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Thursday
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Highlights

63822 **Loan Program** DOE/SOLAR proposes to establish Municipal Waste Energy Price Support Loan Program; comments by 10-20-80 (Part VI of this issue)

63630 **Reporting Requirements** SEC publishes regulations and proposals regarding certain reporting forms (Part II of this issue) (6 documents)

63786 **Energy Conservation** DOE/Conservation and Solar Energy Office implements the Residential Conservation Service Program; effective 2-24-81 (Part IV of this issue)

63500 **Charter Flights** CAB proposes to amend financial security provisions for protection of charter passengers' funds; comments by 11-24-80

63488 **Flood Damage** DOD/Army provides guidance on selection of level of protection for flood damage prevention projects in urban areas; effective 9-25-80

63498 **Real Estate** FHLBB proposes to establish procedure for insured institutions to make available neutral lists of providers of settlement services; comments by 11-18-80

63553 **Health and Safety** IRLG announces Reproductive Toxicity Risk Assessment Task Group outline of work plan; comments by 11-24-80

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Highlights

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There are no restrictions on the republication of material appearing in the **Federal Register.**

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

63506 **Space Transportation** NASA proposes to provide an equitable basis for reimbursement for Spacelab services provided in conjunction with Shuttle flight; comments by 11–24–80

63592 **Semi-Annual Agenda** OMB gives explanation of projects to develop new Federal assistance policies

63786 **Air Pollution** EPA publishes regulations regarding gaseous emission regulations for 1984 and later model year light-duty trucks (Part III of this issue)

63491 **Radio** FCC amends rules to eliminate the financial qualifications requirement in Public Mobile Radio Services; effective 9–10–80

63535 **Safety** DOT/FHA proposes elimination of first aid kit in buses operating in interstate or foreign commerce; comments by 1–23–81

63516 **Radio** FCC amends proposed rules governing conversion of radiation patterns for AM broadcast stations; comments by 11–17–80, reply comments by 12–2–80

63479 **Filberts** USDA/AMS amends certain changes in quality provisions for imported filberts; effective 11–1–80

63602 **Sunshine Act Meetings**

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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 month.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 665]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period September 26–October 2, 1980. Such action is needed to provide for orderly marketing of fresh Valencia oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: September 26, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that the action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1979–80 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on January 22, 1980. A final impact analysis on the marketing policy is available from Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on September 23, 1980 at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports the demand for Valencia oranges continues to be good.

It is further found that there is insufficient time between the date when information became available upon which this regulation is based and when the action must be taken to warrant a 60-day comment period as recommended in E.O. 12044, and that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553). It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

Section 908.965 is added as follows:

§ 908.965 Valencia Orange Regulation 665.

Order. (a) The quantities of Valencia oranges grown in Arizona and California which may be handled during the period September 26, 1980 through October 2, 1980, are established as follows:

(1) District 1: 352,000 cartons;

(2) District 2: 448,000 cartons;

(3) District 3: Open Movement.

(b) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" mean the same as defined in the marketing order.

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

Dated: September 24, 1980.

D. S. Kuryloski,

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

[FR Doc. 80-29920 Filed 9-24-80; 11:30 am]

BILLING CODE 3410-02-M

7 CFR Part 999

Amendment of Filbert Import Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment would make certain changes in the quality provisions for imported filberts. All filberts imported into the U.S. must meet the same or comparable grade and size standards required of filberts grown in Oregon and Washington. Effective August 1, 1980, a revision was made in the standards applicable to domestic filberts.

EFFECTIVE DATE: November 1, 1980.

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447–5053. The Final Impact Analysis describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "significant".

Notice was published in the April 9, 1980, issue of the **Federal Register** (45 FR 24167) to revise the grade requirements for shelled filberts (§ 999.400 Exhibit A) pursuant to section 8e (7 U.S.C. 608e–1) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "act".

In response to several requests for additional time to study the proposal, the time for filing comments was extended from June 16, 1980, to July 1, 1980, and subsequently to July 21, 1980, by notices published in the June 11, 1980, and July 2, 1980, issues of the **Federal Register** (45 FR 39507, 44960). Comments were received from filbert importers, an association representing filbert importers, a member of Congress and the Embassy of Turkey.

Section 8e of the act provides, in part, that whenever a marketing order issued by the Secretary of Agriculture pursuant to section 8c of the act (7 U.S.C. 608c) contains any terms or conditions

regulating the grade, size, quality, or maturity of filberts produced in the United States, the importation of filberts into the United States shall be prohibited unless the commodity complies with the grade, size, quality, and maturity provisions of the order or comparable restrictions. Order No. 982, as amended (7 CFR Part 982), regulating the handling of filberts grown in Oregon and Washington (hereinafter referred to as the "order"), contains terms and conditions regulating the grade and size of filberts.

Pursuant to the order, § 982.101 of Subpart—Grade and Size Regulations (7 CFR 982.101) requires domestic shelled filberts to meet the requirements for Oregon No. 1 whole and broken grade as contained in the Oregon Grade Standards for Filbert (Hazelnut) Kernels (hereinafter referred to as the "Oregon standards"). Effective August 1, 1980, the standards provide a tolerance in total of one percent for kernels or portions of kernels which are moldy, rancid, decayed, or insect injured.

Previously, the standards provided a tolerance of one percent for kernels or portions of kernels which were moldy, rancid, or insect injured. Decay was not named in the standards but was considered one of a number of named and unnamed defects for which there was a total tolerance of five percent. The proposal to amend the quality requirements for imported filberts adopted the change in the standards applicable to filbert kernels regulated under the order, including a definition of the term "decay" to mean that any portion of the kernel is decomposed.

All of the commentators objected to the proposal. Major reasons given for opposing the proposal alleged the following: (1) USDA failed to follow prescribed procedures in accepting and adopting the recent changes in the Oregon standards for shelled filberts; (2) no reason was given to support a revised standard for domestic or imported filberts; (3) the definition of decay is too imprecise to be operational; (4) the proposed change in the tolerance is unnecessarily restrictive and would have an adverse impact on U.S. consumers and Turkey; and (5) differences between domestic and imported shelled filberts in their handling, shipping, timing of inspection, and composition, necessitate comparable standards for imported filberts instead of the same standards prescribed for domestic shelled filberts.

Commentators objected to the procedure used by the Department in accepting and adopting the change in the Oregon standards for shelled filberts without permitting any opportunity for substantive comment by interested parties. It was contended that USDA apparently did not follow its own procedural regulations or requirements of the Administrative Procedure Act when it failed to conduct a rulemaking proceeding to amend § 982.101 to adopt the Oregon standards "as amended" by action of the State of Oregon in December 1979. In addition, it was stated that the order sets forth detailed and specific procedures for establishing and amending grade and size regulations for domestic filberts, including establishment of a Filbert Control Board. The Board has certain powers and duties, including the duty to review the grade and size regulations in effect each marketing year and to recommend modifications thereof. Comments indicated that there is no evidence in the record that the Board reviewed the standards or recommended an amendment of § 982.101. It was also stated that the standards in the import regulation are identical to the domestic standards and, while Oregon had amended its standards for shelled filberts, the Board has made no recommendation to the Secretary to amend the U.S. standards (i.e., the Oregon standards applicable to domestic shelled filberts), and the Secretary has taken no action to date to amend those standards.

The April 9 notice together with the two subsequent extensions of time for filing comments gave all interested persons ample opportunity to comment on the proposed change in the import regulation (7 CFR 900.400). That proposed change was the same as that which became effective August 1, 1980, for domestic filberts pursuant to § 982.101. Section 982.101 incorporates the Oregon standards for shelled filberts by reference, and was issued following rulemaking, including a recommendation from the Filbert Control Board, notice, and opportunity for comment. And, any change in the Oregon standards for shelled filberts automatically becomes the standards under § 982.101 and no further action by the Board or the Department is necessary. However, the Board is not prohibited from recommending an alternative if it determines that a change in the Oregon standards should not be applicable pursuant to the order and, in the case of shelled filberts, § 982.101. There was no such recommendation from the Board which met twice after the Oregon standards were revised in December 1979, following Oregon State rulemaking. In view of all of the foregoing, rulemaking by the Department on the change in the standards for domestic shelled filberts was unnecessary.

Several commentators indicated that no reason was given to support a revised standard, and that inclusion of decay in the one percent tolerance now prescribed in the import regulation for rancid, moldy, and insect damaged nuts, is unnecessary.

Section 8e of the act requires the same or comparable standards for domestic filberts be applied to imported filberts. Hence, any change in the standard for domestic filberts necessitates consideration of a change in the standard for imported filberts.

It was also contended that the definition of decay is too imprecise to be operational, and that a technical definition, illustrated by pictures, should be established. In addition, others raised a question whether a distinction could be made between rancidity and decay.

The defect "decay" has long been known to exist in filberts and other tree nuts. Evidence of this is illustrated from a review of other standards for nuts which make specific references to "decay". Although tolerance levels vary between tree nuts as dictated by individual nut characteristics, in most cases "decay" is classified as "serious damage" or "very serious damage." These designations underscore the importance the tree nut industries and the Department place on limiting the amount of decay. The review also reveals that appropriate and functional definitions have been established for "decay" and "rancidity".

For example, § 51.1995(f)(2) of the United States Standards for Grades of Filberts in the Shell (7 CFR 51.1995) prescribes a tolerance for filberts with rancid, decayed, moldy, or insect injured kernels for U.S. No. 1 Grade. Those standards are effective under § 900.400 for imported inshell filberts. The same provision is contained in the Oregon Grade Standards Filberts (Hazelnuts) in the Shell for Oregon No. 1 Grade, which are effective under the order for domestic filberts. Neither of those standards defines the term "decay". Both define the term "rancidity" in terms of taste.

Section 51.2110 of the United States Standards for Grades of Shelled Almonds (7 CFR 51.2105) prescribes requirements for U.S. No. 1 Whole and Broken grade, including a tolerance for serious damage. Section 51.2130 defines the term "Serious damage" to mean any defect which makes a kernel or piece of kernel unsuitable for human consumption, and includes decay, rancidity, insect injury and damage. Section 51.2121 of that standard defines "decay" to mean that the kernel is

putrid or decomposed, and § 51.2122 defines "rancidity" in terms of taste. Section 51.2075(b)(5) of the United States Standards for Grades of Almonds in the Shell (7 CFR 51.2075) prescribes a tolerance for internal defects, including decay or rancidity damage by insects, or mold, for U.S. No. 1 Grade. Section 51.2088 of those standards defines decay to mean that all or part of the kernel has become decomposed, and § 51.2089 defines "rancidity" in terms of taste.

Section 51.2277 of the United States Standards for Shelled Walnuts (7 CFR 51.2275) provides, in part, that U.S. No. 1 Grade shall be free from shell, foreign material, insect injury, decay, and rancidity. "Decay" is included as a defect in the definition of "Very serious damage" in § 51.2294. "Very serious damage" is defined to mean any defect, other than color, which very seriously affects the appearance, or the edible or shipping quality of the individual portion of kernel or of the lot as a whole. There is no definition of "decay". The term "rancidity" is defined in terms of taste. Section 51.2948 of the United States Standards for Grades of Walnuts (Juglans regia) in the Shell (7 CFR 51.2945) provides, in part, that kernels of U.S. No. 1 Grade shall be free from decay, dark discoloration, and rancidity. "Decay" is included in the definition of "Serious damage" in § 51.2966, and is defined in § 51.2962 to mean that any portion of the kernel is decomposed. "Rancidity" is defined in terms of taste.

Sections 51.1430, 51.1431, and 51.1432 of the United States Standards for Grades of Shelled Pecans (7 CFR 51.1430) prescribe requirements, respectively, for U.S. No. 1 Halves, U.S. No. 1 Halves and Pieces, and U.S. No. 1 Pieces of pecans. All three grades require kernels to be free from damage or serious damage. "Decay" is contained in the definition of "Serious damage" in § 51.1450. "Decay" is not defined, but "rancidity" is defined in terms of taste. "Decay" is also considered as "Serious damage" in § 51.1414 of the United States Standards for Grades of Pecans in the Shell (7 CFR 51.1400). These standards do not define "decay".

It is evident from this review of other nut standards that "decay" is a factor commonly considered in determining the wholesomeness of nuts destined for human consumption. Moreover, definitions of "decay" in other standards are the same as, or similar to, those in the proposal. "Decay" is a specific, identifiable defect, and one which can be uniformly classified and graded. Moreover, it is distinct from "rancidity". "Decay" is determined by visual inspection, whereas "rancidity" is determined by taste.

Some comments suggested that the proposed change is unnecessarily restrictive and would have an adverse impact on U.S. consumers and Turkey. It was contended that application of standards stricter than those currently in effect will put Turkish exporters in a very difficult position in meeting these requirements because size classifications, tolerances and other factors are completely different between U.S. and Turkish standards. However, the only change proposed was to define the term "decay" and include that defect with the three other highly objectionable defects previously mentioned for which a one percent tolerance would be prescribed. All other requirements of § 900.400 would continue to apply.

Turkey has issued a regulation governing the control of filbert exports. A copy of that regulation was submitted in the comments. Article 12 of that regulation includes, in part, the following tolerances:

[In percent]

	Standard filberts	Run-of-the mill filberts	Fine and natural filberts
I. Rotten and moldy, total	0.50	0.50	0.50
II. Bitter, invisibly rotten, invisibly moldy, worm eaten and sour limy-total	(1)	0.50	0.50

[1] Total of I and II.

Other standards which may be used for reference are those prepared for the Economic Commission for Europe. These standards are used by filbert (hazelnut) importers in the Federal Republic of Germany, which is Turkey's chief customer for shelled filberts. In some years, the Federal Republic imports as much as 80 percent of Turkish shelled filbert exports. Those standards include the following tolerances:

IV. Tolerances

* * * * *

(i) *Quality and presentation tolerances*

[In percent]

	"Extra"	I	II
* * * * *			
Rancid, rotten, mouldy, having a bad smell or taste, damaged by insects or attacked by rodents [1]	1	1.5	3
* * * * *			

[1] For hazel nuts of an old crop, these tolerances are increased to 1.5%, 2.5%, and 4% respectively in the Extra Class, Class I, and Class II, provided that the marking indicates the crop year or "old crop."

It is thus apparent that the ECE and Turkish standards include tolerances that are as strict as, or stricter, than, those proposed under § 900.400.

The most relevant of the comments pertain to comparability, since the act requires that imported filberts must meet the same or comparable standards required of domestic filberts regulated under the order. It was contended that differences between domestic and imported shelled filberts in their handling, shipping, timing of the inspection, and composition would support a comparable standard. Comments indicated that domestic filberts are not subject to the same handling and transportation difficulties faced by imported filberts. Also, domestic filberts are dehydrated mechanically after harvest, whereas Turkish filberts are dried in the sun and therefore subject to the vagaries of the weather. Domestic filberts are stored in refrigerated warehouses, whereas Turkish filberts purportedly are stored at room temperature and therefore are not protected from temperature variations and atmospheric moisture. Finally, it was contended that domestic filberts are inspected following shelling, whereas Turkish filberts are shelled, shipped—which may require a minimum of seven weeks for a trans-Atlantic crossing—and then inspected.

Commentators also stated that the higher oil content of imported filberts may cause a slightly higher incidence of rancidity and/or decay in those filberts. Furthermore, it was contended that the extent of any other differences in the composition between imported and domestic filberts can be determined only by chemical analysis. Accordingly, commentators stated that additional research is needed to determine whether these differences warrant a comparable standard.

The Secretary may establish a comparable regulation for imports under section 8e only upon a finding that the application of the restrictions effective under a marketing order is not practicable because of variations in characteristics between the domestic and imported commodity. Variations in such factors as the method of handling, shipping, or time of inspection do not necessarily serve as a basis for such a finding. With regard to the physical characteristics, no information was submitted that the higher oil content of Turkish filberts, or any other such attribute, would warrant a more liberal tolerance for decay for imported filberts. In fact, no evidence was presented indicating that Turkish filberts naturally

contain a higher incidence of decay, and that any higher incidence of decay could not be corrected by better sorting, handling and storing techniques. There is no basis in the comments that would warrant a finding that application of the restrictions under the marketing order to imported shelled filberts is not practicable because of variations in characteristics between domestic and imported shelled filberts.

It is nevertheless possible that traders in imported filberts may be unable to immediately meet the requirements of § 900.400 Exhibit A as proposed in the notice and that their situation should be recognized. Accordingly, full adherence with these requirements will be deferred. To afford traders ample opportunity to adjust their practices to comply with the minimum quality standards now required of the domestic filberts, it has been determined that no change in the requirements currently effective for imported shelled filberts will be imposed until November 1, 1980, and that from that date until February 1, 1981, an "interim" period, November 1, 1980 through January 31, 1981, imported shelled filberts will be allowed a total tolerance of one and one-half percent for mold, rancidity, decay or insect injury, provided that in order to maintain the quality level already achieved under the current import regulation, not more than a total of one percent shall be permitted for mold, rancidity or insect injury.

On the basis of the incidence of such defects found in recent imports of shelled filberts, it appears that the "interim" period requirements described above will impose no undue hardship on parties engaged in the commercial trading of imported filberts. And, while the "interim" tolerance would be fifty percent greater than that permitted for shipments of filberts grown in Oregon and Washington, the interests of consumers would be accommodated to some extent by the significant reduction in the allowable level of the highly objectionable defect, decay. Beginning February 1, 1981, nearly 10 months later than originally proposed in the **Federal Register** of April 9, 1980, and six months after being imposed on domestic filberts, the aggregate tolerance will be reduced to one percent for mold, rancidity, decay, or insect injury.

This will require a change in § 900.400(b)(2). Subparagraph (2) currently provides that the requirements in Exhibit A are identical to the requirements for Oregon No. 1 whole and broken grade for shelled filberts (as contained on Oregon Grade Standards for Filberts (Hazelnut) Kernels) and prescribed for shelled filberts under Order No. 982, as amended. Since the requirements for imported shelled filberts will not be identical to those prescribed under the order during the period November 1, 1980, through January 31, 1981, the phrase "Except as provided in Exhibit A of this section," is inserted at the beginning of the second sentence of subparagraph (2).

After consideration of all relevant matter presented, including that in the notice, the comments received, and other available information, it is found that to amend the regulation for imported filberts, as hereinafter set forth, will tend to effectuate the declared policy of the act.

Therefore, § 999.400 is amended as follows:

§ 999.400 Regulations governing the importation of filberts.

* * * * *

1. Section 999.400(b)(2) is revised to read as follows:

(b) *Grade and Size Requirements.*

* * * * *

(2) Shelled filberts. All shelled filberts shall be of a quality equal to or better than the requirements prescribed in Exhibit A of this section. Except as provided in Exhibit A of this section, these requirements are identical to the requirements for Oregon No. 1 whole and broken grade for shelled filberts (as contained in Oregon Grade Standards for Filbert (Hazelnut) Kernels) and prescribed for shelled filberts under Order No. 982, as amended.

2. Grade Requirements for Shelled Filberts, in Exhibit A, are revised to read as follows:

GRADE REQUIREMENTS FOR SHELLED FILBERTS

Filbert kernels or portions of filbert kernels shall meet the following requirements:

(1) Well dried and
(2) Clean.
(3) Free from:
(i) Foreign material;
(ii) Mold;
(iii) Rancidity;
(iv) Insect injury; or
(v) Decay.

* * * * *

3. Clause (2) of Tolerances, in Exhibit A, is revised to read as follows:

TOLERANCES

* * * * *

(2) For Defects: five percent for kernels or portions of kernels which are below the requirements of this grade, including not more than the following: (a) For the period ending January 31, 1981, one and one-half percent for mold, rancidity, decay, or insect injury, *Provided,* That not more than one percent shall be for mold, rancidity, or insect injury; and (b) thereafter, beginning February 1, 1981, one percent for mold, rancidity, decay, or insect injury.

4. In definitions, in Exhibit A, under the heading "Serious Damage", paragraph "(d)" is relettered "(e)" and a new paragraph "(d)" is added to read as follows:

Serious Damage

* * * * *

(d) "Decay" means that any portion of the kernel is decomposed.

* * * * *

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

Dated: September 22, 1980 to become effective November 1, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 80-29724 Filed 9-24-80; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 235

Inspection of Persons Applying for Admission: Deletion of Obsolete Form Reference

AGENCY: Immigration and Naturalization Service.

ACTION: Final rule.

SUMMARY: This amendment of the regulations of the Immigration and Naturalization Service deletes reference to an obsolete form no longer in use, i.e., "Notice to Nonimmigrants", Form M–211.

EFFECTIVE DATE: September 25, 1980.

FOR FURTHER INFORMATION CONTACT: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 I Street NW., Washington, D.C. 20536. Telephone: (202) 633–3048.

FOR SPECIFIC INFORMATION CONTACT: William F. Doyle, Immigration Inspector, Immigration and Naturalization Service, 425 I Street NW., Washington, D.C. 20536. Telephone: (202) 633–2699.

SUPPLEMENTARY INFORMATION: Subparagraph 235.1(f)(iv)(1a) is being deleted from Title 8 of the Code of Federal Regulations because the instruction referring to Form M–211, "Notice of Nonimmigrants" is no longer

necessary. The Immigration and Naturalization Service has discontinued Form M–211 since the information contained on this form has been incorporated in the revised Form I–94, "Arrival-Departure Record". Compliance with the provision of 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment contained in this order is editorial in nature solely to reflect current Service forms.

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

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

§ 235.1 [Amended]

In § 235.1, paragraph (f)(iv)(1a) is deleted.

(Secs. 103 and 235, 8 U.S.C. 1103 and 1225)

Dated: September 19, 1980.

David Crosland,

Acting Commissioner of Immigration and Naturalization.

[FR Doc. 80–29704 Filed 9–24–80; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 80–NW–41–AD, Amdt. 39–3921]

Airworthiness Directives: Rockwell NA–265–60 Airplanes modified in Accordance with Raisbeck Group STC SA687NW

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends airworthiness directive (AD) 80–04–11 (45 FR 12213 dated February 25, 1980), Amendment 39–3703, applicable to Rockwell Model NA–265–60 airplanes modified in accordance with Raisbeck Group STC SA687NW. This amendment removes a requirement to inspect the horizontal stabilizer.

DATE: Effective date October 1, 1980.

FOR FURTHER INFORMATION, CONTACT: Mr. William M. Perrella, Airframe Section, ANW–212, Engineering and Manufacturing Branch, FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108, telephone (206) 767–2516.

SUPPLEMENTARY INFORMATION: AD 80–04–11 (45 FR 12213 dated February 25, 1980) Amendment 39–3703 Paragraph B, requires an initial inspection of the horizontal stabilizer, for fatigue cracks caused by poor workmanship, and repetitive inspections at 5,000 hour intervals. All stabilizers have now been rebuilt by Rockwell, obviating the need for this requirement. Paragraph B is therefore removed from this AD.

Since this amendment relieves a restriction and imposes no additional burden on any person, it is found that notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) as amended by 39–3703, 45 FR 12213, AD 80–04–11, is further amended by deleting paragraph B.

This amendment becomes effective October 1, 1980.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c); and 14 CFR 11.89)).

Note.—The FAA has determined that this document involves a regulation which is not considered to be significant under the provision of Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Seattle, Washington, on September 10, 1980.

Jonathan Howe,

Acting Director, Northwest Region.

[FR Doc. 80–29502 Filed 9–24–80; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 80–WE–44–AD; Amdt. 39–3920]

Lockheed Model L–1011 Series Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which provides for deactivation of certain lavatory vent line heaters on Lockheed Model L–1011 series airplanes. The AD is needed to prevent electrical arcing between the input leads on the heaters which could result in fire damage.

DATE: Effective September 29, 1980. Compliance schedule—Within 25 hours' time in service from the effective date of this AD.

ADDRESSES: The applicable service information may be obtained from:

Lockheed California Company, P.O. Box 557, Burbank, California 91520, Attention: Commercial Support Contracts, Department 63–11 V33, B–1.

Also, a copy of the service information may be reviewed at, or a copy obtained from:

Rules Docket in Room 916, FAA 800 Independence Avenue, S.W. Washington, D.C. 20591, or

Rules Docket in Room 6W14, FAA Western Region 15000 Aviation Boulevard Hawthorne, California 90261.

FOR FURTHER INFORMATION CONTACT: Jerry Presba, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536–6351.

SUPPLEMENTARY INFORMATION: There has been a report of fire damage in the forward electronic service center of a Lockheed Model L–1011–385 airplane which occured during maintenance with ground power applied to the airplane. The fire may have been initiated by electrical arcing of the two power input leads of the forward lavatory vent line patch heater, possibly due to moisture penetration. Since this condition is likely to exist or develop on other airplanes of the same type design, an airworthiness directive is being issued which requires deactivation of the forward and aft lavatory vent line patch heaters on Lockheed Model L–1011–385 series airplanes.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new airworthiness directive:

Lockheed—California: Applies to Lockheed Model L–1011–385 series airplanes certificated in all categories.

Compliance required within 25 hours' time in service from the effective date of this AD, unless already accomplished.

To prevent possible fire damage to the forward electronic service center accomplish the following:

(a) Open the circuit breaker labeled "HEATERS JET PUMP LAV" (L–1011–385–1), "HEATERS LAV JET PUMP" (L—1011–385–3); collar the circuit breaker and install a tag labeled "Do Not RE-SET".

Note.—Lockheed Alert Service Bulletin 093–21–A180 dated March 12, 1980 refers to this subject.

(b) Alternative inspections, modifications or other actions which provide an equivalent level of safety may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

This amendment becomes effective September 29, 1980.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

Note.—The FAA has determined that this document involves a final regulation which is not considered to be significant under Executive Order 12044; as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Los Angeles, California on September 9, 1980.

F. C. McClure

Acting Director, FAA Western Region.

[FR Doc. 80–29503 Filed 9–24–80; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 80–CE–31–AD; Amdt. 39–3922]

Cessna Models 335 and 340A Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), AD 80–19–10, applicable to certain Cessna Model 335 (Serial Numbers 335–0001 thru 335–0054 and 335–0056) and Cessna Model 340A (Serial Numbers 340A901 thru 340A0994 and 340A1002) airplanes. The AD requires, prior to further flight, the installation of a temporary instrument panel placard prohibiting flight in icing conditions, the temporary withdrawal of the icing approval by covering the icing portion of the airplane operational limits placard and the banding of the deicer circuit breakers. The AD further requires a wiring inspection and a wiring change, if necessary, of the left hand side junction box, within the next 25 hours time-in-service, in accordance with Cessna Multi-engine Customer Care Service Information Letter ME80–31. When this letter requirement has been accomplished, the former requirements set forth herein are no longer applicable. These actions are necessary to assure that the deicer systems on these airplanes are correctly wired, the miswiring of which would create a safety hazard by overloading the normal avionics power distribution system.

EFFECTIVE DATE: September 29, 1980, to all persons except those to whom it has already been made effective by airmail letter from the FAA dated September 4, 1980.

COMPLIANCE: As prescribed in the body of the AD.

ADDRESSES: Cessna Multi-engine Customer Care Service Information Letter ME80–31 dated July 18, 1980, applicable to this AD, may be obtained from Cessna Aircraft Company, Marketing Division, Attention: Customer Service Department, Wichita, Kansas 67201; Telephone (316) 685–9111. A copy of the service information letter is also contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106; and/or Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Ed Mosman, ACE–213, Aircraft Certification Program, FAA, Room 238, Terminal Building No. 2299, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 942–4281.

SUPPLEMENTARY INFORMATION: The loss of electrical power to the avionics, heated windshield, and propeller deice systems while in adverse weather conditions was reported on a Model 335 airplane. It was subsequently determined that a wiring error had been made during production which caused both the avionics buss and the deicer buss to be connected to the remote avionic circuit breaker. The combined avionics and deicer overload caused the remote avionics breaker to open. The operator switched to emergency power, and the overload also opened the emergency avionics power breaker until power to the propeller deice system was removed. The same wiring error was later found on a Model 340A airplane. A review of the production records established that the same wiring error could have been made on 55 each Model 335 and 95 each Model 340A airplanes. On airplanes that have been incorrectly wired, a situation results in which the operator is unable to supply electrical power to the deicer buss and to the normal avionics distribution circuit. This situation, if not corrected, would create a safety hazard to an operator if he attempts to fly in icing conditions and finds he is unable to supply electrical power to the then needed deicer systems.

The FAA determined that this is an unsafe condition that may exist in other airplanes of the same type design thereby requiring the issuance of an AD. It was also determined that an emergency condition existed, that immediate corrective action was required and that notice and public procedure thereon was impractical and contrary to the public interest. Accordingly, the FAA notified all known registered owners of the airplanes affected by this AD by airmail letter dated September 4, 1980. The AD became effective as to these individuals upon receipt of that letter and is identified as AD 80–19–10.

The AD, which is applicable to certain serial numbers of Cessna Model 335 and 340A airplanes, requires, prior to further flight, the installation of a temporary placard on the instrument panel which prohibits flight in icing conditions, the temporary withdrawal of the icing approval by covering the icing portion of the airplane operational limits placard and the banding of the deicer circuit breakers. These requirements are no longer applicable when a wiring inspection and a wiring change, if necessary, of the left hand side junction box has been accomplished in accordance with Cessna Multi-engine Customer Care Service Information Letter ME80–31, which must be done within 25 hours time-in-service after the effective date of the AD. Since the unsafe condition described herein may still exist on other Cessna Models 335 and 340A airplanes, the AD is being published in the **Federal Register** as an amendment to Part 39 of the Federal Aviation Regulations (14 CFR Part 39) to make it effective to all persons who did not receive the letter notification.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive.

Cessna: Applies to Model 335 (Serial Numbers 335–0001 thru 335–0054 and 335–0056) and Model 340A Serial Numbers 340A0901 thru 340A0994 and 340A1002) airplanes certified in all categories.

Compliance: Required as indicated unless the requirements of Paragraph (B) have been previously accomplished.

To prevent flight in adverse weather conditions with no means to supply electrical power to the deicer systems:

(A) Prior to further flight:

1. Install, and operate the airplane in accordance with, a temporary placard on the instrument panel just below the glareshield in the pilot's line of forward vision when seated in the left control seat which states, "Not Approved For Flight In Icing Conditions."

2. Install black electrician's tape or equivalent over the bottom portion of the airplane Operational Limits placard, which is located on the pilot's sun visor, to cover the wording "AND FLIGHTS INTO ICING

CONDITIONS IF THE PROPER OPTIONAL EQUIPMENT IS INSTALLED AND OPERATIONAL."

3. Pull the propeller deice and optional heated windshield circuit breakers, if installed, and install a band around each breaker to prevent activating those circuits.

(B) Within 25 hours time-in-service after the effective date of the AD, perform the wiring inspection and accomplish the wiring change, if required, in accordance with Cessna Multi-engine Customer Care Service Information Letter ME80-31, dated July 18, 1980. Make the prescribed entry in the airplane maintenance records.

(C) Remove the temporary placard, cover tape and circuit breaker bands specified in Paragraphs (A) 1., 2., and 3. when Paragraph B has been accomplished.

(D) Within seven days notify, in writing, the Chief, Aircraft Certification Program, Federal Aviation Administration, Room 238, Terminal Building No. 2299, Mid-Continent Airport, Wichita, Kansas 67209 of any incorrect wiring of the deicer buss found when complying with Paragraph B). One acceptable means of makings these reports is Malfunction or Defect Report (FAA Form 8010-4). (Reporting approved by the Office of Management and Budget under OMB No. 04-R0174). Failure to comply with this paragraph subjects owners/operators to agency enforcement action.

(E) The airplane may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(F) Any equivalant method of compliance with this Airworthiness Directive must be approved by the Chief, Aircraft Certification Program, Federal Aviation Administration, Room 238, Terminal Building No. 2299, Mid-Continent Airport, Wichita, Kansas 67209.

This amendment becomes effective on September 29, 1980, to all persons except those to whom it has already been made effective by an airmail letter from the FAA dated September 4, 1980, and is identified as AD 80-19-10.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421 and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.89 of the Federal Aviation Regulations (14 CFR Sec. 11.89).

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A copy of the final evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to FAA, Office of the Regional Counsel, Room 1558, Central Region, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 11, 1980.

Paul J. Baker,

Director, Central Region.

[FR Doc. 80-29504 Filed 9-24-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 79-NE-10; Amdt. 39-3924]

Sikorsky S-76A Helicopters Certificated in All Categories; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD), applicable to the Sikorsky S-76A series helicopter, that requires replacement of the horizontal stabilizer support structure before September 30, 1980, in accordance with Retrofit Kit No. 76070-210006-011 and Sikorsky Service Bulletin No. 76-55-2, dated June 2, 1980. This amendment extends the compliance date to December 15, 1980.

DATES: Effective September 25, 1980. Compliance schedule—As prescribed in body of AD.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Stephen J. Soltis, ANE-212, Engineering and Manufacturing Branch, Flight Standards Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone: (617) 273-7336.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39-3794, 45 FR 39833, AD 80-12-11, as amended by Amendment 39-3894, 45 FR 56334, AD 80-12-11 R1, which currently requires that the horizontal stabilizer support structure be replaced before September 30, 1980, in accordance with Retrofit Kit No. 76070-20006-011 and Sikorsky Service Bulletin No. 76-55-2, dated June 2, 1980.

After issuing Amendment 39-3894, it has been found that the manufacturer cannot supply sufficient replacement components in accordance with the September 30, 1980, compliance date. The manufacturer has thus requested an extension of the original compliance date to December 15, 1980.

The FAA has determined that an adequate level of safety is provided by the repetitive inspections of the horizontal stabilizer support structure required per AD 80-12-11 R1. Therefore, the subject compliance date may be changed to December 15, 1980, without any change to the present level of safety.

Since a situation exists that requires immediate adoption of this regulation and such action will relax an existing requirement, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by amending Amendment 39-3794, 45 FR 39833, AD 80-12-11, as amended by Amendment 39-3894, 45 FR 56334, AD 80-12-11 R1, as follows:

1. By striking out the compliance date "September 30, 1980," as it appears in paragraph 9 and inserting the date "December 15, 1980," in lieu thereof.

This amendment to FAR Part 39 becomes effective September 25, 1980.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89.)

A historical file on this AD is maintained by the FAA at its Headquarters in Washington, D.C., and at the FAA, New England Region Headquarters, Burlington, Massachusetts.

Note.—The FAA has determined that this document involves a final regulation which is not considered to be significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, the expected impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Burlington, Massachusetts, on September 12, 1980.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 80-29507 Filed 9-24-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 20554; Amdt. 39-3929]

Messerschmitt-Bolkow-Blohm GmbH Model BO-105 Series Helicopters; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) applicable to Messerschmitt-Bolkow-Blohm Model BO-105 series helicopters by adjusting the compliance time for inspection of the engine cowling for proper application of fire protective paint and rework of those cowling assemblies where incorrect application of the paint is found because the fire protective paint is unavailable from

sources in the U.S.A. due to shipment delays to these domestic sources.

DATES: Effective September 19, 1980. Compliance schedule—As prescribed in body of AD.

ADDRESSES: The applicable service bulletin may be obtained from: Messerschmitt-Bolkow-Blohm GmbH, Unternehmensbereich drehflugler, Kundendienst, Abt. DV04, Prandtlstrasse, 8012 Ottobrunn, Federal Republic of Germany.

A copy of the service bulletin is contained in the rules docket for this amendment in Room 916, 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: C. Christie, Chief, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, Federal Aviation Administration, c/o American Embassy, Brussels, Belgium, Telephone: 513.38.30, or C. Chapman, Acting Chief, Technical Standards Branch, AWS-110, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591, Telephone: 202-426-8192.

SUPPLEMENTARY INFORMATION: This Amendment amends Amendment 39-3859 (45 FR 49908), AD 80-16-01, which currently requires a one time inspection of the engine cowling to determine proper application of the fire protective paint and, if a defective paint application is found, stripping and proper re-application of the fire protective paint and installation of new asbestos fabrics on the engine cowling of certain Messerschmitt-Bolkow-Blohm Model BO-105 series helicopters. After issuing Amendment 39-3859, the FAA has determined that some relief should be provided from the 100 hour compliance time due to the unavailability of the fire protective paint in the U.S.A. resulting from shipment delays to these domestic sources. Based on service experience, FAA has determined that this extended compliance period will not have an adverse effect on safety. Therefore, the FAA is amending Amendment 39-3859 by adjusting the compliance time period.

Since this amendment relieves a restriction and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and good cause exists for making the amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending Amendment 39-3859 (45 FR 49908), AD 80-16-01, as follows:

(1) By revising the compliance paragraph to read: "Compliance required prior to accumulation of 100 hours time in service after the effective date of this AD, or before November 15, 1980, whichever occurs later."

(2) By eliminating the lead-in sentence in paragraph (a).

(3) Delete the phrase "before further flight, except as provided in paragraph (d)," from paragraphs (b) and (c).

This Amendment becomes effective September 19, 1980.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89))

Note.—The FAA has determined that this document involves a regulation which is not considered to be significant under Executive Order 12044 as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Washington, D.C., on September 19, 1980.

Jerold M. Chavkin,

Acting Director of Airworthiness.

[FR Doc. 80-29740 Filed 9-24-80; 8:45 am]

BILLING CODE 4910-13-M

[Docket No. 20778; Amdt. No. 1173]

14 CFR Part 97

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occuring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Information Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, may be ordered from Superintendant of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The annual subscription price is $135.00.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures and Airspace Branch (AFO-730), Aircraft Programs Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. § 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form

document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, or contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, Effective at 0901 G.m.t. on the dates specified, as follows:

1. By amending § 97.23 VOR-VOR/DME SIAPs identified as follows:

. . . Effective October 30, 1980

Arcata-Eureka, CA—Arcata, VOR/DME Rwy 1, Amdt. 4
Arcata-Eureka, CA—Arcata, VOR Rwy 13, Amdt. 5
Meeker, CO—Meeker, VOR-A, Original
Washington, DC—Washington National, VOR Rwy 15, Amdt. 5
Washington, DC—Washington National, VOR/DME Rwy 18, Amdt. 5
Washington, DC—Washington National, VOR Rwy 36, Amdt. 7
Mt. Vernon, IL—Mt. Vernon-Outland, VOR Rwy 5, Amdt. 10
Bloomington, IN—Monroe County, VOR Rwy 24, Amdt. 6
Peru, IN—Peru Muni, VOR Rwy 36, Amdt. 2
Winamac, IN—Arens Field, VOR/DME-A, Amdt. 2
Davenport, IA—Davenport Muni, VOR Rwy 2, Amdt. 4
Davenport, IA—Davenport Muni, VOR Rwy 20, Amdt. 3
Anthony, KS—Anthony Muni, VOR-A, Original
Hawesville, KY—Hancock Airfield, VOR Rwy 33, Original
Paducah, KY—Farrington Airpark, VOR/DME-B, Original
Richmond, KY—Madison, VOR/DME Rwy 18, Original
Russellville, KY—Russellville-Logan County, VOR/DME Rwy 24, Original
Farmerville, LA—Farmerville, VOR/DME-A, Original
Holland, MI—Park Township, VOR-C, Amdt. 5
Niles, MI—Jerry Tyler Meml, VOR Rwy 3, Amdt. 5
Niles, MI—Jerry Tyler Meml, VOR Rwy 21, Amdt. 1
Brainerd, MN—Brainerd-Crow Wing Co/Walter F. Wieland Fld, VOR/DME Rwy 12, Amdt. 3
Brainerd, MN—Brainerd-Crow Wing Co/Walter F. Wieland Fld, VOR Rwy 30, Amdt. 7
Detroit Lakes, MN—Detroit Lakes, VOR Rwy 13, Amdt. 5
Detroit Lakes, MN—Detroit Lakes, VOR Rwy 31, Amdt. 3
Winona, MN—Winona Muni-Max Conrad Fld, VOR Rwy 29, Amdt. 10
Albion, NJ—Albion, VOR-A, Amdt. 1
Atlantic City, NJ—Atlantic City, VOR Rwy 4, Amdt. 13
Atlantic City, NJ—Atlantic City Muni/Bader Field, VOR-A, Original
Atlantic City, NJ—Atlantic City Muni/Bader Field, VOR Rwy 11, Amdt. 1
Atlantic City, NJ—Atlantic City Muni/Bader Field, VOR Rwy 16, Amdt. 2, cancelled
Belmar-Farmingdale, NJ—Monmouth County, VOR-A, Amdt. 10
Berlin, NJ—Camden-Burlington County, VOR-A, Amdt. 1
Hammonton, NJ—Hammonton Muni, VOR-A, Amdt. 5
Hammonton, NJ—Hammonton Muni, VOR-B, Original
Millville, NJ—Millville Muni, VOR Rwy 19, Amdt. 2
Vineland, NJ—Rudys, VOR-A, Amdt. 6
Vineland, NJ—Kroelinger, VOR Rwy 28, Amdt. 7
Austin, TX—Bird's Nest Aviation Inc, VOR/DME-B, Amdt. 1
Austin, TX—Tims Airpark, VOR/DME-A, Amdt. 4
Austin, TX—Robert Mueller Muni, VOR/DME or TACAN Rwy 12R, Amdt. 5
Austin, TX—Robert Mueller Muni, VOR/DME or TACAN Rwy 16R, Amdt. 4
Jonestown, TX—Bar K Airpark, VOR/DME-A, Amdt. 1, cancelled
Lago Vista, TX—Lago Vista Bar-K Airpark, VOR/DME-A, Original
San Marcos, TX—San Marcos Muni, VOR/DME-A, Amdt. 1
Logan, UT—Logan-Cache, VOR-A, Amdt. 4
Logan, UT—Logan-Cache, VOR-C, Amdt. 1
Provo, UT—Provo Muni, VOR-A, Amdt. 5
Provo, UT—Provo Muni, VOR/DME Rwy 13, Amdt. 2
Olympia, WA—Olympia, VOR Rwy 17, Amdt. 10
Olympia, WA—Olympia, VOR/DME Rwy 35, Amdt. 10
Clarksburg, WV—Benedum, VOR Rwy 3, Amdt. 11

Note.—The FAA published an amendment in Docket No. 20628, Amdt. No. 1171 to Part 97 of the Federal Aviation Regulations (Vol. 45 FR No. 166 Page 56338; dated August 25, 1980) under section 97.23 effective October 2, 1980, which is hereby amended as follows:
Enterprise, AL—Enterprise Muni, VOR Rwy 5 original change effective date to October 30, 1980.

2. By amending § 97.25 SDF-LOC-LDA SIAPs identified as follows:

. . . Effective October 30, 1980

Washington, DC—Washington National, LDA Rwy 18, Amdt. 9
South Bend, IN—Michiana Regional, LOC Rwy 9, Original
South Bend, IN—Michiana Regional, LOC (BC) Rwy 9, Amdt. 10, cancelled
Joplin, MO—Joplin Muni, LOC BC Rwy 31, Amdt. 16
Millville, NJ—Millville Muni, LOC Rwy 10, Amdt. 1
Westhampton Beach, NY—Suffolk County, LOC BC Rwy 6, Original
Cleveland, OH—Burke Lakefront, LOC Rwy 24R, Amdt. 5
Clarksville, TN—Outlaw Field, LOC Rwy 34, Amdt. 1

. . . Effective October 2, 1980

Merced, CA—Merced Muni, LOC BC Rwy 12, Amdt. 5
Asheville, NC—Asheville Muni, LOC Rwy 16, Amdt. 1

. . . Effective September 3, 1980

McAlester, OK—McAlester Muni, LOC Rwy 1, Amdt. 1

3. By amending § 97.27 NDB/ADF SIAPs identified as follows:

. . . Effective October 30, 1980

Butler, AL—Butler-Choctaw County, NDB Rwy 11, Original
Washington, DC—Washington National, NDB Rwy 15, Amdt. 2
Washington, DC—Washington National, NDB Rwy 36, Amdt. 5
Perry, GA—Perry-Fort Valley, NDB Rwy 36, Original
Winamac, IN—Arens Field, NDB Rwy 9, Original
Davenport, IA—Davenport Muni, NDB Rwy 2, Amdt. 10
Herington, KS—Herington Muni, NDB Rwy 17, Original
Herington, KS—Herington Muni, NDB Rwy 35, Original
Johnson, KS—Stanton County Muni, NDB Rwy 17, Original
Holland, MI—Park Township, NDB-B, Amdt. 3, cancelled
Holland, MI—Park Township, NDB Rwy 5, Original

Holland, MI—Park Township, NDB Rwy 23, Original
Madison, MN—Dawson-Madison LAC QUI PARLE County, NDB Rwy 31, Original
Joplin, MO—Joplin Muni, NDB Rwy 13, Amdt. 21
West Plains, MO—West Plains Muni, NDB Rwy 14, Original
West Plains, MO—West Plains Muni, NDB Rwy 32, Original
Ord, NE—Evelyn Sharp Field, NDB Rwy 13, Original
Cleveland, OH—Burke Lakefront, NDB Rwy 24R, Amdt. 4
Clarksville, TN—Outlaw Field, NDB Rwy 34, Amdt. 1
Austin, TX—Robert Mueller Muni, NDB Rwy 30L, Amdt. 29
Georgetown, TX—Georgetown Muni, NDB Rwy 17, Amdt. 1
Sulphur Springs, TX—Sulphur Springs Muni, NDB Rwy 18, Original
Logan, UT—Logan-Cache, NDB-B, Amdt. 3
Clarksburg, WV—Benedum, NDB Rwy 21, Amdt. 6

. . . *Effective October 2, 1980*

Asheville, NC—Asheville Muni, NDB Rwy 16, Amdt. 12
Asheville, NC—Asheville Muni, NDB Rwy 34, Amdt. 13

. . . *Effective September 5, 1980*

Hutchinson, KS—Hutchinson Muni, NDB Rwy 13, Amdt. 10

. . . *Effective September 3, 1980*

McAlester, OK—McAlester Muni, NDB Rwy 1, Amdt. 1
New Castle, PA—New Castle Muni, NDB Rwy 23, Amdt. 1

4. By amending § 97.29 ILS-MLS SIAPs identified as follows:

. . . *Effective October 30, 1980*

Washington, DC—Washington National, ILS Rwy 36, Amdt. 31
Sterling Rockfalls, IL—Whiteside Co Arpt-Jos. H. Bittorf Fld, ILS Rwy 25, Amdt. 6
Joplin, MO—Joplin Muni, ILS Rwy 13, Amdt. 19
Atlantic City, NJ—Atlantic City, ILS Rwy 13, Amdt. 2
Cleveland, OH—Cleveland-Hopkins Intl, ILS Rwy 5R, Amdt. 8
Austin, TX—Robert Mueller Muni, ILS Rwy 12R, Amdt. 5
Austin, TX—Robert Mueller Muni, ILS Rwy 30L, Amdt. 28
Provo, UT—Provo Muni, ILS Rwy 13, Original
Clarksburg, WV—Benedum, ILS Rwy 21, Amdt. 7
Milwaukee, WI—General Mitchell Field, ILS Rwy 7R, Amdt. 9

. . . *Effective October 2, 1980*

San Francisco, CA—San Francisco Intl, ILS Rwy 28L, Amdt. 16
Merced, CA—Merced Muni, ILS Rwy 30, Amdt. 6
Detroit, MI—Detroit Metropolitan-Wayne County, ILS Rwy 3R, Amdt. 4
Asheville, NC—Asheville Muni, ILS Rwy 34, Amdt. 18

. . . *Effective September 5, 1980*

Hutchinson, KS—Hutchinson Muni, ILS Rwy 13, Amdt. 11

5. By amending § 97.31 RADAR SIAPs identified as follows:

. . . *Effective October 30, 1980*

Washington, DC—Washington National, RADAR-1, Amdt. 21
South Bend, IN—Michiana Regional, RADAR-1, Amdt. 4
Detroit, MI—Detroit Metropolitan-Wayne County, RADAR-1, Amdt. 13
Austin, TX—Robert Mueller Muni, RADAR-1, Amdt. 12

. . . *Effective October 2, 1980*

Asheville, NC—Asheville Muni, RADAR-1, Amdt. 2

6. By amending § 97.33 RNAV SIAPs identified as follows:

. . . *Effective October 30, 1980*

Meeker, CO—Meeker, RNAV Rwy 3, Original
Washington, DC—Washington National, RNAV-A, Amdt. 3
Washington, DC—Washington National, RNAV Rwy 3, Amdt. 5
Washington, DC—Washington National, RNAV Rwy 33, Amdt. 3
South Bend, IN—Michiana Regional, RNAV Rwy 9, Amdt. 3
Davenport, IA—Davenport Muni, RNAV Rwy 14, Amdt. 3
Davenport, IA—Davenport Muni, RNAV Rwy 32, Amdt. 3
Salisbury, MD—Salisbury-Wicomico County Regional, RNAV Rwy 5, Amdt. 3
Salisbury, MD—Salisbury-Wicomico County Regional, RNAV Rwy 23, Amdt. 3
Joplin, MO—Joplin Muni, RNAV Rwy 31, Amdt. 3

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. §§ 1348, 1354(a), 1421, and 1510); Sec. 6(c), Department of Transportation Act (49 U.S.C. § 1655(c)); and 14 CFR 11.49(b)(3).)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C. on September 12, 1980.

John S. Kern,

Acting Chief, Aircraft Programs Division.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on May 12, 1969.

[FR Doc. 80-29505 Filed 9-24-80; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 396

[ER 1105-2-111]

Flood Damage Prevention; Level of Protection for Urban Areas

AGENCY: Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: This regulation provides guidance on the selection of the level of protection for flood damage prevention projects in urban areas, particularly high levees, high floodwalls, and rapid flow channels. Extensive damage and loss of life could occur in urban areas if high levees or high floodwalls were overtopped or overbank flooding occurred from high depth and rapid flow channels. The Standard Project Flood is the goal for minimum level of protection where the damages from floods exceeding the level of protection could be considered a catastrophe.

EFFECTIVE DATE: September 25, 1980.

FOR FURTHER INFORMATION CONTACT: Barry Kennedy, Planning Division, Office of the Chief of Engineers (DAEN-CWP-A), WASH, DC 20314. (202-272-0141).

SUPPLEMENTARY INFORMATION:

On April 22, 1980, the Corps of Engineers published in the **Federal Register** as a proposed rule a regulation, in substantially the same form as this regulation, for comment. In addition to comments received from Corps of Engineers offices, six letters have been received offering suggestions for improvement. Those comments were carefully considered and some were integrated into the final regulation, but the policy embodied in this regulation remains unchanged. The wording of the definitions of "catastrophe", "level of protection" and "Standard Project Flood" have been improved. Paragraph 396.7 has been changed by adding a new subparagraph a, explicitly requiring evaluation of catastrophic potential. Other minor changes have been made to improve the clarity and readability of the regulation. Some comments received were sound but were not integrated into this regulation because they were more closely related to subjects covered under other Corps of Engineers regulations.

Dated: September 22, 1980.

Forrest T. Gay III,

Colonel, Corps of Engineers, Executive Director, Engineer Staff.

In consideration of the above, the Department of the Army amends 33 CFR by adding a new Part 396 to read as follows:

PART 396—FLOOD DAMAGE PREVENTION: LEVEL OF PROTECTION FOR URBAN AREAS [ER 1105-2-111]

Sec.

396.1 Purpose.
396.2 Applicability.
396.3 References.
396.4 Definitions.
396.5 Perspective on the standard project flood (SPF) level of protection.
396.6 Policy on level of protection.
396.7 Selection of level of protection.
396.8 Documentation.
396.9 Coordination.
396.10 Claims of protection provided within freeboard.

Authority: U.S. Water Resources Council, Floodplain Management Guidelines (43 FR 6030, 10 February 1978).

§ 396.1 Purpose.

This regulation provides guidance on the selection of the level of protection to be afforded by Corps of Engineers flood damage prevention projects in urban areas, particularly high levees, high floodwalls and rapid flow channels. It also clarifies the use of freeboard as it relates to level of protection.

§ 396.2 Applicability.

This regulation is applicable to all OCE elements and all field operating activities having Civil Works responsibilities.

§ 396.3 References.

(a) U.S. Water Resources Council, Floodplain Management Guidelines (43 FR 6030), 10 February 1978.

(b) U.S. Water Resources Council Procedures for Evaluation of National Economic Development (NED) Benefits and Costs in Water Resources Planning (Level C); Final Rule (18 CFR Part 713), 14 December 1979.

(c) ER 1105-2-10.

(d) ER 1105-2-200.

(e) ER 1105-2-250.

(f) ER 1105-2-351.

(g) ER 1165-2-26.

(h) EM 1110-2-1411.

(i) EM 1110-2-1601.

§ 396.4 Definitions.

For the purposes of this regulation, the following definitions are established.

(a) "Catastrophe" is an event causing sudden and widespread misfortune, destruction or irreplaceable loss. A catastrophe may be said to occur when many human lives are endangered, human lives will likely be or have been lost, or urban property damage occurs extensively enough to cripple activities in the area.

(b) "Freeboard" is the vertical height between the design water surface (profile or flat pool) and the design grade of the flood damage prevention project. Allowances for settlement, aggradation and future increases in flood flows are not included in the freeboard height.

(c) "High levees" are levees of such a height and character that an overtopping as a result of flood waters (with or without failure) may cause depths of inundation and/or velocities that could result in a catastrophe. A similar definition holds for high floodwalls.

(d) "Level of protection" is the flood level at which flood damages and/or other adverse effects not eliminated by the project are considered relatively minor. Level of protection is a convenient term used to express the flood control effectiveness of a project and may be based on flood discharge, stage, volume, duration or any combination of factors that express project functional characteristics. However, to fully describe how a project is expected to function usually requires describing project impacts at several flood levels. Note that the terms level of protection and project design flood are not always synonymous. Major reaches of a project may have different *levels of protection and level of protection may change over time.* More precise definitions of level of protection for some specific types of projects are as follows:

(1) *Flood storage (lake).* The flood controlled by lake storage to planned discharge rates at the control (or at a downstream damage location, considering local inflow) which results in relatively minor adverse effects. The flood damage prevention becomes less reliable and level of protection decrease as the distance downstream of the control (dam) increases.

(2) *Levee and floodwall.* The flood which the levee or floodwall is designed to contain, excluding freeboard. This definition may also apply to paved channels (with a clearly defined top of bank) that carry rapid flow (EM 1110-2-1601, para 8d). The project design flood and level of protection are the same for levees and floodwalls, excluding residual interior flooding.

(e) "Probable Maximum Flood (PMF)" is the largest flood that might be expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the region.

(f) "Risk" is the probability that one or more flood events will exceed a given magnitude within a specified period of years.

(g) "Standard Project Flood (SPF)" is a flood that might be expected from the most severe combination of meteorological and hydrological conditions that are considered reasonably characteristic of the region involved, excluding extraordinarily rare combinations. This definition is taken from EM 1110-2-1411, which provides specific instructions for computing the standard project flood.

(h) "Urban areas" are concentrations of habitation and supporting activities and may be parts of cities, towns, or other incorporated or unincorporated political subdivisions of states that occupy an essentially continuous area of developed land and contains such structures as residences, public and commercial buildings, and industrial sites.

§ 396.5 Perspective on the standard project flood (SPF) level of protection.

The SPF is not the maximum flood that can occur. The PMF is commonly on the order of twice the SPF. While the SPF is not determined on the basis of frequency studies, comparisions with extrapolated frequency curves show the SPFs commonly have exceedence intervals from a few hundred to a few thousand years. If a SPF corresponds to an 0.25 percent chance flood, for instance, there is about a 22 percent risk that it will be exceeded one or more times in a project life of 100 years. This would imply a substantial risk of exceeding such a flood level even though design for SPF may have the appearance of providing a high level of protection.

§ 396.6 Policy on level of protection.

(a) Where damages from large floods would be a catastrophe, the SPF is the goal for the level of protection that district engineers should recommend. This policy is particularly applicable to projects involving high levees, high floodwalls, and rapid flow channels in urban areas.

(b) In areas not covered by the policy given in § 396.6(a) i.e., there is no indication that floods, up to an SPF, would cause a catastrophe, district engineers may recommend an appropriate degree of protection on the basis of the planning process, as discussed in § 396.7.

(c) Flooding resulting from interior runoff and seepage—"interior flooding"—must always be evaluated to

assess the actual level of protection provided by levees and floodwalls. The level of protection provided by the levee and floodwall structures and the interior flood control system must be explained in the report, accounted for in the project economics and made clear to the public.

§ 396.7 Selection of level of protection.

The planning process is described in Part 290 of this chapter, including the formulation and evaluation of alternative measures. In the case of flood damage prevention, the district engineer must consider various practicable structural and non-structural measures to achieve the desired level of protection. Other regulations fully describe the types of measures which may be considered. The one percent chance (100-year) flood is not established as a criteria for flood damage prevention, except for flood insurance and land use regulation purposes. The following procedure should be followed and documented in the feasibility report and in an Advanced Engineering and Design (AE&D) reformulation planning report regardless of the type of flood damage prevention measure:

(a) Evaluate the potential for a catastrophic flood for existing and future conditions.

(b) Formulate plan for the SPF.

(c) Formulate other plans for higher (floods up to PMF may be considered) and lower degrees of protection based on the planning objectives established for the study, including such elements as possible loss of life, flood impacts, desires of local interests, economic, environmental social considerations, and other factors such as design considerations.

(d) Formulate a plan that maximizes net benefits. However, maximization of net benefits will not serve by itself as the decision criteria.

(e) Evaluate, screen, and refine the plans formulated in § 396.7(b), (c), and (d) above, following the provisions of Part 295 of this Chapter and the WRC Manual of Procedures. Evaluate the estimates of remaining damages including both average annual damages and the remaining damages from a single occurrence of the SPF. The remaining average annual (nonpreventable) damages should include those for all floods greater than the level of protection provided. In addition to damages, assessment of residuals should consider all intangibles and the physical impacts of flooding. Consider local conditions, an analysis of available alternatives, the potential for flood warning, evacuation and the possibility of emergency measures to reduce damages if floods exceed the level of protection. Consider the reliability of the data, the chance and risk of exceeding various floods, the consequences of exceeding various floods, including the potential for a catastrophe, and the catastrophic potential without the project. Some situations, such as a short warning time, very high velocities, or great depths of inundation, constitute a special class with high potential for a catastrophe and require special care. All sources of flooding should be considered. The evaluation data and process should be documented in the report.

(f) Select an appropriate level of protection based on the evaluation in § 396.7(e) and the policy of § 396.6. The recommended degree of protection and local cooperation requirements must be consistent with the requirements of Executive Order 11988, as implemented by references § 396.3 (a) and (f). The provisions of ER 1165–2–26 should be incorporated into the multiobjective planning process of preauthorization studies and in the AE&D planning and design studies.

§ 396.8 Documentation.

The plan formulation process, design and district engineer's recommendations must be fully supported and documented.

(a) If the district engineer recommends less than SPF protection, the report must present at least one alternative with SPF protection and the district engineer's rationale for providing less than SPF protection.

(b) The district engineer's report should support the recommended level of protection with data on population, structures, warning time, flood depths and velocities, physical damages, economic and environmental data, etc., that led to that decision.

§ 396.9 Coordination.

When levels of protection lower than the SPF are being considered for plans involving levees and/or floodwalls in urban areas, division engineers should coordinate with OCE in reviewing the adequacy of proposed flood damage prevention plans. In urban areas, if the district engineer is considering a channel improvement project, which satisfies the requirements of § 396.6(b) and § 396.7 but which provides protection less than one percent chance, he should coordinate with the division engineer in determining the adequacy of the level of protection for the location and situation. Coordination should be part of the normal Intensive Management Program (see ER 1105–2–10).

§ 396.10 Claims of Protection Provided Within Freeboard.

Statements or implications that a flood damage prevention project, because of freeboard, will protect against any flood larger than the design flood shall not be included in feasibility, post-authorization or other related reports or otherwise communicated to the public.

[FR Doc. 80–29755 Filed 9–24–80; 8:45 am]
BILLING CODE 3710–92–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 80–506]

Commission Organization; Amending Rules Concerning Pleadings Filed After Sunshine Meetings

AGENCY: Federal Communications Commission.

ACTION: Rule revision.

SUMMARY: The Commission has recently received numerous untimely and unauthorized pleadings resulting from comments made by the staff or Commissioners during discussions at open Commission meetings. Section 0.602 of the Rules, which governs open meetings, is supplemented to clarify the procedural limits with respect to the filing of pleadings after open Sunshine meetings.

EFFECTIVE DATE: October 27, 1980.

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

FOR FURTHER INFORMATION CONTACT: Norman B. Blumenthal, Office of General Counsel, Room 616, X632–6990.

Order

Adopted: September 10, 1980.

Released: September 17, 1980.

By the Commission: Commissioner Washburn dissenting.

1. The purpose of this Order and the rules adopted herein are to clarify the relationship between open Commission meetings and our other procedural and pleading rules.

2. Section 0.602 of our Rules (47 CFR Section 0.602) governs the conduct of open Commission meetings pursuant to the Sunshine Act, 5 U.S.C. Section 552. The Sunshine Act provides the public the right to attend and observe such meetings. However, we note that the Sunshine Act does not in any way alter

our other procedural rules which remain fully operative. Nonetheless, following Sunshine meetings, the Commission is frequently barraged by the filing of untimely and unauthorized pleadings and other documents which are inconsistent with our general rules of practice and procedure set forth in 47 CFR 1.1 *et seq.* These unauthorized pleadings and other communications usually argue about the comments or discussions at the open meetings. Some documents even request reconsideration of an order that has not even been released to the public.

3. In connection with this growing practice we stress several points. First, in the course of discussion of matters at Commission meetings, many thoughts and ideas are espoused solely for dialectical purposes and do not necessarily represent the final views of a decision-maker. Thus comments and communications addressed to comments made by Commissioners and staff at open meetings are often misdirected or ill-founded. Second, our rules of procedure and pleading patterns are carefully structured to ensure that all commenting parties have a comparable opportunity to present their views to the Commission and to respond to comments made by those with contrasting views. Were the Commission to consider these unauthorized, last-minute filings outside of the orderly pleading cycle, the element of procedural unfairness to parties who have not attended the open meeting is manifest. Finally, it is an unnecessary drain on limited staff resources and otherwise disruptive of orderly administration for parties and others to file these unauthorized documents.

4. Hence, the clarifying rules adopted herein emphasize that pleadings based on matters raised at open meetings will not become part of the official record in the matter and no further action need be taken by the Commission based on such pleadings. If, after an agency decision has been promulgated, parties wish reconsideration or clarification of that decision, they may of course file pleadings in conformance with Part 1 of our rules.[1]

[1] Of course, nothing in these new rules will prevent a party from seeking leave to file new pleadings, i.e. if a party seeks a stay of an order which has not been released but which has been made effective immediately. See 47 CFR 1.103. Nor do the rules adopted herein alter or modify the *ex parte* prohibitions set forth in Part 1 of our rules relating to impermissible off-the-record communications. For a thorough discussion of our *ex parte* strictures, which were also recently revised, *see Report and Order in General Docket No. 78-167, Policies and Procedures Regarding Ex Parte Communications During Informal Rulemaking Proceedings*, FCC 80-334, released June 30, 1980.

5. Authority for adoption of the rule amendments contained herein is set forth in section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

Accordingly, *it is ordered*, that effective October 27, 1980, Section 0.602 of the Communications Rules, 47 CFR is amended as set forth in the attached Appendix.

(Secs. 4, 303, 48 Stat., as amended, 1068, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

1. In Part I of Chapter I of Title 47 of the Code of Federal Regulations, paragraphs (c) and (d) are added to § 0.602 to read as follows:

§ 0.602 Open meetings.

* * * * *

(c) The right of the public to observe open meetings does not alter those rules in this Chapter which relate to the filing of motions, pleadings, or other documents. Unless such pleadings conform to the other procedural requirements of this Chapter, pleadings based upon comments or discussions at open meetings, as a general rule, will not become part of the official record, will receive no consideration, and no further action by the Commission will be taken thereon.

(d) Deliberations, discussions, comments or observations made during the course of open meetings do not themselves constitute action of the Commission. Comments made by Commissioners may be advanced for purposes of discussion and may not reflect the ultimate position of a Commissioner.

[FR Doc. 80-29662 Filed 9-24-80; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 22

[CC Docket No. 80-55; FCC 80-517]

Public Mobile Radio Service; Elimination of Financial Qualifications in the Public Mobile Radio Service

AGENCY: Federal Communications Commission.

ACTION: Report and order adopted.

SUMMARY: Commission amended its rules to eliminate the financial qualifications requirement in the Public Mobile Radio Services. Part 22 of FCC rules provided that applications in the Public Mobile Radio Services—Domestic Public Land Mobile, Rural Radio and Offshore Radio Telecommunications Services—will be granted only to those who are financially qualified. In eliminating this requirement, the FCC noted that this industry has had a 30-year period of development, and was now a relatively low-cost, low-risk business venture. The FCC stated that while the Communications Act authorized it to examine the financial qualifications of its applicants, the Act does not require such an examination.

EFFECTIVE DATE: September 10, 1980.

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

FOR FURTHER INFORMATION CONTACT:

Steven A. Weiss, Common Carrier Bureau, (202) 632-6450.

SUPPLEMENTARY INFORMATION:

Report and Order

(Proceeding Terminated)

Adopted: September 10, 1980.

Released: September 18, 1980.

By the Commission:

1. On February 12, 1980, the Commission adopted a Notice of Proposed Rule Making, CC Docket No. 80-55, FCC 80-59, 45 FR 12446 (February 26, 1980), in which it proposed to eliminate the financial qualifications requirement in the Public Mobile Radio Services (PMRS). The Commission also proposed to amend § 22.43(a) of the Rules to indicate that unavailability of funds will not constitute a sufficient reason for an extension of time in which to complete construction of a station. Interested parties were invited to file comments on or before April 1, 1980, and reply comments by April 25, 1980.

2. One party—Radiotelephone Communicators of Puerto Rico, Inc.—filed a comment with respect to this matter. This comment was in opposition to the Commission's proposal. No reply comments were filed.

3. Radiotelephone argues that the elimination of financial qualifications will encourage parties who are financially unqualified to enter the PMRS. Radiotelephone also argues that the elimination of financial qualifications will encourage parties who lack other basic qualifications, such as character, to enter the PMRS, ultimately leading to a diminution of service to the public because of irresponsible operators. Radiotelephone also points out that the performance of firms entering this business has been predictable because entering firms have been required to establish their financial qualifications. Consequently, Radiotelephone concludes that the financial qualifications requirement has been effective. Finally, Radiotelephone

asserts that the Commission cannot rely upon strict enforcement of the time requirements to govern extensions of time for construction permits.

Discussion

4. The Communications Act of 1934, as amended (the Act) authorizes the Commission to examine, *inter alia*, the financial qualifications of its applicants. See Sections 308(b) and 319(a) of the Act. However, the Commission is not required to do so. *NARUC* v. *FCC*, 525 F.2d 630, 645 (D.C. Cir.), *cert. denied* 425 U.S. 992 (1976). As the *NARUC* Court pointed out: "The Commission is not required to consider financial fitness if it deems it irrelevant to its regulatory scheme." (footnote omitted) Id. at 645. For the reasons set forth below, we conclude that the financial qualifications requirement in the Public Mobile Radio Services should be eliminated.[1] Consequently, we reject Radiotelephone's arguments in opposition to our proposal.

5. We disagree with Radiotelephone's argument that the proposed rule change should not be adopted because some parties who are financially unqualified will attempt to enter the PMRS. The common carrier mobile radio industry is a relatively low-cost, low-risk business venture with a 30-year period of development. *Tel-Page Corporation of Wisconsin*, 74 FCC 2d 370 (1979). Although there is a possibility that a grant might be made to a party who ultimately is unable to secure financing to construct and operate the station, we believe that this will be a rare enough occurence to justify eliminating the requirement. The financial qualifications requirement represents a significant administrative burden because of the time and staff required to review the materials submitted. In the past, when the staff concluded the financial information submitted in an application was inadequate, a deficiency letter requesting further information was sent to the applicant. In response to this letter, the applicant in most cases submitted the necessary information to demonstrate financial qualifications. Similarly, when financial qualifications was the subject of a formal or informal petition, the applicant usually submitted the necessary data to moot the objection. This process, however, consumes an inordinate amount of time and has sometimes served to delay competition. Such a delay disserves the public in at least two ways. First, it prolongs the nonuse of a valuable resource—the frequency applied for. Second, it impedes realization of price and service benefits that we have found competition brings in these markets. Although the financial qualifications requirement does force the applicant to formulate a detailed financial plan early in the planning stages, we believe that, given the low-cost, low-risk nature of this industry, this possible benefit is outweighted by its negative regulatory effects. We conclude, therefore, that the elimination of the financial qualifications requirement is in the public interest.[2]

6. Finally, after careful consideration, we have decided not to amend Section 22.43(a) of the Rules dealing with extensions of time to construct facilities. The existing case law already establishes the principle that unavailability of funds is not a sufficient reason to extend a construction permit. *See Northeast TV Cablevision Corp.*, 21 FCC 2d 442 (1970); *Onondaga VHF-TV, Inc.* (WONH-TV), 64 FCC 2d 855 (Rev. Bd. 1977). Therefore, we believe that strict enforcement of existing case law, in conjunction with the existing Sections 22.43 and 22.44 of the Rules and Section 319(b) of the Act, adequately assures that stations be timely constructed. In this regard, we reject Radiotelephone's argument that the Commission cannot rely upon strict enforcement in the granting of extensions of construction permits to assure that stations are timely constructed. Radiotelephone has provided no evidence to substantiate its position that this process is presently being abused, or that this process is likely to be abused in the future.

7. Accordingly, it is ordered, That, pursuant to authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended (47 U.S.C. 154(i), 303(r)), Part 22 of the Commission's Rules and Regulations is amended as specified in the attached Appendix. Because these changes eliminate a restriction, *see* Section 553(d)(1) of the Administrative Procedure Act (5 U.S.C. 553(d)(1)), these amendments shall become effective September 10, 1980, and will apply to all applications for the Public Mobile Radio Services including those currently pending.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 22, Title 47 of the Code of Federal Regulations is amended as follows:

(1) In § 22.13, paragraphs (a)(2) and (c) are amended to read as follows:

§ 22.13 General application requirements.

(a) * * *

(2) Demonstrate the applicant's legal, technical, and other qualifications to be a permittee or licensee;

* * * * *

(c) In addition to the general application requirements of §§ 22.13 and 22.15 of this Part, applicants shall submit any additional documents, exhibits, or signed written statements of fact:

* * * * *

(2) The Table of Contents is amended to read as follows:

Sec.

§ 22.17 [Reserved]

§ 22.17 [Deleted and Reserved]

(3) Section 22.17 is deleted and reserved.

(4) Section 22.32(b)(5) is amended to read as follows:

§ 22.32 Consideration of applications.

* * * * *

(b)(5) The applicant is legally, technically and otherwise qualified, and a grant of the application would serve the public interest.

* * * * *

(5) Section 22.39(b) is amended to read as follows:

§ 22.39 Transfer of control or assignment of station authorizations.

* * * * *

(b) Requests for transfer of control or assignment authority shall be submitted on the application forms prescribed by § 22.11 of this chapter; and shall be accompanied by the applicable showings required by §§ 22.13, 22.15 and 22.40 of this chapter.

* * * * *

(6) Section 22.400 is amended to read as follows:

§ 22.400 Eligibility.

Developmental authorizations for stations in the Public Mobile Radio Services will be issued only to existing and proposed communication common carriers who are legally and otherwise qualified to conduct experimentation utilizing hertzian waves for the development of engineering or operational data, or techniques, directly related to a proposed Public Mobile Radio Service or to a regularly

[1] Our discussion here does not affect the cellular rulemaking, Notice of Inquiry and Notice of Proposed Rulemaking, CC DOCKET NO. 79-318, FCC 79-774, Cur. Ser. Vol. 6 RR 74:1, 45 FR 2859 (January 15, 1980). We will address the need for a financial qualifications requirement separately in that rulemaking.

[2] We are eliminating the financial qualifications requirement for developmental authorizations as well as for the regular services in the Public Mobile Radio Services.

established radio service regulated by the rules of this part.

(7) Section 22.500 is amended to read as follows:

§ 22.500 Eligibility.

Authorizations for base stations and auxiliary test stations to be operated in this service will be issued to existing and proposed communication common carriers. Authorizations for mobile stations on land or on board vessels will be issued to communication common carriers or to individual users of the service. Applications will be granted only in cases where it is shown that (a) the applicant is legally, technically and otherwise qualified to render the proposed service, (b) there are frequencies available to enable the applicant to render a satisfactory service, and (c) the public interest, convenience or necessity would be served by a grant thereof.

(8) Section 22.600 is amended to read as follows:

§ 22.600 Eligibility.

Authorizations for central office stations and interoffice stations will be issued to existing and proposed communication common carriers. Authorizations for rural subscriber stations will be issued to communication common carriers or to individual users of the service. Applications will be granted only in cases where it is shown that (a) the applicant is legally, technically and otherwise qualified to render the proposed service, (b) there are frequencies available to enable the applicant to render a satisfactory service and (c) the public interest, convenience or necessity would be served by a grant thereof.

(9) Section 22.1000 is amended to read as follows:

§ 22.1000 Eligibility.

Authorizations for stations to be operated in this service will be issued to existing and proposed communications common carriers. Authorizations for subscriber stations will be issued to communication common carriers or to individual users of the service. Applications will be granted only in cases where it is shown that (a) the applicant is legally, technically and otherwise qualified to render the proposed service and (b) there are frequencies available to enable applicant to render a satisfactory service and (c) the public interest, convenience or necessity would be served by a grant thereof.

(10) Section 22.405(a) is amended to read as follows:

§ 22.405 Supplementary showing required.

(a) Authorizations for development of a proposed radio service in the Public Mobile Radio Services will be issued only upon a showing that the applicant has a definite program of research and development, the details of which shall be set forth, having reasonable promise of substantial contribution to these services within the term of such authorization. A specific showing should be made as to the factors which the applicant believes qualify it technically to conduct the research and development program, including a description of the nature and extent of engineering facilities which applicant has available for such purpose.

* * * * *

[FR Doc. 80-29653 Filed 9-24-80; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 71

[OST Docket No. 9; Notice No. 80-9]

Standard Time Zone Boundary in the State of Alaska; Relocation of Time Zone Boundary

AGENCY: Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Department of Transportation is moving the boundary line of the Pacific time zone to include Juneau, Alaska, and parts of the surrounding area. This action moves the affected time zone boundaries back to the positions in existence prior to April 27, 1980. This action is being taken because the Department has determined that it will be for the convenience of commerce. The Department's decision is clearly supported by the affected community.

EFFECTIVE DATE: 2:00 a.m., Yukon Daylight Time, Sunday, October 26, 1980.

FOR FURTHER INFORMATION CONTACT: Jack S. Lusk, Office of the General Counsel, Room 10421, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 426-4723.

SUPPLEMENTARY INFORMATION:

Background

On September 27, 1979, the Department published a final rule in the **Federal Register** moving Juneau, Alaska, and parts of the surrounding area to the Yukon time zone (49 CFR 71.10, 10a and 11; 44 FR 55575, as amended by 45 FR 25065 (April 14, 1980)). The effective date for this action was April 27, 1980. The change was based on a petition that the Department received from the Assembly of the City and Borough of Juneau and the written and oral comments of interested parties.

On Friday, March 28, 1980, a special election was held in Juneau concerning the time zone decision. By a vote of approximately 2 to 1 (2,933 to 1,579) a proposition was passed that amended the Juneau City Charter to restrict the Assembly's authority to act in matters concerning time zones and to require the Assembly to ask the Department to reconsider its decision to move Juneau from the Pacific to the Yukon time zone. We received the request on April 8, 1980.

On May 5, 1980 the Department denied the petition for reconsideration. The Department based its decision largely on the fact that it would have been unfair to those commercial interests who had relied on the Department's final rule to change it on such short notice. The Department stated its willingness to give the petition further consideration and, if warranted, make the change back at a future date. The Department also stated its willingness to hold further hearings in Alaska on this matter.

On June 9, 1980, the Department published a notice seeking comments on its decision and announcing a series of public hearings to be held in southeastern Alaska. DOT conducted public hearings in Juneau on July 15, in Haines and Skagway on July 16, and in Ketchikan on July 17, 1980. Comments were received, at the hearings and to the Docket, from approximately 200 people. Commenters included representatives from State and local governments, Native Indian organizations, educational institutions, medical facilities, and transportation and industry groups. The great majority of these commenters favored a return to the Pacific time zone.

Under section 4 of the Uniform Time Act of 1966 (15 U.S.C. 261) (the Act) the Secretary of Transportation has the authority to modify the boundaries between time zones in the United States and to move an area from one time zone to another. The Act's standard is "regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce." Based on the evidence presented to the Department, we have determined that the convenience of commerce would best be served by returning Juneau and the surrounding area to the observation of Pacific time.

The record overwhelmingly supports this decision, demonstrating that while the time zone move may have been a legitimate attempt to make Juneau more accessible to the other major cities in the State and to provide better government services to those cities, the citizens of southeastern Alaska clearly did not support the move.

Written comments and oral testimony on this matter focused on several issues. Those who supported keeping Juneau on Yukon time thought that the time zone change had, in fact, made Juneau more accessible and better able to provide services to other parts of the State. But the majority of commenters stated that dividing the southeastern part of the State into two time zones had caused a great deal of confusion and had adversely affected commerce. Commenters indicated that the change disrupted various aspects of the transportation and communications network that ties southeastern Alaska together. Many commenters focused upon the particular confusion caused to the tourist and fishing industries in this area. Furthermore, we received much testimony outlining disruptions in commerce between the affected area and the continental United States, especially Seattle on the west coast, as well as neighboring portions of Canada.

Effective Date

In the notice of June 9, 1980, the Department stated that it was also interested in receiving comments on the appropriate date for reverting to the Pacific time zone if that decision were made. We received a number of comments concerning this matter. Several commenters thought that, if a decision were made to move Juneau back to the Pacific time zone, the change should be instituted as quickly as possible. Other comments cited possible additional confusion resulting from making the change so shortly after announcing the decision. Several commenters noted that an immediate change would cause a particular hardship on small businesses involved in the tourist and transportation industries that publish their schedules on a seasonal basis. These commenters indicated that their season would end in October and a change at that time would pose no problem. To minimize any disruption that may already have been created and ease the transition back to Pacific time, the time zone boundary change will take affect at 2:00 a.m. Yukon Daylight Time on Sunday, October 26, 1980, when standard time begins. The effect will be that clocks in the Juneau area will not have to be changed.

Note.—The Office of the Secretary has determined that this document involves a regulation which is not considered to be significant under the procedures and criteria prescribed by E.O. 12044 and as implemented by the Department of Transportation's Regulatory Policies and Procedures published in the **Federal Register** on February 26, 1979 (44 FR 11034). Furthermore, the economic impact of the proposed regulation is so minimal that a full regulatory evolution is not warranted.

In consideration of the foregoing, § 71.10 and 71.11 of Title 49, C.F.R., are revised to read as appears below and § 71.10a is deleted. (Act of March 19, 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 260–267); § 6(e)(5), Department of Transportation Act (49 U.S.C. 1655(e)(5)).

Issued in Washington, D.C. on September 22, 1980.

Neil Goldschmidt,

Secretary of Transportation.

Sections 71.10 and 71.11 are revised, and § 71.10a is deleted as follows:

§ 71.10 Pacific Zone.

The fifth zone, Pacific standard time zone, includes the part of the United States that is west of the boundary line between the mountain and Pacific standard time zones described in § 71.9 and east of 137 degrees W. longitude.

§ 71.10a [Deleted]

§ 71.11 Yukon Zone.

The sixth zone, the Yukon Standard Time Zone, includes the part of the United States that is between 137 degrees W. longitude and 141 degrees W. longitude.

[FR Doc. 80-29702 Filed 9-24-80; 8:45 am]
BILLING CODE 4910-62-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Revised Directed Service Order No. 1482]

Car Service; Various Railroads—Directed Service—Chicago, Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Revised directed Service Order No. 1482.

SUMMARY: Pursuant to Section 104 of Pub. L. 96–254 (May 30, 1980) the Commission is directing various carriers named in the Appendix to provide service over described lines of the Chicago, Rock Island & Pacific Railroad Company, debtor (William M. Gibbons, Trustee) (Rock Island or RI) due to lack of rail service which cannot be resolved by a grant of interim operating authority over specific lines.

This directed service order is being issued on the basis of a directed service certification by the Secretary of Transportation.

DATES: *Effective date.* This directed service order shall become effective at 12:01 a.m. (central time) on September 20, 1980.

FOR FURTHER INFORMATION CONTACT: Richard J. Schiefelbein (202) 275–0826 or Joel E. Burns (202) 275–7849.

SUPPLEMENTARY INFORMATION:

Decision of the Commission

Background

The Rock Island has been in bankruptcy proceedings since 1975. In September 1979, its cash flow position became so severe as to prevent the continuation of normal rail operations. Accordingly, we issued Directed Service Order No. 1398 (and supplements thereto) directing the Kansas City Terminal Railway Company (KCT) to provide service under 49 U.S.C. 11125 as a subsidized "directed rail carrier" (DRC) over the Rock Island rail system. *Kansas City Term. Ry. Co.—Operate—Chicago; R.I.&P.*, 360 I.C.C. 289, 478, 718 (1979–80)(44 FR 56343, Oct. 1, 1980). That order expired on March 23, 1980.

In order to provide for the continuation of essential rail services, we issued various service orders and directed service orders, without federal subsidy, authorizing several railroads to provide interim service over Rock Island lines on a voluntary basis. Our unsubsidized directed service orders issued under 49 U.S.C. § 11125 expired on May 31, 1980, in accordance with statutory time limits.

On May 30, 1980, Pub. L. 96–254 ("Rock Island Railroad Transition and Employee Assistance Act" or "RITEA") was enacted. Section 104 of RITEA provides that the Commission shall, notwithstanding the provisions of 49 U.S.C. § 11125 or Pub. L. 96–131, order directed service for a period not to exceed 90 days over any line of the Rock Island if the Secretary of Transportation finds and certifies to the Commission a lack of rail service exists which cannot be resolved by a grant of interim operating authority over such line and that either (a) grains or foods are ready to be shipped to market, or (b) a rail carrier, shipper, State, or other interested party has expressed in writing to the Secretary an interest in purchasing, leasing, or rehabilitating the particular rail line or facilities for purposes of providing rail services, and

there is a reasonable expectation that such transaction will be consummated. RITEA further provides that the Secretary may make available to the Commission not more than $15 million for purposes of providing directed service.

The Secretary of Transportation made a directed service certification to the Commission pursuant to section 104 of RITEA, with respect to Rock Island's lines listed in the appendix. The certification is incorporated in this decision by this reference. A summary of the certification is attached as an appendix.

Discussion and Conclusions

Section 104 of RITEA requires the Commission to direct service for a period not to exceed 90 days over any RI line for which the Secretary of Transportation makes an appropriate certification to the Commission. The Secretary has made the appropriate certification for Rock Island's lines described in the appendix. Therefore, we shall direct the named DRCs to perform operations over the certified lines.

We will direct service for the period for which the Secretary of Transportation has certified that need for service over the line exists.

Because of the emergency nature of the situation and the need for immediate action, we are issuing this decision without advance public notice and hearings. The Administrative Procedure Act (APA), 5 U.S.C. Chapter 5, subchapter II, does not require prior notice or hearing where such procedure would be impracticable or inconsistent with the public interest, 5 U.S.C. 553(b)(B). Further, in view of the continuing emergency with respect to service over Rock Island lines, good cause exists to make this decision effective immediately.

The terms and conditions of this directed service are set forth below.

Terms and Conditions

Effective date—DSO No. 1482 shall be effective at 12:01 a.m. (central time) on the first day following the service date of this decision.

Expiration date—Unless modified by the Commission, this order will remain in effect, with respect to each particular DRC, according to the terms set forth in the appendix.

Operations—The DRCs are authorized respectively, to operate over the RI tracks described in the appendix. Operation over the designated tracks includes use of facilities and appurtenances thereto that are necessary or reasonably related to train operations, including but not limited to: yards, yard facilities; maintenance facilities; communication, electrical, and signal facilities; locomotive and car repair facilities; scales; etc.

Reimbursement procedures.—Reimbursement for directed service operations under this decision shall be subject to the provisions of 49 CFR Part 1126, *Submission of Cost Data to Justify Reimbursement for Directed Service.* To ease the fiscal burdens involved in commencing service under the directed service order, any DRC may elect to use the optional three-stage funding procedure established in our directed service regulations 49 CFR 1126.3. This flexible procedure was established by us to provide for initial, interim, and final funding to assist a DRC in meeting the startup and subsequent cash requirements involved in directed service.

In an effort to facilitate further the ability of the DRCs to meet startup costs we shall partially relax the reporting requirements associated with initial funding requests under section 1126.3(b). At present, initial funding requests must be documented by three items: (i) A brief description of the DRC's initial operating plan for the directed service; (ii) a statement of its immediate cash requirements; and (iii) a statement of forecasted costs and revenues. See 49 CFR 1126.3(b)(i–iii). To streamline the initial funding process, we shall permit the DRC to omit from its "initial operating plan" certain data which we would ordinarily require.

Section 1126.3(b)(i) requires the DRC's initial operating plan to outline the following information: (1) The frequency and schedule of service planned; (2) the personnel and equipment to be utilized; (3) the crew change and interchange points to be observed; (4) any immediate maintenance and repair work required; and (5) its fuel and supply needs. However, startup funds may well be needed by the DRC before it can determine this information. Therefore, we will permit a DRC to apply for initial funding under 49 CFR 1126.3(b) without filing an initial operating plan containing all the information requested by section 1126.3(b)(i). Rather, the DRC's initial operating plan need only contain the information which it has available to it at the time of its application for initial funding. The DRC shall, however, submit an updated operating plan as soon as one is developed. Initial funding to cover start-up costs may not exceed the estimated net cost of directed service. If the DRC's start-up costs exceed the estimated net cost of directed service, the DRC may borrow the additional funds necessary to commence operations and claim reimbursement for interest on the loan as a cost of directed service. The Commission will not be responsible for the reimbursement of any costs beyond those agreed to by the Secretary of Transportation and the DRCs or in excess of the statutorily available funds under 45 USC 1003 (Section 4 of RITEA).

The issuance of this directed service order does not preclude interested rail carriers (including the DRC) from filing petitions with the Commission to operate over portions of the RI on a noncompensated basis under section 122 of Pub. L. 96–254 or similar provisions.

Track Safety—The DRCs are not authorized to expend funds to rehabilitate the track above the level necessary to provide the service certified by the Secretary of Transportation without prior approval of the Commission. The DRCs may make necessary repairs in order to keep the line operable.

A DRC, with the Trustee's consent, may enter Rock Island property before commencing operations in order to perform repairs necessary to make the line operable. Entry prior to the service period shall be at the DRC's own risk and expense with respect to insurance, casualties, and rent. Direct costs of repair work prior to the directed service period, necessary to make the line operable at the level of service specified for directed operations, may be claimed as reimbursable cost of directed service.

Reimbursement for these costs may not be claimed until directed service has commenced. DRC may, however, borrow funds as needed in order to perform these repairs and claim interest expense as a reimbursable cost.

Cars and Operating Equipment—In operating the involved RI lines, each DRC shall use its own cars and operating equipment.

Employees—To the maximum extent practicable, the DRC shall hire former employees of Rock Island necessary to perform directed service over Rock Island properties. Rock Island employees hired during the directed service period do not assume an employment relationship with the DRCs. The DRC's work rules, rates of pay, and employment conditions will apply. Rock Island seniority roster shall apply.

Preservation of RI Estate—During the period of its operation of RI's lines, the DRCs shall be responsible for preserving the value of the lines to the RI estate. The DRCs shall thus have an affirmative duty to perform that degree of maintenance necessary to avoid deterioration of the lines and related facilities, unless otherwise agreed.

Liabilities and expenses.—We shall treat as compensable costs of directed service all liabilities and expenses arising out of wrecks or derailments, personal injury claims and actions, and damage to or destruction of property on directed service lines. Prior to commencing operations, each DRC shall obtain necessary insurance in an amount reasonably estimated to cover major liabilities and expenses of this kind. All liabilities arising out of directed service, but not finally determined as of expiration of the directed service period, should be covered by the DRCs' Casualty Loss reserves.

Both reserves and the cost of appropriate insurance may be claimed as reimbursable costs of directed service. For outstanding claims covered by insurance, deductible amounts may be included in the reserve accounts.

Reserve accounts may be included in the directed service cost form only if contingent liabilities not covered by (or in excess of) insurance have been incurred during directed service but not finalized in amount. Those amounts shall be dispensed to the DRC as the respective liabilities are finalized and certified by the Commission for payment. See *Regional Rail Reorg. Act—Submission of Cost Data,* 348 I.C.C. 251, 278 (1975) (*Submission of cost Data I.*)

Compensation for RI lines and facilities.—The Bankruptcy Court has approved abandonment by the Trustee of the entire Rock Island system. Compensation for use of Rock Island tracks in directed service under RITEA presents a situation different from that presented in *Lehigh & New England Ry. Co.,* v. *I.C.C.,* 540 F.2d 71 (3d Cir. 1976), *cert. denied* 429 U.S. 1061 (1977) (*LNE* case). In the *LNE* case we concluded that compensation need not be paid by a DRC for use of tracks and related facilities unless directed service should be profitable. That decision was based to a large extent on the conclusion that directed service confers substantial benefits on the owner of the line, by relieving the owner of its duty to provide service during the period of directed operations. The Bankruptcy Court's action has relieved the RI Trustee of these duties. Therefore, we believe that the Rock Island estate should be compensated for the use of Rock Island tracks and related facilities used in directed operations, whether or not those operations are profitable.

In *St. Louis-San Francisco Railway Company—Compensation Company—Compensation for Use of Terminal Tracks—Chicago, Rock Island & Pacific Railroad Company, Debtor (William M. Gibbons, Trustee),* —— I.C.C. —— (decided April 7, 1980), 45 FR 25401 (April 15, 1980) (*Frisco Compensation* case) we set reasonable compensation terms for use of RI tracks during interim operations under 49 U.S.C. 11123. We believe that the terms set forth in the *Frisco Compensation* case will also provide for payment of just and reasonable compensation for use of RI tracks in directed service operations under section 104 of RITEA. Therefore, DRC shall pay the Trustee, as a reimbursable expense of directed service, compensation for use of Rock Island tracks and related facilities in accordance with the *Frisco Compensation* formula.

Rates—The DRCs shall adopt any existing local Rock Island rates or may establish new through or local rates on not less than one day's notice to the Commission and the public. Transit rates may not be adopted or established.

Operational Difficulties—Any operational or other difficulties associated with the authorized operations shall be resolved by the DRC and any other affected party through negotiated agreement or, failing agreement, by the Commission's Railroad Service Board.

Reporting Requirements—The DRCs shall submit to the Commission, on a monthly basis, reports on the directed service operations. These reports shall include summaries of the traffic handled, the revenues collected, and the expenses incurred in the directed service operations, in a form to be specified by the Commission's Bureau of Accounts. Revenue, expenses, and statistics resulting from directed service operations shall be internally maintained separate from the DRC's usual railroad operations.

We find: 1. The Secretary of Transportation has made a directed service certification to the Commission, pursuant to section 104 of Pub. L. 96–254, with respect to Rock Island's lines described in the appendix.

2. The designated DRCs are capable of performing directed service over the lines certified by the Secretary.

3. This decision will not significantly affect either the quality of the human environment or the conservation of energy resources. *See* 49 CFR Parts 1106, 1108, (1978).

49 CFR 1033. Various Railroads—Directed Service—Chicago, Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee)

It is ordered: (1) *Entry*—Each DRC is directed to enter upon and operate RI's lines described in the appendix pursuant to this directed service order and under section 104 of Pub. L. 96–254. Entry, by each DRC, respectively, shall occur and continue in accordance with the terms set forth in the appendix. Each DRC shall notify the Commission of its entry on the property immediately after such entry takes place.

(2) *Other Matters*—Operations under this order shall conform with the directions prescribed above and the directed service certification of the Secretary of Transportation.

(3) *Commission Filings*—All submissions filed in this proceeding should refer to "DSO No. 1482" and be sent to the following Commission offices in the Commission's Headquarters at 12th and Constitution Avenue, N.W., Washington, DC 20423:

- Office of the Secretary (Room 2215) (original).
- Section of Finance (Room 5417) Office of Proceedings (3 copies).
- Section of Rail Service Planning (Room 7375) Office of Policy and Analysis (3 copies).
- Railroad Service Board (Room 7115) (3 copies).

(4) *Applicability*—The provisions of this decision shall apply to intrastate, interstate and foreign commerce.

(5) *Modifications*—The Commission retains jurisdiction to modify, supplement or reconsider this order at any time.

(6) *Initial and Interim finding*—All correspondence to the Commission containing requests for initial and interim funding shall be addressed to: Ronald S. Young, Acting Director, Bureau of Accounts, Interstate Commerce Commission, Room 6133, 12th and Constitution Avenue, NW, Washington, DC 20423.

Envelopes containing such requests shall have the notation "Rock Island–DS" typed on the lower left corner.

(7) *Costs and revenues.*—The DRC shall record the costs and revenues attributable to directed service in the manner prescribed in this decision and in 49 CFR Part 1126, 44 FR 6156, 8879 (1979), subject to the limitations set forth in the directed service certification of the Secretary of Transportation.

(8) *Service on Parties*—This decision shall be served on all parties. This decision shall also be served upon the American Short Line Railroad Association and upon the Association of American Railroads, Car Service Division (as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement).

(9) *Notice to General Public*—Notice of this decision shall be given to the general public by: (a) Depositing a copy in the Office of the Secretary, Interstate

Commerce Commission, Washington, DC; and (b) filing a copy with the Director, Office of the Federal Register.

(10) *Effective Date*—This decision and order shall be effective at 12:01 a.m. (central time) on September 20, 1980.

(11) *Expiration Date*—Unless otherwise modified by the Commission, this decision and order will expire with respect to the various DRCs in accordance with the terms set forth in the appendix below.

Decided: September 12, 1980.

By the Commission. Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Commissioner Trantum commented with a separate expression. Commissioners Clapp and Alexis were absent and did not participate.

Agatha L. Mergenovich,

Secretary.

Commissioner Trantum, Commenting

I urge the Secretary of Transportation and his delegate, the Federal Railroad Administrator, not to rely on section 104 as a solution to the Rock Island problem. As this Commission learned when it directed service under 49 U.S.C. 11125, the availability of federal subsidies is a powerful incentive for private parties to avoid the hard business of rationalizing the railroad industry. A situation in which "a lack of rail service exists which cannot be resolved by a grant of interim operating authority" is the likely result.

I am sensitive to the difficulties faced by shippers, state and local governments, and other regional interests affected by the demise of the Rock Island. I must point out, however, that while directed service may appear to be an easy way to deal with an urgent problem—such as the need to move grain at a particular season—it is actually counterproductive. Ninety days of directed service means the loss of ninety days that could have been used to discover and implement a lasting, private-sector solution. The short-term relief provided by directed service is not worth its cost in tax dollars or lost opportunities.

[DSO No. 1482]

Appendix—Rock Island Lines Certified for Directed Service Under Rock Island Railroad Transition and Employee Assistance Act—Pub. L. 96-254 (May 30, 1980)

1. A. *Carrier.* Wabash Valley Railroad Company, a wholly owned subsidiary of Morrison-Knudsen Company, Inc.

B. *Certification Date.* August 8, 1980.

C. *Description of Lines.*

(1) Subdivision 7, mainline track extending eastward from Phillipsburg, KS, milepost 283.9 to Mahaska, KS, milepost 170.3; and

(2) Subdivision 20–B, branchline track extending southeast from Belleville, KS, milepost 226.1 to Manhattan, KS, milepost 143.3.

D. *Service Period.* Beginning on or about September 1, 1980, and continuing for ninety days, dates inclusive.

E. *Frequency of Service.* Not less than two trains per week.

F. *Reimbursement.* In no event shall the aggregate of compensation paid or payable by the United States exceed $1,000,000 for the total directed service period.

2. A. *Carrier.* The Atchison, Topeka and Santa Fe Railway Company.

B. *Certification Date.* September 4, 1980.

C. *Description of Lines.*

(1) Subdivision 25–C, branchline track in Alva, Oklahoma, (milepost 101.0 to 103.5).

D. *Service Period.* Beginning on or about October 1, 1980, and continuing for ninety days, dates inclusive.

E. *Frequency of Service.* Service to be provided on an as needed basis.

F. *Reimbursement.* In no event shall the aggregate of compensation paid or payable by the United States exceed $170,140 for the total directed service period.

[FR Doc. 80-29725 Filed 9-24-80; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 45, No. 188
Thursday, September 25, 1980

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

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 80-592]

Referral of Settlement Business to Service Corporations

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed amendment.

SUMMARY: These regulatory amendments are proposed in response to an interpretive rule published by the Department of Housing and Urban Development pursuant to § 8 of the Real Estate Settlement Procedures Act that casts doubt on the ability of insured institutions to refer borrowers to their service corporations for certain settlement services. The proposed amendment would establish a procedure for insured institutions to make available neutral lists of providers of settlement services which would avoid violation of the interpretive rule.

DATE: Comments must be received by: November 18, 1980.

ADDRESS: Send comments to the Office of the Secretary, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

FOR FURTHER INFORMATION CONTACT: Wendy B. Davis, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552, (202) 377-6465.

SUPPLEMENTARY INFORMATION: On July 16, 1980, (45 FR 49360, July 24, 1980) the Department of Housing and Urban Development (HUD) issued an interpretive rule concerning the applicability of the prohibitions and penalties of § 8 of the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2601 *et seq.*, to transactions between real estate settlement service providers and businesses they own or control. This interpretive rule was issued pursuant to the authority contained in RESPA for HUD to issue regulations and interpretations. The rule on controlled business concludes that a dividend paid by a subsidiary to its partent may be a "fee, kickback, or thing of value" and as such would be prohibited if made in connection with referrals for settlement services. Adherence to this rule would prevent insured institutions from referring business to their service corporations in connection with home mortgage loan closings. Current Board regulations do not prohibit referrals of settlement services to service corporations.

Subsequent to the issuance of this interpretive rule, HUD had determined that provision by a savings and loan association of a neutral list including the service corporation and at least four other providers of the settlement service would not constitute a referral for purposes of RESPA. In addition, under the provisions of § 19 of RESPA, enabling HUD to make exceptions for certain classes of transactions, HUD had indicated its intent to exempt the entire area of hazard insurance from this interpretive rule.

In order to avoid inconsistencies in approach, the Board therefore proposes to prohibit referrals (in connection with home mortgage loans) to wholly or partially owned businesses, except through a neutral list. The proposed amendment also makes clear that if the association's normal lending territory does not include at least four providers of the service in question, the list will be considered sufficient if it includes all the providers in the normal lending territory. Further, the amendment preserves the association's prerogative to refuse the services of any provider it has reasonable cause to believe would jeopardize its interests. Since the provision of a list of providers of settlement services might give rise under state law to a warranty of the quality of such servicers, an association should, if necessary, include a disclaimer stating that it does not guarantee these services.

Nothing in this proposed amendment should be construed as indicating that referrals consistent with these procedures are the only manner in which settlement servicers may be selected. Board regulations permit, and HUD has not attempted to prohibit, insured institutions to require that appraisals be done by persons on salary or contract to the institution itself, or by unaffiliated appraisers of the association's choice. Similarly, the association may require that the borrower use its own escrow services, or those of an unaffiliated entity of the association's selection. The impact of the proposed amendment would be solely to require that where an association chooses to direct its loan customers to its service corporation for the specified settlement services, it may do so only through the procedures hereby established.

Accordingly, the Board hereby proposes to amend § 563.35 of the Rules and Regulations for Insurance of Accounts (12 CFR 563.35), as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

Amend § 563.35 by redesignating existing paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), respectively; adding a new paragraph (b); and amending newly designated paragraph (d); to read as follows:

§ 563.35 Restrictions involving loan services.

* * * * *

(b) *Referrals.* No insured institution may refer a borrower to an entity it wholly or partially owns for appraisal or escrow services or title insurance in connection with a home mortgage loan, other than temporary financing such as a construction loan. However providing the borrower with an alphabetically arranged neutral list of providers of such services including such wholly or partially owned entity and at least four other providers of such service not affiliated with the institution will not constitute a referral for purposes of this section, except:

(1) If the association's normal lending territory includes fewer than four providers of such services not affiliated with the insured institution, no referral will be deemed to have taken place if the borrower is provided with an alphabetically arranged neutral list of all the providers of such services in the institution's normal lending territory; and

(2) The list may not include providers of such services that the intitution has reasonable cause to believe will afford it insufficient protection:

* * * * *

(d) *Limitation on paragraphs (a), (b) and (c).* Notwithstanding paragraphs (a),

(b) and (c) of this section, an insured institution or subsidiary thereof may refuse to make any loan if it believes on reasonable grounds that the settlement services provided by the person or organization selected by the borrower will afford insufficient protection to such institution.

* * * * *

(Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730). Sec. 5A, 47 Stat. 727, as amended by sec. 1, 64 Stat. 256, as amended, sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1425a, 1437). Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464). Reorg. Plan No. 3 of 1947, 12 FR 4891, 3 CFR, 1943–48 Comp., p. 1071)

Dated: September 18, 1980.

By the Federal Home Loan Bank Board.

Robert D. Linder,

Acting Secretary.

[FR Doc. 80-29743 Filed 9-24-80; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Airworthiness Docket No. 80-ASW-33]

Bell Helicopter Textron Model 47 Series Helicopters; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD) which would require modification of the tail rotor drive quill assembly by replacing the bearing, Bell Helicopter Textron (BHT) P/N 47-620-605-001, with the improved bearing, BHT P/N 47-620-929-001. This modification would be required on the applicable helicopters certified in all categories and would apply to BHT Model 47 series helicopters and military Models OH-13 series helicopters which utilize either tail rotor drive quill assembly, BHT P/N 47-631-605-35 or BHT P/N 47-620-541-9. This includes, but is not necessarily limited to, helicopters produced under the following Type Certificates:

H47SW—Texas Helicopter Corporation, U.S. Army OH-13/M74 series helicopters.

H5SW—Tomcat Helicopters, Inc., (Continental Copters, Inc.) U.S. Army OH-13H (BHT Model 47 series).

H2CE—Wilbur Isenburg (Hawkeye), U.S. Army OH-13E (BHT Model 47 series).

The proposed AD is needed to prevent the failure of the tail rotor drive quill assembly bearing. This failure could result in loss of directional control of the helicopter and a hazardous emergency landing.

DATES: Comments must be received on or before October 27, 1980.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attention: Airworthiness Docket No. 80-ASW-33, Post Office Box 1689, Fort Worth, TX 76101.

The applicable service bulletin may be obtained from Bell Helicopter Textron, Product Support Department, Post Office Box 482, Fort Worth, Texas 76101. A copy of the service bulletin is contained in the Rules Docket, Office of the Regional Counsel, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: H. R. Whitlock or D. E. Gonder, Propulsion Section, ASW-214, Engineering and Manufacturing Branch, Federal Aviation Administration, Post Office Box 1689, Fort Worth, Texas 76101, telephone (817) 624-4911, extension 525.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director 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, both before and after the closing date for comments, in the office of the Regional Counsel, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the docket.

There have been reports of the failure of the bearing (BHT P/N 47-620-605-001) used in the BHT Model 47 series helicopters' tail rotor drive quill assemblies, BHT P/N 47-620-631-35 or P/N 47-620-541-9. When a failure does occur, a hazardous emergency landing must be made since directional control of the helicopter is lost. Since this condition is likely to exist or develop on other helicopters of the same type design, the proposed AD would require removal of the bearing and installation of the improved bearing on BHT Model 47 series helicopters and military Model OH-13 series helicopters certificated in all categories which utilize tail rotor drive quill assemblies, BHT P/N 47-620-631-35 or BHT P/N 47-620-541-9. This also includes, but is not necessarily limited to, helicopters produced under the following Type Certificates:

H47SW—Texas Helicopter Corporation, U.S. Army OH-13/M74 series helicopters (BHT Model 47 series).

H5SW—Tomcat Helicopters, Inc., (Continental Copters, Inc.) U.S. Army OH-13H helicopter (BHT Model 47 series).

H2CE—Wilbur Isenburg (Hawkeye), U.S. Army OH-13E helicopter (BHT Model 47 series).

Compliance is required within the next 600 hours' time in service after the effective date of the AD.

To prevent the failure of the tail rotor drive assembly bearing and possible loss of directional control, accomplish the following, unless already accomplished:

a. Dissassemble and inspect the tail rotor drive assembly (BHT P/N 47-620-631-35 or P/N 47-620-541-9) as necessary to determine the identification of the bearing at the inboard end of the transmission tail rotor drive gear, P/N 47-620-568-1.

b. If the bearing is BHT bearing P/N 47-620-929-001 or FAA-approved equivalent, reassemble and reinstall the tail rotor drive assembly as prescribed by the applicable maintenance and overhaul manuals.

c. If the bearing identified in item a is any part other than BHT P/N 47-620-929-001 or FAA-approved equivalent, replace the bearing with BHT bearing, P/N 47-620-929-001, in accordance with instructions in BHT Alert Service Bulletin No. 47-80-6, "Replacement of Bearing, P/N 47-620-605-001, with Bearing, P/N 47-620-929-001," dated May 15, 1980, or an FAA-approved equivalent. Reassemble and reinstall the tail rotor drive assembly as prescribed by the applicable maintenance and overhaul manuals.

d. Any equivalent method of compliance with this AD must be approved by the Chief, Engineering and Manufacturing Branch, Flight Standards Division, Southwest Region, Federal Aviation Administration.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.85)

The Federal Aviation Administration has determined that this document involves a proposed regulation which is

not considered to be significant under Executive Order 12044 as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Fort Worth, Texas, on September 11, 1980.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 80-29506 Filed 9-24-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-GL-31]

Proposed Designation of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The nature of this federal action is to designate controlled airspace near Fosston, Minnesota, to accommodate a new instrument approach into Fosston Municipal Airport, established on the basis of a request from the local Airport officials to provide that facility with instrument approach capability. The intended effect of this action is to insure segregation of the aircraft using this approach procedure in instrument weather conditions from other aircraft operating under visual conditions.

DATES: Comments must be received on or before October 20, 1980.

ADDRESSES: Send comments on the proposal to FAA Office of Regional Counsel, AGL-7, Attention: Rules Docket Clerk, Docket No. 80-GL-31, 2300 East Devon Avenue, Des Plaines, Illinois 60018. A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Doyle W. Hegland, Airspace and Procedures Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (312) 694-4500, Extension 456.

SUPPLEMENTARY INFORMATION: The floor of the controlled airspace in this area will be lowered from 1200' above ground to 700' above ground. The development of the proposed instrument procedures necessitates that the FAA lower the floor of the controlled airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace. In addition, aeronautical maps and charts will reflect the area of the instrument procedure which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Regional Counsel, AGL-7, Great Lakes Region, Rules Docket No. 80-GL-31, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before October 20, 1980, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

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

The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a 700-foot controlled airspace transition area near Fosston, Minnesota. Subpart G of Part 71 was republished in the Federal Register on January 2, 1980 (45 FR 445).

The Proposed Amendment

Accordingly, the FAA proposes to amend Subsection 71.181 of Part 71 of the Federal Aviation Regulations as follows:

In Section 71.181 (45 FR 445), the following transition area is added:

Fosston, Minnesota

That airspace extending upward from 700' above the surface within a five statute mile radius of the Fosston Municipal Airport and extending three statute miles either side of the 175° bearing from the Fosston NDB to eight statute miles south of the Fosston NDB.

This amendment is proposed under the authority of Section 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.61 of the Federal Aviation Regulations (14 CFR 11.61).

The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044 as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the draft evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to the Federal Aviation Administration, Attention: Rules Docket Clerk (AGL-7), Docket No. 80-GL-31, 2300 East Devon Avenue, Des Plaines, Illinois.

Issued in Des Plaines, Illinois, on September 5, 1980.

Wm. S. Dalton

Director, Great Lakes Region.

[FR Doc. 80-29506 Filed 9-24-80; 8:45 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Parts 207, 208, 212, 214, and 380

[EDR-407; SPDR-79; Docket No. 36958]

Charter Air Transportation; Financial Security Requirements and Charter Passengers' Payments

Dated: September 19, 1980

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to a petition for rulemaking from Wardair Canada, the CAB proposes to amend its charter rules to allow airlines and charter operators to use insurance policies to satisfy financial security requirements. On its own initiative, the CAB also proposes a clarification of its rules concerning the use of letters of credit as an arrangement for protecting charter passengers' payments.

DATE: Comments by: November 24, 1980. Reply comments by: December 9, 1980.

Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

Requests to be put on the Service List by: October 6, 1980.

The Docket Section prepares the Service List and sends it to each person

listed, who then serves comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 36958, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Copies may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

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

SUPPLEMENTARY INFORMATION:

Background

By SPR-165, 44 FR 51207, August 31, 1979, the Board modified the financial security provisions governing Public Charters under 14 CFR Part 380. The purpose of that action was to broaden the class of security agreements that charter operators could use for the protection of charter passengers' funds. Previously, only surety bonds and escrow accounts had been permitted. With the adoption of that amendment, charter operators were able to use any security agreement issued by a bank that provided protection for participants' funds at least equivalent to a surety bond.

Despite this liberalization, it appears that the present rules may unnecessarily restrict some security arrangements. Wardair Canada has filed a petition for rulemaking stating that "the financial protection provisions of Part 380 do not appear to contemplate the protection of participant's deposits through an insurance policy." Several banks have also expressed concern that letters of credit, although specifically authorized by § 380.34(c), cannot be issued by national banks in the form required by Board rules without running afoul of the rules of the Comptroller of the Currency.

Insurance Policies

Wardair, in its rulemaking petition, asked the Board to authorize an insurance plan as an alternative to the security arrangements now used for the protection of charter participants' payments. Wardair argued that the insurance plan that it now uses in its Canadian operations provides coverage in excess of that required under Part 380. It also stated that this type of plan would obviate the need for escrow accounts, thereby eliminating the burden of administering those accounts and greatly improving an operator's cash-flow position. Condor Flugdienst filed an answer in support of the Wardair petition.

We agree that an insurance policy may provide protection for participants' funds that is at least equivalent to the current bond requirement. In some cases insurers may be willing to accept risks with lower payments by the charter operator (in the form of fees, premiums, or collateral) than those required for other forms of security. Permitting the use of an insurance policy may thus reduce operators' cash flow problems and give them an additional option in providing security while still providing complete protection for passengers' funds.

We are therefore proposing to allow operators to use insurance policies to secure customers' deposits. In order to ensure that insurance policies and other security agreements provide at least as much protection as the bond that was originally required, we also propose to set forth several criteria with which the agreements would have to comply. To satisfy the Board that the insurance policy or other secruity agreement provided equivalent protection to the bond, they would have to meet the following standards, set forth in a revised § 380.34(c)(3):

(1) They would have to cover any refunds due the participant as a result of a cancellation by the operator or participant or as a result of a major change, as defined by § 380.33, in the charter tour. The insurance policy that Wardair uses in its Canadian operations and which it attached to its petition for rulemaking is deficient in this respect because it covers only non-performance by the air carrier, not unsatisfactory performance caused by a major change.

(2) The amount of coverage must be at least as much as the bond requirement. Currently, an operator has two options. Under § 380.34(b), it may obtain a security agreement in the amount of 10,000 dollars times the number of flights and in addition arrange to have the participants make their payments into an escrow account. Under § 380.34(a), the operator may avoid the escrow requirement by obtaining a bond in an amount equal to the price of the charter air transportation (twice or three times that amount is required for tours of more than 14 days).

Rather than requiring the coverage of insurance policies and other security agreements to conform to bond coverage under § 380.34(a), we are considering requiring that the amount of coverage equal or exceed the total amount of money collected from passengers by the charter operator. this amount would be calculated by multiplying the number of seats available for sale on the charter or series of charters by the per passenger charter price. This would cover both the air transportation and any ground package, and would replace or be an alternative to the present scheme of requiring the amount of coverage to vary depending on the duration of the charter tour.

A possible problem with this scheme arises because one cannot know in advance, when the security arrangements are made, the total amount of money that will be collected from passengers by the charter operator. the amount may vary because there may be fewer passengers than expected or some participants may not buy all the elements of the ground package. If this scheme were adopted it therefore may be necessary to require the coverage to at least equal the amount that would be collected if the charter were full and all participants paid the maximum price.

Another alternative we are considering is a requirement that the operator obtain a security agreement in an unlimited amount. Such an open-ended arrangement could cover all claims resulting from the charter operations of the operator. It would be preferable in our view, since it would not depend on providing the insurer with lists of proposed flights, although it may be more difficult to obtain. The liability of the securer would still be limited by the rule that recovery by each participant is limited to the charter price (§ 380.34(b)(1)).

(3) They must be written on behalf of the participants only. The participants are those who have paid for a charter that is listed on a prospectus that the operator filed with the Board. No other creditor of the operator should be able to file claims under the policy. If they could, a charter passenger would not have the same degree of assurance of a refund as when a bond is used.

(4) The insurance policy or other security agreement could not be affected by the insolvency of the charter operator. A passenger must be able to obtain any refund that is due in the event that the charter operator becomes bankrupt, regardless of when the passenger's payments were made or the bankruptcy occurred.

(5) When security is provided in the form of an insurance policy, the policy must be written by an insurance company that is complying with applicable State laws that give authority to issue such policies and that is accepted by the Interstate Commerce Commission or is listed in Best's Insurance Reports with a general policyholders rating of "A" or better. Section 380.34(c)(7) would be amended to require this. That section already

requires that a security agreement other than a bond that is issued by a bank must comply with the rules of the Comptroller of the Currency if it is a national bank or with the applicable State laws if it is a State bank.

(6) The securer would have to agree to waive all defenses against passengers except those that the charter operator could have raised. This is particularly important with respect to insurance policies where the willfull conduct of the operator might otherwise be used by the insurer as a bar to the participants' recovery. Thus, even intentional misconduct by the operator against participants or misrepresentations by the operator upon which the insurer relied in deciding to provide the coverage would not relieve the insurer of its obligation to the beneficiaries (passengers) under the policy. The beneficiaries would need only to make a claim, and if it were found valid and the operator were unable to pay it, they could collect under the policy. The insurer could, however, still bring a separate action against the operator to recover the refunds it had paid.

(7) The insurance policy or other security agreement would have to provide for the filing of claims up to 60 days after the intended return date of the tour.

(8) The policy or agreement could not be cancelled on less than 30 days' notice to the Board.

If an insurance policy met these requirements, it is the Board's tentative view that it would provide protection equal to a bond. We request comments on whether any other conditions should be added or whether one or more of those listed are unnecessary. If a policy did not meet these requirements, the insurer or other securer would be held liable to the same extent as if the policy did comply.

We also request comments on whether an insurance policy complying with this rule would be less expensive to obtain and, if so, why that would be the case.

Direct Carriers

Condor Flugdienst, in its answer to the Wardair petition, asked the Board to reexamine the financial security requirements applicable to direct air carriers as well. These appear in 14 CFR Parts 207, 208, 212, and 214. It stated that direct carriers should also be able to enter into any type of security arrangement that provides protection that is at least equivalent to that provided under present §§ 207.17, 208.40, 212.15 and 214.9c. Under those sections, a direct air carrier operating charter flights must either arrange to have the charterer's payments deposited in an escrow account until the charter flight is completed, or furnish a surety bond in an unlimited amount guaranteeing performance of the flight. Condor claimed that the escrow arrangement is not a viable option because of its restrictions on a carrier's cash flow. It did not view the surety bond alternative as a significant improvement because the bond is difficult to obtain and, when obtained, is very expensive. Condor pointed out that the high cost of the bond would have to be passed on to charter operators and ultimately to consumers.

As Condor also recognized, the Board has an obligation to protect the U.S. traveling public against non-performance by direct air carriers. It is our tentative view, however, that this interest would not be undermined by giving direct carriers the same financial security options now available to charter operators. We therefore propose to allow direct air carriers to utilize any type of security arrangement that provides protection at least equivalent to that provided by the surety bond.

Toward this end, we are proposing that the direct carrier's security arrangements meet certain standards. These are, with two exceptions, the same as those described above for charter operators. The exceptions concern the scope and the amount of coverage.

The insurance policy or other security agreement furnished under Part 380 has to protect passenger payment in the event of operations in violation of the major change provisions of that part as as well as in the case of non-performance. There are, however, no major change provisions applicable to the operations of direct carriers. Therefore unless the direct carrier substituted its policy for the security agreement of the charter operator under § 380.34a, the security agreements of direct carriers would have to cover only non-performance of the flight. If the direct carrier's policy were substituted for that of the charter operator, it would have to cover refunds due to both non-performance and major changes.

As to the amount of coverage, the direct carrier is now required to furnish a bond in an unlimited amount. We propose that an insurance policy or other security agreement provide comparable coverage. There may, however, be barriers to specifying coverage in an unlimited amount for these agreements. Insurance companies may not be willing to write policies that are open-ended. Also, national banks may not be able to issue letters of credit in an unlimited amount. The regulations of the Comptroller of the Currency at 12 CFR 7.7016(c) state that "(a)s a matter of sound banking practice, letters of credit should be * * * limited in amount."

As alternatives to requiring an open-ended security agreement, we are therefore considering two other approaches that should also provide comparable protection. One would be to establish a limit for the required amount of coverage but set it high enough to ensure that charterers' funds would always be covered. The limit could be in the area of 25 to 50 million dollars. The other approach would be to not set a specified minimum coverage but to require only that the coverage be of a "sufficient" amount to cover the charterer's payments. What constituted a sufficient amount would be left to the discretion of the securer. It, however, would be held fully responsible for reimbursing the charterer for the direct carrier's non-performance in the event that the carrier was unable to repay and the security agreement's coverage was not sufficient.

We specifically request comments on whether a limit should be set for the required coverage applicable to direct carriers and, if so, in what amount. Regardless of which approach is adopted, the liability of the securer to any single charterer would not exceed the amount paid by that charterer to the direct air carrier for the charter involved.

Letters of Credit

Section 380.34(c)(2)(iii) permits charter operators to use a bank's letter of credit (or any other type of security agreement) to secure customers' deposits if it provides protection for those deposits equivalent to or greater than that of a bond. That section and § 380.34(c)(3) require the agreement between the operator and the bank to include a statement that if the letter of credit does not provide protection comparable to the bond, the issuing bank will have the same liability to charter participants as if it had entered into a bond.

The Assistant Chief Counsel of the Comptroller of the Currency, in a letter to Board staff, stated that the provision might prevent national banks from using letters of credit because in his view, requiring a bank to assume all the liabilities of a bond would make it a guarantor. While a bank may become a guarantor, under 12 CFR 7.7010 the transaction must be fully collateralized. Thus, a possible advantage of the letter of credit from the operator's standpoint, to avoid the heavy collateralization required of bonds, may be lost as a result of that interpretation of

§ 380.34(c)(3) of our rules and § 7.7010 of the Comptroller's rules.

The Office of the Comptroller also questioned the requirement of § 380.34(c)(3) on the grounds that it would place the bank in violation of 12 CFR 7.7016. That section states, among other things, that the bank's obligation to pay on a letter of credit should arise only upon the presentation of documents, and that the bank must not be called on to decide questions of fact or law between the operator and the passenger. Its role must be only ministerial.

In order to enable charter operators to use the letter of credit option, we are proposing to revoke § 380.34(c)(3) in its present form and replace it with the criteria described above for insurance policies. A letter of credit that met the standards of proposed § 380.34(c)(3) would, in our view, provide protection equivalent to the bond without requiring the bank to comply with the collateral requirements for sureties under 12 CFR 7.7010. To obtain a refund from the bank under the letter of credit, a charter participant would present to the bank a statement that (1) a judgment had been rendered against the operator, the operator had admitted liability, or a claim had been presented to the operator at its address listed in the operator-participant contract, and (2) the operator had failed to either pay or dispute the claim. The bank would then have a reasonable time within which to pay the claim. That time would be such as was needed for it to check the correctness of these facts (*i.e.*, that the operator had failed to pay or dispute the claim) with the operator, without creating an undue delay. Of course, as far as the Board is concerned, the bank in its own discretion could choose to pay in other circumstanes and without the presentation of the documents described above if it wished.

The same would apply to letters of credit for direct air carriers. The bank could issue a letter of credit that complied with parts 207, 208, 212, or 214 of the Board's rules and the applicable rules of the Comptroller. The condition of the letter would be presentation by the charterer of document similar to those described above.

Accordingly, the Civil Aeronautics Board proposes to amend Chapter II of Title 14, Code of Federal Regulations, as follows:

PART 207—CHARTER TRIPS AND SPECIAL SERVICES

1. In Part 207, *Charter Trips and Special Services*, § 207.17(c), (d) and (e) would be amended and new paragraphs (f), (g) and (h) would be added to that section, to read:

§ 207.17 Protection of customers' deposits

* * * * *

(c) The carrier may elect, in lieu of furnishing an escrow agreement under paragraph (a) of this section, to furnish and file with the Board a surety bond which guarantees to the United States Government, or any other type of security agreement as defined by § 380.2 of this chapter which guarantees to the United States Government or to the charterer, the performance of all charter trips (other than cargo charter trips) originating in the United States and of all overseas military personnel charter trips, as defined in Part 372 of this chapter, to be performed in whole or in part by the carrier under any contract entered into by such carrier after the execution of the bond or other security agreement. The bond or other security agreement shall conform to the following standards:

(1) It shall be for an unlimited amount;

(2) Except as provided by paragraph (c)(7) of this section, claims under it may be made only with respect to the nonperformance of air transportation;

(3) It shall be exclusively for the benefit of the charterer and only the charterer shall be able to collect under it, unless it is used as a substitute for the security agreement of the charter operator under § 380.34a of this chapter, in which case the charter participants shall be able to collect under it as well;

(4) It shall provide full protection for the payments of the charterer in the event that the direct air carrier becomes insolvent;

(5) The surety company, bank, or insurance company making the security agreement shall waive all defenses against the charterer except those that the direct air carrier could raise against the charterer;

(6) It shall not be cancelled on less than 30 days notice to the Board; and

(7) If it is used as a substitute for the security agreement of the charter operator under § 380.34a of this chapter, it shall also comply with the requirements of that section.

(d) When security is provided by a bond under paragraph (c) of this section, it shall be in the form set forth as Appendix A to this part and shall be issued by a bonding or surety company that is legally authorized to issue bonds of that type in the State in which the carrier is incorporated or maintains its principal place of business and (1) whose surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 1084.6 or (2) which is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholder's rating of "A" or better.

(e) When security is provided by a security agreement other than a bond under paragraph (c) of this section the agreement shall be issued by one of the following:

(1) A national bank complying with the provisions of 12 CFR 7.7010(a) or 7.7016 and insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation;

(2) A state bank complying with applicable State laws that give authority to issue such agreements and insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation;

(3) An insurance company complying with applicable State laws that give authority to issue such agreements and that is accepted by the Interstate Commerce Commission under 49 CFR 1084.6 or which is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better.

(f) For the pusposes of this section, the term "State" includes any territory or possession of the United States, or the District of Columbia.

(g) If the bond or other security agreement does not comply with the requirements of this section, or for any reason fails to provide satsifactory or adequate protection for the public, the Board will notify the air carrier, by registered or certified mail, stating its deficiencies. Unless those deficiencies are corrected within the time limit set forth in the notification, no amounts payable in advance by customers for the subject charter trips may be accepted by the carrier.

(h) The bond or other security agreement required by this section shall provide that unless the charterer files a claim with the carrier, or, if it is unavailable, with the surety, bank or insurance company, within 60 days after cancellation of a charter trip with respect to which the charterer's advance payments are secured, the surety, bank or insurance company shall be released from all liability under the bond or other security agreement to that charterer for that charter trip. The contract between the carrier and the charterer shall contain notice of this provision.

PART 208—TERMS, CONDITIONS, AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN CHARTER AIR TRANSPORTATION

2. In Part 208, *Terms, Conditions, and Limitations of Certificates To Engage In*

Charter Air Transportation, § 208.40 (c), (d), and (e) would be amended and new paragraphs (f), (g), and (h) would be added, to that section, to read:

§ 208.40 Protection of customers' deposits.

* * * * *

(c) The carrier may elect, in lieu of furnishing an escrow agreement under paragraph (a) of this section, to furnish and file with the Board a surety bond which guarantees to the United States Government, or any other type of security agreement as defined by § 380.2 of this chapter which guarantees to the United States Government or to the charterer, the performance of all charter trips (other than cargo charter trips) originating in the United States and of all overseas military personnel charter trips, as defined in Part 372 of this chapter, to be performed in whole or in part by the carrier under any contract entered into by such carrier after the execution of the bond or other security agreement. The bond or other security agreement shall conform to the following standards:

(1) It shall be for an unlimited amount;

(2) Except as provided by paragraph (c)(7) of this section claims under it may be made only with respect to the nonperformance of air transportation;

(3) It shall be exclusively for the benefit of the charterer and only the charterer shall be able to collect under it unless it is used as a substitute for the security agreement of the charter operator under § 380.34a of this chapter in which case the charter participants shall be able to collect under it as well;

(4) It must provide full protection for the payments of the charterer in the event that the direct air carrier becomes insolvent;

(5) The surety company, bank or insurance company making the security agreement must waive all defenses against the charterer except those that the direct air carrier could raise against the charterer;

(6) It shall not be cancelled on less than 30 days notice to the Board; and

(7) If it is is used as a substitute for the security agreement of the charter operator under § 380.34a of this chapter, it shall also comply with the requirements of that section.

(d) When security is provided by a bond under paragraph (c) of this section, it shall be in the form set forth as Appendix A to this part and shall be issued by a bonding or surety company that is legally authorized to issue bonds of that type in the State in which the carrier is incorporated or maintains its principal place of business and (1) whose surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 1084.6 or (2) which is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholder's rating of "A" or better.

(e) When security is provided by a security agreement other than a bond under paragraph (c) of this section the agreement shall be issued by one of the following:

(1) A national bank complying with the provisions of 12 CFR 7.7010(a) or 7.7016 and insured by the Federal Deposit Insurance Corportion or the Federal Savings and Loan Insurance Corporation;

(2) A state bank complying with applicable State laws that give authority to issue such agreements and insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation;

(3) An insurance company complying with applicable State laws that give authority to issue such agreements and that is accepted by the Interstate Commerce Commission under 49 CFR 1084.6 or which is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better.

(f) For the purpose of this section, the term "State" includes any territory or possession of the United States, or the District of Columbia.

(g) If the bond or other security agreement does not comply with the requirements of this section, or for any reason fails to provide satisfactory or adequate protection for the public, the Board will notify the charter air carrier, by registered or certified mail, stating its deficiencies. Unless the deficiencies are corrected within the time limit set forth in the notification, no amounts payable in advance by customers for the subject charter trips may be accepted by the carrier.

(h) The bond or other security agreement required by this section shall provide that unless the charterer files a claim with the carrier, or, if it is unavailable, with the surety, bank or insurance company, within 60 days after cancellation of a charter trip with respect to which the charterer's advance payments are secured, the surety, bank or insurance company shall be released from all liability under the bond or other security agreement to the charterer for that charter trip. The contract between the carrier and the charterer shall contain notice of this provision.

PART 212—CHARTER TRIPS BY FOREIGN AIR CARRIERS

3. In Part 212, *Charter Trips By Foreign Air Carriers,* § 212.15 (c), (d) and (e) would be amended and new paragraphs (f), (g), and (h) would be added to that section, to read:

§ 212.15 Protection of customers' deposits.

* * * * *

(c) The carrier may elect, in lieu of furnishing an escrow agreement under paragraph (a) of this section, to furnish and file with the Board a surety bond which guarantees to the United States Government, or any other type of security agreement as defined by § 380.2 of this chapter which guarantees to the United States Government or to the charterer, the performance of all charter trips (other than cargo charter trips) originating in the United States and of all overseas military personnel charter trips, as defined in Part 372 of this chapter, to be performed in whole or in part by the carrier under any contract entered into by such carrier after the execution of the bond or other security agreement. The bond or other security agreement shall conform to the following standards:

(1) It shall be for an unlimited amount;

(2) Except as provided by paragraph (c)(7) of this section, claims under it may be made only with respect to the nonperformance of air transportation;

(3) It shall be exclusively for the benefit of the charterer and only the charterer shall be able to collect under it unless it is used as a substitute for the security agreement of the charter operator under § 380.34a of this chapter in which case the charter participants shall be able to collect under it as well;

(4) It must provide full protection for the payments of the charterer in the event that the direct air carrier becomes insolvent;

(5) The surety company, bank or insurance company making the security agreement must waive all defenses against the charterer except those that the direct air carrier could raise against the charterer;

(6) It shall not cancelled on less than 30 days notice to the Board; and

(7) If it is used as a substitute for the security agreement of the charter operator under § 380.34a of this chapter, it shall also comply with the requirements of that section.

(d) When security is provided by a bond under paragraph (c) of this section, it shall be in the form set forth as Appendix A to this part. It shall be issued by a bonding or surety company that is legally authorized to issue bonds of that type in the State in which there is located the office or usual residence of the agent designated by the carrier under section 1005(b) of the Act to receive service of notice, process or

other documents issued by or filed with the Board and (1) whose surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 1084.6 and (2) which is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholder's rating of "A" or better.

(e) When security is provided by a security agreement other than a bond under paragraph (c) of this secton the agreement shall be issued by one of the following:

(1) A national bank complying with the provisions of 12 CFR 7.7010(a) or 7.7016 and insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation;

(2) A state bank complying with applicable State laws that give authority to issue such agreements and insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation;

(3) An insurance company complying with applicable State laws that give authority to issue such agreements and that is accepted by the Interstate Commerce Commission under 49 CFR 1084.6 or which is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better.

(f) For the purpose of this section the term "State" includes any territory or possession of the United States, or the District of Columbia.

(g) If the bond or other security agreement does not comply with the requirements of this section, or for any reason fails to provide satisfactory or adequate protection for the public, the Board will notify the foreign air carrier, by registered or certified mail, stating its deficiencies. Unless those deficiencies are corrected within the time limit set forth in the notification, no amounts payable in advance by customers for the subject charter trips may be accepted by the carrier.

(h) The bond or other security agreement required by this section shall provide that unless the charterer files a claim with the carrier, or, if it is unavailable, with the surety, bank or insurance company, within 60 days after cancellation of a charter trip with respect to which the charter's advance payments are secured, the surety, bank or insurance company shall be released from all liability under the bond or other security agreement to the charterer for that charter trip. The contract between the carrier and the charterer shall contain notice of this provision.

PART 214—TERMS, CONDITIONS, AND LIMITATIONS OF FOREIGN AIR CARRIER PERMITS AUTHORIZING CHARTER TRANSPORTATON ONLY

4. In Part 214, *Terms, Conditions, and Limitations of Foreign Air Carrier Permits Authorizing Charter Transportation Only*, § 214.9 (c), (d) and (e) would be amended and new paragraphs (f), (g) and (h) would be added to that section, to read:

§ 214.9c Protection of customers' deposits.

* * * * *

(c) The carrier may elect, in lieu of furnishing an escrow agreement under paragraph (a) of this section, to furnish and file with the Board a surety bond which guarantees to the United States Government, or any other type of security agreement as defined by § 380.2 of this chapter which guarantees to the United States Government or to the charterer, the performance of all charter trips (other than cargo charter trips) originating in the United States and of all overseas military personnel charter trips, as defined in Part 372 of this chapter, to be performed in whole or in part by the carrier under any contract entered into by such carrier after the execution of the bond or other security agreement. The bond or other security agreement shall conform to the following standards:

(1) It shall be for an unlimited amount;

(2) Except as provided by paragraph (c)(7) of this section, claims under it may be made only with respect to the nonperformance of air transportation;

(3) It shall be exclusively for the benefit of the charterer and only the charterer shall be able to collect under it unless it is used as a substitute for the security agreement of the charter operator under § 380.34a of this chapter in which case the charter participants shall be able to collect under it as well;

(4) It must provide full protection for the payments of the charterer in the event that the direct air carrier becomes insolvent;

(5) The surety company, bank or insurance company making the security agreement must waive all defenses against the charterer except those that the direct air carrier could raise against the charterer;

(6) It shall not be cancelled on less than 30 days notice to the Board; and

(7) If it is used as a substitute for the security agreement of the charter operator under § 380.34a of this chapter, it shall also comply with the requirements of that section.

(d) When security is provided by a bond under paragraph (c) of this section, it shall be in the form set forth as Appendix A to this part. It shall be issued by a bonding or surety company that is legally authorized to issue bonds of that type in the State in which there is located the office or usual residence of the agent designated by the carrier under section 1005(b) of the Act to receive service of notice, process or other documents issued by or filed with the Board and (1) whose surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 1084.6 and (2) which is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholder's rating of "A" or better.

(e) When security is provided by a security agreement other than a bond under paragraph (c) of this section the agreement shall be issued by one of the following:

(1) A national bank complying with the provisions of 12 CFR 7.7010(a) or 7.7016 and insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation;

(2) A state bank complying with applicable State laws that give authority to issue such agreements and insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation;

(3) An insurance company complying with applicable State laws that give authority to issue such agreements and that is accepted by the Interstate Commerce Commission under 49 CFR 1084.6 or which is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better.

(f) For the purpose of this section, the term "State" includes any territory or possession of the United States, or the District of Columbia.

(g) If the bond or other security agreement does not comply with the requirements of this section, or for any reason fails to provide satisfactory or adequate protection for the public, the Board will notify the foreign air carrier, by registered or certified mail, stating its deficiencies. Unless those deficiencies are corrected within the time limit set forth in the notification, no amounts payable in advance by customers for the subject charter trips may be accepted by the carrier.

(h) The bond or other security agreement required by this section shall provide that unless the charterer files a claim with the carrier, or, if it is unavailable, with the surety, bank or insurance company, within 60 days after cancellation of a charter trip with respect to which the charter's advance payments are secured, the surety, bank

or insurance company shall be released from all liability under the bond or other security agreement to the charterer for that charter trip. The contract between the carrier and the charterer shall contain notice of this provision.

Part 380—PUBLIC CHARTERS

5. In Part 380, *Public Charters*, the definition of "securer" and "security agreement" in § 380.2 would be amended by inserting "or insurance company" in each, as follows:

§ 380.2 Definitions.

* * * * *

"Securer" means the charter operator's surety company, if a surety bond is used, or the bank or insurance company making the security agreement, if a security agreement other than a bond is used.

"Security agreement" means either a surety bond in the form set forth in Appendix A, a surety trust agreement in the form set forth in Appendix E, or an arrangement with a bank or insurance company that provides protection of charter participants' funds equivalent to or greater than that provided by the bond.

* * * * *

6. In § 380.32, *Specific requirements for operator-participant contracts*, paragraph (v) would be amended by replacing "surety company or bank" with "surety company, bank, or insurance company."

7. In § 380.34, paragraph (c)(2)(iii) would be amended to read:

§ 380.34 Security and depository agreements.

* * * * *

(c)(1) * * *

(2) The security agreement may be either—

(i) * * *

(ii) * * *

(iii) An arrangement with a bank (for instance, a standby letter of credit) or insurance company that provides protection of charter participants' funds equivalent to or greater than that provided by the bond in Appendix A. An arrangement provides equivalent protection to the bond if it meets the criteria set forth in paragraph (c)(3) of this section. An arrangement that does not conform to the standards set forth in paragraph (c)(3) of this section shall be invalid to that extent, and instead the securer, the charter operator or foreign charter operator, and the charter participant shall have the same rights and liabilities as they would have if those standards had been met.

* * * * *

8. Also in § 380.34, paragraph (c)(3) would be amended to read:

§ 380.34 Security and depository agreements.

* * * * *

(c) * * *

(3) Any agreement under paragraph (c)(2)(iii) of this section shall, in addition to the requirements of paragraph (c)(1) of this section, conform to the following criteria:

(i) It shall ensure that the participant receives any refunds due as a result of a major change as defined by § 380.33 or a cancellation by any party;

(ii) It shall provide coverage in the amount specified by paragraph (a) of this section unless the direct air carrier and charter operator or foreign charter operator enter into a depository agreement with a bank under paragraph (b)(2) of this section, in which case the amount of coverage need only be 10,000 dollars times the number of flights, to a maximum of 200,000 dollars;

(iii) Only the charter participants shall be able to collect under the agreement;

(iv) It shall provide full protection for the funds of the charter participants if the charter operator becomes insolvent;

(v) The securer shall waive all defenses against charter participants except those that the charter operator may raise against charter participants; and

(vi) It shall not be canceled on less than 30 days notice to the Board.

* * * * *

9. Also in § 380.34, paragraph (c)(7) would be amended to read:

§ 380.34 Security and depository agreements.

* * * * *

(c) * * *

(7) When security is provided by a security agreement other than a bond under paragraph (c) of this section the agreement shall be issued by one of the following:

(i) A national bank complying with the provisions of 12 CFR 7.7010(a) or 7.7016 and insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation;

(ii) A state bank complying with applicable State laws that give authority to issue such agreements and insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation;

(iii) An insurance company complying with applicable State laws that give authority to issue such agreements and that is accepted by the Interstate Commerce Commission under 49 CFR 1084.6 or which is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better.

* * * * *

(Secs. 204, 401, 402, 416, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 754, 757, 92 Stat. 1731; (49 U.S.C. 1324, 1371, 1372, 1386))

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-29761 Filed 9-24-80; 8:45 am]

BILLING CODE 6320-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1214

Space Transportation System; Reimbursement for Spacelab Services

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: The proposed rule, in conjunction with Subparts 1214.1 and 1214.2, provides an equitable basis for reimbursement for Spacelab services provided in conjunction with a Shuttle flight.

DATE: Comments or suggestions should be submitted in writing not later than November 24, 1980.

ADDRESS: Comments may be mailed to the Office of Space Transportation Operations, NASA Headquarters, Washington, D.C. 20546 or delivered to Room 421, 600 Independence Avenue, Washington, D.C. between 8:00 A.M. and 4:30 P.M. Comments received may also be inspected at Room 421 between 8:00 A.M. and 4:30 P.M.

FOR FURTHER INFORMATION CONTACT: Jon M. Smith, Office of Space Transportation Operations, National Aeronautics and Space Administration, Washington, D.C. 20546, (202-755-2356).

SUPPLEMENTARY INFORMATION: Equitable apportionment of the Shuttle and Spacelab weight and volume capabilities forms the basis for establishing a policy for computing the price for using Spacelab services. Because the landing weight capability of the Shuttle is a primary limiting factor on Spacelab capability, Shuttle landing weight capability is used as a basis for proration rather than Shuttle lifting weight capability as defined in Subparts 1214.1 and 1214.2. Because the Spacelab elements themselves comprise a portion of the Shuttle's useful payload, the policy contained in this Subpart 1214.8 is established consistent with Subparts 1214.1 and 1214.2 such that the user of a Spacelab element pays for an appropriate share of the price for the

transportation and use of a Spacelab element in low earth orbit as well as the price for transporting the user's useful payload.

1. 14 CFR Part 1214 is amended by adding a new Subpart 1214.8 reading as follows:

Subpart 1214.8—Reimbursement for Spacelab Services

Sec.
1214.800 Scope.
1214.801 Definitions.
1214.802 Relationship to the Shuttle policy.
1214.803 Reimbursement policy.
1214.804 Services, pricing basis, and other considerations.
1214.805 Unforeseen user delay.
1214.806 Premature termination of operation.
1214.807 Exceptional payloads.
1214.808 Standby payloads.
1214.809 Short-term callup accelerated launch.
1214.810 Integration of payloads.
1214.811 Reflight guarantees.
1214.812 Payload specialists.
1214.813 Computation of sharing and pricing parameters.

Authority: Sec. 203, Pub. L. 85–568, 72 Stat. 429, as amended (42 U.S.C. 2473).

Subpart 1214.8—Reimbursement for Spacelab Services

§ 1214.800 Scope.

This Subpart 1214.8 establishes the special reimbursement policy for Spacelab services provided to Space Transportation System (STS) users governed by the provisions of Subpart 1214.1 or Subpart 1214.2. The following four types of Spacelab flights are available to accommodate payload requirements:
(a) Dedicated-Shuttle Spacelab flight.
(b) Dedicated-element flight.
(c) Complete-pallet flight.
(d) Shared-element flight.

§ 1214.801 Definitions.

(a) *Shuttle policy.* The appropriate Subpart (1214.1 or 1214.2) governing use of the Shuttle. Determination of the appropriate Subpart for each user shall be made by reference to § 1214.101 and § 1214.201.

(b) *Spacelab element.* A pallet (3 meter segment) or pressurized module (long or short).

(c) *Standard flight price.* The price for standard Shuttle and standard Spacelab services provided. If a user elects not to use a portion of the standard services, the standard flight price shall not be affected.

(d) *Shuttle load factor.* The parameter defined as the pro rata share of the Shuttle payload used to compute the user's share of the Shuttle flight price. Means of computing this parameter are defined in § 1214.813.

(e) *Spacelab load fraction.* The parameter defined as the pro rata share of the Spacelab element payload used to compute the user's share of the price for use of a Spacelab element. Means of computing this parameter are defined in § 1214.813.

(f) *Shuttle charge factor and element charge factor.* Parameters used in computation of the user's pro rata share of services and the user's flight price. Means of computing these parameters are defined in § 1214.813.

§ 1214.802 Relationship to the Shuttle policy.

Except as specifically noted, the provisions of the Shuttle policy also apply to Spacelab payloads. Although some language in the Shuttle policy is Shuttle-specific, it is the intent of this Subpart 1214.8 that the Shuttle policy be applied to Spacelab also, including the policy on patent and data rights. However, in the event of any inconsistencies in the policies, the Spacelab policy will govern with respect to Spacelab services.

§ 1214.803 Reimbursement policy.

(a) *Reimbursement basis.* (1) The policy is established for two distinct phases covering 12 years of STS operations. The first phase is through the third full fiscal year of STS operations and the second phase consists of the remainder of the 12-year period.

(2) During both phases, users covered by Subpart 1214.1 or Subpart 1214.2 shall reimburse NASA for Spacelab service an amount which is a pro rata share of Spacelab aggregate costs or total Spacelab operations costs, respectively, over both phases.

(3) The price shall be held constant for flights in the first three full fiscal years of Space Transportations Systems operation.

(4) Subsequent to the first three full fiscal years, the price to users covered by Subpart 1214.1 or Subpart 1214.2 shall be adjusted annually to ensure that Spacelab aggregate costs or total Spacelab operations costs, respectively, are recovered over the 12-year period.

(b) *Escalation.* Payments shall be escalated in accordance with the Shuttle policy.

(c) Users shall reimburse NASA an amount which is the sum of the user's standard flight price and the price for all optional services provided.

(d) *Use fees for apportioned/assigned payloads.* If more than one pricing policy (e.g., Subpart 1214.1, Subpart 1214.2) applies to components of an apportioned/assigned payload, the appropriate use fees shall be computed separately for each component according to the applicable policy.

(e) *Earnest money.* For those users required to pay earnest money by the Shuttle policy, the total earnest money payment per launch service agreement for Spacelab payloads (including Shuttle services) shall be the lesser of $150,000 or 10% of the user's estimated standard flight price. Earnest money will be applied to the first payment made by the user or will be retained by NSAS if a launch services agreement is not signed.

§ 1214.804 Services, pricing basis, and other considerations.

(a) *Dedicated-Shuttle Spacelab flight.* (1) A dedicated-Shuttle Spacelab flight is a Shuttle flight flown for a single user who is entitled to select the Spacelab elements used on the flight.

(2) In addition to the standard services listed in § 1214.804(e), the following standard services are provided to users of dedicated-Shuttle Spacelab flights and form the basis for the standard flight price: (i) Use of the full standard services of the Shuttle and the Spacelab elements selected.

(ii) One day of single shift on-orbit operations.

(iii) Standard mission destinations as defined in the Shuttle policy.

(iv) Launch within a prenegotiated 90-day period in accordance with the dedicated flight scheduling provisions of the Shuttle policy.

(v) User selection and use of two user-furnished payload specialists and two backup payload specialists for the flight.

(3) Users contracting for a dedicated-Shuttle Spacelab flight shall reimburse NASA an amount which is the sum of: (i) The dedicated flight price for the Shuttle when flown on a one-day mission.

(ii) The price for the use of all Spacelab elements used (including all necessary mission-independent Spacelab equipment).

(iii) The price for flight accommodations for two payload specialists and mission-independent training for two payload specialists and two backup payload specialists.

(iv) The price for all optional services provided.

(4) *Apportionment and assignment of services.* Subject to NASA approval, a user contracting for a dedicated-Shuttle Spacelab flight shall be permitted to apportion and assign services under the provisions of the Shuttle policy.

(5) *Options.* (i) The schedule-launch option as provided in the Shuttle policy is available to dedicated-Shuttle Spacelab users covered by Subpart 1214.1. The fee for a scheduled-launch

option (including Shuttle option fee) is $133,000 in fiscal year 75 dollars.

(ii) The fixed-price option for flights in a given year beyond the three-year fixed price period may be made available by NASA to dedicated-Shuttle Spacelab users covered by Subpart 1214.1. The fixed price option and fee, when offered, will be negotiated separately with the user.

(iii) The option fees shall be applied to the price of the user's flight or be retained by NASA.

(6) *Postponement and cancellation.* The postponement and cancellation provisions of the Shuttle policy shall apply to dedicated-Shuttle Spacelab flights.

(7) *Unscheduled user delays.* The three-day delay provisions of the Shuttle policy shall apply to dedicated-Shuttle Spacelab flights.

(b) *Dedicated elements.* (1) A dedicated Spacelab element is one which is flown for a single user and which includes all Spacelab hardware necessary to permit it to be flown on any shared Shuttle flight as an autonomus payload (e.g., a dedicated pallet is supplied with a complete igloo).

(2) In addition to a pro rata share of the standard services listed in § 1214.804(e), the following standard services are provided to users of dedicated elements and form the basis for establishing the standard flight price: (i) A pro rata share of the Shuttle services normally provided, where the basis for proration is the user's Shuttle load factor as defined in § 1214.813(d)(1).

(ii) The exclusive services of the Spacelab element and all Spacelab hardware provided to support the element.

(iii) One day of single shift on-orbit operations.

(iv) Standard mission destinations as defined in the Shuttle policy.

(v) Launch within a prenegotiated 90-day period in accordance with the shared-flight scheduling provisions of the Shuttle policy.

(vi) A pro rata share of the on-orbit operations time of two payload specialists, where the basis of proration shall be the user's Shuttle load factor. This shall include user selection and use of one user-furnished payload specialist plus one backup payload specialist for the flight if the user's Shuttle load factor is 0.5 or more or NASA selection and provision of payload specialists and backup payload specialists for all payloads whose Shuttle load factor is less than 0.5.

(vii) Use of the entire volume above a pallet or the entire experiment and storage volumes of a pressurized module, as applicable.

(3) Users contracting for a dedicated Spacelab element flight shall reimburse NASA an amount which is the sum of: (i) The product of the user's Shuttle charge factor and the dedicated flight price of the Shuttle when flown on a one-day mission.

(ii) The price for the use of the Spacelab element selected (including all necessary mission-independent Spacelab equipment).

(iii) The product of the user's Shuttle charge factor and the price for flight accommodations for two payload specialists and mission-independent training for two payload specialists and two backup payload specialists.

(iv) The price for all optional services provided.

(4) *Apportionment and assignment of services.* Subject to NASA approval, a user contracting for dedicated elements shall be permitted to apportion and assign services under the provisions of the Shuttle policy.

(5) *Options.* (i) The scheduled-launch option as provided in the Shuttle policy is available to dedicated element users covered by Subpart 1214.1. The fee for a scheduled-launch option (including Shuttle option fee) is $133,000 in FY75 dollars.

(ii) The fixed-price option for flights in a given year beyond the three-year fixed price period may be made available by NASA to dedicated element users covered by Subpart 1214.1. The fixed price option and fee, when offered, will be negotiated separately with the user.

(iii) The option fees shall be applied to the price of the user's flight or be retained by NASA.

(6) *Postponement and cancellation.* The postponement and cancellation provisions of the Shuttle policy shall apply to dedicated elements.

(7) *Unscheduled user delays.* The three-day delay provisions of the Shuttle policy shall apply to dedicated elements.

(c) *Complete pallet.* (1) A complete Spacelab pallet is one which is flown for a single user but flies with other Spacelab elements on a NASA or NASA-designated Spacelab flight and shares the common standard Spacelab services, e.g., shares an igloo with the other pallets.

(2) In addition to a pro rata share of the standard services listed in § 1214.804(e), the following standard services are provided to users of complete pallets and form the basis for the standard flight price: (i) The pallet's pro rata share of standard Shuttle services, where the basis of proration shall be the user's Shuttle load factor as defined in § 1214.813(e)(1).

(ii) A pro rata share of seven days of on-orbit operations, where the basis of proration shall be the user's Shuttle load factor.

(iii) Mission destination selected by NASA in consultation with the user.

(iv) Assignment, with the user's concurrence, to a Spacelab flight designated by NASA.

(v) Launch date established by NASA.

(vi) A pro rata share of the on-orbit operation time of two payload specialists, where the basic of proration shall be the user's Shuttle load factor. This shall include user selection and use of one user-furnished payload specialist plus one backup payload specialist for the flight if the user's Shuttle load factor is 0.5 more or NASA selection and provision of payload specialists and backup payload specialists for all payloads whose Shuttle load factor is less than 0.5.

(vii) Use of the entire volume above a pallet.

(3) Users contracting for complete pallet flights shall reimburse NASA an amount which is the sum of: (i) The product of the user's Shuttle charge factor and the dedicated flight price of the Shuttle when flown on a seven-day mission.

(ii) The price for the use of a complete pallet (including all necessary mission-independent Spacelab equipment).

(iii) The product of the user's Shuttle charge factor and the price for flight accommodations for two payload specialists and mission-independent training for two payload specialists and two backup payload specialists.

(iv) The price for all optional services provided.

(4) *Apportionment and assignment of services.* Subject to NASA approval, a user contracting for complete pallets shall be permitted to apportion and assign services under the provisions of the Shuttle policy.

(5) *Options.* Options as provided in the Shuttle policy shall not be made available to users contracting for complete pallets.

(6) *Postponement and cancellation.* The postponement and cancellation provisions of the Shuttle policy shall apply to complete pallets.

(7) *Unscheduled user delays.* The three-day delay provisions of the Shuttle policy shall apply to complete pallets.

(d) *Shared element.* (1) A shared element is a Spacelab pallet or module which: (i) Is shared by two or more users on a NASA or NASA-designated Spacelab flight.

(ii) Shares common standard Spacelab services with other Spacelab elements on the same flight.

(2) In addition to a pro rata share of the standard services listed in § 1214.804(e), the following standard services are provided to users of shared elements and form the basis for the standard flight price:

(i) For shared pallets, a pro rata share of the standard services provided by a pallet. The basis of proration shall be the user's Spacelab load fraction as defined in § 1214.813(f)(1).

(ii) For shared modules, a pro rata share of the standard services provided by a long module flown on a dedicated-Shuttle Spacelab flight. The basis of proration shall be the user's Spacelab load fraction as defined in § 1214.813(f)(1). (The type of pressurized module actually used to meet a user's requirement for a shared module shall be determined by NASA subsequent to contract negotiations.)

(iii) A pro rata share of the element's share of standard Shuttle services, where the basis for proration shall be the user's Spacelab load fraction.

(iv) A pro rata share of seven days of on-orbit operations, where the basis of proration shall be the user's Shuttle load factor as defined in § 1214.813(f)(1).

(v) Mission destination selected by NASA in consultation with the user.

(vi) Assignment, with the user's concurrence, to a Spacelab flight designated by NASA.

(vii) Launch date established by NASA.

(viii) A pro rata share of the on-orbit operations time of two payload specialists, where the basis of proration shall be the user's Shuttle load factor. This shall include user selection and use of one user-furnished payload specialist plus one backup payload specialist for the flight if the user's Shuttle load factor is 0.5 or more or NASA selection and provision of payload specialists and backup payload specialists for all payloads whose Shuttle load factor is less than 0.5.

(3) User contracting for shared-element flights shall reimburse NASA an amount which is the sum of: (i) The product of the user's Shuttle charge factor and the dedicated flight price of the Shuttle when flown on a seven-day mission.

(ii) The product of the user's element charge factor and the price for the use of the Spacelab element being used (including all necessary mission-independent Spacelab equipment).

(iii) The product of the user's Shuttle charge factor and the price for flight accommodations for two payload specialists and mission-independent training for two payload specialists and two backup payload specialists.

(iv) The price for all optional services provided.

(4) *Apportionment and assignment of services.* Subject to NASA approval, a user contracting for a shared element shall be permitted to apportion and assign services under the provisions of the Shuttle policy.

(5) *Options.* Options as provided in the Shuttle policy shall not be made available to users contracting for shared elements.

(6) *Postponement and cancellation.* Users shall be governed by the provisions of the Shuttle policy with the following exception. When computing occupancy fees for shared-element payloads, the "adjusted reimbursements from other users" shall be defined as the adjusted reimbursements from those users who subsequently contract for the use of the element being shared.

(7) *Unscheduled user delays.* The three-day delay provisions of the Shuttle policy shall not be offered to shared element users.

(e) *Common standard Spacelab services.* The following standard Spacelab services are common to all Spacelab flights: (1) Use of Shuttle[1] and Spacelab hardware.

(2) KSC launch.[1]

(3) A three-person NASA Shuttle flight crew.[1]

(4) Accommodations for a two-person payload specialist crew.

(5) Mission-independent training for two payload specialists and two backup payload specialists.

(6) Prelaunch integration and interface verification of preassembled racks and pallets. (Level III, II, and I).

(7) Shuttle[1] and Spacelab flight planning.

(8) Payload electrical power.[1]

(9) Payload environmental control.

(10) On-board data acquisition and processing services.

(11) Transmission of the data to the JSC Payload Operations Control Center (POCC) via the basis STS Operational Instrumentation (OI) telemetry system.

(12) Use of standard payload monitoring and control facilities in the JSC POCC.

(13) Voice communications between payload specialists and the JSC POCC.

(14) NASA Payload safety review.[1]

(15) NASA support of payload design reviews.[1]

(f) *Typical optional Spacelab services.* The following are typical optional Spacelab services: (1) Use of special payload support equipment, e.g., instrument pointing system.

(2) Vandenberg Air Force Base (VAFB) launch.

(3) Non-standard mission destination.

(4) Additional time on orbit.

(5) Training and use of additional payload specialists.

(6) User-furnished payload specialists, if the user's payload has a load factor of less than 0.5.

(7) Analytical and/or hands-on integration (and de-integration) of the user's payload into racks and/or onto pallets.

(8) Unique integration or testing requirements.

(9) Additional resources beyond the user's pro rate share.

(10) Additional experiment time or payload specialist time beyond the user's pro rate share.

(11) Special access to and/or operation of payloads.

(12) User software development for Command and Data Management Subsystem (CDMS) computer.

(13) Extravehicular Activity (EVA) services.

(14) Payload flight planning services, other than for launch, deployment, and entry phases.

(15) Transmission of Spacelab data contained in the STS OI telemetry link to a location other than the JSC POCC.

(16) Transmission of Spacelab data not contained in the STS OI telemetry link to JSC and/or other designated locations.

§ 1214.805 Unforeseen user delay

Should an unforeseen user payload problem pose a threat of delay to the Shuttle launch schedule or critical off-line activities, NASA shall, if requested by the user, make all reasonable efforts to prevent a delay, contingent on the availability of facilities, equipment, and personnel. In requesting NASA to make such special efforts the user shall agree to reimburse NASA the estimated additional cost incurred.

§ 1214.806 Premature termination of operation.

Should a failure of Shuttle (not Spacelab) subsystems necessitate termination of the user's Spacelab operation, NASA shall refund to the user a pro rata share of the user's price for additional days on orbit. The basis for proration shall be the fraction of the user's operating time completed at the time of termination.

§ 1214.807 Exceptional payloads.

Users whose payloads qualify under the NASA Exceptional Program Selection Process shall reimburse NASA for Spacelab and Shuttle services on the basis indicated in the Shuttle policy.

[1] Typical standard Shuttle services repeated for clarity.

§ 1214.808 Standby payloads.

The standby payload provisions of the Shuttle policy are not offered to Spacelab users.

§ 1214.809 Short-term callup and accelerated launch.

The short-term callup and accelerated launch provisions of the Shuttle policy normally are not offered to Spacelab users. NASA will negotiate any such user requirements on an individual basis.

§ 1214.810 Integration of payloads.

(a) The user shall bear the cost of performing the following Spacelab-level mission management functions: (1) Analytical design of the mission,

(2) Generation of mission requirements and their documentation in the Payload Integration Plan (PIP),

(3) Provision of mission unique training and payload specialists (if appropriate),

(4) Physical integration of experiments into racks and/or onto pallets,

(5) Supporting operations, and

(6) Assuring the mission is safe.

(b) When NASA-provided Spacelab elements (e.g., racks and pallets) are used, all physical integration (and de-integration) of payloads into racks and/or onto pallets will normally be performed at KSC by NASA. When the user provides Spacelab elements, these physical integration activities may be done the user at a location chosen by the user.

(c) With the exception of the restrictions noted in (b) above, users contracting for dedicated-Shuttle and dedicated-element flights may perform the Spacelab-level mission management functions defined in (a) above. NASA will assist users in the performance of these functions, if requested. Charges for this service will be based on actual costs and will be included in the price for optional services.

(d) For complete pallets or shared elements, NASA will normally perform the Spacelab-level mission management functions listed in (a) above. Charges for this service will be based on actual costs and will be included in the price for optional services.

(e) Integration of the above payload entities with Spacelab support systems and with the Shuttle shall be performed by NASA as part of the standard service. Users shall be available to participate as required by NASA in these levels of integration. User equipment shall be operated only to the extent necessary for interface verification. Users requiring additional payload operation after delivery of the payload to NASA shall negotiate such operation as an optional service.

§ 1214.811 Reflight guarantees.

(a) Reflights shall be provided only under the reflight provisions of the Shuttle policy.

(b) For users flying under the provisions of Subpart 1214.1, a fee for providing standard Spacelab services for one reflight is included in the Spacelab price.

(c) Users who elect to purchase Shuttle reflight insurance under the provisions of Subpart 1214.2 must also pay a fee for providing standard Spacelab services on one reflight.

§ 1214.812 Payload specialists.

(a) The use of user-furnished payload specialists shall be subject to the approval of the NASA Administrator.

(b) The standard Spacelab flight price is based on single-shift operation. It includes a fee for a pro rata share of accommodations for two payload specialists and mission-independent training for two payload specialists and two backup payload specialists. This fee applies to both user-furnished and NASA-furnished personnel.

(c) The price for mission-dependent training of all payload specialists and backups required for the user's mission is not included in the standard flight price and shall be paid by the user.

(d) The price for use of user-furnished payload specialists in excess of the user's pro rata share shall be negotiated as an optional service.

§ 1214.813 Computation of sharing and pricing parameters.

(a) *General.* (1) Computational procedures as contained in the following subparagraphs of this paragraph shall be applied as applicable. The procedure for computing Shuttle load factor, charge factor, and flight price for Spacelab payloads replaces the procedure contained in Appendix D of Subpart 1214.1.

(2) Shuttle charge factors as derived herein shall apply to all orbital inclinations. Users shall, however, reimburse NASA an optional services fee for flights to non-standard destinations.

(3) The user's total Shuttle charge factor shall be the sum of the Shuttle charge factors for the user's individual (dedicated, complete, or shared) elements, with the limitation that the user's Shuttle charge factor shall not exceed 1.0.

(4) Users contracting for pallet-only payloads are entitled to locate minimal controls as agreed to by NASA in a pressurized area to be designated by NASA. There is no additional charge for this service.

(5) NASA shall, at its discretion, adjust up or down the load factors and load fractions calculated according to the provisions of this § 1214.813. Adjustments shall be made for special space or weight requirements which include, but are not limtied to:

(i) Sight clearances, orientation, or placement limits;

(ii) Clearances for movable payloads;

(iii) Unusual access clearance requirements;

(iv) Clearances extending beyond the bounds of the normal element envelope;

(v) Extraordinary shapes;

(vi) Substantial differences between up-weight and down-weight. The adjusted values shall be used as the basis for computing charge factors and prorating services.

(6) NASA shall establish values for Spacelab and Shuttle weight parameters used in this § 1214.813.

(b) *Definitions used in computations.* (1) $P_{SHUTTLE\ OPS}$=Dedicated Shuttle operations charge, $.

(2) $P_{SHUTTLE\ USE\ FEES}$=Dedicated Shuttle use fees plus use fees for ground facilities and equipment used to process a dedicated Spacelab flight (if applicable), $.

(3) $P_{ELEMENT\ OPS}$=Spacelab element operations charge for element(s) used, $.

(4) $P_{ELEMENT\ USE\ FEES}$=Spacelab element use fees (if applicable) for element(s) used, $.

(5) $P_{P/L\ SPEC}$=Price for flight accommodations for two payload specialists and mission-independent training for two payload specialists and two backup payload specialists, $.

(6) $P_{8\ EXTRA\ DAYS}$=Price for six extra days of on-orbit operations, $.

(7) $P_{OPT\ SERVICES}$=Price for all optional services, $.

(8) SCF=Shuttle charge factor, dimensionless.

(9) ECF=Element charge factor, dimensionless.

(10) W_E=the sum of: (i) The weights of the Spacelab elements used, kg.

(ii) The appropriate pro rata share of the weight of all necessary Spacelab mission-independent equipment, kg.

(iii) The appropriate pro rata share of the weight of all necessary additional mission-independent weight not included in the Spacelab weight, e.g., the weight of the second payload specialist plus all accommodations necessary for the specialist, kg.

(11) W_L=The payload landing weight capability of the Shuttle, kg.

(12) W_M=The appropriate payload weight capability of a long module, kg.

(13) W_P = The appropriate payload weight capability of a pallet flown as part of a Spacelab mission, kg.

(14) W_U = The weight of the user's payload and the user's pro rata share of the weight of NASA mission-dependent equipment carried to meet the user's needs, kg.

(c) *Dedicated-Shuttle Spacelab flight (one-day mission).* The user's total reimbursement is defined by the expression: $P_{\text{SHUTTLE OPS}} + P_{\text{SHUTTLE USE FEES}} + P_{\text{P/L SPEC}} + P_{\text{ELEMENT OPS}} + P_{\text{ELEMENT USE FEES}} + P_{\text{OPT SERVICES}}$.

(d) *Dedicated-element flight (one-day mission).* (1) *Shuttle load factor.* (i) The Shuttle load factor shall be the greater of the element's length load factor or the element's weight load factor.

(ii) Length load factor is as defined in Table 1. Weight load factor is defined as:

$$\frac{W_E + W_U}{W_L}$$

Table 1

Element(s) selected	Length load factor
1 Pallet[1]	0.22
2 Pallets[1]	0.42
3 Pallets[1]	0.62
Short module	0.47
Long module	0.62
Short module plus 1 pallet	0.65

[1] includes igloo length.

(2) *Shuttle charge factor (SCF).*

If the Shuttle load factor is	The Shuttle charge factor shall be
Less than 0.75	Shuttle load factor divided by 0.75.
0.75 or more	1.0.

(3) *Total reimbursement.* The user's total reimbursement is defined by the expression: SCF ($P_{\text{SHUTTLE OPS}} + P_{\text{SHUTTLE USE FEES}} + P_{\text{P/L SPEC}}$) + $P_{\text{ELEMENT OPS}} + P_{\text{ELEMENT USE FEES}} + P_{\text{OPT SERVICES}}$.

(e) *Complete pallets (seven-day mission).*

(1) *Shuttle load factor.*

(i) The Shuttle load factor shall be the greater of the element's length load factor or the element's weight load factor.

(ii) Length load factor is as defined in Table 2. Weight load factor is defined as:

$$\frac{W_E + W_U}{W_L}$$

Table 2

Element(s) selected	Length load factor
1 Pallet[1]	0.2
2 Pallets[1]	0.4
3 Pallets[1]	0.6

[1] Includes appropriate share of igloo length.

(2) *Shuttle charge factor (SCF).*

If the Shuttle load factor is	The Shuttle charge factor shall be
Less than 0.87	Shuttle load factor divided by 0.87.
0.87 or more	1.0.

(3) *Total reimbursement.* The user's total reimbursement is defined by the expression: SCF ($P_{\text{SHUTTLE OPS}} + P_{\text{SHUTTLE USE FEES}} + P_{\text{P/L SPEC}} + P_{6\ \text{EXTRA DAYS}}$) + ($P_{\text{ELEMENT OPS}} + P_{\text{ELEMENT USE FEES}} + P_{\text{OPT SERVICES}}$.

(f) *Shared elements (seven-day mission).*

(1) *Spacelab load fractions and Shuttle load factors.*

(i) *Pallet.*

Spacelab load fraction is the greater of:

$$\frac{W_U}{W_P} \quad \text{or} \quad \frac{\text{Payload volume, m}^3}{15}$$

Shuttle load factor is the greater of:

$$\frac{W_U}{4W_P} \quad \text{or} \quad \frac{\text{Payload volume, m}^3}{60}$$

(ii) Pressurized module.

Spacelab load fraction and Shuttle load factor are identical and are the greater of:

$$\frac{W_U}{W_M} \quad \text{or} \quad \frac{2 \times (\text{Experiment volume}) + \text{Storage volume, m}^3}{40}$$

(2) *Shuttle charge factors for pallets and pressurized modules (SCF).*

If the Shuttle load factor is	The Shuttle charge factor shall be
Less than 0.0075	0.01.
0.0075 to 0.75	Shuttle load factor divided by 0.75.
Greater than 0.75	1.0.

(3) *Element charge factors (ECF).*

(i) Pallets.

If the Spacelab load fraction is	The element charge factor shall be
Less than 0.035	0.04.
0.035 to 0.87	Spacelab load fraction divided by 0.87.
Greater than 0.87	1.0.

(ii) Pressurized modules.

If the Spacelab load fraction is	The element charge factor shall be
Less than 0.0087	0.01.
0.0087 to 0.87	Spacelab load fraction divided by 0.87
Greater than 0.87	.0.

(4) *Total reimbursement.*

(i) The user's total reimbursement is defined by the expression: SCF ($P_{SHUTTLE\ OPS} + P_{SHUTTLE\ USE\ FEES} + P_{P/L\ SPEC} + P_{6\ EXTRA\ DAYS}$) + ECF ($P_{ELEMENT\ OPS} + P_{ELEMENT\ USE\ FEES}$) + $P_{OPT\ SERVICES}$.

(ii) If a user contracts for portions of more than one element, the expression: "ECF ($P_{ELEMENT\ OPS} + P_{ELEMENT\ USE\ FEES}$)" shall apply individually to each element used.

(5) Experiment volume in the pressurized module is defined to be the sum of the user's payload volume in racks and in the center aisle.

(i) Rack volume is defined relative to basic Air Transportation Rack (ATR) configurations. The user's rack volume shall be defined as the volume of one or more rectangular parallelepipeds which totally enclose the user's payload. Width dimensions shall be either 45.1 or 94.0 centimeters. Height dimensions shall be integral multiples of 4.45 centimeters. Depth dimensions shall be 61.2 or 40.2 centimeters.

(ii) Center aisle space volume is defined as the volume of a rectangular parallelepiped which totally encloses the user's payl. ad. No edge of the parallelepiped shall be less than 30 centimeters in length.

(6) Storage volume in the pressurized module is defined as the volume of one or more rectangular parallelepipeds enclosing the user's stowed payload. No edge of the parallelepiped(s) shall be less than 30 centimeters in length.

(7) Volume of the user's pallet-mounted payload shall be defined as the volume of a rectangular parallelepiped enclosing the pallet payload and user-dictated mounting hardware. No edge of the parallelepiped shall be less than 30 centimeters in length.

Robert A. Frosch,

Administrator.

[FR Doc. 80-29754 Filed 9-24-80; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 144

[Docket No. R-80-873]

Nondiscrimination in Programs and Activities Receiving Assistance Under Title I of the Housing and Community Development Act of 1974; Transmittal of Proposal to Congress

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of transmittal of proposed rules to Congress under Section 7(o) of the Department of HUD Act.

SUMMARY: Recently enacted legislation authorizes Congress to review certain HUD rules for fifteen (15) calendar days of continuous session of Congress prior to each such rule's publication in the **Federal Register.** This Notice lists and summarizes for public information a proposed rule which the Secretary is submitting to Congress for such review. This proposed rule would set forth procedures and policies to assure nondiscrimination based on race, color, national origin or sex in programs and activities receiving assistance from HUD under Title I of the Housing and Community Development Act of 1974.

FOR FURTHER INFORMATION CONTACT: Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 7th Street, SW., Washington, D.C. 20410 (202) 755-6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairmen and Ranking Minority Members of both the Senate Banking, Housing and Urban Affairs Committee and the House Banking, Finance and Urban Affairs Committee the following rulemaking document:

24 CFR Part 144—Nondiscrimination in Programs and Activities Receiving Assistance Under Title I of the Housing and Community Development Act of 1974

(Section 7(o) of the Department of HUD Act, 42 U.S.C. 3535(o), Section 324 of the Housing and Community Development Amendments of 1978)

Issued at Washington, D.C., September 19, 1980.

Moon Landrieu,

Secretary, Department of Housing and Urban Development.

September 19, 1980.

[FR Doc. 80-29640 Filed 9-24-80; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Part 146

[Docket No. R-80-876]

Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance From HUD; Transmittal of Proposal to Congress

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of transmittal of proposed rule to Congress under Section 7(o) of the Department of HUD Act.

SUMMARY: Recently enacted legislation authorizes Congress to review certain HUD rules for fifteen (15) calendar days of continuous session of Congress prior to each such rule's publication in the **Federal Register.** This Notice lists and summarizes for public information a proposed rule which the Secretary is submitting to Congress for such review. This proposed rule would set forth HUD's "agency-specific" regulation to carry out the Department's responsibilities under the Age Discrimination Act of 1975, in accordance with the government-wide regulation published by HEW.

FOR FURTHER INFORMATION CONTACT: Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 7th Street, SW., Washington, D.C. 20410 (202) 755-6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairmen and Ranking Minority Members of both the Senate Banking, Housing and Urban Affairs Committee and the House Banking, Finance and Urban Affairs Committee the following rulemaking document:

24 CFR Part 146—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance From HUD

(Section 7(o) of the Department of HUD Act, 42 U.S.C. 3535(o), Section 324 of the Housing and Community Development Amendments of 1978)

Issued at Washington, D.C., September 19, 1980.

Moon Landrieu,

Secretary, Department of Housing and Urban Development.

[FR Doc. 80-29637 Filed 9-24-80; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Part 204

[Docket No. R-80-874]

Single Family Coinsurance Eligibility Requirements and Contract Rights and Obligations; Transmittal of Proposed Rule to Congress

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of transmittal of proposed rule to Congress under Section 7(o) of the Department of HUD Act.

SUMMARY: Recently enacted legislation authorizes Congress to review certain HUD rules for fifteen (15) calendar days of continuous session of Congress prior to each such rule's publication in the **Federal Register.** This Notice lists and summarizes for public information a

proposed rule which the Secretary is submitting to Congress for such review. This proposed rule would amend 24 CFR Part 204 to expand the coinsurance program to include non-occupant owner transactions, Section 234(c) condominium loans, and also Section 235 interest subsidy loans. This rule would also revise the requirements concerning collection and distribution of the mortgage insurance premium and the stop loss provision.

FOR FURTHER INFORMATION CONTACT: Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 7th Street, SW., Washington, D.C. 20410, (202) 755–6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairmen and Ranking Minority Members of both the Senate Banking, Housing and Urban Affairs Committee and the House Banking, Finance and Urban Affairs Committee the following rulemaking document:

24 CFR Part 204—Single Family Coinsurance Eligibility Requirements and Contract Rights and Obligations

(Sec. 7(o), Department of HUD Act (42 U.S.C. 3535(o); sec. 324 of the Housing and Community Development Amendments of 1978)

Issued at Washington, D.C., September 19, 1980.

Moon Landrieu,

Secretary, Department of Housing and Urban Development.

[FR Doc. 80-29635 Filed 9-24-80; 8:45 am]

BILLING CODE 4210-01-M

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24 CFR Part 242

[Docket No. R-80-875]

Mortgage Insurance for Hospitals; Eligibility Requirements; Transmittal of Proposed Rule to Congress

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of transmittal of proposed rule to Congress under Section 7(o) of the Department of HUD Act.

SUMMARY: Recently enacted legislation authorizes Congress to review certain HUD rules for fifteen (15) calendar days of continuous session of Congress prior to each such rule's publication in the **Federal Register.** This Notice lists and summarizes for public information a proposed rule which the Secretary is submitting to Congress for such review. This proposed rule would add a new § 242.96 to permit mortgage refinancing of existing debts of existing hospitals.

FOR FURTHER INFORMATION CONTACT: Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 7th Street, SW., Washington, D.C. 20410 (202) 755–6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairmen and Ranking Minority Members of both the Senate Banking, Housing and Urban Affairs Committee and the House Banking, Finance and Urban Affairs Committee the following rulemaking document:

24 CFR Part 242—Mortgage Insurance for Hospitals, Subpart A—Eligibility Requirements

(Sec. 7(o), Department of HUD Act, (42 U.S.C. 3535(o)), sec. 324, Housing and Community Development Amendments of 1978)

Issued at Washington, D.C., September 19, 1980.

Moon Landrieu,

Secretary, Department of Housing and Urban Development.

[FR Doc. 80-29636 Filed 9-24-80; 8:45 am]

BILLING CODE 4210-01-M

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24 CFR Part 570

[Docket No. R-80-870]

Community Development Block Grants Small Cities Program; Transmittal of Proposed Rule to Congress

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of transmittal of proposed rule to Congress under Section 7(o) of the Department of HUD Act.

SUMMARY: Recently enacted legislation authorizes Congress to review certain HUD rules for fifteen (15) calendar days of continuous session of Congress prior to each such rule's publication in the **Federal Register.** This Notice lists and summarizes for public information a proposed rule which the Secretary is submitting to Congress for such review.

This rule would revise the method of delivering Small Cities Community Development Block Grant funds to recipients in the Commonwealth of Puerto Rico from a competitive system to a quasi-formula method.

FOR FURTHER INFORMATION CONTACT: Burton Bloomberg, Director, Office of Regulation, Office of General Counsel, 451 7th Street SW., Washington, D.C. 20410 (202) 755–6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairmen and Ranking Minority Members of both the Senate Banking, Housing and Urban Affairs Committee and the Housing Banking, Finance and Urban Affairs Committee the following rulemaking document:

Proposed Rule—24 CFR Part 570—Community Development Block Grants Small Cities Program

(Sec. 7(o), Department of HUD Act, (42 U.S.C. 3535(o)); sec. 324, Housing and Community Development Amendments of 1978)

Issued at Washington, D.C., September 19, 1980.

Moon Landrieu,

Secretary, Department of Housing and Urban Development.

[FR Doc. 80-29634 Filed 9-24-80; 8:45 am]

BILLING CODE 4210-01-M

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24 CFR Parts 803 and 888

[Docket No. R-80-872]

Housing Assistance Payment Programs, Amendment of Fair Market Rent Schedules—Existing Housing; Transmittal of Proposed Rule to Congress

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of transmittal of proposed rule to Congress under Section 7(o) of the Department of HUD Act.

SUMMARY: Recently enacted legislation authorizes Congress to review certain HUD rules for fifteen (15) calendar days of continuous session of Congress prior to each such rule's publication in the **Federal Register.** This Notice lists and summarizes for public information a proposed rule which the Secretary is submitting to Congress for such review. This proposed rule would amend the Fair Market Rents for all market areas under the Section 8 and Section 23 Housing Assistance Payments Program (HAPP) for Existing Housing and for Mobile Home Spaces. It would reflect anticipated median rent levels as of October 1, 1981.

FOR FURTHER INFORMATION CONTACT: Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 7th Street SW., Washington, D.C. 20410 (202) 755–6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairmen and Ranking Minority Members of both the Senate Banking, Housing and Urban Affairs Committee and the House Banking, Finance and Urban Affairs Committee the following rulemaking document:

24 CFR Parts 803 and 888—Housing Assistance Payments Programs, Amendment of Fair Market Rent Schedules—Existing Housing

(Sec. 7(o), Department of HUD Act, (42 U.S.C. 3535(o)), sec. 324, Housing and Community Development Amendments of 1978)

Issued at Washington, D.C., September 19, 1980.

Moon Landrieu,

Secretary, Department of Housing and Urban Development.

[FR Doc. 80-29633 Filed 9-24-80; 8:45 am]

BILLING CODE 4210-01-M

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24 CFR Part 882

[Docket No. R-80-871]

Low-Income Housing; Housing Assistance Payments Program; (Section 8); Existing Housing, Eviction; Transmittal of Proposal to Congress

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of transmittal of proposed rules to Congress under Section 7(o) of the Department of HUD Act.

SUMMARY: Recently enacted legislation authorizes Congress to review certain HUD rules for fifteen (15) calendar days of continuous session of Congress prior to each such rule's publication in the **Federal Register.** This Notice lists and summarizes for public information a proposed rule which the Secretary is submitting to Congress for such review. This rule would provide that a PHA shall have the sole right to issue the Notice to Vacate to a tenant. It would also establish revised procedures for issuance of the Notice to Vacate.

FOR FURTHER INFORMATION CONTACT: Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 7th Street SW., Washington, D.C. 20410 (202) 755-6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairmen and Ranking Minority Members of both the Senate Banking, Housing and Urban Affairs Committee and the House Banking, Finance and Urban Affairs Committee the following rulemaking document:

24 CFR Part 882—Section 8 Housing Assistance Payments Program; Existing Housing—Eviction

(Section 7(o) of the Department of HUD Act, 42 U.S.C. 3535(o), Section 324 of the Housing and Community Development Amendments of 1978)

Issued at Washington, D.C., September 19, 1980.

Moon Landrieu,

Secretary, Department of Housing and Urban Development.

[FR Doc. 80-29641 Filed 9-24-80; 8:45 am]

BILLING CODE 4210-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL 1616-8]

Motor Vehicle Pollution Control; Waiver of Carbon Monoxide Emission Standards; Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing to consider applications for waiver of 1982 model year light-duty vehicle emission standard for carbon monoxide (CO).

SUMMARY: On September 12, 1980, General Motors Corporation submitted to EPA an application for a CO waiver for its 1.8/2.0L engine family. EPA plans to hold a public hearing on this waiver application and any others which EPA receive in time for consideration at this hearing.

DATES: This notice announces that EPA will hold a public hearing in Washington, D.C., beginning at 9:00 a.m. on October 10, 1980, to consider GM's waiver application and any other manufacturer's application received by October 3, 1980. Interested parties may also submit written comments to the public docket on those waiver applications until October 24 to ensure consideration of those comments in the Administrator's evaluation of this waiver application.

ADDRESS: All public portions of the CO waiver applications and other relevant information are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday, at: U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 (Docket Number EN-80-16).

FOR FURTHER INFORMATION CONTACT: Mr. Glenn Unterberger, Manufacturers Operations Division, (EN-340), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 472-9421.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 202(b)(5)(A) of the Clean Air Act, as amended, 42 U.S.C. 7521(b)(5)(A) (1977) ("Act"), at any time after August 31, 1978 any manufacturer may file with the Administrator an application requesting the waiver of the effective date of the carbon monoxide (CO) emission standard applicable to any model of light-duty motor vehicles and engines manufactured by the applicant during model years 1981 and 1982. Section 202(b)(5)(C) requires the Administrator to issue a decision on the waiver request within 60 days after receipt of the application and after a public hearing. Guidelines for the submission of CO waiver requests have been previously published in the **Federal Register** at 43 FR 47272, October 13, 1978.

Section 202(b)(1)(A) requires that emissions of CO from 1981 and later model year light-duty motor vehicles be reduced by at least 90% from 1970 CO emission standards. A CO emission standard of 3.4 grams per vehicle mile (gpm), determined to achieve such reduction and made applicable by regulation to 1981 and later model year light-duty vehicles, has been published in the **Federal Register,** 43 FR 37972, August 24, 1978. If the Administrator determines that he should grant a waiver from the CO standard of 3.4 gpm, he must, simultaneoulsy with such determination, prescribed by regulation CO emission standards to apply to those model vehicles or engines to which the waiver applies. Under section 202(b)(5)(B), the maximum CO level for which a waiver may be granted is 7.0 gpm.

Under section 202(b)(5)(C), the Administrator may grant a waiver only if he finds that protection of the public health does not require attainment of the statutory CO standard of 3.4 gpm for those model years and vehicles for which the applicant seeks a waiver. In addition, the Administrator may grant a waiver only if he determines that (1) such waiver is essential to the public interest or the public health and welfare of the United States, (2) the applicant has made all good faith efforts to meet the established standards, (3) the applicant has established that effective control technology, processes, operating methods, or other alternatives are not available or have not been available with respect to the model in question for a sufficient period of time to achieve compliance prior to the effective date of such standards, taking into consideration costs, driveability, and fuel economy, and (4) studies and investigations of the National Academy of Sciences and other information available to him have not indicated that technology, processes, or other alternatives are available to meet such standards.

Since the first CO waiver hearing, in July, 1979, EPA has held a number of public hearings regarding CO waiver applications. The Administrator's decisions on the various applications, some of which addressed more than one waiver request, have all been published in the **Federal Register** or will appear there shortly.

II. Waiver Applications

GM submitted its CO waiver application on September 12, 1980. EPA will hold a public hearing on GM's application and on applications received form any other motor vehicle manufacturers on or before October 3, 1980 in the GSA Auditorium, Seventh and D Streets, S.W., Washington, D.C. 20460 beginning on October 10, 1980 at 9:00 a.m. EPA encourages all manufacturers still planning to request a CO waiver to file their applications by the October 3, 1980 deadline. This will facilitate review of as many outstanding waiver applications as possible in one consolidated proceeding. Submitting applications at a reasonable time before the scheduled proceedings will facilitate the Administrator in making a timely decision.

In addition to testimony provided by each waiver applicant, testimony has been given at these hearings by other automobile manufacturers and by several emission control system part suppliers. Information considered for each of these decisions is contained in the respective public dockets. The public docket pertaining to this waiver application of GM (Docket Number EN–80–16) will incorporate by reference the information in all of the previous waiver dockets. Interested parties may obtain the previous public docket numbers by referring to the incorporation memorandum which lists the previous dockets individually, in the public docket for this application.

In order to grant a waiver, the Administrator must determine that the applicant has provided information sufficient to satisfy each of the waiver criteria set out above. However, the Administrator need not make his determination solely on the record of the public hearing, and he may consider any additional information as well. All information considered by the Administrator will be included in the public docket.

III. Hearing Procedures

The public hearing is intended to provide an opportunity for interested persons to state their views or arguments, or to provide pertinent information concerning the action requested of the Administrator by the applicant. Any person desiring to make an oral statement at the hearing should file a notice of such intention and 10 copies of the proposed testimony and other relevant material in the Central Docket section at the address listed above no later than October 6, 1980.

If feasible, at least 25 copies of such statement or material for the hearing record and general circulation should be submitted to the Presiding Officer at the time of the hearing. In addition, any person may submit written questions at any time during the hearing to be propounded to the witnesses by the hearing panel to the extent practicable. Any person may file relevant statements and information not specifically required by the hearing panel in the public docket until October 24, 1980, to ensure their consideration in the Administrator's evaluation of the waiver application at issue. The Administrator will consider submissions received after that date to the extent practicable in reaching decisions within the time periods specified by the Act.

Where appropriate, EPA will require representatives of the applicants under the subpoena authority of section 307(a)(1) of the Act to attend the hearing and respond to the hearing panel's questions. EPA may also subpoena other parties to produce relevant information and provide testimony before the hearing panel. Section 307(a)(1) also authorizes the administration of oaths to testifying parties.

The Presiding Officer will have the responsibility for maintaining order, excluding irrelevant or repetitious material, scheduling presentations, directing participants to submit corroborative material in writing and, to the extent possible, notifying participants of the time at which they may appear.

As was the case in the previous CO waiver public hearings, the participants' presentations in this hearing should address exclusively the following considerations:

1. Whether protection of the public health requires attainment of the established CO standard of 3.4 gpm for the model years to which the waiver would apply.

2. Whether the requested waiver is essential to the public health and welfare of the United States.

3. Whether the applicants have made all good faith efforts to meet the CO standard for those model years and vehicles for which the applicant seeks the waiver.

4. Whether effective control technology, processes operating methods, or other alternatives are not available or have not been available with respect to the model in question for a sufficient period of time to achieve compliance prior to the effective date of such standards, taking into consideration costs, driveability, and fuel economy.

5. Whether studies and investigations of the National Academy of Sciences and other information indicate that alternatives are available to meet such standards.

6. The level of CO emissions, not to exceed 7.0 gpm, which the model in question could meet in each of the model years for which an applicant has requested a waiver and which would reflect the greatest degree of emission control achievable by use of available technology, giving appropriate considerations to the cost of applying such technology within the available time period.

7. The potential costs (as identified in *Internatonal Harvester* v. *Ruckelshaus*, 487 F 2d 615, 641 (D.C. Cir., 1973) which might result from a denial of this waiver request if effective emission control technology ultimately is not available for the model in question, considering cost, driveability, and fuel economy, and the potential benefits, if any, which might result from a waiver grant.

8. In the case of a wiaver request for the 1982 model year for an engine family previously granted a waiver for the 1981 model year only, the 1982 production schedule and lead-time considerations, the development efforts employed and planned for meeting the 3.4 gpm CO emission standard for the 1982 model year, and the reasons why the applicant believes this engine family will not be capable of meeting the 3.4 gpm standard in the 1982 model year.

A verbatim record of the proceedings will be available for public inspection. Any person may request a copy of the transcript from the hearing reporter during the hearing at the party's own expense. Any person also may obtain copies of other documents in the public record as specified in 40 CFR Part 2.

Dated: September 23, 1980.

Jeffrey G. Miller,

Acting Assistant Administrator for Enforcement.

[FR Doc. 80–29789 Filed 9–24–80; 8:45 am]

BILLING CODE 6560–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[Docket No. 21473; FCC 80-538]

Conversion of Radiation Patterns for AM Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to convert the radiation patterns of all U.S. directional AM broadcast stations which have not already done so to "standard" or "augmented" patterns. This will enable computerization of these patterns which, in turn, will facilitate application processing. Benefits, problems, technical considerations and options are discussed and technical formulas are specified for performing the conversion.

DATES: Comments must be filed on or before November 17, 1980 and reply comments on or before December 2, 1980.

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

FOR FURTHER INFORMATION CONTACT: John Boursy, Broadcast Bureau, (202) 632-6485.

In the matter of Amendment of the rules governing the conversion of radiation patterns for AM Broadcast stations, Docket No. 21473, FCC 80-538. (43 FR 16783)

Notice of proposed rulemaking

Adopted: September 19, 1980;

Released: September 26, 1980.

By the Commission:

1. In 1971, we adopted new rules governing the design of radiation patterns for AM broadcast stations with directional antennas. *Report and Order in Docket No. 16222* 27 FCC 2d 77, 20 RR 2d 1745 (1971). Our amended Rules define the mathematical formula to be used in computing the radiation patterns, which are called "standard patterns." However, the Rules (Sections 73.150 and 73.152) apply only to applicants for new stations or for major changes, although applicants for minor changes can voluntarily use the new method of computing the patterns. Because the Rules apply only to stations authorized since 1971, most of the AM station patterns are under the old system. These stations have measured patterns which describe the pattern with which they are actually operating. They also have theoretical patterns which describe how the station would operate under ideal circumstances. Because no circumstances are ideal, of course, the theoretical patterns generally have MEOV (Maximum Expected Operating Values) which attempt to estimate the maximum expected deviations from the ideal. Because the MEOV were assigned based on the experience and educated guesses of the station's consulting engineer, there is no easy way to define the MEOV with a formula. Similarly, there is no easy way to define a measured pattern with a formula. Prior to the advent of automation in processing the applications for AM broadcast stations, all of the required engineering studies were performed manually, both by the applicant's consulting engineer and by the Commission engineers. The use of theoretical patterns with MEOV and measured patterns was a logical approach under those circumstances. However, in the past several years, more and more of the AM engineering studies have become automated. To take advantage of the efficiency of automation, we have been searching for ways to automate application processing without losing effectiveness. One approach is to convert all of the existing AM stations still using non-standard patterns to standard patterns since the standard pattern formula can easily be (and, in fact, has been) computerized. Accordingly, we issued the *Notice of Inquiry*, 66 FCC 2d 901 (1977), in this proceeding to begin discussion of the possibility of converting the remaining stations to standard patterns.

2. As extended, the time for filing comments was July 24, 1978, and the time for filing reply comments was August 25, 1978. Comments were filed by the following parties:

J. G. Rountree
Hammett & Edison, Inc.
R. A. Jones
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Clear Channel Broadcasting Service (CCBS)
Association of Federal Communications Consulting Engineers (AFCCE)
Association for Broadcast Engineering Standards, Inc. (ABES)

No reply comments were filed. We have analyzed the comments, considering that the consultants were speaking for themselves rather than for their clients, and have found them to be extremely helpful. Rather than discuss the comments at this point, we find it more appropriate to begin discussion of the entire matter, bringing in the related comments as we proceed.

3. While our first concern in the *Notice of Inquiry* was whether we should convert, ABES has raised an issue which is even more basic: What are our goals, our policy objectives? Our primary objective in this proceeding is to increase the speed at which AM engineering studies are conducted. The potential means of achieving this end is increased automation of these studies. These studies involve individual applications as well as individual notifications from foreign countries. Also, we must conduct general studies for policy reasons; these include preparations for negotiations which may lead to new international agreements. For example, preparation is now underway for the Second Session of the Region 2 MF Broadcasting Conference, which may lead to an agreement by all or most countries in the Western Hemisphere concerning the AM Broadcast Band. Because of the voluminous nature of these general studies (perhaps involving all existing stations), it is simply not feasible to perform the studies manually. Although we have already automated a substantial portion of the engineering processing, we find that further automation requires conversion to computerized patterns. ABES has correctly surmised that this is our goal and has directed its comments accordingly.

4. We now reach the question of the type of computer pattern to which we should convert. Our *Notice* focused on the standard pattern with augmentation. We have also considered other possibilities, such as digitizing existing measured patterns, but have rejected them as not going far enough towards total automation. For instance, digitizing measured patterns would require re-digitizing each time a new measured pattern is filed. In addition, if we were to use a digitized pattern, we would be faced with the problem of developing a method to determine the radiation to use at various vertical angles when the only radiation we have is in the horizontal plane. At present, we use engineering judgment, which varies from case to case. However, an automated method cannot depend on "engineering judgment" but must have a pre-defined means of determining the appropriate value of vertical radiation from the horizontal radiation. We would also have a problem from an international standpoint if we were to use a digitized pattern. We thus concentrate on conversion to standard patterns. All of the commenting parties, except Mr. Jones, agreed that conversion was desirable. Their rationale was along the same lines as ours: it would aid computerization with the resulting improvements in speed. On the other

hand, Mr. Jones believes that the savings in time would not be significant, and, without a savings in time, the reason for conversion disappears. Mr. Jones states that he determined that it required less than two hours to manually adjust a nighttime computer channel study to account for the measured patterns. This small amount of time per application, coupled with the relatively few nighttime applications which are filed, leads Mr. Jones to conclude that the small benefit is not enough to justify the possibly substantial cost of conversion. However, we find that it is not unusual for a complicated nighttime allocation study to take a substantial amount of a staff engineer's time. We estimate that this could be cut significantly if adjustments for measured patterns were not needed. Moreover, although at the time we issued the *Notice* our daytime allocation studies were almost completely unautomated, we have since purchased a computer system which automates the calculating and plotting of groundwave contours. In the short time that this system has been in use, we have found significant improvements in the processing time for daytime studies. While not all of the increases in speed are attributable to the use of standard patterns rather than measured patterns, we have been able to achieve more of an improvement with those applications with standard patterns than with applications using non-standard patterns. Clearly, we have found that there are significant improvements which obtain with the standard pattern; we expect that consulting engineers would find similar improvements. Moreover, in many of the general studies which we will be required to make in preparations for negotiations, we also find that it is simply not possible to manually perform the required studies, simply because of the volume of work to be accomplished in a short time. Accordingly, we conclude that conversion to the standard pattern is necessary to assist in alleviating our current AM backlog, to aid us in forestalling the possibility of future backlogs, and to assist in preparation for future international conferences and general rulemakings.

5. In paragraph 5 of the *Notice*, we discussed whether we should convert all of the theoretical patterns to standard patterns or just the nighttime patterns. We pointed out that the determinations of presunrise power, as well as daytime allocations studies, would be made with standard patterns, if we converted the daytime patterns. However, since relatively few of the stations with presunrise service authorizations operate with directional antennas, there would be little overall effect on presunrise operation. None of the commenting parties discussed whether only some of the patterns should be converted to standard patterns. We infer that this represents a consensus that all patterns should be converted. We agree, particularly now that we are able to automate daytime studies in addition to the nighttime studies.

6. Because we performed our own study on a Class III channel at night (930 kHz; see the Appendix to the *Notice*), but did not have sufficient resources to perform a sample study on one of our clear channels, we specifically asked for comments on the effects that a conversion would have on the nighttime service areas of Class I stations. CCBS noted that most of the Class II stations (which operate co-channel with the Class I stations) were not authorized with standard patterns and would not be able to provide the requisite nighttime protection to the 0.5 mV/m-50 percent skywave service areas of Class I stations if they were required to utilize a standard pattern. In general, this is because the standard pattern will not allow for the high degree of suppression to which many Class II stations have been restricted. While CCBS is very much in favor of the use of standard patterns for new stations, it is concerned that conversion of existing stations would result in the depiction of "interference" to the skywave service areas of Class I stations. Recognizing that that this "interference" would be on paper only (because no actual adjustments to the stations' directional antenna systems would be made), CCBS is nonetheless concerned that we would be opening the door for eventual creation of actual interference, presumably by a station which adjusts its pattern sometime in the future to conform to the standard pattern. Therefore, CCBS suggests that Class II stations should convert to standard patterns which provide actual protection to the skywave service areas of Class I stations. ABES also believes that any conversion must be of a nature such that a Class I–A station will not become something less.

7. The issue raised by CCBS is a complex issue. At this stage, we are not sure of the magnitude of the problem postulated by CCBS. Neither CCBS nor any other party has submitted studies showing the extent to which there may be a paper infringement of Class I secondary service areas; in addition, the Commission does not have the resources, given our current backlogs, to make such a study. Accordingly, we will propose two solutions:

a. Convert the Class I and II stations without regard to whether there is a theoretical increase in "interference," or

b. In those cases where the standard pattern radiation exceeds the MEOV and the measured radiation in the direction towards a Class I station's skywave service area, require the Class II station to convert to a different standard pattern which would not increase the radiation beyond that now authorized. This might be accomplished by use of a lower Q, in accordance with the requirements outlined in paragraph 40 of our *Report and Order in Docket No. 16222*, 27 FCC 2d 77, 20 RR 2d 1745 (1971), concerning the showings required to establish that the operation with the lower Q is susceptible to practical achievement. Another alternative is to allow "negative augmentation" under Section 73.152(a)(2) of the Rules. In this manner, we would permit specification of augmented values of radiation which are less than the standard pattern values (although not less than the measured values). The formula in Section 73.152(a)(2) could be used without change if we consider that "J" in the current formula can be an imaginary number. To avoid the need to think of "J" being imaginary (because "j" represents the square root of −1, among other reasons), we are proposing to redefine "J" so that it will always be real. We also propose to use a different letter to avoid confusion with the "J" in the present Rules. We note that we are suggesting this alternative only for use in conversion, not for the use of future applicants wishing to avoid interference problems.

We will await analysis of the comments to be filed in response to this *Notice* before selecting the course to follow.

8. In addition to the question concerning the Class I stations discussed in the preceeding paragraphs, we have a similar question concerning the Class II and III stations. As noted earlier, there will be shifts in the predicted interference levels and service areas for these stations. But these changes will also be only on paper and not in practice, although there may be future changes which would not be permissable under pre-conversion circumstances. The situation with the Class II and III stations is somewhat different than with the Class I stations. As indicated above, The *Notice* included an Appendix which showed the results of conversion of the nightime stations on 930 kHz. In most cases on 930 kHz, there would be changes in the nightime RSS of less than one decibel

(dB), as we switch from the use of measured patterns to standard patterns. If we compare theoretical (rather than measured) patterns to standard patterns, we find that there would be changes of less than 0.5 dB on 930 kHz. And, since all stations are authorized to operate with at least their theoretical radiations, there would be changes in the authorized RSS of less than 0.5 dB in all cases. Such a small change (even if it occurred in fact rather than on paper) would be imperceptable. Because of the small changes, we believe that it would be unnecessary, as well as undesirable, to permit the use of a lower Q or "negative augmentation" in the situations involving only Class II and III stations.

9. In its comments, AFCCE favors conversion to the standard pattern, but prefers to avoid even a nominal change in the nighttime limitations which comprise a station's RSS. To avoid such a change, AFCCE proposes that the Commission compute the RSS and maximum permissable limitation for each station under the present procedures, publish a list of these values, and include these values on the stations' licenses. Stations would be given six months to challenge these values; if there were no challenge or at the conclusion of actions concerning the challenge, these values would become final, to be used in future allocations. If it is not possible to issue all of these values immediately, AFCCE suggests working by frequency or by groups of frequencies.

10. We have given a great deal of thought to this portion of the AFCCE proposal and have concluded that it is not desirable. First, if we follow this approach, we would not have to convert existing stations to standard patterns. Currently, all applicants for new stations or for major changes are required to use standard patterns. If we knew the RSS and the maximum permissable limitations for each station, our studities would be easy, and we would only have to require that applicants for minor changes also submit standard patterns to achieve complete automation of nightime studies. However, we must convert to a computerized pattern so that we can perform the studies necessary for international conference preparation. A more fundamental problem with AFCCE's approach is that it is not dynamic; it does not recognize changes that would occur on the channel. For instance, a station may change frequency, thereby dropping out of the RSS, but AFCCE's approach would be unable to deal with this possibility (absent recalculation the RSS using measured patterns, the very thing which we are trying to eliminate in this proceeding). We feel that freezing things as they are is not consistent with the dynamics of broadcasting, both from a domestic and international standpoint. Accordingly, we must reject AFCCE's suggestion. In view of the fact that the levels of authorized RSS appear to change by no more than 0.5 dB, and considering that no suitable alternative approaches have been suggested, we conclude that we should actually recompute the predicted levels of interference and service areas for each study.

11. We now move to an issue that affects only certain Class III stations. As discussed in the *Notice*, the changes in the nightime RSS which would result from conversion could possible convert a Class III–A station into a Class III–B station, or vice-versa, if the RSS moves above or below 2.5 mV/m. *Notice, supra*, at n. 3. A Class III–A station may have its RSS raised no higher than 2.5 mV/m while a Class III–B station may have its RSS raised no higher then 4.0 mV/m. (A station with an RSS higher than 2.5 mV/m. or 4.0 mV/m, depending on its class, is protected against any increases in the RSS.) For Class III stations with a nighttime power of one kilowatt, the determination of whether it is a Class III–A or Class III–B station depends on whether its RSS is above or below 2.5 mV/m. Since a change in the permissable level of interference from 2.5 mV/m to 4.0 mV/m is much greater than the 0.5 dB we would otherwise experience, we were concerned that this would be a barrier to conversion. In his comments, Mr. Williams suggested that we determine which Class III stations are Class III–A stations under the present measured pattern system, and continue to define these individuals stations as Class III–A stations after the conversion even if the RSS rises above 2.5 mV/m. This proposal has some of the same infirmities as the AFCCE proposal discussed above, although Mr. Williams' alternative would require calculations only for Class III stations with a nighttime power of one kilowatt rather than for all nighttime Class II and III stations. After due consideration, we believe that the most direct solution is to simply change the definition of Class III–A and Class III–B stations so that all Class III stations with a nighttime power of one kilowatt are Class III–A stations. This would provide a benefit to those Class III–B stations whose RSS is between 2.5 mV/m. and 4.0 mV/m (without affecting any other stations) since they would reecive protection to their actual RSS service contours rather than remaining vulnerable to applicants which might raise the RSS to as high as 4.0 mV/m. Because of the simplicity, we will propose changing the definition rather than following Mr. William's approach.

12. In paragraph 19 of the *Notice*, we discussed the possibility of converting to the metric system at the same time that we convert to standard patterns. We noted that our present allocation scheme mixes metric and traditional British units. (For example, we have millivolts per *meter* at one *mile*.) Since we have already announced our intention to convert to the metric system, FCC 76–737 (August 3, 1976), the only question is whether we should combine the metric conversion with the standard pattern conversion. Our initial inclination was to combine the two conversions simply to avoid the necessity of two separate conversions, and we requested comments. All of the parties who commented on the potential metric conversion were in favor of the concept, although there were reservations. Mr. Jones, for instance, indicated his belief that it was unnecessary to convert our radiation patterns from millivolts per meter at one mile to millivolts per meter at one kilometer; he saw nothing wrong with a simple relabeling (as opposed to redrawing) of the patterns to show the radiation in millivolts per meter at 1.6 kilometers. All of the commenting parties were uniformly opposed to the use of radians rather than degrees in describing the directional antenna parameters; indeed, it is rare when we see such uniformity in comments filed in any proceeding. Hammett & Edison referred to the suggestion to use radians as "ludicrous." Since degrees are acceptable under *Metric Practice*, ANSI Z210.1–1976, ASTM E 380–76, IEEE Std. 268–1976, we conclude that the continued use of degrees in describing the parameters would be best. As for the description of radiation patterns, however, we believe it would be best to describe the inverse distance fields at a distance of one kilometer, rather than one mile (or 1.6 km). Since the *Notice* was issued, we have become involved in negotiations which may lead to an AM broadcast agreement covering the entire western hemisphere. The daytime and nighttime propagation curves in the preliminary agreements have specified the radiation in decibels above one microvolt per meter (dBu), as we do in FM and TV. Since we believe that our domestic rules should conform to international agreements if possible and appropriate, we find it necessary to consider whether the new metric

standard patterns should be plotted in millivolts per meter or dBu. We do not now express a preference and will wait until the *Report and Order* before making our choice. Comments on these points are specifically solicited. As for the conversion of our groundwave and skywave propagation curves to the metric system, we agree with Hammett & Edison that conversion of those curves need not be a part of this proceeding. Accordingly, we will no longer consider the propagation curve conversion in this Docket. While it may be slightly difficult to work with the new metric standard patterns and the old propagation curves, we are confident that there will be no problems with conversions to and from the metric system for the short period in which the curves will be out of sync with the patterns.

13. As discussed in paragraph 7 of the *Notice*, we must take account of those cases where currently authorized measured patterns and/or MEOV exceed the would-be standard pattern. In those cases, we suggested that use of the modified standard pattern (augmented pattern; see Section 73.152) would be appropriate. Since the augmentation resulting in the modified standard pattern is unique to the station, each will have to be done on a case-by-case basis. There are numerous patterns to be converted, approximately 2,000 when the separate day and night patterns are considered. We also wish to perform the conversion with as little disruption as possible to both the Commission staff and prospective applicants. Because of our current backlog situation and filing deadlines for the Second Session of the Region 2 MF Broadcasting Conference, we wish the conversion to proceed as quickly as possible so that we might take advantage of the use of the standard pattern. On the other hand, because of our limited staff, we cannot absorb the workload and continue to process the pending applications at our present rate. For these reasons, it is important to examine the details to ensure that we select the most efficient *and* effective method of conversion.

14. One of the first things to be considered is the order of conversion. In the *Notice*, we proposed two alternatives:

(a) Submission of the new standard pattern with the license renewal application, with the Commission staff or a contractor verifying the patterns. This approach has been used in the past; for instance, the TV stations submitted new coverage maps with their renewal applications in conjunction with the adoption of revised propagation curves. And we are in the process of having Class D noncommercial educational FM stations submit applications to change frequency with their renewal applications.

(b) Conversion frequency by frequency, with work on a new frequency not beginning until work on the previous frequency is finished.

The commenting parties generally favored conversion over the renewal cycle, primarily because such an approach worked well with the TV coverage contours, and because a station will be more motivated to convert while its renewal application is pending. Mr. Williams preferred conversion by state rather than by frequency, with a lottery determining which states come first. He prefers this to a frequency-by-frequency conversion to avoid the possibility of mutually exclusive situations which may develop if all stations on a frequency converted at once. Since we are simply making a conversion on paper, we will, by administrative fiat, have no mutually exclusive situations in the U.S. However, there is the possibility of such situations arising with foreign stations. For instance, the conversion of two stations to standard patterns could, considered individually, raise the RSS of a foreign station to a permissable value, but, considered together, would raise the RSS to an impermissable value. We also have the possibility of a reduction in radiation from a station which is the dominant limit in the RSS of a foreign station, thereby reducing the foreign station's RSS. Because of the lower RSS, the converted standard pattern of a second domestic station may be unacceptable. These considerations come into play only when we consider notifying the standard patterns to foreign countries. Since we do not necessarily have to notify the standard patterns to foreign countries at the same time that we adopt them domestically, although we prefer the one-pattern approach, the order of the conversion should not be dictated by the need to notify to foreign countries.

15. As many are aware, we are preparing for the Second Session of the Region 2 MF Broadcasting Conference to be held in November and December 1981. As indicated in paragraph 3, above, we must conduct many studies during our preparation. It may be that the preparations will require that we convert to standard patterns, at least for international purposes. If that should occur, then we would not be afforded the luxury of converting domestically but not internationally. Therefore, our conversion may, in fact, have to consider the effect on the stations in foreign countries in addition to the domestic effect. ABES has expressed some concern over the possibility that some U.S. stations may be required to adjust parameters during such an international conversion. Since this question is in a state of flux at this time, we are simply keeping it in mind as we consider the order of conversion.

16. At the time we adopted the *Notice*, we were leaning in favor of conversion by frequency, primarily because it would be less disruptive. By publishing the schedule of conversion, we could give notice to applicants of specific dates on which their applications would have to consider the results of conversion; applications filed before those dates would be able to ignore the results of conversion. While it is of course possible to publish dates for states to convert (whether in order by renewal cycle or in some other order), the allocation studies remain restricted to certain frequencies. Preparing an allocation study with a few changes on the frequency occuring quite often would, we believe, create more of an uncertainty than more numerous changes at one time. Recognizing our concern, and disliking our suggestion of a freeze or mini-freezes, Hammett & Edison suggests that applicants could simply amend to compensate for the changes. Despite the comments favoring conversion over the renewal cycle, and the apparent feeling that such a conversion would not be sufficiently disruptive to favor conversion by frequency, we are tentatively concluding that we should convert by frequency. We base this conclusion primarily on the international considerations which are involved.

17. We now move on to the discussion of how the standard pattern will be derived. As noted above, modified standard patterns may be required to take into account the measured patterns and the MEOV. The question of arriving at an appropriate augmentation of the standard pattern to achieve the modified standard pattern remains elusive. We could have each licensee and permittee recalculate and replot its patterns, and submit them to the Commission for verification. The workload would be spread over the licensees and permittees rather than concentrated on the Commission or a contractor. In addition, the individual station is uniquely aware of the particular circumstances of the station. It could for instance, devote more effort to augmentation of one of two apparently similar portions of its pattern because the station has had previous

problems in one area but not in the other. If Commission staff or a contractor performed the conversion, these two areas might receive equal attention. On the other hand, the augmentation would not be uniformly applied, as it would be if the Commission or a single contractor performed the conversion. With either approach, however, it will be necessary to adopt some guidelines concerning the use of augmentation. And, if the guidelines are sufficient, it is possible that uniformity could be achieved even with each licensee and permittee performing the work for its station. AFCCE, ABES, Hammett & Edison, and, we infer, Mr. Williams favor each licensee and permittee performing the conversion, with the Commission staff verifying the submitted information. Mr. Jones suggests that we ask licensees and permittees to voluntarily submit standard patterns. For those which are not submitted, he suggests that either the Commission or a contractor perform the conversion. Mr. Rountree believes that the beneficiaries of the conversion should pay the cost. Under his analysis, the Commission would be the major beneficiary, with improved efficiency. However, he doubts that the conversion would contribute to a meaningful reduction in the cost of government, and, as a taxpayer, protests. At the time of the *Notice*, we were quite open-minded about the various alternatives. However, in view of the changes since the time the *Notice* was issued, we now find that a speedy conversion is essential. Since we lack the staff to perform the conversion or to verify conversion by licensees and permittees, we see no choice but to use a contractor. We emphasize that we reach this decision based primarily on the time frame associated with each of the possibilities, and not on their relative merits.

18. We now discuss possible guidelines for using augmentation. It is first appropriate to review the difference between a standard pattern concept and the previous two-pattern concept. Under the traditional approach, the determination of interference (and lack thereof) was based on the measured pattern of existing stations, except in the case of an application. The MEOV specified in an application was used in computing interference. Coverage was determined using theoretical values for applications, and measured values for existing stations. Once the application was granted, the MEOV was used only as the upper bounds for adjustment of the directional array. With its use of only one pattern, the standard pattern approach combines the two different philosophies inherent in the traditional method. The standard pattern is used to determine the extent of interference and coverage, as well as defining an upper bound on the adjustment of the directional antenna. It has two conflicting roles: it must attempt to show, reasonably well, the extent of interference and coverage; and it must also allow a reasonable tolerance for adjustment of the array. We do not want to permit the use of any augmentation simply because it encompasses existing MEOV since many MEOV are substantially beyond what would ever be achieved. Using an unrealistically high augmentation would not only inflate the depiction of coverage, but would also raise the apparent level of interference on a channel, thereby allowing greater levels of interference from new stations both foreign and domestic. On the other hand, we don't necessarily wish to restrict the augmentation to the measured value (in those cases where the MEOV is greater than the measured value, and the measured radiation is greater than the standard pattern radiation) because the additional leeway may be needed in the future for minor readjustments.

19. In paragraph 17 of the *Notice*, we suggested that we limit the augmentation so that the RMS of the measured pattern is no less than 85 percent of the RMS of the augmented pattern, as required by Section 73.151(a) of the Rules. AFCCE proposes that we ignore the MEOV in deriving the standard pattern, but that the MEOV (both on the theoretical pattern and on the construction permit) would continue to be valid. Thus, a station would be restricted in future adjustments of the directional antenna to a value below the standard pattern radiation if the MEOV is below the standard pattern. Although AFCCE was silent about the converse, the logical extension of this approach is that stations would be able to retain their MEOV in areas where the MEOV exceeds the standard pattern radiation. The AFCCE approach is very attractive, although it does have the infirmity of requiring two patterns. Of course, only one of the two patterns (the standard pattern) need be used for interference and coverage calculations. Hammett & Edison would restrict the use of augmentation to those areas where the measured patterns show a need, with unrealistic MEOV deleted.

20. We advance another proposal: permit augmentation to encompass MEOV which are below a certain percentage (say, ten percent) of the RMS even if they might appear to be unreasonable, but permit augmentation to encompass MEOV of higher values only if the MEOV are reasonable. In this manner, we would allow sufficient latitude for adjustment in the nulls (where most adjustments are needed) and still avoid unrealistic MEOV. Adoption of this latter proposal would be a step towards defining a more precise method of assigning augmentation, thereby possibly permitting a contractor to arrive at augmentations with some assurance of uniformity and fairness. In the guidelines proposed in Appendix I, we present two formulas to determine the maximum allowable portion of the MEOV which would be retained in the form of augmentation. The first formula attempts to allow retention of more MEOV in the null areas than in the main lobes of the patterns. The determination of whether the area of concern is a null depends on the ratio of the measured radiation to the RMS. As written, as the measured radiation approaches zero (a true null), the allowable retention of the MEOV increases to ten percent of the RMS. As the radiation increases, less of the MEOV is retained so that—when the measured value equals the RMS—only five percent of the RMS may be added to the measured value. And, when the measured value is twice the RMS (or greater), no MEOV beyond the measured value is permitted. The second formula looks only at the reasonableness of the MEOV. The more excessive the MEOV, the less that is retained. If the tolerance (the MEOV minus the measured radiation) is low, a higher percentage of the tolerance is retained than if the tolerance is high. Using the proposed formula, as the tolerance approaches zero, the full tolerance is retained. As the tolerance increases to the point where the MEOV is twice the measured value, only one-half of the tolerance is retained. And if the MEOV is three times (or more) the measured value, none of the tolerance is retained. The maximum allowable portion of the MEOV which could be retained is the greater of the two values. Our preliminary studies show that the first formula is predominant in null areas while the second formula is predominant in the major lobes of the patterns. We are not wedded to the specific numbers in the formulas, or even the formulas. However, we do wish to follow the general philosophy of limiting excessive radiation while still allowing adequate room for adjustment.

21. As an alternative, we suggest a modification of the AFCCE approach: Retain the MEOV in those cases where they exceed standard pattern values,

thereby allowing the station to adjust to the MEOV or standard pattern, whichever is greater. Retention of the MEOV would last for a given time (perhaps until 1985), at which time the MEOV would evaporate. During this grace period, stations could voluntarily apply for augmentation, not exceeding the MEOV, to allow retention beyond 1985, for instance. Since the augmentations would not exceed the authorized MEOV, allocations studies by the applicant and the Commission staff would not be required. After the initial conversion, which would consider the present measured patterns, stations submitting measurement data showing radiation in excess of the standard pattern, although within the MEOV, would be required to reduce radiation or submit a minor change application to add augmentation to cover the measured radiation. We would still include restrictions to limit the use of unreasonable augmentation. We set out in Appendix I a list of proposed (sometimes conflicting) guidelines to be used, regardless of whether the conversion is by the licensee, the Commission, or a contractor. As indicated in paragraph 15, above, we may have to convert to standard patterns for international purposes as well as for domestic reasons. If this should occur, we would not be able to have a grace period in which each station could apply to add augmentation to retain the MEOV. In this event, the conversion would have to include the MEOV as well as measured radiation, as outlined in paragraph 20, above. At this stage, although we cannot be sure, it apears as though a full conversion will be required.

22. In paragraph 12 of the *Notice* we discussed the so-called "problem" cases, and solicited suggestions on the possible means of solving these problems. The first area in which problems are likely to arise is when we notify the new standard patterns to foreign countries. As mentioned previously, the radiation values on the standard pattern will often be higher than the notified values, particularly in the null areas. AFCCE, the only party commenting on this subject, suggested that there was no immediate need to notify the new standard patterns to foreign countries since, under its proposal, no station would be allowed to increase radiation over that now authorized, even if the standard pattern values are higher than what is now authorized. AFCCE foresees notification only when (and if) other countries choose to adopt similar procedures. As we indicated in our *Further Notice of Proposed Rulemaking in Docket No. 16222,* 34 FR 18942 at para. 66 (1969), one of the aims in adopting the standard pattern was to achieve a single-pattern system. Indeed, failure to adopt a standard pattern for all stations for use in the international arena would preclude automated studies of both routine notifications from foreign countries and the general studies which are necessary as we prepare for the Second Session of the Region 2 MF Broadcasting Conference. Accordingly, we conclude that there is a need to convert to standard patterns for international purposes as well as for purely domestic use. As mentioned in paragraph 22 of the *Notice,* we have held discussions with Canada concerning the possibility of a joint conversion to standard patterns. Some, or perhaps all, of the problems discussed above would be alleviated or even eliminated by a joint conversion since Canada and the United States are the two countries in Region 2 with the most stations with directional antennas. We are continuing to pursue this possibility.

23. Another problem arises when the pattern generated from the authorized parameters is not the same as the actually authorized pattern. Many such situations exist, most of which were generated during the 1940 "NARBA shift" when changes in frequency were made without taking into account the effect of the changes on the electrical height and spacing of the existing towers. In paragraph 14 of the *Notice,* we suggested the use of the actual field ratios and phasings, but recomputing the electrical height and spacing for the new frequency. The standard pattern would then be computed from these values. AFCCE suggests that any of the theoretical parameters could be modified to generate a theoretical pattern which is a closer match. Mr. Jones simply states his agreement that the "NARBA shift" problems should be corrected at this time. In view of the lack of opposition to our original proposal, we will include it in the guidelines for conversion in Appendix I. However, we are also asking for comments on the AFCCE proposal that the theoretical parameters such as field ratio and relative phasing also be modified, if necessary. The comments should consider that a contractor may be performing the conversion, and should analyze the desirability of delegating the authority to make such modifications to a contractor. We also ask for comments on whether providing for such modifications would require a significant increase in the cost of conversion.

24. The present standard pattern rules require an assumed loss resistance of at least one ohm per tower at the current loop (or base if the tower is less than 90 electrical degrees in height). Many of the existing theoretical patterns, however, have an RMS greater than that which would be computed using using an assumed loss of one ohm. In the *Notice,* we asked whether we should allow the use of the larger RMS or whether we should require that the standard pattern be generated with an RMS no larger than the one-ohm-loss RMS. Hammett & Edison suggest that the standard pattern be based on the theoretical RMS, except where the theoretical pattern size is larger than can actually be generated with any reasonable loss resistance. Noting that they have encountered measured patterns with excessive RMS with some elderly directional antennas, Hammett & Edison recommend abandoning the measured pattern in these cases and using a calculated standard pattern with no less than one ohm loss per tower. AFCCE suggests using a one ohm loss pattern only in those cases where the mesured RMS exceeds the one-ohn-loss by ten percent or more. AFCCE agrees with the Hammett & Edison comment that some of the existing measured patterns, particularly from proofs of performance made many years ago, show unrealistically high RMS values, and states that the general experience of its members is that remeasurement using presently acceptable procedures results in the conclusion that the pattern RMS was exaggerated.

25. We have conducted a study of many stations, including the nighttime operations of all of the U.S. Class I–B stations and those on 930 kHz, to determine the existing RMS situation. Our calculations of the equivalent loss resistance were based on the theoretical, not measured RMS, although we have also tabulated the measured RMS for comparison. The results are shown in Appendix II. As can be seen, there are several cases where the theoretical RMS is based on an unreasonably low equivalent loss resistance; indeed, in many cases the loss resistance is negative, indicating that more power is radiated than was supplied. Based on this study and the comments by Hammett & Edison and AFCCE, we conclude that it will, in some cases, to necessary to use an RMS which is less than presently authorized in arriving at a standard pattern. In making our proposal, we are also considering that Section 73.51(b) allows the antenna input power to be 8 percent greater than the nominal power for

stations with 5 kilowatts or less, and 5.3 percent greater than the nominal power for stations with powers in excess of 5 kilowatts. While Sections 73.51(b)(3) and 73.51(c) make provisions for reduction in power as necessary to limit the radiated fields to the authorized values, we believe that we should not reduce presently authorized values below what is permitted by Section 73.51. Accordingly, we will propose in the conversion guidelines in Appendix I that the theoretical RMS be no greater than 3.9 percent more (equivalent to 8 percent more power) than the no loss or one-ohm-loss RMS for stations with nominal powers of five kilowatts or less, and no greater than 2.6 percent more (equivalent to 5.3 percent more power) than the no loss or one-ohm-loss RMS for stations with nominal powers above five kilowatts. We request comments on whether we should use the no loss RMS or the one-ohm-loss RMS. In this manner, we hope to achieve a limitation on unrealistic RMS values while, at the same time, allowing reasonable values resulting from antenna installations with better than average efficiency.

26. As can be seen from Appendix II, there were a few stations whose RMS we were unable to analyze because we did not have sufficient information about their sectionalized antennas. This brings us to the question of how to deal with these cases. Usually, the situation arises with stations that were authorized many years ago, at a time when we did not require all of the information that we now require for top-loaded and sectionalized towers. In some cases, we were supplied only with graphical information regarding the antenna characteristics. While manual processing of the applications was not impeded with graphical information, the automation of the processing is hindered without available formulas describing the vertical radiation characteristics, or, in some cases, the parameters necessary to utilize known formulas. In yet other cases, we do not have even graphical information. Since calculation of the vertical radiation characteristics (as opposed to interpolation from graphs) requires this information, we suggested in paragraph 16 of the *Notice* that the burden of deriving the appropriate formula or suplying the necessary parameters be placed on the licensee or permittee. In addition, to compute the RMS based on an assumed loss resistance pursuant to the method outlined in Appendix B of the *Report and Order in Docket No. 20645, supra,* it is necessary to have the formula to compute the loop current. And, again, we suggested that the burden of supplying this information be placed on the licensee or permittee. In many cases, the "burden" will be minimal because we will already have the formula, and will need only the actual values for the variables in the formula. Other cases, somewhat fewer in number, will require derivation of formulas in addition to supplying the actual values for the variables.

27. In his comments, Mr. Jones opposes the suggestion that licensees or permittees be required to supply formulas for top-loaded and sectionalized towers. His experience, he states, shows that the measured results do not agree with the predictions. Therefore, he suggests the use of assumed uniform current distribution for all towers, with 10 percent elongation for top-loading. He would, however, give licensees and permittees the option of submitting additional studies which show otherwise. Hammett & Edison, on the other hand, believes it is reasonable for the licensee or permittee to be responsible for deriving the appropriate formulas, citing the case of KOTZ, Kotzebue, Alaska, in which the firm developed computerized methods to determine the three-dimensional radiation pattern for a top-loaded "Tee" antenna. AFCCE agrees that this information should be available, but does not express a preference as to where it should originate. In addition, it would be acceptable to AFCCE if it were either in formula or tabular form. Mr. Williams comments that the licensees using such antennas should be required to provide the appropriate information.

28. With regard to Mr. Jones' comments, we note that we have consistently held that there is no effective method of determining the actual vertical radiation characteristics of an array other than inference from the horizontal pattern. *Capital Cities Broadcastng Corp.*, 20 FCC 2d 768 (1969); 49 FCC 2d 626 (1974), *supplemented in* 51 FCC 2d 649 (1975), *affirmed sub nom, WBEN, Inc. v. Federal Communications Commission,* 175 U.S. App. D.C. 363, 535 F. 2d 1325, 37 RR 2d 675 (1976). While Mr. Jones may be correct in his assertion that the vertical radiation characteristics for top-loaded towers differ from what is predicted, we have no reliable information to confirm or dispute this. However, we do need a method, for administrative purposes if no other, to compute the vertical radiation characteristics for top-loaded and sectionalized towers. And we believe that the use of formulas which are designed for this purpose will more closely approximate reality than simpler approaches such as the addition of ten percent to the physical height of a top-loaded tower. To assist in this, we are proposing to modify the Rules to include the formulas for vertical radiation characteristics, $f(\theta)$, for top-loaded and some sectionalized towers, in addition to the formula already included for the more customary towers. Appendix III includes the corresponding formulas for loop current. Over the past few months, Commission staff have been making informal requestrs of licensees with sectionalized towers to supply this information on a voluntary basis since it is necessary that we have sufficient information to make interference calculations preparatory to the Second Session of the Region 2 MF Broadcasting Conference. We are now directing the staff to begin solicitation of the necessary information on a more formal basis. Because of the time constraints, we cannot wait until issuance of a Report and Order before beginning the compilation of these data. We note that acquiring these data at an earlier time will simplify the conversion to standard patterns.

29. In the *Notice,* we indicated that a part of the conversion to standard patterns would involve the replotting of approximately 2000 patterns, including all necessary stacked and vertical sections. After checking for accuracy, they might be notified to foreign countries in accordance with our international agreements. AFCCE questions whether we should continue our requirement concerning the plotted patterns, in particular the 5-degree through 60-degree stacked sections. Noting that the patterns served a useful purpose when MEOV were specified, AFCCE suggests that the plots are seldom needed with standard patterns because of the widespread use of computers. Hammett & Edison, while not discussing whether we should continue to require the plotted patterns, notes that it is now relatively easy to plot them with computerized curve plotters; several consultants have such plotters. From a purely domestic point of view, we see no need to continue the requirement to submit the stacked sections. AFCCE suggests that the need for the plots could be eliminated by specifying sufficient information on the construction permit and license so that the pattern could be computed; at the moment, we do *not* specify everything that is needed to compute a standard pattern. In addition, AFCCE would have us specify a radiation value at a particular azimuth and elevation angle so that correct entry of the parameters (into a computer program to calculate

radiation, for instance) could be verified. A factor which we did not consider earlier is the cost of replotting all of the vertical and stacked sections. The cost estimates supplied to us are substantial in the aggregate, and they were made in 1978. Because we see no need for the stacked sections for our domestic use, and because of the substantial cost in replotting the patterns, we intend to pursue the question of whether they are needed for international purposes. We hope to be able to answer that question in the *Report and Order*. However, although we believe that it is necessary to continue the requirement of a plotted horizontal plane pattern (if for no other reason than to see what the pattern looks like), we propose to delay the replotting until we know whether the Second Session of the Region 2 MF Broadcasting Conference has voted to change the channel spacing from 10 kHz to 9 kHz. If we do shift to 9 kHz spacing, we will not replot the patterns until after the necessary frequency changes are made. Hammet & Edison suggest the adoption of a required format for the plotted patterns, including the tower layout, etc.

30. To this point, all of our discussion has been related solely to directional antennas. However, the majority of antennas are non-directional, and, if we are to further automate our processing, it is necessary to consider the means of dealing with measurement data for non-directional stations which show that the station is, in fact, directional. In paragraph 18 of the *Notice*, we suggested that we ignore measurement data in determining the radiation from non-directional stations, using only the predicted radiation. (Measurement data would still be used to determine the conductivity.) AFCCE agrees with this suggestion, while Hammett & Edison suggests that a standard pattern be developed for those cases where the measured radiation departs from circular by more than 10 percent, or some other reasonably restrictive value. We assume that generation of the standard pattern would use augmentation (either positive or negative) in the arcs where the departure from circular occurs. Because of its simplicity, we tend to favor the approach we originally suggested. However, because of the potential impact (as noted above, there are more non-directional operations than directional operations) and because of the dearth of comments, we will withhold a final decision pending further analysis. We specifically solicit comments on this issue.

31. In the *Notice* we were concerned with patterns generated with parameters of unrealizable precision. While not making specific proposals, we suggested limiting the precision to no greater than can be obtained with available equipment. Mr. Williams applauds us for this stand, and would extend the limitation on the number of significant figures to actual interference calculations such as computations of nighttime RSS. AFCCE would take it one step farther, its goal being a license which contains sufficient information to reproduce the standard pattern accurately and completely. Therefore, in addition to restrictions on the field ratio and phasing, as we proposed, AFCCE would also include restrictions on precision for spacing, orientation, and height. AFCCE did not mention other parameters, such as the theoretical RMS (used to determine pattern size) and the augmentation parameters. We agree that there should be restrictions on the precision used in specifying the parameters. Indeed, we suggest that there is a rebuttable presumption of instability of a directional antenna array if its parameters must be specified to greater precision. The exact values we propose are outlined in the proposed Rules. In two areas we are deviating from the AFCCE proposal. We see no reason to require that the field ratio of the tower with the highest field be specified as 1.00. Also, we see no need to require that the spacing and orientation be specified from a common reference point. In a parallelogram array, for example, a simpler description results from describing the sides of the parallelogram; we would apply the limitations on precision to the descriptions of the sides of the parallelogram.

32. In the *Notice* we were concerned with the means of enforcing the conversion effort if we left it to the individual stations to supply the standard patterns. Several of the parties commented that the best way to ensure compliance would be to withhold license renewal in the same manner used when TV broadcast stations had to submit new service contours. However, in view of our disposition to have a contractor perform the conversion, we now see no need for concern, except with regard to the supplying of information for top-loaded and sectionalized towers. We believe that these situations can be handled by withholding license renewal.

33. We have previously discussed our desire to convert to standard patterns on an international as well as domestic basis. We are continuing our discussions in this area with Canada and hope to be able to perform a joint conversion.

34. ABES expressed concern in its comments that we might do more in this proceeding than simply redescribe the existing situation. ABES was especially concerned that redesign, modifications, and new proofs of performance not be required. At this stage, we believe it is appropriate to recapitulate those few areas in which we are proposing to do more than redescribe an array. They are:

(a) Restrict the RMS of those stations with excessively high values of RMS.

(b) Restrict the MEOV in those arcs where the MEOV are excessively high.

(c) Correct the parameters where the existing parameters are simply wrong.

(d) Modify the theoretical parameters, if necessary, to achieve a calculated theoretical pattern which more closely approximates the plotted theoretical pattern.

35. One final area deserves discussion. It does not relate to the conversion process, but it does relate to augmented patterns. We therefore feel that it is appropriate to include it in this proceeding. The present § 73.152 restricts the use of augmentation to those cases where, after construction and adjustment of a directional antenna, augmentation is necessary to encompass measured values that exceed the standard pattern values. Should this occur, the station is authorized limited program test authority at reduced power. The station must file an application for modification of construction permit; then we must process and grant the application. The permittee then is authorized to operate with full facilities. Our experience has shown that such cases are sufficiently numerous that we should consider whether to loosen the restriction on proposing augmentation at the initial construction permit stage. (Currently, augmentation at the construction permit stage is limited to a few cases, such as the case of a DA–D station proposing to become a DA–1 station, where the need for augmentation is already known with certainty.) We must keep in mind that we do not want to return to the situation which developed with MEOV that were excessive; that concern is even more important now that the augmented pattern will be used for future allocation studies, not just the initial application, as was the case with MEOV. Accordingly, we are proposing an amendment to permit augmentation at the construction permit stage upon a sufficient showing that is is needed. We have made some initial proposals concerning the showing, and solicit

comments on these and other proposals for such a showing.

36. Accordingly, it is proposed to amend Part 73 of the Commission's Rules and Regulations as set forth in attached Appendix IV.

37. Authority for the actions taken herein is contained in Sections 4(i), and 303(a), (b), (f), (g), and (r) of the Communications Act of 1934, as amended.

38. Pursuant to procedures set out in Sections 1.4, 1.415, and 1.419 of the Commission's Rules and Regulations, interested parties may file comments on or before November 17, 1980 and reply comments on or before December 2, 1980. Because of the time constraints imposed by international consideration, we do *not* intend to grant extensions of time to file comments and reply comments. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings.

39. In accordance with § 1.419 of the Commission's Rules and Regulations, an original and five copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission. Members of the general public who wish to participate informally in the proceeding may submit one copy of their comments, specifying Docket No. 21473.

40. All filings made in the proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW, Washington, D.C.

41. For further information concerning this proceeding, contact John Boursy, Broadcast Bureau, (202) 632–6485. However, members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, *ex parte* contacts presented to the Commission in proceedings such as this one will be disclosed in the public docket file.

42. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentations requested by the Commission. If a member of the public does wish to comment on the merits of the proceeding in this manner, he or she should follow the Commission's procedures governing *ex parte* contracts in informal rule making. A summary of these procedures is available from the Commission's Consumer Assistance Office, FCC, Washington, DC 20554 (202–632–7000).

Federal Communications Commission,

William J. Tricarico,

Secretary.

Appendix I

The following guidelines are to be applied in converting AM broadcast stations to standard patterns.

[**Note.**—Areas in which we have not reached even a preliminary decision are enclosed within square brackets.]

1. Existing standard and augmented patterns.

A. Convert to metric system using existing parameters.

[B. Replot horizontal plane patterns.]

2. Other existing patterns.

A. Check parameters such as spacing and height to ensure that they are correct for the authorized frequency. If incorrect, use the physical spacing and height to compute the proper electrical height for the authorized frequency.

B. Compute the equivalent loss resistance, using the authorized theoretical RMS. If the equivalent loss resistance is less than one ohm per tower, adjust the theoretical RMS so that it is no greater than 3.9 percent more than the [one-ohm-loss] [no loss] RMS if the nominal power is less than or equal to five kilowatts, and no greater than 2.6 percent more than the [one-ohm-loss] [no loss] RMS if the nominal power is greater than five kilowatts.

C. Compute the standard pattern using the theoretical RMS (as modified by B, if appropriate) to determine the pattern size. The normal Q shall be used in computing the standard pattern.

D. Examine the measured pattern, the plotted theoretical pattern with MEOV, and the appropriate construction permit to determine the arcs in which the measured radiation and/or MEOV exceeds the standard pattern, as computed in C, above. In these arcs, augmentation shall be applied as follows:

(1) The augmented value shall be as great as the measured value at each azimuth, insofar as possible. It is more important that the augmentation cover the measured values on the azimuths at which proof of performance measurements were made; it is less important that the augmentation cover the values on the measured pattern which are the result of "smoothing in" between measured radials.

(2) In arcs where the MEOV exceeds the measured and/or standard pattern values, the augmented values shall be no greater than the MEOV at any azimuth.

(3) In arcs where the MEOV exceeds the measured and/or standard pattern values, the maximum possible value of the existing MEOV which can be retained at each azimuth is the greater of the following two values, subject to the condition in (2), above:

RADI=(RMS) [(−0.05) (Meas/RMS)+0.1]+Meas

where RMS is the measured pattern RMS, and Meas is the measured radiation at the desired azimuth.

RAD2=(MEOV−Meas) [1.0−(MEOV−Meas)/(2 Meas)]+Meas

where MEOV is the MEOV at the desired azimuth, and Meas is the measured radiation at the desired azimuth.

Note.—In each case, if the part in square brackets is less than zero, use zero.

(4) Normally, the augmentation shall not extend beyond the arcs of existing MEOV. However, in those cases where the only MEOV at an azimuth is a value specified on a construction permit, or where the MEOV specified on the construction permit is greater than the MEOV shown on the pattern, the MEOV on the construction permit can be used in (3), above, with a span of 10 degrees.

(5) Augmentation shall be used as sparingly as possible.

(6) The measured pattern RMS shall not fall below 85 percent of the augmented pattern RMS.

[E. For stations which meet all of the following criteria:

(1) Class I and II station operating at night.

(2) Co-channel with a U.S. Class I station.

(3) Has arcs in the direction of the 0.5 mV/m−50 percent skywave contour of the Class I station.

Then, the standard pattern of the Class I or II station shall be adjusted by use of either a lower Q or "negative augmentation" (or both) to reduce the standard pattern radiation to a value no greater than the MEOV or the measured radiation. In accomplishing this, it may be necessary to repeat steps C and D.]

[F. For non-Class IV stations operating at night, which have arcs in the direction of the protected service area on a non-U.S. Class I station, or in the direction of the site (plus and minus five degrees) of a non-U.S. non-Class I station, in which the standard pattern radiation exceeds the notified pattern radiation:

Then, the standard pattern of the non-Class IV station shall be adjusted by use of either a lower Q or "negative augmentation" (or both) to reduce the standard pattern radiation to a value no greater than the notified radiation. In accomplishing this, it may be necessary to repeat steps C, D, and E.]

G. Convert the standard pattern, as augmented, to the metric system.

[H. Replot the horizontal plane pattern.]

3. Pending applications.

The processing of pending applications will be stopped individually, while each is converted. The method of conversion will be as though the application were an existing operation. After its conversion, each application will be processed using the converted pattern. If interference develops (using the converted pattern) that did not exist prior to conversion, the application will be granted with the converted pattern, notwithstanding the interference.

4. Precision of parameters.

Converted patterns which do not need adjustment of basic parameters (pursuant to 2(A) above, for example) will continue using these parameters, even if the precision is in excess of the specified precision in Sections 73.150(b)(6) and 73.152(b)(5).

If the existing parameters must be adjusted or if new parameters must be assigned (adding augmentation, for example), the new and/or adjusted parameters shall have no

greater precision than outlined in Sections 73.150(b)(6) and 73.152(b)(5).

Appendix II

This Appendix lists the theoretical RMS, measured RMS, one-ohm-loss RMS, and equivalent loss resistance (for the theoretical RMS) for the nighttime operations of U.S. Class I–B stations and for the nighttime operations on 930kHz. Stations which already have standard patterns are not listed. Neither are non-directional stations.

Call and location	Freq.	1 ohm loss RMS	Meas. RMS	Theo. RMS	Equiv. loss
KAAY—Little Rock, AR	1090	1736	1636	1630	8.46
KPMC—Bakersfield, CA	1560	758	743	765	−0.03
KFBK—Sacramento, CA	1530	(1)	(1)	(1)	(1)
KGO—San Francisco, CA	810	1546	1615	1540	1.16
WTIC—Hartford, CT	1080	1704	1720	1660	6.17
WTOP—Washington, DC	1500	1691	?	1630	10.79
KXEL—Waterloo, IA	1540	1664	1840	1700	−2.52
WCFL—Chicago, IL	1000	1629	1580	1600	4.17
WOWO—Ft. Wayne, IN	1190	1640	1700	1730	−10.81
KWKH—Shreveport, LA	1130	1756	1820	1650	14.20
WBAL—Baltimore, MD	1090	1811	1638	1654	16.48
KSTP—St. Paul, MN	(2)	(2)	(2)	(2)	(2)
KFAB—Omaha, NE	1110	1624	1835	1770	−18.52
WBT—Charlotte, NC	1110	1573	1658	1590	−1.32
WKBW—Buffalo, NY	1520	1738	1770	1725	2.55
WOR—New York, NY	710	1666	1600	1590	10.23
WNEW—New York, NY	1130	1456	1490	1485	−1.89
WQXR—New York, NY	1560	1656	1630	1592	7.24
WCKY—Cincinnati, OH	1530	1727	1634	1600	13.11
KOMA—Oklahoma City, OK	1520	1708	1772	1634	7.81
KVOO—Tulsa, OK	1170	1761	1650	1600	20.06
KEX—Portland, OR	1190	1750	1732	1655	10.06
KYW—Philadelphia, PA	1060	1605	1593	1590	2.64
WLAC—Nashville, TN	1510	1592	1600	1600	0.64
KRLD—Dallas, TX	1080	1706	1850	1800	−8.85
WRVA—Richmond, VA	1140	1632	1678	1600	3.85
KIRO—Seattle, WA	710	1407	1365	1407	1.00
KOMO—Seattle, WA	1000	1771	1800	1745	2.11
KGA—Spokane, WA	1510	1586	1589	1573	2.76
WWVA—Wheeling, WV	1170	1638	1650	1600	6.06
KHJ—Los Angeles, CA	930	453	479	480	−2.73
KIUP—Durango, CO	930	179	178	180	0.64
WJAX—Jacksonville, FL	930	472	471	470	1.35
WKXY—Sarasota, FL	930	136	127.5	126.5	2.45
WMGR—Bainbridge, GA	930	136	126.3	125.4	2.48
KSEI—Pocatello, ID	930	424	440	436	−0.87
WTAD—Quincy, IL	930	202	201	175	12.47
WKCT—Bowling Green, KY	930	127	121	120.3	3.73
WFMD—Frederick, MD	930	212	177	221	0.12
WBCK—Battle Creek, MI	930	205	191	191	2.93
WSLI—Jackson, MS	930	475	469	452	2.05
KWOC—Poplar Bluff, MO	930	133	126	126	3.84
WWNH—Rochester, NH	930	399	393	393	2.14
WPAT—Paterson, NJ	930	485	530	545	−8.67
WBEN—Buffalo, NY	930	531	527	517	5.38
WSOC—Charlotte, NC	930	204	219	220	−0.51
WITN—Washington, NC	930	203	210	215	−0.30
WEOL—Elyria, OH	930	217	204.1	202	1.87
WKY—Oklahoma City, OK	930	477	583	600	−28.29
KAGI—Grants Pass, OR	930	194	199	190	1.87
KSDN—Aberdeen, SD	930	211	198	195	2.46
KCCW—Terrell Hills, TX	930	191	210	196	−0.99
WGNT—Huntington, WV	930	205	187.5	190	2.04

[1] Sectionalized (insufficient data).
[2] Sectionalized.

Appendix III

In this Appendix, the equations for the no-loss loop current for top-loaded and sectionalized towers are given. The "loop current" is the current at the point where the current in the tower is the maximum, and is used in determining whether the theoretical RMS for a standard pattern is too high.

The equation for the loop current for a normal (i.e., non-top-loaded, non-sectionalized) tower was given in Appendix B to the *Report and Order in Docket No. 20645*, 60 FCC 2d 927, 37 RR 2d 649 (1976), and will not be repeated here.

For a top-loaded tower:

$$I_i = \frac{K F_i}{(C2)(\cos B_i - \cos G_i)}$$

For a sectionalized tower:

$$I_i = \frac{K F_i \sin (180 - \Delta_i)}{(C2)\{\cos B_i - \cos G_i - \sin B_i \cos [D_i - \cos \Delta_i]\}}$$

Where:

I_i = the no-loss loop current in amperes of the i^{th} tower;

K = the no-loss multiplying constant, as computed pursuant to Appendix B to the *Report and Order in Docket No. 20645, supra;*

F_i = the field ratio for the i^{th} tower;

$C2$ = 37.256479; this was derived in *Constants for Directional Antenna Computer Program*, 43 FCC 2d 544, 28RR 2d 959 (1973);

B_i (for a top-loaded tower) = the *difference* between the apparent height (based on current distribution) and the actual height of the i^{th} tower;

B_i (for sectionalized tower) = the *difference* between the apparent height (based on current distribution) of the lower section and the actual height of the lower section of the i^{th} tower;

G_i (for a top-loaded tower) = the apparent height (based on current distribution) of the i^{th} tower;

G_i (for a sectionalized tower) = the apparent height (based on current distribution) of the lower section of the i^{th} tower;

D_i = the *difference* between the apparent height (based on current distribution) of the entire tower and the actual height of the entire tower, for the i^{th} tower; this will be zero if the top section is not top-loaded;

Δ_i = the *difference* between the apparent height (based on current distribution) of the entire tower, and the actual height of the lower section, for the i^{th} tower; this will be equal to the height of the upper section if the upper section is not top-loaded.

Note.—A diagram showing B_i and G_i for the top-loaded towers appears as Figure 1 to proposed Section 73.160 in Appendix IV. A diagram showing B_i, G_i, and D_i for sectionalized towers appears as Figure 2 to proposed Section 73.160 in Appendix IV.

Appendix IV

[**Note.**—Areas in which we have not reached even a preliminary decision are enclosed within square brackets.]

1. Section 73.21(b)(1)(ii) is proposed to be modified to read as follows:

§ 73.21 Classes of AM Broadcast Channels and Stations.

* * * * *

(b) * * *

(1) * * *

(ii) *Class III–B station.* A Class III–B station is a Class III station which operates with a nighttime nominal power

of 500 watts, and a daytime nominal power no less than 500 watts and no greater than 5 kilowatts. The service area of a Class III–B station is subject to interference in accordance with Section 73.182.

* * * * *

2. The following amendments to § 73.150 are proposed:

§ 73.15 [Amended]

A. The Note to § 73.150(a) is proposed to be modified to read as follows:

(a) * * *

Note.—Applications for new stations and for changes (both minor and major) in existing stations must use a standard pattern. [Those stations which had non-standard patterns until the conversion to standard patterns in Docket No. 21473 continue to retain any maximum expected operating values (MEOV) which exceed the standard pattern until January 1, 1985. These MEOV are not to be used in computing interference and service; they are to be used only in determining the allowable adjustment of a directional antenna system, and as a basis for augmentation pursuant to Section 73.152(a)(1) of the Rules.]

B. The portion of § 73.150(b)(1)(i) which currently begins:

"f(θ) represents the vertical plane * * *"

and concludes

"See also Section 73.190, Figure 5."

is proposed to be replaced by the following:

$f_i(\theta)$ Represents the vertical plane radiation characteristic of the *ith* antenna. This value depends on the tower height, as well as whether the tower is top-loaded or sectionalized. The various formulas for computing $f_i(\theta)$ are given in Section 73.160.

C. Section 73.150(b)(1) is proposed to be modified to redescribe Eq. 3, Eq. 4, and Eq. 5 as Eq. 2, Eq. 3, and Eq. 4, respectively.

D. Section 73.150(b)(6) is proposed to be redesignated as § 73.150(b)(7), and a new § 73.150(b)(6) is proposed to be added as follows:

(b) * * *

(6) The values used in specifying the parameters which describe the array must be specified to no greater precision than can be achieved with available monitoring equipment. Use of greater precision raises a rebuttable presumption of instability of the array. Following are acceptable values of precision; greater precision may be used only upon showing that the monitoring equipment to be installed gives accurate readings with the specified precision.

(i) Field Ratio: 3 significant figures.

(ii) Phasing: to the nearest 0.1 degree.

(iii) Orientation (with respect to a common point in the array, or with respect to another tower): to the nearest 0.1 degree.

(iv) Spacing (with respect to a common point in the array, or with respect to another tower): to the nearest 0.1 degree.

(v) Electrical Height (for all parameters listed in Section 73.160): to the nearest 0.1 degree.

(vi) Theoretical RMS (to determine pattern size): [4 significant figures] [to the nearest 0.1 dBu]

(vii) Additional requirements relating to modified standard patterns appear in Section 73.152(b)(5).

* * * * *

3. Section 73.152 is proposed to be amended to read as follows:

§ 73.152 Modification of Directional Antenna Data

(a) If, after construction and final adjustment of a directional antenna, a measured inverse distance field in any direction exceeds the field shown on the standard radiation pattern for the pertinent mode of directional operation, an application shall be filed, specifying a modified standard radiation pattern and/or such changes as may be required in operating parameters so that all measured effective fields will be contained within the modified standard radiation pattern.

(b) Normally, a modified standard pattern is not acceptable at the initial construction permit stage. However, in certain cases, where it can be shown that modification is necessary, a modified standard pattern will be acceptable at the initial construction permit stage. Following is a non-inclusive list of items to be considered in determining whether a modification is acceptable at the initial construction permit stage:

(1) When the proposed pattern is essentially the same as an existing pattern at the same antenna site. (e.g., A DA-D station proposing to become a DA-1 station.)

(2) Excessive reradiating structures, which should be shown on a plat of the antenna site and surrounding area.

(3) Other environmental factors; they should be fully described.

that direction were employed), the license application shall specify the level at which the input power to the antenna shall be limited to maintain the measured field at a value not in excess of that shown on the standard pattern, and shall specify the common point current corresponding to this power level. This value of common point current will be specified on the license for that station.

(2) Where any excessive measured field does not result in objectionable interference to another station, a modification of construction permit application shall be submitted with a modified standard pattern encompassing all measured fields. The modified standard pattern shall supersede the previously submitted standard radiation pattern for that station in the pertinent mode of directinal operation. Following are the possible methods of creating a modified standard pattern:

(i) The modified pattern may be computed by making the entire pattern larger than the original pattern (i.e., have a higher RMS value) if the measured fields systematically exceed the confines of the original pattern. The larger pattern shall be computed by using a larger multiplying constant, k, in the theoretical pattern equation (Eq. 1) in Section 73.150(b)(1).

(ii) Where the measured field exceeds the pattern in discrete directions, but objectionable interference does not result, the pattern may be expanded over sectors including these directions. When this "augmentation" is desired, it shall be achieved by application of the following equation:

(4) Judgment and experience of the engineer preparing the engineering portion of the application. This must be supported with a full discussion of the pertinent factors.

(c) The following general principles shall govern the situations in paragraph (a) and (b) in this Section:

(1) Where an excessive measured field in any direction will result in objectionable interference to another station (and which would not be computed if the standard pattern field in

$$E(\phi,\theta)_{aug} = \sqrt{\{E(\phi,\theta)_{std}\}^2 + A\{g(\theta)\cos(180\frac{D_A}{S})\}^2}$$

where:

$E(\phi,\theta)_{std}$ is the standard pattern field at some particular azimuth and elevation angle, before augmentation, computed pursuant to Eq. 2, Section 73.150(b)(1)(i).

$E(\phi,\theta)_{aug}$ is the field in the direction specified above, after augmentation.

$A = E(\phi',0)^2_{aug} - E(\phi',0)^2_{std}$ in which ϕ' is the central azimuth of augmentation. $E(\phi',0)$ and $E(\phi',0)_{aug}$ are the fields in the horizontal plane at the central azimuth of augmentation.

Note.—A must be positive, except during the process of converting non-standard patterns to standard patterns pursuant to the *Report and Order in Docket No. 21473.* During the conversion process, A may be negative if appropriate.

$g(\phi)$ is defined in Section 73.150(b)(1)(i).

S is the angular range, or "span", over which augmentation is applied. The span is centered on the central azimuth of augmentation. At the limits of the span, the augmented pattern merges into the unaugmented pattern. Spans may overlap.

D_A is the absolute horizontal angle between the azimuth at which the augmented pattern value is being computed and the central azimuth of augmentation. (D_A cannot exceed ½ S).

In the case where there are spans which overlap, the above formula shall be applied repeatedly, once for each augmentation, in ascending order of central azimuth of augmentation, beginning with zero degrees representing true North.

(iii) A combination of paragraph (c)(2)(i) and (ii), of this section with paragraph (c)(2)(i) being applied before paragraph (c)(2)(ii) is applied.

(3) A Modified Standard Pattern shall be specifically labeled as such, and shall be plotted in accordance with the requirements of subparagraph (2) of paragraph (b) of Section 73.150. The effective (RMS) field intensity in the horizontal plane of $E(\phi,\theta)$G2**STD**, $E(\phi,\theta)_{th}$, and the root sum square (RSS) value of the inverse fields of the array elements (derived from the equation for $E(\phi,\theta)_{th}$), shall be tabulated on the page on which the horizonal plane pattern is plotted. Where sector augmentation has been employed in designing the modified pattern, the direction of maximum augmentation (e.g., the central azimuth of augmentation) shall be indicated on the horizontal plane pattern for each augmented sector, and the limits of each sector shall also be shown. Field values within an augmented sector, computed prior to augmentation, shall be depicted by a broken line.

(4) There shall be submitted, for each modified standard pattern, complete tabulations of final computed data used in plotting the pattern. In addition, for each augmented sector, the central azimuth of augmentation, span, and radiation at the central azimuth of augmentation ($E(\phi,\theta)_{aug}$) shall be tabulated.

(5) The parameters used in computing the modified standard pattern shall be specified with realistic precision. Following is a list of the maximum acceptable precision:

(i) Central Azimuth of Augmentation: to the nearest 0.1 degree.

(ii) Span: to the nearest 0.1 degree.

(iii) Radiation at Central Azimuth of Augmentation: [4 significant figures] [to the nearest 0.1 dBu]

4. A new § 73.160 is proposed to be added as follows:

§ 73.160 Vertical plane radiation characteristics, f(ϕ).

(a) The vertical plane radiation characteristics show how much field is being radiated at a given vertical angle, with respect to the horizontal plane. The vertical angle, represented as ϕ, is 0 degrees in the horizontal plane, and 90 degrees when perpendicular to the horizontal plane. The vertical plane radiation characteristic is referred to as $f(\phi)$ is:

$f(\phi) = E(\phi)/E(0)$

where:

$E(\phi)$ is the radiation from the tower at angle ϕ.

$E(0)$ is the radiation from the tower in the horizontal plane.

(b) Listed below are formulas for $f(\phi)$ for several common towers.

(1) For a typical tower, which is not top-loaded or sectionalized, the following formula shall be used:

$$f(\theta) = \frac{\cos(G \sin\theta) - \cos G}{(1 - \cos G)\cos\theta}$$

where G is the electrical height of the tower, not including the base insulator and pier. (In the case of a folded unipole tower, the entire radiating structure's electrical height is used.)

(2) For a top-loaded tower, the following formula shall be used:

$$f(\theta) = \frac{\cos B \cos(A \sin\theta) - \sin\theta \sin B \sin(A \sin\theta) - \cos(A+B)}{\cos\theta\,(\cos B - \cos(A+B))}$$

where:

A is the physical height of the tower, in electrical degrees.

B is the difference, in electrical degrees, between the apparent electrical height (G, based on current distribution) and the actual physical height.

G is the apparent electrical height: the sum of A and B; A+B.

See Figure 1 of this Section.

(3) For a sectionalized tower, the following formula shall be used:

$$f(\theta) = \frac{\{\sin\Delta\,[\cos B \cos(A \sin\theta) - \cos G] + \sin B\,[\cos D \cos(C \sin\theta) - \sin\theta \sin D \sin(C \sin\theta) - \cos\Delta \cos(A \sin\theta)]\}}{\cos\theta\,[\sin\Delta\,(\cos B - \cos G) + \sin B\,(\cos D - \cos\Delta)]}$$

where:

A is the physical height, in electrical degrees, of the lower section of the tower.

B is the apparent electrical height (based on current distribution) of the lower section of the tower.

C is the physical height of the entire tower, in electrical degrees.

D is the difference between the apparent electrical height of the tower (based on current distribution of the upper section) and the physical height of the entire tower. D will be zero if the sectionalized tower is not top-loaded.
G is the sum of A and B; A+B.
H is the sum of C and D; C+D.
Δ is the difference between H and A; H+A.
See Figure 2 of this Section.

(c) One of the above f(ϕ) formula *must* be used in computing radiation in the vertical plane, unless the applicant submits a special formulas for a particular type of antenna. If a special formula is submitted, it must be accompanied by a complete derivation and sample calculations. Submission of values for f(ϕ) only in a tabular or graphical format (i.e., without a formula) is not acceptable.

§ 73.182 [Amended]

5. Section 73.182(a)(3)(ii) is proposed to be modified to read as follows:

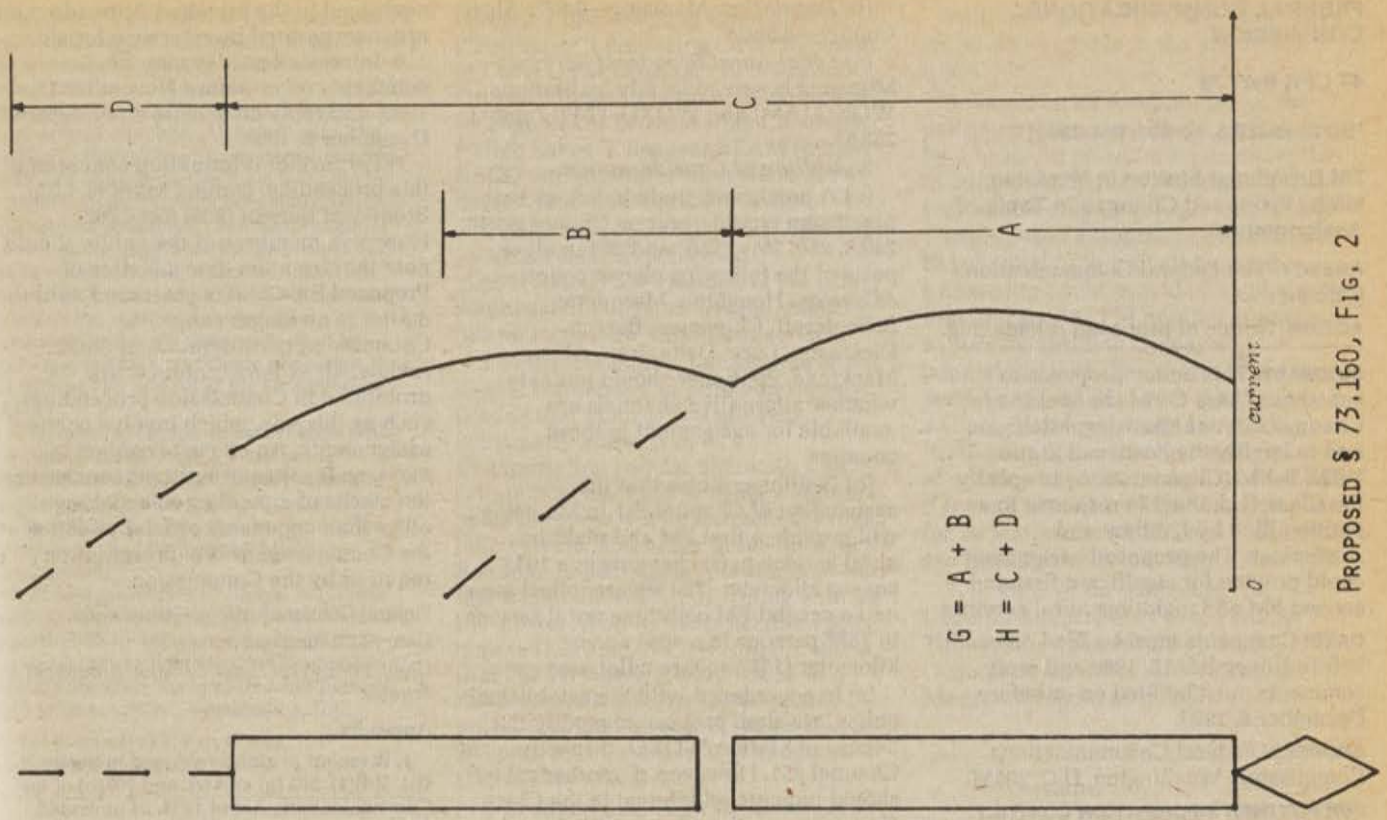
(a) * * *
(3) * * *

(ii) Class III–B stations, which operate with a nighttime nominal power of 500 watts and a daytime nominal power of no less than 500 watts and no greater than 5 kilowatts, and are normally protected to the 4000 uV/m contour nighttime and the 500 uV/m contour daytime.

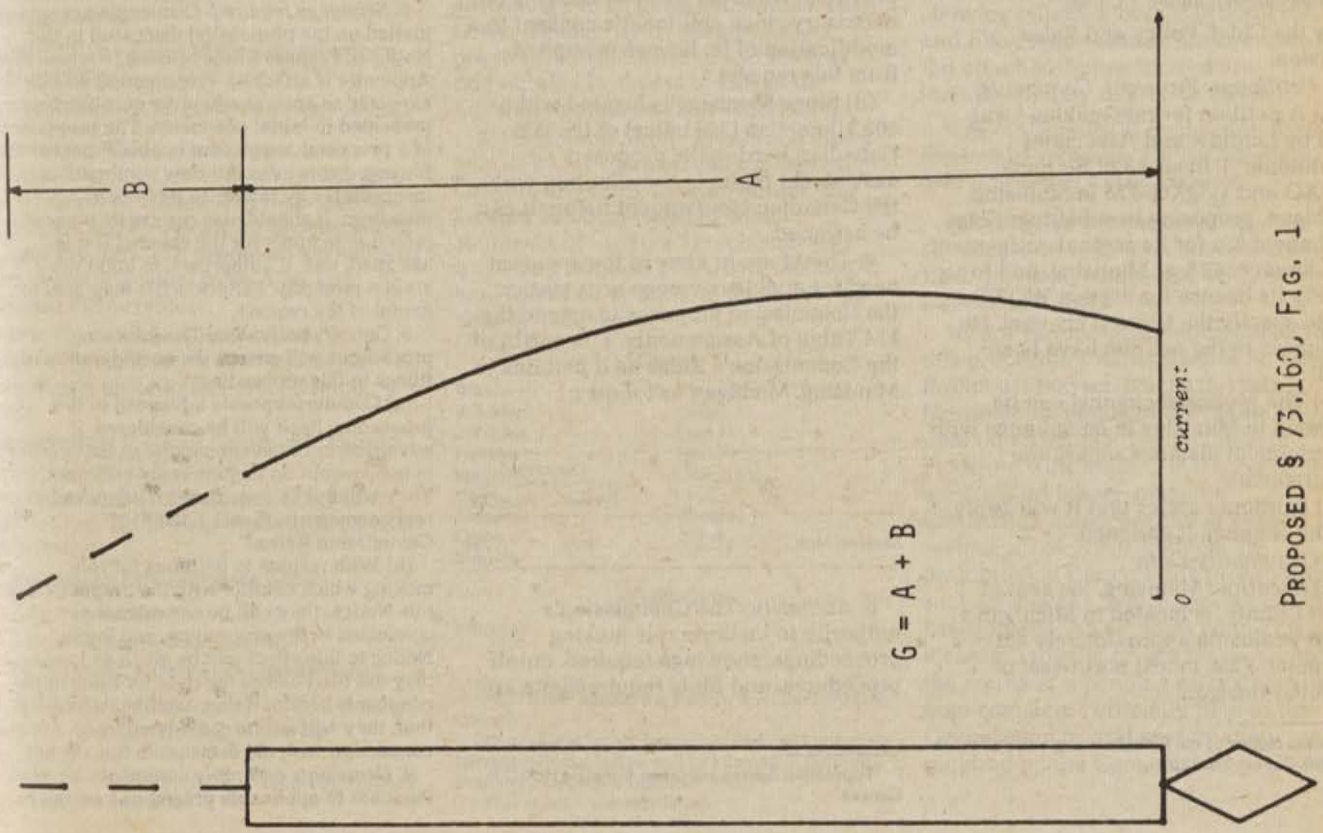
Note.—* * *

* * * * *

BILLING CODE 6712-01-M



PROPOSED § 73.160, FIG. 2



PROPOSED § 73.160, FIG. 1

[FR Doc. 80-29617 Filed 9-25-80; 8:45 am]
BILLING CODE 6712-01-C

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 80-493; RM-3609]

FM Broadcast Station in Munising, Mich.; Proposed Changes in Table of Assignments

AGENCY: The Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to substitute Class C FM channel 251 for Channel 252A at Munising, Michigan, and to modify the license of Station WQXO–FM (Channel 252A) to specify the Class C channel in response to a petition filed by Laidlaw and Associates. The proposed assignment could provide for significant first and second FM and nighttime aural services.

DATE: Comments must be filed on or before November 17, 1980 and reply comments must be filed on or before December 8, 1980.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

Adopted: September 16, 1980.

Released: September 25, 1980.

By the Chief, Policy and Rules Division:

1. *Petitioner, Proposal, Comments:*

(a) A petition for rule making [1] was filed by Laidlaw and Associates ("petitioner"), licensee of Stations WQXO and WQXO–FM in Munising, Michigan, proposing to substitute Class C Channel 251 for its present assignment on Channel 252A at Munising, and to modify its license for Station WQXO–FM to specify the Class C channel. No responses to the petition have been filed.

(b) The proposed channel can be assigned to Munising in compliance with the minimum distance separation requirements.

(c) Petitioner states that it will apply for the channel, if assigned.

2. *Community Data:*

(a) *Location:* Munising, the seat of Alger County, is located in Michigan's upper peninsula approximately 531 kilometers (332 miles) northwest of Detroit, Michigan.

(b) *Population:* Munising—3,677; Alger County—8,568.[2]

(c) *Local Aural Broadcast Service:* Munising is served locally by Stations WQXO (AM) and WQXO–FM (Channel 252A).

3. *Additional Considerations:*

(a) A preclusion study indicates that preclusion would occur on Channels 248, 249A, 250, 251, 252A, and 254 in all or parts of the following eleven counties: *Michigan:* Houghton, Marquette, Schoolcraft, Chippewa, Baraga, Dickinson, Luce, Delta, Iron, Alger, Mackinac. Petitioner should indicate whether alternative channels are available for assignment in these counties.

(b) Petitioner states that the assignment of Channel 251 to Munising will provide a first FM and nighttime aural service to 600 persons in a 1942 square kilometer (750 square miles) area and a second FM nighttime aural service to 1577 persons in a 4084 square kilometer (1577 square mile) area.

(c) In accordance with the established policy, we shall propose to modify the license of Station WQXO to specify Channel 251. However, if another party should indicate an interest in the Class C assignment, then the modification could not be effectuated, *Cheyenne, Wyoming,* 62 F.C.C. 2d 63 (1976). Instead, an opportunity for the filing of a competing application(s) must be provided. An order to show cause is not necessary since petitioner's consent to a modification of its license is implied from this request.

(d) Since Munising is located within 402 kilometers (250 miles) of the U.S.-Canadian border, the proposed assignment requires coordination with the Canadian Government before it can be assigned.

4. Therefore, in view of the apparent need for a wide coverage area station, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules as it pertains to Munising, Michigan as follows:

City	Channel No.	
	Present	Proposed
Munising, Mich	252A	251

5. *Authority:* The Commission's authority to institute rule making proceedings, showings required, cutoff procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

6. Interested parties may file comments on or before November 17, 1980, and reply comments on or before December 8, 1980.

7. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau (202) 632–7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in

[1] Public Notice of the Petition was given on March 20, 1980, Report No. 1220.

[2] Population figures are taken from the 1970 U.S. Census.

Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b), and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commisison's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 80-29719 Filed 9-24-80; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 80-491; RM-3611]

FM Broadcast Station in Madras, Oreg.; Proposed Changes in Table of Assignments

AGENCY: The Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to assign Channel 243 to Madras, Oregon, as its first FM Channel in response to a petition filed by Peregrine Broadcasting Company, Inc. The proposed assignment could provide substantial first and second FM services.

DATE: Comments must be filed on or before November 17, 1980 and reply comments on or before December 8, 1980.

ADDRESSES: Federal Communications, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark Lipp, Broadcast Bureau, Area 202: 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: September 16, 1980.

Released: September 24, 1980.

By the Chief, Policy and Rules Division:

1. The Commission has before it a petition for rulemaking[1] filed by Peregrine Broadcasting Company, Inc. ("Petitioner") proposing the assignment of Class C FM Channel 243 to Madras, Oregon. Opposing comments were filed by High Lakes Broadcasting Company, ("High Lakes"), licensee of AM Station KRCO and permittee for a Class A FM station, both in Prineville, Oregon.

2. Madras (population 1,689),[2] seat of Jefferson County, is located approximately 157 kilometers (98 miles) southeast of Portland, Oregon. Madras has no local aural broadcast service.

3. Petitioner states that Madras is the largest community in Jefferson County. It adds that Madras is a growing community and serves as a transportation hub for highways and railroads in addition to being a stopping place for tourists who frequent the many lakes, rivers, and parks in the area. In its Roanoke Rapids study, petitioner states that a Class C station operating with 50 kW power at an antenna height of 305 meters (1,000 ft.). ATT would provide a first FM service to 9,032 persons in a 7,531 square kilometer (2,942 square miles) area and a second FM service to 985 persons in a 450 square kilometer (176 square miles) area.

4. In opposition, High Lakes asserts that it cannot compete with a high powered Class C operation so close to Prineville.[3] Further it is argued that the assignment of a Class C channel would be contrary to the Commission's policy governing FM channel allocations. High Lakes claims that its Station KRCO provides adequate service to Madras and obtains in excess of 25% of its advertising from Madras Merchants.

5. *Preclusion Study:* Preclusion study was done for Channel 243 in Madras, Oregon, assuming the transmitter was located 26 kilometers (16 miles) southeast of Madras.[4] Preclusion will occur on Channels 240A, 242, 243, 244A, amd 245 in all or parts of the following eighteen *counties:*

Oregon

Wasco	Klamath
Wheeler	Grant
Jefferson	Linn
Harney	Gilliam
Malhaur	Deschutes
Union	Lake
Sherman	Douglas
Crook	Baker
Morrow	

Washington

Klickitat

Petitioner should indicate alternative channels available in the precluded areas.

6. Based on an examination of the petitioner's proposal, there appears to be a basis for considering an exception to our general policy of assigning Class C channels only to a larger community. The proposed assignment of a Class C FM channel to this small isolated community could provide for substantial first and second FM broadcast services to persons residing in sparsely populated areas. The extent of these services would decrease significantly if a Class A channel were assigned. Furthermore, the concern of High Lakes of unfair competition could be resolved if it were to seek a Class C assignment for its station. Several Class C channels are available at Prineville for such use.

7. In view of the foregoing, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules with regard to Madras, Oregon, as follows:

Channel No.	City	
	Present	Proposed
Madras, Oreg.		243

8. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

9. Interested parties may file comments on or before November 17, 1980, and reply comments on or before December 8, 1980.

10. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commision consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rulemaking other than comments officially filed at the Commission or oral presentation required by the Commission.

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[1] Public Notice of the petition was given on March 1, 1980, Report No. 1221.

[2] Population figures were taken from the 1970 U.S. Census.

[3] Prineville is located approximately 42 kilometers (26 miles) from Madras and 18 kilometers (11 miles) from the proposed transmitter site.

[4] This is not a site restriction.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regultions, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submisions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 80-29721 File 9-24-80; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 80-494; RM-3597; RM-3754]

FM Broadcast Stations in Farmville and Appomattox, Va.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes to assign Class B FM Channel 274 to Farmville or to Appomattox, Virginia, in lieu of Channel 296A, in response to petitions filed by Everette Broadcasting Co. and HTB, Inc., respectively. The proposed assignment would provide for a station which could render a second local FM service to Farmville or would upgrade Appomattox's only FM station.

DATE: Comments must be filed on or before November 17, 1980, and reply comments on or before December 8, 1980.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

Adopted: September 17, 1980.

Released: September 26, 1980.

By the Chief, Policy and Rules Division:

1. *Petitioner, Proposal, Comments:* (a) A petition for rule making [1] was filed by Everette Broadcasting Co. ("petitioner"), proposing the assignment of Class B FM Channel 274 to Farmville, Virginia, as that community's second FM assignment. A petition [2] for the same channel assignment was filed by HTB, Inc., licensee of Stations WTTX(AM) and WTTX-FM, proposing that Channel 296A be deleted and replaced by Channel 274 at Appomattox, Virginia. The two petitions are mutually exclusive as the communities are 39 kilometers (24 miles) apart. Required separation for co-channel Class B stations is 240 kilometers (150 miles).

(b) The channel can be assigned to either community in conformity with the minimum distance separation requirements.

(c) Petitioner for Farmville states that it will apply for the channel, if assigned. HTB, Inc. desires to have its license modified to specify the Class B channel.

[1] Public Notice of the petition was given on February 27, 1980, Report No. 1218.

[2] This petition was filed on July 31, 1980. Public Notice is given by this *Notice.*

2. *Community Data:* (a) *Location:* Farmville, the seat of Prince Edward County, is located approximately 88 kilometers (55 miles) southwest of Richmond, Virginia. Appomattox, the seat of Appomattox County, is located approximately 120 kilometers (75 miles) southwest of Richmond.

(b) *Population:* Farmville—4,331 [3], Prince Edward County—14,379; Appomattox—1,400, Appomattox County—4,784.

(c) *Local Aural Broadcast Service:* Farmville is served locally by daytime-only AM Station WFLO, fulltime AM Station WPAK, and FM Station WFLO (Channel 239). Appomattox is served by Stations WTTX(AM) (daytime-only and WTTX-FM (Channel 296A).

Farmville

3. *Economic Considerations:* Petitioner states that the existing businesses in Farmville consist of major industries, tobacco production, health services and government. Petitioner adds that there is a need for a competitive FM station which would provide coverage to Farmville and underserved rural areas.

4. *Preclusion Considerations:* The preclusion study was made assuming the transmitter site for Channel 274 is located in the center of the city. The proposed transmitter site is 1.6 kilometers (1 mile) north of the Farmville reference point. The assignment of Channel 274 to Farmville will cause preclusion on Channels 274 and 275 in all or parts of the following *counties. Virginia:* Amherst, Buckingham, Cumberland, Nottoway, Appomattox, Prince Edward and Amelia.

5. Generally, a community as small as Farmville would be assigned a Class A channel. However, an exception is made where the Class B proposal could provide a significant amount of first and second service to the surrounding area and population. Petitioner should submit a *Roanoke Rapids/Anamosa* showing for its proposed facilities with reasonable or existing facilities for other assignments (whichever is greater).

Appomattox

6. *Economic Considerations:* In addition to tourism deriving from the historical significance of Appomattox, the economy of the area consists of lumbering, agriculture and the manufacture of products such as furniture and clothing. The justification given for a Class B station is the need for a fulltime county-wide service.

7. *Technical data:* Transmitter site must be located 21.5 kilometers (12.7

[3] Population figures are taken from the 1970 U.S. Census.

miles) northeast of Appomattox to avoid short-spacing to an existing station. Petitioner should submit a preclusion study for the co-channel and the six adjacent channels and a *Roanoke Rapids/Anamosa* showing as described in paragraph 5 above.

8. Petitioner has requested that in the event a Class B channel is assigned to Appomattox that its Class A license be modified to specify the Class B channel. We shall propose to do so. However, in accordance with the policy as set forth in *Cheyenne, Wyoming,* 62 F.C.C. 2d 63 (1976), modification will not be granted should another party express an interest in applying for Channel 274 at Appomattox.

9. In view of the competing petitions for assignments which could provide service to underserved rural areas, comments are invited on the following proposals to amend the FM Table of Assignments, Section 73.202(b) of the Commission's Rules, with regard to the listed communities.

City	Channel No.	
	Present	Proposed
Appomattox, Va.	296A	274
or		
Farmville, Va.	239	239, 274

10. The Commission's authority to institute rule making proceeding, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference hearing. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

11. Interested parties may file comments on or before November 17, 1980, and reply comments on or before December 8, 1980.

12. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632–9660. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 80-29722 Filed 9-24-80; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 80-492; RM-3606]

FM Broadcast Station in Casper, Wyo.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: This action proposes to assign two Class C channels to Casper, Wyoming, as the third and fourth FM assignments in response to a petition from Daniel A. Roberts.

DATES: Comments must be filed on or before November 17, 1980, and reply comments must be filed on or before December 8, 1980.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau (202) 632–7792.

SUPPLEMENTARY INFORMATION:

Adopted: September 16, 1980.

Released: September 25, 1980.

1. *Petitioner, Proposal, Comments.* (a) A petition for rule making [1] was filed by Daniel A. Roberts, proposing the assignment of Class C Channels 279 and 295 to Casper, Wyoming, as that community's third and fourth commercial FM channels. No responses to the petition have been filed.

(b) Both channels can be assigned to Casper in conformity with the minimum distance separation requirements.

(c) Petitioner states he will apply for one of the channels, if assigned.

2. *Community Data.*—(a) *Location:* Casper, seat of Natrona County, is located approximately 224 kilometers (140 miles) northwest of Cheyenne, Wyoming.

(b) *Population:* Casper—39,361; [2] Natrona County—51,264

(c) *Local Aural Broadcast Service:* Casper is served locally by three full-time AM stations (KATI, KTWO, and KVOC), FM Station KAWY (Channel

[1] Public Notice of the petition was given on March 20, 1980.

[2] Population figures are taken from the 1970 U.S. Census.

233) and has two applications pending for a second FM station (Channel 238).[3]

3. *Economic Considerations:* Petitioner states that oil, gas, coal, and uranium exploration, production and refining are Casper's economic base, however, wholesale and retail trade are also very important. Petitioner has submitted additional demographic and economic information in an effort to demonstrate the need for two additional FM assignments.

4. *Preclusion Studies:* (1) Preclusion study for Channel 279 in Casper, Wyoming, was done assuming the transmitter was located in the center of the city. Preclusion will occur on Channels 276A, 277, 278, 279, 280A, 281, and 282 in all or parts of the following twenty-one *counties: South Dakota:* Fall River, Custer, Pennington; *Wyoming:* Carbon, Johnson, Fremont, Niobrara, Weston, Big Horn, Natrona, Campbell, Albany, Hot Springs, Crook, Sublette, Converse, Platte, Sweetwater, Washakie, Sheridan, Park. (2) Preclusion study for Channel 295 in Casper, Wyoming, was done with the assumption that the transmitter was located in the center of the city. Preclusion will occur on Channels 292A, 293, 294, 295, 296A, 297, 298 in all or parts of the following thirty-six *counties: Colorado:* Moffat; *Nebraska:* Sioux, Box Butte, Morrill, Dawes, Scotts Bluff; *South Dakota:* Fall River, Lawrence, Shannon, Custer, Butte, Pennington, Meade, *Montana:* Big Horn, Powder, Rosebud, Carter; *Wyoming:* Carbon, Converse, Washakie, Sweetwater, Big Horn, Weston, Park, Albany, Natrona, Johnson, Sublette, Sheridan, Niobrara, Platte, Fremont, Campbell, Hot Springs, Crook, Goshen. Petitioner states that there is at least one FM channel available to all communities in the precluded area without a present assignment.

5. Petitioner's engineering statement indicates that the assignment of one channel will provide a second FM and nighttime aural service to 25 persons in a 386 square kilometer (151) square mile) area. No new first or second service will be provided by the assignment of the second channel. In making the Roanoke Rapids study, petitioner assumed facilities of 100 kW at an antenna height of 581 meters (1908 feet) HAAT.

6. *Other Considerations:* The assignment of four commerical channels to a community the size of Casper exceeds the Commission's population guidelines. However, as we have stated in the past, these are only guidelines, not rigid rules. The mere fact that Casper's population is below 50,000 does not per se rule out any additional assignments. Petitioner points out that the estimated 1980 Casper population (73,000) and the insignificant preclusion (alternate channels are available to precluded counties) are reasons justifying the additional allocations. We invite comments on this matter. Furthermore, as petitioner states, it is expected that one of the two applicants would indicate an interest in a fourth FM assignment for Casper. Such expression of interest would be necessary before the assignment would be made.

7. In view of the foregoing, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules as follows:

Channel No.	City	
	Present	Proposed
Casper, Wyo	233, 238	233, 238, 279, 295

8. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. *NOTE:* A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

9. Interested parties may file comments on or before November 17, 1980, and reply comments on or before December 8, 1980.

10. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632–7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentations required by the Commission.

Federal Communications Commission

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 80–29720 Filed 9–24–80: 8:45 am]

BILLING CODE 6712–01–M

[3] The applicants are Energy Capitol Broadcasting, Inc. (BPH 10521) and Wyomedia (BPH 10753).

47 CFR Part 83

[Docket No. 20908; FCC 80-513]

Terminating Proceeding Concerning the Installation of a Tunable Single Sideband Receiver, Replacing the Currently Required Double Sideband Receiver, Aboard Vessels Fitted Pursuant to Part II of Title III of the Communications Act or the Radio Provisions of the Safety Convention

AGENCY: Federal Communications Commission.

ACTION: Withdrawal of proposed rulemaking.

SUMMARY: This order terminates the Notice of Proposed Rule Making concerning the installation of a tunable single sideband receiver, replacing the currently required double sideband receiver in Docket 20908 which has been superseded by General Docket 80-81.

DATE: Non-Applicable.

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

FOR FURTHER INFORMATION CONTACT: Robert P. DeYoung, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of Part 83, § 83.488(b)—to provide effective January 1, 1977, for the installation of a tunable single sideband receiver, replacing the currently required double sideband reciever, aboard vessels fitted pursuant to Part II of Title III of the Communications Act or the radio provisions of the Safety Convention.

Order

(Proceeding Terminated)

Adopted: September 10, 1980.

Released: September 10, 1980.

By the Commisison:

1. By a Notice of Proposed Rule Making released September 22, 1976, FCC 76-862, in the above captioned matter, the Commission proposed to modify § 83.488(b) of its rules. That proposal has been superseded by the Report and Order in General Docket No. 80-87 released July 14, 1980, FCC 80-360 which implements Chapter IV of the 1974 Safety Convention.

2. For this reason, It is ordered, That the proceeding in Docket No. 20908 is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-29739 Filed 9-24-80; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[BMCS Docket No. MC-95; Notice No. 80-9]

Parts and Accessories Necessary for Safe Operation

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Transportation (DOT), Federal Highway Administration is considering the elimination of the first aid kit in buses operating in interstate or foreign commerce. This Notice is being issued to invite comments and request information concerning the need for continuing the requirement as well as any information concerning possible modifications to the current rule. All comments will be considered before further action is taken.

DATE: Comments must be received on or before January 22, 1980.

ADDRESS Submit comments, preferably in triplicate, to BMCS Docket No. MC-95; Notice No. 80-9, Room 3402, Bureau of Motor Carrier Safety (BMCS), 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald J. Davis, Chief, Development Branch, Regulations Division, Bureau of Motor Carrier Safety, (202) 426-9767; or Mrs. Kathleen S. Markman, Attorney, Motor Carrier and Highway Safety Law Division, (202) 426-0346, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: Through the years there has been increasing Federal Highway Administration interest in eliminating unnecessary regulatory requirements. To this end, the Bureau of Motor Carrier Safety is reviewing the regulation requiring a first aid kit in buses operating in interstate or foreign commerce. This requirement of the Federal Motor Carrier Safety Regulations (49 CFR 393.96(c)) has been in effect for the past 40 years.

It is appropriate to review this regulation in light of the changes that have taken place in the emergency response to accident victims. Increasing State and local attention has been given to developing emergency medical services that respond quickly to the injured. Current rescue and medical techniques, as well as the amount of Government support given to emergency medical services, may render this rule unnecessary.

The DOT's highway safety program has acted as a catalyst in the development of a high quality emergency medical service system. The Highway Safety Act of 1966, as amended, requires the States to have highway safety programs developed in accordance with the uniform standards issued by the Secretary of Transportation, 23 CFR 1204.4. The purpose of Standard 11, Emergency Medical Service, is to: (1) provide a quick identification and response to accidents, (2) sustain and prolong life through proper first aid measures, and (3) bring the injured person and medical resources together quickly.

The DOT and State implement Standard 11 by planning the State's emergency medical service, coordinating the service's operation, devising a statewide communications system and developing the proper emergency equipment and training programs needed.

The National Emergency Aid Radio (NEAR) monitor training programs, designed by the DOT, can be used to provide an emergency response system on a statewise basis. The training program explains how to organize an emergency monitoring network using the Citizen's Band radio. Operators work on both a volunteer and public service basis to receive accident calls on the emergency channel and relay these calls to the proper authorities. The NEAR goal is to provide a communications network that brings the accident victim into the emergency medical services system quickly and efficiently.

The First Responder training course, also developed by the DOT, was designed for the person who is the first to arrive at the scene of a vehicle accident or other medical emergency. In many cases, especially on the highway, this is the State or local police officer. The 40-hour course provides instruction in practical, on-the-scene first aid.

Such programs as these increase the skill and precision by which a medical responder gives first aid to an accident victim. Because of this skill, and because of the emergency medical services system, the required first aid kit may be of little use. Often, at the scene of an accident, the kit might not be used by a bus driver because of his or her inexperience, lack of training, and fear of liability.

Specifically, comments are requested from interstate motor carriers of passengers, drivers, and the public on the following:

1. To what extent are the first aid kits, currently required on buses, used by the drivers or passengers?

2. In what situations (emergency and nonemergency) are the first aid kits used?

3. To what extent are the drivers trained in emergency medical procedures and in the use of the first aid kit?

4. Should the current requirement for first aid kits be eliminated?

5. First aid methods are continually being updated and changed. What modification(s) should be made to the first aid kit if its continued use is necessary?

(49 U.S.C. 304, 1655; 49 CFR 1.48(b) and 301.60)

Note.—The Federal Highway Administration had determined that this document does not contain a significant proposal according to the criteria established by the Department of Transportation pursuant to Executive Order 12044. A draft regulatory evaluation is available for inspection in the public docket and may be obtained by contacting Mr. Gerald J. Davis of the program office at the address specified above.

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

Issued on: September 17, 1980.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety.

[FR Doc. 80-29431 Filed 9-24-80; 8:45 am]

BILLING CODE 4910-22-M

Notices

Federal Register
Vol. 45, No. 188
Thursday, September 25, 1980

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

Animal and Plant Health Inspection Service

Horse Protection; Notice of Disqualification

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of disqualification.

PURPOSE: This notice is to advise the general public and the horse industry of the disqualification of the following individual, under section 6(c) of the Horse Protection Act, from showing or exhibiting any horse, juding or managing any horse show, horse exhibition, or horse sale or auction for the period indicated:

John Young
Dalton, Georgia

John Young has ben disqualified from showing or exhibiting any horse, judging or managing any horse show, horse exhibition, or horse sale or auction for a period of 2 years which is to run from July 23, 1980, through July 22, 1982.

SUPPLEMENTARY INFORMATION: Section 6(c) of the Horse Protection Act (15 U.S.C. 1821–1831) states in relevant part that, "* * * any person * * * may be disqualified by order of the Secretary, after notice and an opportunity for a hearing before the Secretary, from showing or exhibiting any horse, judging or managing any horse show, horse exhibition, or horse sale or auction for a period of not less than 1 year for the first violation and not less than 5 years for any subsequent violation. Any person who knowingly fails to obey an order of disqualification shall be subject to civil penalty of not more than $3,000 for each violation. Any horse show, horse exhibition, or horse sale or auction, or the management thereof, collectively and severally, which knowingly allows any person who is under an order of disqualification to show or exhibit any horse, to enter for the purpose of showing or exhibiting any horse, to take part in managing or judging, or otherwise to participate in any horse show, horse exhibition, or horse sale or auction in violation of an order shall be subject to a civil penalty of not more than $3,000 for each violation * * *."

This will serve as notification to the general public and the horse industry that John Young has been disqualified as indicated, and that allowing a disqualified person to participate in prohibited activities, is a violation of section 6(c) of the Act and is subject to the penalties indicated therein.

Done at Washington, D.C., this 22nd day of September, 1980.

Pierre A. Chaloux,

Deputy Administrator, Veterinary Services.

[FR Doc. 80-29741 Filed 9-24-80; 8:45 am]

BILLING CODE 3410-34-M

Imported Fire Ant Control Treatments With Amdro

AGENCY: Animal and Plant Health Inspection Service.

ACTION: Notice.

SUMMARY: This gives notice that the Animal and Plant Health Inspection Service is not preparing an environmental impact statement concerning Amdro treatments to be made in seven States during the fall of calendar year 1980 for the control of imported fire ant. It has been determined that it is not necessary to prepare an environmental impact statement concerning such Amdro treatments since they would not significantly affect the quality of the human environment.

DATE: Effective date of this notice September 25, 1980.

ADDRESS: Requests for copies of the environmental assessment should be addressed to the Pest Program Development Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Room 630, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: B. Glen Lee, Staff Officer, Pest Program Development Staff, Plant Protection and Quarantine, APHIS, USDA, Federal Building, 6505 Belcrest Road, Room 630, Hyattsville, MD 20782, (301) 436–8745.

The combined environmental assessment and final impact statement describing the options considered in developing this notice and the impact of implementing each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This action has been reviewed under procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "not significant."

The imported fire ant (*Solenopsis* spp.) currently infests 230 million acres in parts or all of the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas. Imported fire ant mounds interfere with the growing and harvesting of crops. In agricultural lands, primary economic losses occur through reduced efficiency of labor, damage to machinery, reduced animal feeding capacity of pastureland, and reduced rangeland. Urban, residential, and public lands infested with the imported fire ant are difficult to maintain and often are the source of reinfestation of agricultural lands.

Imported fire ants are vicious and aggressive when disturbed and are quick to attack both humans and animals. The ants inflict painful, burning stings resulting in the formation of pustules. These pustules may persist for days, and, when broken, frequently become infected. Small animals may die as a result of imported fire ant stings. Persons who receive multiple stings or who are allergic to the ant's venom may require hospitalization.

Under provisions in 7 U.S.C. 147a, the Department of Agriculture has authority, among other things, to cooperate with States in carrying out operations or measures to detect, eradicate, suppress, control,
1978 due to the lack of an environmentally acceptable and biologically effective treatment for such purposes. Populations have increased to high levels throughout parts to the nine infested Southern States. The necessity for reducing the population level to provide relief from the menacing attack

of the ants to humans and agriculture is obvious.

On August 20, 1980, the Environmental Protection Agency conditionally approved Amdro as a treatment for the imported fire ant. Amdro, manufactured by the American Cyanamid Company, is a slow-acting stomach insecticide which is biologically effective for treatment of imported fire ants. Also, as explained below, it is an environmentally acceptable insecticide.

Accordingly, during the fall of calendar year 1980, the Department of Agriculture plans, through cooperative efforts with Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas, to make one application of Amdro this fall to a total of 976,000 combined acres in these States. The areas to be treated have been surveyed and determined to be infested with imported fire ant. Control treatments are planned to begin after September 15, 1980. Treatments would consist of 1 pound of bait containing 3.97 grams of active ingredient per acre. The insecticide is mixed with soybean oil as the attractant and formulated with defatted, pregelled corn grits into a bait.

Applications are not currently planned in Arkansas or Florida due to the nonavailability of State appropriated funds for use in cost sharing cooperative programs.

As explained in the combined environmental assessment and final impact statement developed for the control program, analysis of environmental components collected from areas treated with Amdro during two years of field testing indicates no residue is expected in soil or vegetation because of the application of Amdro, and no significant adverse local, regional, or national impacts on the environment will result from the application of Amdro. It is an amidinohydrazone compound, is short lived and nonpersistant, and does not bioaccumulate in the environment.

This action has been reviewed under the requirements of the National Environmental Policy Act, as amended (42 U.S.C. 4321 et seq.), the Council on Environmental Quality's (CEQ) National Environmental Policy Act Regulations (40 CFR Parts 1500–1508), and the APHIS Guidelines concerning Implementation of NEPA Procedures.

Under the circumstances referred to above, it has been determined that the imported fire ant control program would cause no significant adverse effect to the quality of the human environment and, therefore, it is not necessary to prepare an environmental impact statement.

Done at Washington, D.C., this 22d day of September 1980.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 80-29695 Filed 9-24-80; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Taos Ski Valley, Inc., Proposed Master Plan; Carson National Forest, Taos County, N. Mex.; Intent To Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture will prepare an Environmental Impact Statement for the proposed Master Development Plan for the Taos Ski Valley (TSV, Inc.). The proposal includes further development of skiing facilities within the existing permit area and expansion of the east and west permit boundaries by 17 acres and 11 acres respectively. Briefly, the proposal includes: four additional lifts in the short and intermediate terms, four lifts in the long-term, the addition of 69 acres of trails, an up-mountain restaurant, and an expansion of the parking facilities to accommodate present numbers of vehicles. TSV, Inc. has proposed a limit on skier numbers of 4800 per day, which is 10 percent more than the 1979–80 season's peak day. Proposed improvements have the stated objective of relieving congestion and otherwise improving the quality of the skiing experience. This EIS will *not* evaluate whether there should be a Taos Ski Valley, or changes that have occurred since its inception, *only changes* that will occur as a result of implementing any of the alternatives. It is important to realize this EIS will deal primarily with conceptual plans and the anticipated effects. Site specific plans and detailed mitigation measures will be considered prior to the construction phase of each development, and will be covered by an environmental analysis.

The alternatives being considered relate to various scheduling of the up-mountain proposals (lifts, etc.), and various parking lot configurations. Shuttling of skiers is also being considered.

TSV, Inc. submitted the proposed Master Development Plan in January 1980 to the Forest Service, in accordance with regulations governing winter sports resort planning requirements Forest Service Manual 2300. Extensive public involvement was initiated at that time. Public involvement consisted of three informal open house meetings (February 11, 13, and 15, 1980, in Arroyo Seco, Taos, and Taos Ski Valley), a formal scoping meeting (February 27, 1980, in Taos), interviews on local radio stations, news releases, and the formation of a Citizens Working Group. The scoping process has been completed and no further meetings are planned.

The Citizens Working Group (CWG) was originally twenty-one members, later expanded to twenty-four. The members were chosen by the Forest Service to get a wide range of representation from the communities involved. This CWG was formulated to enable the Forest Service to fully consider the public's needs and desires in the decisionmaking process and to act as a sounding board of public opinion throughout the environmental analysis. This group has met nine times from March 6 to August 6, 1980.

Additional public participation will be invited and encouraged with the issuance of the Draft and Final Environmental Impact Statements.

Public opinion concerning the proposed development at Taos Ski Valley has varied widely. A range of public issues were brought to light during the public involvement process. The Citizens Working Group assisted the Forest Service in determining which to address.

Public Issues

1. Water Quality
   a. Sewage treatment plant discharge
   b. Non-point up-mountain (TSV, Inc., permit area) affects on water quality
   c. Non-point sources in base area which could affect water quality
2. Water Quantity
3. Parking Lot
   a. Environmental
   b. Transportation
   (1) Energy Conservation
   (2) Safety and Convenience
   (3) Shuttle system from Taos
4. Cultural Change and quality of life
5. Development of private land in the valley
6. Orderly, planned growth of TSV (Twining) and surrounding areas
7. Development of private land in Twining
8. Employment opportunity training

Management Concerns (in Addition to Public Issues)

1. Comply with existing laws
2. Flexibility of the Master Development Plan
3. Social and Cultural
4. Energy Conservation
5. Land stability problems with vegetative removal
6. Parking along State Highway 150
7. Air quality and noise pollution
8. Snowmaking
9. Sewage disposal systems and water use on the permit area
10. Lift construction in avalanche paths
11. Insect activity

12. Increase in access to Taos Pueblo lands
13. Demand for new ski areas
14. Some alternatives may adversely affect businesses
15. Mineral Potential

After review of the Environmental Analysis, I have decided documentation should be in an Environmental Impact Statement because:

1. The impacts of implementing the proposal are controversial; specifically those relating to an immediate capacity of approximately 4000 skiers per day, and proposed future capacity of 4800 which is below the mountain's potential.

2. Establishing a skier limit could be precedent setting especially as it might relate to the ability of the permittee or the Twining Water and Sanitation District to treat skier effluent to meet water quality standards.

3. The formal public review periods in the EIS process will give the public, State and Federal agencies additional time to review and coment on the proposal and its effects.

Jack Crellin, Carson Forest Supervisor, is the responsible official, and Veto LaSalle, Questa District Ranger, is the interdisciplinary team leader for the Environmental Analysis.

The Environmental Impact Statement will take about 9 months to complete. The Draft Environmental Impact Statement is scheduled for completion in November 1980 with a two month review period, and the Final Environmental Impact Statement is scheduled for filing in April 1981.

Comments on the Notice of Intent or on the project should be sent to Veto LaSalle, District Ranger, Carson National Forest, Questa Ranger District, Box 110, Questa, New Mexico 87556.

Jack Crellin,

Forest Supervisor.

September 16, 1980.

[FR Doc. 80-29698 Filed 9-24-80; 8:45 am]

BILLING CODE 3410-11-M

Los Padres National Forest Grazing Advisory Board; Meeting

The Los Padres National Forest Grazing Advisory Board will meet from 9:00 a.m. to 12:30 p.m. on November 14, 1980, Dorthea Nelson Room, City Library, 420 South Broadway, Santa Maria, California. The purpose of this meeting is to consider (1) priorities for use of range betterment funds and (2) allotment management plans. This is the Board's third semiannual meeting. Informational topics will include wilderness grazing, the Forest Land Management Plan, and a pending economic study.

The meeting will be open to the public. Persons who wish to attend should notify me at 42 Aero Camino, Goleta, California 93017 (805-968-1578). Written statements may be filed with the committee before or after the meeting.

The committee has established no rules against public participation. Public members will be given an opportunity to speak on each approved agenda item unless such input interferes with the Board's ability to work within the allotted time.

Dated: September 19, 1980.

Frederik G. deHoll,

Forest Supervisor.

[FR Doc. 80-29750 Filed 9-24-80; 8:45 am]

BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

[Docket 38486; Order 80-9-112]

Aeromech, Inc.; for Compensation for Losses in Providing Essential Air Service at Elkins, W. Va.

Order

On March 17, 1980, Aeromech, Inc. (Aeromech) filed a notice of intent to terminate all service at Elkins, West Virginia on April 16, 1980. By Order 80-4-59, April 10, 1980, we prohibited Aeromech's suspension for a 30-day period through May 16, 1980.[1]

On July 18, 1980, Aeromech filed an application for compensation for losses at Elkins during April 16-June 15, 1980. The carrier provided an explanation of its estimated traffic, revenue, expenses and operating statistics and sought a two-month compensation of $84,999, including a profit element.

In our review of Aeromech's request we have recalculated its block-hour estimate for service during this period downward from 237.70 block hours to 179.25 block hours. This reduction in block hours reflects Aeromech's inclusion of an Elkins-Clarksburg-Pittsburgh flight during April 16-May 1, (Order 79-12-65 stipulates that Elkins-Pittsburgh service must be nonstop) and its consideration of daily service in these markets (our order specifies that total weekend service should equal that for a weekday).[2] This revision reduces Aeromech's compensation for service during this period from $84,999 to $52,603. Since interim compensation rates are subject to adjustment, we elect to treat them as temporary rates and recognize only operating losses and interest on long-term debt, which is consistent with 399.30 of the Policy Statements. A profit element will be considered when we propose a final settlement of the carrier's claim.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, particularly sections 102, 204, 419 and 1002(d) thereof, and the regulations promulgated in 14 CFR 302 and 324:

1. We set the interim level of compensation for losses sustained by Aeromech, Inc. by virtue of its provision of essential air service to Elkins, West Virginia at $252.90 for each scheduled flight completed beginning April 16, 1980, subject to a maximum compensation of $1,011.60 for each weekday or weekend period essential service is provided, and a maximum compensation of $26,301.60 per 30-day period;[3]

2. This proceeding shall remain open pending entry of an order fixing the final rate of compensation, and the amount of such rate of compensation may be the same as, lower than, or higher than the interim rate of compensation set here; and

3. We shall serve the order upon all parties to this proceeding.

We shall publish this order in the **Federal Register.**

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-29757 Filed 9-24-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket 38594]

Barbara Jean Cleversey v. Pan American World Airways, Inc., Enforcement Proceeding; Assignment of Proceeding

This proceeding is hereby assigned to Administrative Law Judge Henry M. Switkay. Future communications should be addressed to Judge Switkay.

Dated at Washington, D.C., September 18, 1980.

Joseph J. Saunders,

Chief, Administrative Law Judge.

[FR Doc. 80-29747 Filed 9-24-80; 8:45 am]

BILLING CODE 6320-01-M

[1] We have since extended Aeromech's obligation.

[2] In effect, Aeromech has calculated its service based on a 7-day week whereas it is required to serve what essentially amounts to a 6-day week.

[3] Each weekend will be treated as a single day for purpose of determining the number of days in the period. For weekends that fall into two separate 30 day periods, both weekend days will be considered as part of the later period for the purposes of calculating both compensation and the compensation ceiling.

[Order No. 80-9-114; Docket 37294]

Priority and Nonpriority Domestic Service Mail Rates Investigation; Order To Show Cause

By Order 78-11-80, the Board adopted a review procedure and updating formula for establishing final domesitc service mail rates for future periods on a semi-annual basis. The present order reflects all revisions adopted subsequently by the Board [1] and proposes tentative final rates for the last quarter of calendar year 1980. The rates shall serve as temporary rates for that quarter until the final rate order is issued. Since these rates are subject to retroactive adjustment, we waive the procedural requirements of Rule 310 with respect to the establishment of these temporary rates.

The tentative final service mail rates set forth in the attached Appendix A reflect the application of the following cost escalation factors:

1. Fuel Cost; the change in average price per gallon over the four months from March through July is added to the July 1980 average price per gallon to arrive at the projected average price per gallon at November 15, 1980, the midpoint of the quarter for which the rates are to be effective; and

2. Other Costs: cost escalation from October 1, 1979, to October 1, 1980, is based on a comparison of unit costs for the year ended March 31, 1979, with unit costs for the year ended March 31, 1980.

These rates represent a decrease of approximately 2.18 percent for the linehaul charges and about 0.33 percent for the terminal charges from the final rates established for the third quarter of calendar year 1980. The cause for the decrease is attributed to a decrease in the rate of increase in fuel prices.

The Board tentatively finds and concludes that:

(1) The fair and reasonable rates of compensation to be paid in their entirety by the Postmaster General pursuant to the provisions of section 406 of the Federal Aviation Act of 1958, as amended, to the carriers for the transportation of that mail described in Order 79-7-16, ordering paragraph 3, subparagraphs (c), (d) and (e), between the points listed in subparagraph (c), *supra*, the facilities used and useful therefor, and the services connected therewith, for the period October 1 through December 31, 1980, are those rates set forth in the attached Appendix A. *

(2) Order 79-7-16, ordering paragraph 3(g), shall be amended to read as follows: All weight in excess of the minimum chargeable weight per container established herein shall be charged at the sum of the full linehaul charge for the applicable service established in subparagraph (e) above, and the capacity-related portion of the terminal charge per pound originated as follows:

	Cents	
	Standard container	Daylight container
Oct. 1, 1980, through Dec. 31, 1980	3.741	3.711

(3) The fair and reasonable temporary rates of compensation for the transportation of mail by aircraft in domestic service for the period January 1, 1981, until further Board order are the final rates established for the period October 1 through December 31, 1980.

(4) The terms and conditions applicable to the transportation of each class of mail at the rates established here are those set forth in Order 79-7-16.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, particularly sections 204(a) and 406, and the Board's Procedural Regulations promulgated in 14 CFR Part 302.

1. We direct all interested persons to show cause why the Board should not adopt the foregoing tentative findings and conclusions, and fix, determine and publish the final rates specified above to be effective October 1 through December 31, 1980.

2. We direct all interested persons having objections to the rates or to the tentative findings and conclusions proposed here to file with the Board a notice of objection within ten (10) days after the date of service of the order, and, if notice is filed, to file a written answer and any supporting documents within 30 days after service of this order.

3. If no notice is filed, or, if after notice, no answer is filed within the designated time, or if an answer timely filed raises no material issue of fact, we will deem all further procedural steps waived and we may enter an order incorporating the tentative findings and conclusions set forth here and fixing the final rates set forth in the attached Appendix A.

4. The fair and reasonable temporary rates of compensation for the transportation of mail by aircraft in domestic service for the period October 1, 1980, until further Board order are the rates set forth in the attached Appendix A.

5. We shall serve this order upon all parties to this proceeding.

We shall publish this order in the **Federal Register.**

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-29748 Filed 9-24-80; 8:45 am]

BILLING CODE 6320-01-M

[1] See Orders 79-7-16, 79-7-95, 79-12-128, 80-3-160, 80-3-161, and 80-6-173.

*The appendices are on file with the original at the Office of the Federal Register.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 14-80]

Proposed Foreign-Trade Zone—El Paso, Tex.; Application and Public Hearing

Notice is hereby given that an application has been submitted to the Foreign-Trade Zones Board (the Board) by El Paso Trade Zone, Inc., a Texas non-profit corporation and an affiliate of the El Paso International Airport Board, requesting authority to establish a general-purpose foreign-trade zone in El Paso, Texas, within the El Paso Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act of 1934, as amended (19 USC 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formerly filed on September 17, 1980. The applicant is authorized to make this proposal under Chapter 183, Acts 1977, 65th Texas Leg., May 20, 1977 (Article 1446.9, Vernon's Annotated Civil Statutes).

The applicant proposes to establish a 60-acre foreign-trade zone near the El Paso International Airport. The zone is located within the 530-acre Butterfield Industrial Park, an expansion of the Airport Board's growing industrial and trade complex. Part of the El Paso economic development plan, the zone is related to the city's efforts concerning the expanding bonded manufacturing activity in Northeastern Mexico. The zone will provide a base for U.S. firms doing business in Mexico. Initially, a 75,000 square foot warehouse and a 15,000 square foot office will be constructed on the site. Additional facilities will be developed as needed. The zone site is owned by the Airport Board, and will be operated by the applicant.

The application contains evidence concerning the need for zone services in the El Paso area. Prospective tenants have indicated an interest in using the zone for storage, packing, distribution,

assembly and light manufacture of electronic products, appliances, garments and footwear.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of Paul R. Nichols (Chairman), Program Manager, Import Administration, U.S. Department of Commerce, Room 2124, Washington, D.C. 20230; Manny Najera, District Director, U.S. Customs Service, P.O. Box 9516, El Paso, Texas; and Colonel Bernard J. Roth, District Engineer, U.S. Army Engineer District Albuquerque, P.O. Box 1580, Albuquerque, New Mexico 87104.

As part of its investigation, the Examiners Committee will hold a public hearing on October 29, 1980, beginning at 9:00 a.m., in the Plaza Room, 7 Civic Center Plaza, El Paso. The purpose of the hearing is to help inform interested persons about the proposal, to provide an opportunity for their expression of views, and to obtain information useful to the examiners.

Interested parties are invited to present their views at the hearing. They should notify the Board's Executive Secretary of their desire to be heard in writing at the address below or by phone (202/377–2862) by October 22, 1980. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary at any time from the date of this notice through November 28, 1980. Evidence submitted during the post-hearing period is not desired unless it is clearly shown that the matter is new and material and that there are good reasons why it could not be presented at the hearing. A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

U.S. Customs District Office, Bridge of America, Building B, Room 134, P.O. Box 9516, El Paso, Texas 79985.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2006, 14th and E Streets NW., Washington, D.C. 20230.

Dated: September 18, 1980.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 80–29703 Filed 9–24–80; 8:45 am]

BILLING CODE 3510–25–M

International Trade Administration

California Polytechnic State University et. al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

The following is a consolidated decision on applications for duty-free entry of electron microscopes pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301). (See especially § 301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No. 80–00184. Applicant: California Polytechnic State University, Biological Sciences Department, San Luis Obispo, CA 93407. Article: Electron Microscope, Model EM 109. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for biological investigations in projects dealing with morphology of various fungal spores, the comparison of normal and malignant human breast tissue, study of the importance of microfilaments in secretory cells of the pituitary gland, and the remification of the extravascular transfer system in the pituitary gland of amphibians. The article will be used primarily in the course Techniques in Electron Microscopy for undergraduate and graduate students. This course covers not only the theory and practice of electron microscopy, but also the collection and evaluation of photographic data. In addition, the article will be used for demonstrations in other classes, such as General Cytology, Introductory Botany and Introductory Zoology, Senior Project and Special Problems and Thesis. Article ordered: December 14, 1979.

Docket No. 80–00189. Applicant: University of North Carolina, Department of Neurology, 756 Burnett-Womack Building, Chapel Hill, North Carolina 27514. Article: Electron Microscope, Model EM 109 and Accesories. Manufacturer: Carl Zeiss, West Germany. Intended use of articile: The article is intended to be used for the study of the brain in mammals and fishes. In particular, it is intended to study, with immunocytochemical techniques, the chemical identity of dyemarked hypothalamic magnocellular neuroendocrine cells (MgC), the membrane characteristics of the intracellular organelles of these MgC, the presence or absence of gap junctions between MgC and adjacent hypothalamic cells and the ultrastructural details and chemical nature of synaptic junctions onto these MgC. The objectives will be to establish functional and anatomical criteria for the classification of the chemcial types of MgC, in the hypothalamus. Article ordered: December 27, 1979.

Docket No. 80–00190. Applicant: Tufts University School of Medicine, 136 Harrison Avenue, Boston, Massachsetts 02111. Article: Electron Microscope, Model JEM–100S and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used for studies of viruses, cellular organelles and macromolecular complexes, DNA heteroduplexes, antibodies, etc. The experiments to be conducted will include chemical and physical modifications of structures and mixtures with the objective of examinations of fundamental mechanisms of molecular interactions in cells. In addition, the article will be used for the instruction of graduate students, research fellows and faculty so that they can become familiar with use. Article ordered: December 27, 1979.

Docket No. 80–00191. Applicant: Vanderbilt University, Box 1820, Station B, Nashville, Tennessee 37235. Article: Electron Microscope, Model JEM 100S and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used for studies of the ultrastructural characteristics of tissues, cellular membranes and molecules such as nucleic acid microtubules; study intermediates in the recombination of DNA; and locate replication forks on replicating genomes. The main objective to be pursued in the course of these investigations will be to obtain knowledge about the ultrastructure of cells and their components and to study basic biological functions. The article will also be used to instruct staff and students in the use of electron microscopy to solve problems in biology. Article ordered: November 15, 1979.

Docket No. 80–00192. Applicant: San Jose State University, Department of Biological Sciencies, San Jose, California 95192. Article: Electron Microscope Model EM 109. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for examination of cytoskeletal framework of the stratified epithelial cells of frog skins. Each cell layer, from the basal S. Germinativum layers to the outer S. Corneum layers, will be examined from skins in different functional states. Variations in the different layers under these different states will be studied systematically by electron microscopy. These studies are designed to elucidate the general problem of how cells regulate their volumes. In addition, the article will be used in the courses: Cell Ultrastructure, Biology 234, Cell Physiology, Biology 135, Biology 298, Thesis Research to instruct the students in the use of the electron microscope. Article ordered: December 20, 1979.

Docket No. 80–00195. Applicant: Bishop Clarkson Memorial Hospital, 44th & Dewey Avenue, Omaha, Nebraska 68105. Article: Electron Microscope, Model EM 109R. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used to aid and expand existing diagnostic capabilites in the area of surgical pathology. It will also be used in educational programs for post graduate trainees in Internal Medicine, Dermatology and Surgery. One of the objectives of these programs is to incorporate, as much as possible, the most recent knowledge and advances in medicine. This objective can be

beter achieved by the use of a transmission electron microscope which will allow observation and study at a subcellular or organelle level where much of the new knowledge and understanding of disease and its processes is now being pursued. Another objective is to allow better and more specific classifications of disease. Article ordered: November 7, 1979.

Comments: No comments have been received with respect to any of the foregoing applications. Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles for such purposes as these articles are intended to be used, was being manufactured in the United States at the time the articles were ordered. Reasons: Each foreign article to which the foregoing applications relate is a conventional transmission electron microscope (CTEM). The description of the intended research and/or educational use of each article establishes the fact that a comparable CTEM is pertinent to the purposes for which each is intended to be used. We know of no CTEM which was being manufactured in the United States either at the time of order of each article described above or at the time of receipt of application by the U.S. Customs Service.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used which was being manufactured in the United States either at the time of order or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Stanley P. Kramer, Ph. D.,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-29667 Filed 9-24-80; 8:45 am]

BILLING CODE 3510-25-M

University of Southern California; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket Number: 80-00096. Applicant: University of Southern California School of Medicine, Livingston Research Center, 1321 N. Mission Road, Los Angeles, CA 90033. Article: Stomacher Laboratory Blender. Manufacturer: Seward Ltd., United Kingdom.

Intended use of article: The article is intended to be used to blend (homogenize) sanitary menstrual materials collected by women during menstruation in order to measure the amount of blood lost at menses. The study intends to determine how much menstrual blood loss is increased or decreased by various standard and experimental types of intrauterine contraceptive devices (IUDs).

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article prepares samples by pummeling in a plastic bag with a measured amount of caustic solution using paddles that are not in contact with the material being processed. The Department of Health, Education and Welfare advises in its memorandum dated April 9, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Stanley P. Kramer,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-29666 Filed 9-24-80; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

Proposed Federal Information Prrocessing Standard; Magnetic Tape Cassette for Information Interchange, Dual Track Complementary Return-to-Bias Four States Recording (CRB) on 3.81 mm (0.150 in) Tape

Under the provisions of pub. L. 89-306 and Executive Order 11717, the Secretary of Commerce is authorized to establish uniform Federal Automatic Data Processing (ADP) standards. A Federal Information Processing Standards Publication (FIPS PUB), Magnetic Tape Cassette for Information Interchange, Dual Track Complementary Return-to-Bias Four States Recording (CRB) on 3.81 mm (0,150 in) Tape, is being proposed for Federal use. It is based on the Federal adoption of a proposed voluntary industry standard as it has been developed and passed by Technical Committee X3B5 of the American National Standards Institute.

Prior to the submission of this proposal to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the views of manufacturers, the public, and state and local governments. The purpose of this notice is to solicit such views.

The proposed Federal Information Processing Standard contains two sections: (1) an announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specification section, which deals with the technical requirements of the standard. Only the announcement section of the proposal is provided in this notice.

Interested parties may obtain a copy of the technical specifications from and submit comments in writing to the Standards Administration Office, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234. To be considered, comments on this proposed standard must be received on or before (please insert date which is 60 days from the date of publication of this notice in the Federal Register).

Written comments received in response to this notice plus written comments obtained from Federal departments and independent agencies will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, Main Commerce Building, 14th Street between Constitution Avenue and E Street, N.W., Washington, D.C. 20230.

Dated: September 19, 1980.

Ernest Ambler,

Director.

Federal Information Processing Standards Publication——

Date————————.

Announcing the Standard for Magnetic Tape Cassette for Information Interchange, Dual Track Complementary Returns-to-Bias Four States Recording (CRB) on 3.81 mm (0.150 in) Tape

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to the Federal Property and Administrative Services Act of 1949, as amended, Public Law 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations (CFR).

Name of Standard. Magnetic Tape Cassette for Information Interchange, Dual Track Complementary Return-to-Bias Four States

Recording (CRB) on 3.81 mm (0.150 in) Tape (FIPS PUB —).

Category of Standard. Hardware Standard, Interchange Codes and Media.

Explanation. This standard specifies the recorded characteristics for a 3.81 mm (0.150 in) wide magnetic tape cassette with data recorded on two tracks using complementary recordings and a return-to-bias method of encoding in order to provide for digital data interchange between information processing systems. This standard is one of a series of Federal Standards implementing the Federal Standard Code for Information Interchange (FIPS 1) on magnetic tape media.

Approving Authority. Secretary of Commerce.

Maintenance Agency. Department of Commerce, National Bureau op Standards (Institute for Computer Sciences and Technology).

Cross Index. American National Standards Institute document X3B5/75–48, Proposed American National Standard Magnetic Tape Cassette for Information Interchange, Dual Track Complementary Return-to-Bias Four States Recording (CRB) on 3.81 mm (0.150 in) Tape.

Related Documents

a. American National Standard Code for Information Interchange (ASCII), X3.4–1968 (FIPS PUBS 1 and 7), X3.4–1977.

b. American National Standard Code Extension Techniques for Use with the 7–Bit Coded Character Set of American National Standard Code (ASCII) for Information Interchange, X3.41–1974, FIPS PUB 35.

c. American National Standard Magnetic Tape Cassettes for Information Interchange, (3.810 mm (0.150 in) at 32 bpmm (800 bpi) PE), X3.48–1977, FIPS PUB 51.

Applicability. This standard is applicable to the acquisition and use of all magnetic tape cassette recording and reproducing equipment employing 3.81 mm (0.150 in) wide magnetic tape with data recorded on two tracks with complementary recordings using a return-to-bias method of encoding. Federal information processing systems employing such equipment, including associated software, shall provide the capability to accept and generate recorded magnetic tape cassetes in compliance with the requirements set forth in this standard.

Specifications. This standard incorporates by reference the technical specifications of American National Standards Institute document X3 B5/75–48, Proposed American National Standard Magnetic Tape Cassette for Information Interchange, Dual Track Complementary Return-to-Bias Four States Recording (CRB) on 3.81 mm (0.150 in) Tape.

Qualifications. None.

Implementation Schedule. All applicable equipment ordered on or after the date of this FIPS PUB must be in conformance with this standard unless a waiver has been obtained in accordance with the procedure described below. Exceptions to this standard are made in the following cases:

a. For equipment installed or on order prior to the date of this FIPS PUB.

b. Where procurement actions are into the solicitation phase (i.e., Request for Proposals or Invitation for Bids has been issued) on the date of this FIPS PUB.

Waivers. Heads of agencies may request that the requirements of this standard be waived in instances where it can be clearly demonstrated that there are appreciable performance or cost advantages to be gained and that the overall interests of the Federal Government are best served by granting the requested waiver. Such waiver requests will be reviewed by and are subject to the approval of the Secretary of Commerce. The waiver request must address the criteria stated above as the justification for the waiver.

Forty-five days should be allowed for review and response by the Secretary of Commerce. Waiver requests shall be submitted to the Secretary of Commerce, Washington, D.C. 20230, and labeled as a Request for a Waiver to a Federal Information Processing Standard. No agency shall take any action to deviate from the standard prior to the receipt of a waiver approval from the Secretary of Commerce. No agency shall begin any process of implementation or acquisition of non-conforming equipment unless it has already obtained such approval.

Special Information. Federal standards and/or specifications for unrecorded magnetic tape cassettes will be developed and issued by the General Services Administration. Until such time as these are available, American National Standard X3.48–1977, Magnetic Tape Cassettes for Information Interchange, should be cited in Federal procurements.

Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. When ordering, refer to Federal Information Processing Standards Publication —— (NBS–FIPS–PUB ——), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 80–29630 Filed 9–24–80; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Commercial Ocean Thermal Energy Conversion Environmental Impact Statement; Notice of Public Scoping Meeting

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of public scoping meeting on ocean thermal energy conversion environmental impact statement.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is preparing an environmental impact statement (EIS) on the licensing regulations for ocean thermal energy conversion (OTEC) facilities and plantships to be issued by NOAA under authority of the Ocean Thermal Energy Conversion Act of 1980, Pub. L. No. 96–320 (the Act). The requirements of the Council on Environmental Quality (CEQ) regulations to implement the National Environmental Policy Act (NEPA), 40 CFR Parts 1500–1508, apply to preparation of the EIS. Specifically, 40 CFR 1501.7 requires an early and open "scoping" process to determine the scope of environmental issues to be addressed and the significant issues related to the proposed Federal action. This notice and the public scoping meeting announced in it are part of NOAA's actions to comply with the scoping requirements.

DATE: A public scoping meeting will be held from 9:00 a.m. to 12:00 p.m., on October 30, 1980, in Room 4830 of the Department of Commerce Building, located on 14th Street, between E Street and Constitution Avenue, N.W., Washington, D.C. Written comments will also be accepted until November 7, 1980.

FOR FURTHER INFORMATION CONTACT: For further information regarding development of the ocean thermal energy conversion environmental impact statement or the public scoping meeting, contact Lowell F. Martin, Office of Ocean Minerals and Energy, National Oceanic and Atmospheric Administration, Room 410, Page Building No. 1, 2001 Wisconsin Avenue, N.W., Washington, D.C. 20235, Telephone: (202) 653–7695.

SUPPLEMENTARY INFORMATION: Under the Act, NOAA is required to establish by rule a comprehensive program for issuance of licenses for ownership, construction, and operation of ocean thermal energy conversion facilities and plantships. The Administrator of NOAA has decided to prepare an EIS on the selection of a regulatory strategy that will implement that program. The EIS will (a) assess the environmental impacts associated with development of OTEC as a commercial energy technology; (b) describe and compare alternative strategies for the development of regulations; (c) set forth a preferred alternative strategy; and (d) identify areas where more information is needed or desirable.

Based on discussions with the Department of Energy, Department of Transportation, Environmental Protection Agency, and other involved Federal agencies and upon responses to this notice and comments received in the scoping meeting, NOAA will develop the draft EIS. The draft EIS will be published in early March, 1981. Comments on the draft will be solicited and evaluated in accordance with 40 CFR 1503.

The following preliminary table of contents for the EIS has been developed for discussion purposes:

1. Cover sheet and abstract
2. Summary
3. Table of contents
4. Purpose of and need for the action
5. Alternatives, including the proposed action—This section will evaluate reasonable alternatives for the regulation of OTEC facilities and plantships, including those not within NOAA's jurisdiction, in comparative form. NOAA's preferred alternative for each area of regulation will be identified, as will appropriate measures not already included in the proposed action or alternatives that might mitigate adverse environmental impacts.

5.1. Administrative alternatives.
5.1.1. Nonlicensing approaches.
5.1.2. Information to be included in license applications.
5.1.3. Procedures for evaluating license applications.
5.1.4. Criteria for issuing licenses.
5.1.5. Procedures for ensuring compliance.
5.2. Environmental protection alternatives.
5.2.1. Balance of generic and site-specific regulations.
5.2.2. Discharge limits and operational safeguards to be imposed on OTEC plantships and facilities.
5.2.3. Site evaluation and preconstruction testing criteria.
5.2.4. Site selection criteria.
5.2.5. Upper limit on total number or capacity of OTEC facilities and plantships to be licensed.
5.3. Prevention of interference with other uses of the high seas.
5.3.1. Mechanisms for controlling interference.
5.3.2. Thermal interference between OTEC facilities and plantships.
5.3.3. Interference with navigation, fishing, energy production, scientific research, and other uses.
5.4. Summary of preferred licensing regime.

6. Affected environment—This section will describe the physical, chemical, and biological environment of deep ocean and coastal areas that may be affected by OTEC facilities and plantships operating under the alternative regulatory regimes under consideration.

6.1. Deep ocean.
6.2. Atmosphere.
6.3. Coastal areas.

7. Environmental consequences—This discussion will identify impacts of OTEC operations under the alternatives described in Section 5, including adverse environmental impacts which cannot be avoided. The relationship between commercial OTEC development and enhancement of long-term productivity will be covered. Irreversible or irretrievable commitments of resources involved in implementing OTEC operations under the proposed licensing regime will be described.

7.1. Direct deep ocean consequences.
7.1.1. Displacement of ocean water mass.
7.1.2. Local climate alteration.
7.1.3. Entrainment and/or impingement of marine organisms.
7.1.4. Biofouling prevention.
7.1.5. Working fluid leaks.
7.1.6. Corrosion and erosion of metal surfaces.
7.1.7. Artificial reef effects.
7.1.8. Crew support system discharges.
7.1.9. Transfer of products and supplies.
7.2. Direct Coastal consequences.
7.2.1. OTEC fabrication and deployment.
7.2.2. Electrical transmission cables.
7.2.3. Product pipelines.
7.2.4. Product processing facilities.
7.2.5. Onshore electrical facilities (transmission lines, dc/ac converters).
7.3. Cumulative, indirect and long-term effects.
7.3.1. Energy supply and demand.
7.3.2. Global environmental effects.
7.3.3. Impact on other governmental policies, plans, and controls.

8. List of preparers and their qualifications.
9. List of agencies, organizations, and persons to whom sent.
10. Index.
11. Appendices.

A discussion paper which focuses on issues related to Sections 4—Purpose and need; 6—Affected environment; and 7—Environmental consequences; will be available to the public after October 6, 1980. Copies may be requested from NOAA's Office of Ocean Minerals and Energy at the address given above.

Dated: September 19, 1980.

Francis J. Balint,

Acting Director, Office of Management and Computer Systems.

[FR Doc. 80-29697 Filed 9-24-80; 8:45 am]

BILLING CODE 3510-12-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and, possibly, foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of patents cited are available from the Commissioner of Patents & Trademarks, Washington, D.C. 20231, for $.50 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $5.00 each ($10.00 outside North American Continent). Requests for copies of patent applications must include the PAT-APPL number. Claims are deleted from patent application copies sold to avoid premature disclosure. Claims and other technical data will usually be made available to serious prospective licensees upon execution of a non-disclosure agreement.

Requests for information on the licensing of particular inventions should be directed to the addresses cited for the agency-sponsors.

Douglas J. Campion,

Program Coordinator, Office of Government Inventions and Patents, National Technical Information Service, U.S. Department of Commerce.

U.S. Department of Agriculture, Program Agreements and Patent Branch, Administration Service Division Federal Building, Science and Education Administration, Hyattsville, Md. 20782

Patent application 6,132,595: Ketose Sugars, filed Mar. 21, 1980.
Patent application 6,135,850: Carbon Dioxide Analyzer for Greenhouses; filed Mar. 31, 1980.
Patent 4,186,608: Method and Apparatus for Verifying Declared Contents of Contents of Certain Solids; filed July 17, 1978, patented Feb. 5, 1980, not available NTIS.
Patent 4,196,149: Ternary Salts of Tris(aminomethyl)Phosphines and their Oxides; filed Nov. 29, 1978, patented Apr. 1, 1980, not available NTIS.
Patent 4,204,859: Method of Increasing the Yield of Hydrocarbons from Plants; filed Mar. 31, 1978, patented May 27, 1980, not available NTIS.
Patent 4,205,133: Apparatus for Fermenting Liquids; filed Apr. 26, 1978, patented May 27, 1980, not available NTIS.

U.S. Department of Energy, Assistant General Counsel for Patents, Washington, D.C. 20545

Patent application 6,015,256: Solar Tracking Apparatus; filed Feb. 26, 1979.
Patent application 6,015,257: Reactor and Method for Hydrocracking Carbonaceous Material; filed Feb. 26, 1979.
Patent application 6,015,258: Process for Hydrocracking Carbonaceous Material to Provide Fuels or Chemical Feed Stock; filed Feb. 26, 1979.
Patent application 6,016,037: Method of Controlling Switching of a Multiphase Inductor-Converter Bridge; filed Feb. 28, 1979.
Patent application 6,017,299: Coal Liquefaction in an Inorganic-Organic Medium; filed Mar. 5, 1979.
Patent application 6,025,629: Method of Preparing Porous, Rigid Ceramic

Separators for an Electrochemical Cell; filed Mar. 30, 1979.

Patent application 6,029,963: Process for Hydrocracking Carbonaceous Material in Liquid Carrier; filed Apr. 13, 1979.

Patent application 6,039,986: Novel Fisher-Tropsch Catalysts; filed May 17, 1979.

Patent application 6,052,716: Trace Desulfurization; filed June 27, 1979.

Patent 4,085,590: Hydride Compressor; filed Jan. 5, 1976, patented Apr. 25, 1978, not available NTIS.

Patent 4,172,236: Loss-Free Method of Charging Accumulator Rings; filed June 16, 1978, patented Oct. 23, 1979, not available NTIS.

Patent 4,174,190: Annular Linear Induction Pump with an Externally Supported Duct; filed June 30, 1977, patented Nov. 13, 1979, not available NTIS.

Patent 4,176,093: Neutron Absorbing Room Temperature Vulcanizable Silicone Rubber Compositions, filed Feb. 22, 1977, patented Nov. 27, 1979, not available NTIS.

Patent 4,180,736: Use of a Large Time-Compensated Scintillation Detector in Neutron Time-of-Flight Measurements; filed Sept. 25, 1978, patented Dec. 25, 1979, not available NTIS.

U.S. Department of Transportation, Patent Counsel, 400 7th Street S.W., Washington, D.C. 20590

Patent application 6,158,907: Hand-Held Railroad Data Acquisition System; filed June 12, 1980.

U.S. Department of the Navy, Assistant Chief for Patents, Office of Naval Research, Code 302, Arlington, VA 22217

Patent application 6,125,004: Seal for Situ Replacement on a Rotatable Shaft; filed Feb. 27, 1980.

National Aeronautics and Space Administration, Assistant General Counsel for Patent Matters, NASA Code GP-2, Washington, D.C. 20546

Patent application 6,145,207: Potential Heat Exchange Fluids for Use in Sulfuric Acid Vaporizers; filed Apr. 30, 1980.

Patent 4,198,792: Chelate-Modified Polymers for Atmospheric Gas Chromatography; filed June 30, 1978, patented Apr. 22, 1980, not available NTIS.

Patent 4,199,448: Reverse Osmosis Membrane of High Urea Rejection Properties; filed June 9, 1976, patented Apr. 22, 1980, not available NTIS.

[FR Doc. 80-29696 Filed 9-24-80; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Department of the Army

Partially Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463), announcement is made of the following Committee meeting:

Name of committee: United States Army Medical Research and Development Advisory Panel Ad Hoc Study Group on Bacterial Diseases.

Date of Meeting: 20 & 21 October 1980.

Time and Place: 0845 hours, Room 3092, Walter Reed Army Institute of Research, Washington, DC.

Proposed Agenda: This meeting will be open to the public on 20 October 1980 from 0845 to 1015 to discuss the scientific research program of the Bacterial Diseases Branch, Walter Reed Army Institute of Research. Attendance by the public at open sessions will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of P.L. 92-463, the meeting will be closed to the public on 20 October 1980 from 1015 to 1630 for the review, discussion and evaluation of individual programs and projects conducted by the U.S. Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. If the review of research proposals requires additional time, the closed portion of the meeting may be extended into 21 October.

Dr. Howard Noyes, Associate Director for Research Management, Walter Reed Army Institute of Research, Building 40, Room 1111, Walter Reed Army Medical Center, Washington, DC 20012 (202/576-3061) will furnish summary minutes, roster of Committee members and substantive program information.

For the Commander.

Harry G. Dangerfield, M.D.,

Colonel, MC, Deputy Commander.

[FR Doc. 80-29648 Filed 9-24-80; 8:45 am]

BILLING CODE 3710-08-M

Bonus Awards Schedule for Senior Executive Service (SES)

ACTION: Notice.

SUMMARY: Notice is hereby given of the schedule and numbers of bonuses to be awarded senior executives in Department of the Army.

EFFECTIVE DATE: September 23, 1980.

FOR FURTHER INFORMATION CONTACT: Carol D. Smith, Chief, Senior Executive Service Office, Directorate of Civilian Personnel, Headquarters, Department of the Army, the Pentagon, Washington, D.C. 20310, (202) 697-2169.

SUPPLEMENTARY INFORMATION: In accordance with the general recommendations provided in the Office of Personnel Managements' memo of July 21, 1980, following information is provided:

Number of bonuses awarded	Percentage of current base pay awarded
3	20.
3	17-19.
7	12-16.
39	11 and below.

The bonuses are currently scheduled for payment prior to October 31, 1980.

Carol D. Smith,

Chief, Senior Executive Service Office.

[FR Doc. 80-29647 Filed 9-24-80; 8:45 am]

BILLING CODE 3710-08-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1615-6]

Water Quality Standards; Navigable Waters of the State of Georgia

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of State water quality standards approval.

SUMMARY: The Environmental Protection Agency has approved water quality standards revisions adopted by the State of Georgia. These revisions become part of the State's water quality standards contained in the document "Classifications for the Waters of the State of Georgia and Rules and Regulations for Water Quality Control."

FOR FURTHER INFORMATION CONTACT:

R. F. McGhee, Water Division, Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365, 404-881-4793.

SUPPLEMENTARY INFORMATION: On January 38, 1980, EPA, Region IV, approved revisions to Georgia's water quality standards resulting from the State's triennial review pursuant to Section 303(c) of the Clean Water Act. These revisions upgraded the beneficial use for two stream segments to "Fishing".

The revisions are consistent with the Clean Water Act as interpreted in the Agency's water quality standards regulations at 40 CFR 35.1550.

AVAILABILITY: Copies of the revisions may be obtained from the Georgia Department of Natural Resources, Environmental Protection Division, 270 Washington Street, S.W., Room 822, Atlanta, GA 30334.

(Sec. 303(c) of the Clean Water Act, as amended [33 U.S.C. 1313(c)])

Dated: September 18, 1980.

Eckardt C. Beck,

Assistant Administrator for Water and Waste Management.

[FR Doc. 80-29655 Filed 9-24-80; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1616-1]

Water Quality Standards; Navigable Waters of the Trust Territory of the Pacific Islands

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of Trust Territory water quality standards approval.

SUMMARY: The Environmental Protection Agency has approved water quality standards revisions adopted by the Trust Territory of the Pacific Islands. These revisions become part of the Trust Territory's water quality standards contained in the documents: Public Health, Safety and Welfare, Chapter 13, Air, Land and Water Pollution, Subchapter VII, Marine and Fresh Water Quality Standard Regulations.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Covington, Environmental Protection Agency, Region IX, 215 Freemont Street, San Francisco, California 94111, (415) 556-2320.

SUPPLEMENTARY INFORMATION: On August 4, 1980, EPA, Region IX approved the water quality standards adopted by the Trust Territory of the Pacific Islands on March 3, 1980. The standards were completely revised and the numerical criteria coverage increased. These revisions are consistent with the Clean Water Act as interpreted in the Agency's water quality standards regulations at 40 CFR 35.1550.

AVAILABILITY: Copies of the water quality standards may be obtained from the Environmental Protection Board, Office of High Commissioner, Trust Territory of the Pacific Islands, Saipan, CM 96950.

Authority: Section 303(c) of the Clean Water Act as amended [33 U.S.C. 1313(c)].

Dated: September 18, 1980.

Eckardt C. Beck,

Assistant Administrator for Water and Waste Management.

[FR Doc. 80-29656 Filed 9-24-80; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1616-2]

Water Quality Standards; Navigable Waters of the State of California

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of State water quality standards approval.

SUMMARY: The Environmental Protection Agency has approved water quality standards revisions adopted by the State of California on August 16, 1978, by means of Resolution 78-43. These revisions become part of the State's water quality standards for the San Francisco Bay Basin and the Sacramento-San Joaquin Delta Basin as contained in the Water Quality Control Plan for the Sacramento-San Joaquin Delta and Suisun Marsh (Delta Plan).

FOR FURTHER INFORMATION CONTACT: Mr. Frank Covington, Environmental Protection Agency, Region IX, 215 Freemont Street, San Francisco, California 94111, (415) 556-2320.

SUPPLEMENTAL INFORMATION: On August 28, 1980, Region IX approved revision to California's water quality standards in accordance with Section 303(c) of the Clean Water Act. These revisions specify salinity control and outflow needs of Delta water supplies with principal focus on current and near-term conditions.

AVAILABILITY: Copies of the water quality standards may be obtained from the California State Water Resources Board, P.O. Box 100, Sacramento, California 75801.

(Sec. 303(c) of the Clean Water Act, as amended [33 U.S.C. 1313 (c)])

Dated: September 18, 1980.

Eckardt C. Beck,

Assistant Administrator for Water and Waste Management.

[FR Doc. 80-29657 Filed 9-24-80; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1615-6F]

Water Quality Standards; Navigable Waters of the State of North Carolina

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of State water quality standards approval.

SUMMARY: The Environmental Protection Agency has approved water quality standards revision adopted by the State of North Carolina on May 8 and June 12, 1980. These revisions become part of the State's "Classifications and Water Quality Standards Applicable to Surface Waters of North Carolina."

FOR FURTHER INFORMATION CONTACT: R. F. McGhee, Water Division, Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365, 404/881/4793.

SUPPLEMENTARY INFORMATION: On August 18, 1980, EPA, Region IV, approved revisions to North Carolina's water quality standards in accordance with Section 303(c) of the Clean Water Act. These revisions upgraded the beneficial use for three stream segments as follows:

Sandy Creek (from dam at Southerlands Pond to Franklin County SR 1412)—Class B.

Big Creek Arm of Lake Sequoyah (From source to U.S. Hwy 64 Bridge)—Class A-II Trout.

Welch Creek (From Seaboard Coast Line Railroad Bridge to Roanoke River)—Class C-Sw.

The revisions are consistent with the Clean Water Act as interpreted in the Agency's water quality standards regulations at 40 CFR 35.1550.

AVAILABILITY: Copies of the revisions may be obtained from the North Carolina Dept. of Natural Resources, Division of Environmental Management, P.O. Box 27687, Raleigh, North Carolina 27611.

(Sec. 303(c) of the Clean Water Act, as amended [33 U.S.C. 1313(c)])

September 18, 1980.

Eckardt C. Beck,

Assistant Administrator for Water and Waste Management.

[FR Doc. 80-29658 Filed 9-24-80; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL COMMUNICATIONS COMMISSION

AM Broadcasting in Region 2 Advisory Committee, Reorganization Meeting and Organizational Meetings of the Technical and Allocations Subgroups

The following open meetings will be held on Tuesday, October 14, 1980, at the times stated below, in Room A-110 of the FCC Annex, 1229 20th St., NW., Washington, D.C.:

A. The eighth meeting of the Advisory Committee on Radio Broadcasting (formerly the Advisory Committee on AM Broadcasting in Region 2) starting at 9:30 A.M. The agenda will be:

1. Call to order by the Chairman;
2. Announcements;
3. Approval of minutes of previous meetings;
4. Reorganization of the Committee, and the assignment of functions to two informal subgroups:
   a. Subgroup on Radio Spectrum Allocations
   b. Subgroup on Technical Matters;
5. Summary of activities of September, 1980 meeting of the CITEL Working Group and the Panel of Experts respecting technical matters;
6. Other technical reports;

7. Summary of developments on drafting of Region 2 agreement;
8. Other business;
9. Future meeting dates;
10. Adjournment.

B. The organizational meeting of the Subgroup on Radio Spectrum Allocations, starting upon conclusion of the full Committee meeting. The agenda will be:

1. Call to order;
2. Organization of the Subgroup;
3. Report on status of pending issues concerning radio broadcasting allocations, objectives, and methods;
4. Discussion of the report submitted under item 3;
5. Formulation of plans for the work of the subgroup, and the assignment of tasks to be performed and reported by designated persons;
6. Other business;
7. Next meeting date;
8. Adjournment.

C. The organizational meeting of the Subgroup on Technical Matters, starting upon conclusion of the previous Subgroup. The agenda will be:

1. Call to order;
2. Organization of the subgroup;
3. Identification and discussion of unresolved technical questions;
4. Assignment of tasks to be performed and reported to the subgroup;
5. Other business;
6. Next meeting date;
7. Adjournment.

If it should not be possible to complete consideration of an entire agenda on October 14, 1980, that meeting will be continued at an announced date and time.

All interested parties are invited to participate and may submit comments, addressed to Mr. Henry L. Baumann, Chairman, Advisory Committee on Radio Broadcasting, Federal Communications Commission, Washington, D.C. 20554.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-29708 Filed 9-24-80; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 80-548, File No. 20774-CD-P-(2)-78, and CC Docket No. 80-549, File No. 21187-CD-P-78]

Central Radio Telephone, Inc., and Mobile Radio System of San Jose, Inc., Memorandum Opinion and Order Designating Applications for Consolidated Hearing

Adopted September 8, 1980.

Released: September 29, 1980.

In the matter of Applications of: Central Radio Telephone, Inc., for a construction permit to add frequency 454.075 MHz to Station KMM599 located at Palo Alto, California, and to add a tramsmitter to Station KMM599 to operate on frequency 454.075 MHz in the Domestic Public Land Mobile Radio Service at San Jose, California (CC Docket No. 80-548, File No. 20774-CD-P-(2)-78); and Mobile Radio System of San Jose, Inc., for a construction permit to add a transmitter to operate on frequency 454.075 MHz in the Domestic Public Land Mobile Radio Service near Los Altos, California (CC Docket No. 80-549, File No. 21187-CD-P-78).

By the Chief, Common Carrier Bureau:

1. Presently before the Chief, Common Carrier Bureau, pursuant to delegated authority, are the above-captioned applications of Central Radio Telephone, Inc. (Central) and Mobile Radio System of San Jose, Inc. (Mobile). Central has filed a petition to deny the Mobile application or designate it for hearing. Responsive pleadings have been filed.

2. These applications are electrically mutually exclusive because they both propose to operate on the same frequency in the same general area. Thus, a comparative hearing will be held to determine which applicant would better serve the public interest. We find the applicants to be otherwise qualified, except as noted herein.

3. The Central petition raised the following issues for our consideration:

(a) whether Mobile has filed a strike application; and

(b) whether Mobile has demonstrated adequate public need for its proposed services.

4. *Strike application.* Central, in its petition, charged that the Mobile request is a strike application. In support, Central alleged that Mobile filed its application just before the expiration of the 60-day cutoff period for filing applications mutually exclusive with the Central application. Central also stated that Mobile could have selected frequency 454.050 MHz, which would accommodate Mobile's proposed system design as well as 454.075 MHz, but that Mobile elected to request the latter frequency in order to be electrically mutually exclusive with the Central application and thus delay the processing of it. In response, Mobile stated that frequency 454.050 MHz would be technically inferior to frequency 454.075 MHz because Mobile would receive interference on 454.050 MHz, although it would not cause interference to other stations. In addition, Mobile noted that Central has presented no extrinsic evidence of improper motive on the part of Mobile. After reviewing all of the information provided on this matter, we believe that Central has not presented sufficient information to raise a substantial question regarding whether Mobile's motive or purpose was to obstruct or delay the Central application. *See Grenco, Inc., et al.*, 28 FCC 2d 166, 167 (1971). Accordingly, we will not designate a strike issue for hearing.

5. *Need.* Central charged that Mobile has not adequately demonstrated a need for the additional channel it requests because it has submitted the traffic loading study required by Section 22.516 of our Rules for only one of its three existing frequencies. In response, Mobile argued that traffic loading studies need not be submitted for its other two existing frequencies because they provide automatic service while the proposed frequency and the existing frequency for which a traffic loading study has been submitted are manual.

6. Section 22.516 of our Rules requires applicants requesting additional channels to submit data showing the actual traffic loading on each channel assignment of their present radio systems. It contains no exemption for channels operated in a mode different from the proposed for the requested additional frequencies and we have consistently required traffic loading studies for all existing frequencies in order to demonstrate a need for additional frequencies. Therefore, we will designate for hearing an issue as to whether Mobile has adequately demonstrated a need for the additional channel it requests.

7. Accordingly, it is ordered, that the petition to deny application or to designate it for hearing filed by Central Radio Telephone, Inc., in File No. 21187-CD-P-78, is granted in part and is denied in part, to the extent noted herein, and that the above-referenced application of Central Radio Telephone, Inc., File No. 20774-CD-P-(2)-78, and the application of Mobile Radio System of San Jose, Inc., File No. 21187-CD-P-78, are designated for hearing in a consolidated proceeding, pursuant to Section 309(e) of the Communications Act of 1934, as amended, upon the following issues:

(a) to determine whether Mobile Radio System of San Jose, Inc. has demonstrated a need for an additional frequency;

(b) to determine and compare the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(c) to determine and compare the areas and populations that each applicant will serve within the

prospective 39 dBu contours, based upon the standards set forth in § 22.504(a) of the Commission's Rules [1], and to determine and compare the need for the proposed services in said areas; and

(d) to determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the above-referenced applications would best serve the public interest, convenience, and necessity.

8. It is further ordered, that with respect to issue (a) the burden of proof and the burden of proceeding with the introduction of evidence are placed upon Mobile Radio System of San Jose, Inc.

9. It is further ordered, that, with respect to issues (b), (c), and (d) the burden of proof and the burden of proceeding with the introduction of evidence are placed jointly on the applicants.

10. It is further ordered, that the hearing shall be held at the Commission offices at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

11. It is further ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

12. It is further ordered, that the applicants may avail themselves of an opportunity to be heard by filing with the Commission pursuant to § 1.221(c) of the Rules within 20 days of the release date hereof, a written notice stating an intention to appear on the date for the hearing and present evidence on the issues specified in this Memorandum Opinion and Order.

13. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

Philip L. Verveer,

Chief, Common Carrier Bureau.

[FR Doc. 80-29711 Filed 9-24-80; 8:45 am]

BILLING CODE 6712-01-M

Radio Broadcasting Advisory Committee; Charter Amendment

The General Services Administration (GSA) has approved a charter amendment for the Advisory Committee on AM Broadcasting in Region 2. The changes were made in response to a petition to the Commission from several organizations in the radio broadcast industry. The responsibilities of the Committee are increased and the name changed to "Advisory Committee on Radio Broadcasting." There are two new informal subgroups, titled "Subgroup on Radio Spectrum Allocations" and "Subgroup on Technical Matters." In addition to advising the Commission staff on preparation for the Region 2 Administrative Radio Conference on AM Broadcasting, the Committee as revised will study and advise the Commission on appropriate allocations objectives and technical standards of AM and FM broadcast stations.

To make it possible for the Committee and its subgroups to provide timely advice and information, it is important that the membership be ready to begin work as soon as possible. The Commission invites parties interested in participating in the work of the Committee or its subgroups to notify Mr. Henry L. Baumann, Chairman, Advisory Committee on Radio Broadcasting, Federal Communications Commission, Washington, D.C. 20554, and to participate in meetings of the Committee and subgroups, to be announced separately. The Commission encourages a balanced representation of diverse interests, views, and experiences in the radio broadcast field, including minorities and women.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-29707 Filed 9-24-80; 8:45 am]

BILLING CODE 6712-01-M

Marine Services; Radio Technical Commission; Meetings

In accordance with Pub. L. 92-463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

Special Committee No. 74, "Digital Selective Calling", Notice of 16th Meeting, Tuesday, October 7, 1980—9:00 a.m., Conference Room 7204, Nassif (DOT) Building, 400 Seventh Street, SW (at D Street), Washington, DC.

Agenda

1. Call to Order; Chairman's Report.
2. Administrative Matters.
3. Meeting of Ship Station Safety Working Group and Coast Station Working Group.
4. Working Group Reports.
5. Future work assignments.

CDR J.G. Williams, Chairman, SC-74, U.S. Coast Guard Headquarters, Washington, DC, Phone: (202) 426-1345.

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman or the RTCM Secretariat (phone: (202) 632-6490).

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-29710 Filed 9-24-80; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 80-479, File No. BRH-589, et al.; FCC 80-529 28108]

United Broadcasting Co., Inc.; et al.; Memorandum Opinion and Order Designating Applications for Consolidated Hearing

In the matter of Applications of: United Broadcasting Company, Inc., Washington, D.C. For Renewal of License of Station WOOK(FM), Washington, D.C. (BC Docket No. 80-479, File No. BRH-589); District Broadcasting Company, Washington, D.C. Req: 100.3 MHz, Channel No. 262 20 kW (H&V), 447 feet (H&V), (BC Docket No. 80-480, File No. BPH-780831AY); and Hispanic Broadcasting Corporation, Washington, D.C. Req: 100.3 MHz, Channel No. 262 20 kW (H&V), 485 feet (H&V), (BC Docket No. 80-481, File No. BPH-780901AB; for Construction Permits.

Adopted: September 10, 1980.

Released: September 30, 1980.

By the Commission:

1. The Commission has before it for consideration the above-captioned application of United Broadcasting Company, Inc. (United) for renewal of its license for Station WOOK(FM), Washington, D.C.; petitions to deny that application timely filed by the Metropolitan Washington Coalition for Latino Radio (Coalition) and by the Hispanic Broadcasting Corporation (Hispanic); the mutually exclusive applications of Hispanic and of District Broadcasting Company (District) for construction permits for new stations on the WOOK(FM) frequency; and various related pleadings.

2. *Procedural Issues.* When the cut-off date of April 2, 1979 was set with regard to these applications, a deadline for the filing of petitions to specify issues was automatically established as June 18, 1979, in accordance with Commission Rules in effect at that time. However, on June 1, 1979, the Commission adopted

[1] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 39 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in two-way communications service and operating on frequencies in the 450-460 MHz band. Propagation data set forth in § 22.540(b) of the Rules are the proper bases for establishing the location of service contours (F50,50) for the facilities involved in this proceeding.

new procedures for the processing of contested applications, which provided for the submission of petitions to specify issues directly to the presiding Administrative Law Judge within a specified period of time after the applications are designated for hearing. *Revised Procedures for the Processing of Contested Applications*, 72 FCC 2d 202, 45 RR 2d 1220 (1979). Those procedures became effective on June 18, 1979. They provided that in any proceedings for which the filing deadline had already passed, the old procedures would apply, and that in proceeings for which a deadline had not yet been set, the new procedures would apply. However, no provision was specified for cases such as this one, where the deadline for filing issue pleadings under former § 1.584 was set but had not passed when the new procedures became effective.[1] *Revised Procedures, supra*, para. 63. Nevertheless, Hispanic and District filed predesignation petitions to specify issues on June 18, 1979. United, however, did not. Instead, due to uncertainty as to the appropriate procedures, United filed a petition for declaratory ruling seeking clarification of the pleading procedures to be followed, and a protective motion for an extension of time to allow it to file predesignation pleadings if the old procedures were applied in this case. In order to achieve the most equitable and expeditious resolution of this matter, we will permit the parties to direct requests for issue enlargement to the Administrative Law Judge in accordance with § 1.229 of our rules.[2] [3] Thus, the various predesignation pleadings submitted by Hispanic and District will be dismissed.

3. *United's Renewal Application.* United's renewal application has been challenged in two petitions to deny, filed by Hispanic and by the Coalition. Hispanic argues that United has repeatedly demonstrated that it lacks the requisite character to remain a Commission licensee, and, thus, should not be included in the comparative hearing for the WOOK(FM) frequency. It points to the denial of United's renewal application for Station WFAB, Miami, Florida for repeated rule violations,[4] and the denial of its renewal application for Station WOOK(AM), Washington, D.C. for a variety of technical and operational violations,[5] as conclusive evidence of United's disqualifying shortcomings. Hispanic makes no specific claims of misconduct in United's operation of the WOOK(FM) facility,[6] and proposes that as no facts are thus in question, a hearing is unnecessary and the issue can be resolved in the contexts of an oral argument. The petitioner argues that United's statutory rights are essentially protected by this procedure, and that if United is to be found unfit on the basis urged, this procedure will expedite the resolution of that issue, and consequently simplify the comparative hearing for the frequency.

4. United responds that a character issue has not been raised with respect to its conduct at WOOK(FM), arguing that the findings with regard to its conduct at its other stations are limited to the disposition of those licenses. It further maintains that if its character is in question, Section 309(e) of the Communications Act of 1934, as amended, absolutely requires that a full evidentiary hearing be held if the renewal of its license is at stake.

5. This issue will be held in abeyance pending further consideration by the Commission. However, in order to expedite the commencement of the hearing on these applications, they will be designated herein, with the Commission retaining jurisdiction over resolution of the effect of United's past misconduct on its basic and/or comparative qualifications.[7]

6. The Coalition argues in its petition to deny that the circumstances surrounding United's exchange of formats between its two Washington, D.C. stations (just prior to the Court of Appeal's affirmance of the Commission's denial of the license renewal for United AM station) raise a question of the licensee's candor, both with the Commission and with the public. The petitioner contends that it was repeatedly assured by the licensee that the station maintained a commitment to broadcasting to the Spanish-speaking community, and that United specifically requested that the Coalition rely on its assurances of that commitment rather than take legal action.[8] It argues that further evidence of United's improbity is its veiling of its actual intent to drop the Spanish-language format when it presented the format exchange to the Commission.[9] It also charges that a unique format was abandoned by United, and that *Citizen's Committee to Save WEFM* v. *F.C.C.*, 506 F. 2d 246 (1974), requires the Commission to make a determination of whether the loss of that format is in the public interest.[10]

7. United insists that none of the representations made to the Commission or members of the public concerning its Spanish-language format were untrue when they were made. It also argues that a hearing issue is not warranted on the public interest considerations of the format loss, contending that the Coalition has not shown the degree of "public grumbling" necessary to warrant such an issue, and that the Coalition has not shown that United's operation of that format is financially viable. If further contends that the format was not abandoned by United, but rather eliminated by the Commission and the Court of Appeals in their actions which denied the renewal application for United's AM station. (See fn. 5, above) United finally urges that an issue considering whether United abandoned a unique format contrary to the public interest should not be raised here, as that resolution would prejudge one of the potential

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[1] In fact, petitions to specify issues were due on the very day that our new procedures became effective.

[2] District requested in its petition to specify issues that a character issue be drawn against United on the basis of its past misconduct at other stations. As that request is raised in Hispanic's petition to deny, and United has responded in its opposition to that petition, it will be considered in conjunction with that petition.

[3] To the exent that United's Requests for a Declaratory Ruling seeks clarification of the pleading procedures to be followed here, it is granted. United's Motion for Extension of Time is rendered moot, and therefore dismissed.

[4] *United Broadcasting Co. of Florida, Inc. (WFAB)* 55 FCC 2d 832, 35 RR 2d 119 (1975), *recon. den.*, 60 FCC 2d 816, 38 RR 2d 225 (1976).

[5] *United Television Co, Inc. (WOOK)* 55 FCC 2d 416, 34 RR 2d 1465 (1975), *recon. den.*, 59 FCC 2d 663, 37 RR 2d 503 (1976), *aff'd sub nom. United Broadcasting Co., Inc.* v. *F.C.C.*, 565 F. 2d 699, 40 RR 2d 1646 (D.C. Cir. 1977), *cert. den.*, 434 U.S. 1046 (1978).

[6] Hispanic does point out that WOOK(FM) (then WFAN) shared for many years the same building and technical staff with United's AM station which lost its license for technical and other violations.

[7] In this connection we note that on July 3, 1980, District filed a Petition for Immediate Designation for hearing and suggested therein that the Commission should immediately designate the comparative proposals of the parties for hearing even if the Commission chose to delay disposition on the issue of United's past misconduct.

[8] This contention is supported by the affidavit of two members of the Coalition, which recounts meetings held between those persons and United.

[9] In presenting its format exchange to the Commission, United stated that "the change will not materially reduce or alter the program service available to either the Spanish-language or the Black communities in the Washington area. Indeed, both communities will continue to receive the full panoply of service which was provided by the stations prior to the switch in formats." (January 1977 amendment to the 1975 WOOK(FM) renewal application.)

[10] On September 30, 1975, the Commission denied United's application for renewal of its AM station in Washington (*WOOK, supra*). At that time the AM station carried a Black-oriented program format, and United's FM station in Washington carried a Spanish-language format. After reconsideration was denied (*WOOK, supra*), an appeal was taken by United to the Court of Appeals. Four months later United requested a swap of the call signs of its AM and FM stations, which was approved, and United swapped the formats between the two stations. The following month United amended its pending FM renewal application to reflect that change. A protest of that change was denied by the Commission staff in June, 1977. (See *In re Oppenheimer*, 65 FCC 2d 443 (1977).) Thus, when the Court of Appeals affirmed the Commission's denial of the AM renewal application, (*United Broadcasting Co., Inc.*, v. *F.C.C., supra*), it was the Spanish-language format which was eliminated from the air.

comparative issues in the consolidated hearing anticipated for the license, i.e., whether Hispanic merits a programming preference for its Spanish-language programming proposal.

8. The evidence before us does not raise a substantial question of any attempt by United to purposely deceive the public or the Commission about its intentions concerning its programming policies. There is no indication that it did not intend to continue its service to the Spanish-speaking community in some capacity when such representations were made, or that it fully anticipated the loss of its AM station and had any contingent programming plans when the representations of which the Coalition complains were made. Thus, a hearing issue is not warranted in this regard. There may be a question as to whether a unique format was lost when United's Spanish-language programming went off the air. However, it is not necessary to reach that question here. One of the competing applicants, Hispanic, has proposed a Spanish-language programming format in its application. In the event a threshold showing is made to the Administrative Law Judge that Hispanic's proposed format is specialized and unique, an inquiry into the need for that format may be considered under the standard comparative issue. See *Cameron Communications (KRQO)*, 71 FCC 2d 460, 45 RR 2d 689 (1979); *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 5 RR 2d 1901 (1965).[11]

9. *The Hispanic Application.* Examination of the Hispanic application indicates that it is legally, technically, and financially qualified to construct and operate as proposed. However, since its application is mutually exclusive with those of District and United, it must be designated for hearing as specified below.

10. *The District Application.* Examination of the District application indicates that it is legally, financially and technically qualified to construct and operate as proposed. However, since its application is mutually exclusive with those of United and Hispanic, it must be designated for hearing as specified below.

11. Accordingly, it is ordered, that the petition to deny filed by the Metropolitan Washington Coalition for Latino Radio is denied.

12. It is further ordered, that the petition to deny filed by the Hispanic Broadcasting Corporation is denied except to the extent indicated herein.

13. It is further ordered, that the Request for Declaratory Relief filed by United Broadcasting Company, Inc. is granted to the extent indicated herein.

14. It is further ordered, that the Protective Motion for Extension of Time filed by United Broadcasting Company, Inc. is dismissed.

15. It is further ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the captioned applications, being mutually exclusive, are designated for hearing in a consolidated proceeding at a time and place to be specified in a subsequent Order, upon the following issues:

A. To determine which of the proposals would, on a comparative basis, best serve the public interest.

B. To determine, in light of the evidence adduced pursuant to the above issue, which of the applications should be granted.

16. It is further ordered, that the Petitions to Specify Issues filed by District Broadcasting Company and the Predesignation Submission filed by Hispanic Broadcasting Corporation and all pleadings responsive thereto and the Petition to Intervene filed by the Metropolitan Washington Coalition for Latino Radio are dismissed.

17. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issue specified in this Order.

18. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

19. It is further ordered, that the Secretary of the Commission shall send by Certified Mail-Return Receipt Requested, a copy of this Memorandum Opinion and Order to each of the parties to this proceeding.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-29709 Filed 9-24-80; 8:45 am]

BILLING CODE 6712-01-M

[11] We will take no action on the Coalition's Petition to Intervene. It may file a petition to intervene with the Administrative Law Judge pursuant to § 1.223 of the rules.

FEDERAL MARITIME COMMISSION

[Docket No. 80-63]

Black Sea Canada/U.S.A. Line, et al.; Order To Show Cause

Members of the West Coast of Italy, Sicilian and Adriatic Ports, North Atlantic Range Ports Conference (WINAC) currently operate under Tariff No. FMC 3. This tariff contains a provision known as Rule 26 which provides, in pertinent part, that:

The Carrier * * * [will] verify the weight, volume, contents, value and nature of cargo, whenever reasonable doubts exist as to their correctness.

Should it result from this verification that there was a misdescription or misdeclaration or error of any kind in connection with said cargo, whether innocent or intentional, and whether known or unknown to the Consignee, the *interested party shall be liable to pay:*

(a) The difference of freight due on such cargo if the * * * error concern[s] the volume of the cargo, provided cargo is not containerized. Such difference to be paid, in any case, by the freight payer.

(b) The difference of freight due on such cargo *and the verification expenses plus an amount equal to double such difference of freight* if the said misdescription or misdeclaration or error concern the weight, contents, value and nature of cargo, or dimension of containerized cargo. The difference of freight to be paid, in any case, by the freight payer whilst the amount equal to double such difference plus the verification expenses is to be paid by the party at fault.

The Carrier shall have a lien for any or all of said sums which he may enforce by public or *private sale* on notification given to the Consignee of the proposed sale even if said Consignee is not the party at fault. In the event of Consignee not being yet identified, steps will be taken by the Carrier or by the Conference Verification Service to notify the Shippers of the action to be taken.

The amounts so recovered will accrue towards the funds required for expenses in connection with the Conference Verification Service and not to the Carrier involved. [Emphasis supplied.]

There is reason to believe that Rule 26 encourages the WINAC carriers to

unreasonably delegate to their shippers their duty to rate cargo in strict accordance with their published tariff.[1] If WINAC happens to discover shipping documents containing information which could cause a misrating in the shipper's favor, the carrier may assess a private penalty of twice the amount of the undercharge plus "verification expenses" both of which are applied towards the costs of performing the carrier's statutory duties.[2] This penalty may even be assessed against the consignee—a person which typically has no connection with the rating process—simply because the carrier neglected to weigh, measure or inspect the cargo at the point of loading.[3]

When an ocean carrier discovers that additional freight is owing, it is supported by the Shipping Act and customary commercial practices when it asserts a lien against the cargo for the extra charges. There appears to be no such precedent for the collection of private penalties against shippers and consignees.[4] The Shipping Act prescribes a substantial civil penalty for shippers which would wilfully attempt to obtain transportation at less than tariff rates, 46 U.S.C. 815, Initial Paragraph, and to knowingly falsify shipping documents can violate other United States statutes as well.[5] Under these circumstances, the burden is on WINAC to demonstrate why additional sanctions must be included in its FMC tariff and why these sanctions must be enforced by a cargo lien which may subject the interests of innocent parties to the risk of a private rather than public sale without even a guarantee that they will receive actual notice of the foreclosure proceedings.

WINAC's employment of such practices seems to cause unfair treatment with regard to the receipt, handling and delivery of cargo under section 17 of the Shipping Act, 1916 (46 U.S.C. 816), and contravene the public interest within the meaning of section 15 (46 U.S.C. 814).

A further undesirable aspect of Rule 26 is the fact that the amount assessed as "verification expenses" is not published in WINAC's tariff and the amount of the penalty is also unascertainable in advance of shipment.[6] This lack of precision in quoting the rate ultimately charged under the tariff appears to violate section 18(b)(1) of the Shipping Act, 1916 (46 U.S.C. 817(b)(1)) and § 536.6(a) of the Commission's Rules (46 CFR 536.6(a)). It may also encourage incidents of undue preference or prejudice and unjust discrimination between shippers in violation of sections 16 and 17 (46 U.S.C. 815 and 816) in situations where the consignee of one shipment is required to pay a penalty and the consignee of a similar shipment does not, either because no misdescription occurred or because the carrier chose to collect the penalty from the foreign shipper instead.

Accordingly, WINAC will be directed to show cause why Rule 26 should not be removed from its FMC tariff entirely or so modified as to eliminate the attachment of any lien covering penalty amounts or verification expenses and to eliminate any enforcement of a cargo lien by private sale.

Therefore, it is ordered, That pursuant to sections 15, 16 First, 17, 18(b)(1) and 22 of the Shipping Act, 1916, and section 536.6(a) of the Commission's Rules, the member lines of the West Coast of Italy, Sicilian and Adriatic Ports, North Atlantic Range Ports Conference listed in Appendix "A" appear before the Commission as Respondents in this proceeding and show cause why Rule 26 of their FMC Tariff No. 3 should not be cancelled or modified on the grounds that it:

(1) Fails to advise shippers of the charges which will be assessed with sufficient exactitude to comply with section 18(b)(1) and the Commission's tariff filing regulations;

(2) Improperly shifts to shippers and consignees the expense and responsibility imposed upon ocean carriers by section 18(b)(3) and section 15 to rate all cargo accurately;

(3) Is an unreasonable practice connected with the handling, receipt and delivery of cargo in violation of section 17, second paragraph; or

(4) Is so unfair to parties not responsible for shipping document preparation as to be contrary to the public interest within the meaning of section 15;

and

It is further ordered, That the Commission's Bureau of Hearing Counsel is made a party to this proceeding; and

It is further ordered, That this proceeding is limited to the submission of affidavits of fact and memoranda of law and replies thereto. Should any party believe an evidentiary hearing is required, that party must accompany any request for such hearing with a statement setting forth in detail the facts to be proven, their relevance to the issues in this proceeding and why such proof cannot be submitted through affidavit. Affidavits of fact and memoranda of law shall be filed by Respondents and served upon all nonrespondent parties of record no later than the close of business on October 31, 1980. Reply affidavits and memoranda shall be filed by the Commission's Bureau of Hearing Counsel no later than the close of business on November 21, 1980. Intervenors shall submit their case at the same time as the party they support. Oral argument may be scheduled if deemed necessary by the Commission; and

It is further ordered, That persons other than those already named who desire to participate in this proceeding shall file a petition to intervene pursuant to section 502.72 of the Commission's Rules (46 C.F.R. 502.72); and

It is further ordered, That this order be published in the **Federal Register** and that a copy thereof also be served upon each of the Respondents; and

It is further ordered, That all future notices, orders, or decisions issued by or on behalf of the Commission be mailed directly to all parties of record; and

It is further ordered, That all documents submitted by any party in this proceeding be filed in accordance with section 502.118 of the Commission's Rules (46 C.F.R. 502.118), as well as being mailed directly to all parties of record.

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[1] Section 18(b)(3) of the Shipping Act, 1916 (46 U.S.C. 817(b)(3)) imposes liability without fault upon ocean carriers whenever they "charge, demand, collect or receive" compensation for transportation services which is different than the amount specified in their FMC tariff.

[2] Conference carriers must not only rate cargo accurately, but are required by section 15 of the Shipping Act, 1916, to maintain an effective self-policing system. These duties are nondelegable in the sense that responsibility for their performance is always on the carrier. It follows that the direct costs of performing these duties must be borne by the carrier and not the cargo.

[3] Rule 26(b) speaks in terms of charging only the "party at fault," but the cargo lien may be enforced against either the shipper or consignee and the Conference carriers have used Rule 26 as a basis for charging United States consignees without regard to fault. *See William Kopke, Jr.* v. *Sea-Land Service, Inc.*, 20 S.R.R. 137 (1980).

[4] Assessment of a penalty against an innocent consignee is readily distinguishable from the carrier's duty to collect unpaid freight from such a consignee through the enforcement of a cargo lien. Although the latter practice may occasionally work a hardship on the consignee, it is nonetheless necessary to assure that the tariff is applied without discrimination. Collection of a penalty, especially when it varies in amount and bears no relation to the carrier's actual "damages"—serves no such statutory purpose.

[5] *E.g.*, The Federal Bills of Lading Act, 49 U.S.C. 81–124.

[6] Because the penalty varies in proportion to the undercharge, the amount paid in one instance may greatly exceed the amount in another even though the shippers' conduct were the same. Indeed, the penalty paid by the shipper could exceed the amount of any conference self-policing fine or civil penalty claim paid by the carrier for misrating the cargo in violation of section 18(b)(3).

By the Commission.*

Joseph C. Polking,

Assistant Secretary.

Attachment A

Member Lines of the West Coast of Italy, Sicilian and Adriatic Ports, North Atlantic Range Ports Conference:

(1) Black Sea Canada/U.S.A. Line
(2) Concordia Lines
(3) Constellation Line
(4) D.B. Turkish Cargo Lines
(5) Egyptian National Line
(6) Farrell Lines, Inc.
(7) Hansa Line
(8) Hellenic Lines, Ltd.
(9) Ibero Lines, S.A.
(10) Italian Line
(11) Jugolinija
(12) Nedlloyd
(13) Ro-Ro Charters Corporation
(14) Sea-Land Service, Inc.
(15) Seatrain International, S.A.
(16) Zim Israel Navigation Co., Ltd.

[FR Doc. 80-29652 Filed 9-24-80; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources Administration

National Council on Health Planning and Development, Agenda Planning Subcommittee; 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 body scheduled to meet during the month of October 1980:

Name: Agenda Planning Subcommittee of the National Council on Health Planning and Development.

Date and Time: October 17, 1980, 11:00 a.m.-1:00 p.m.

Place: Gulf & Western Industries, Inc., 1 Gulf & Western Plaza, 42nd Floor, New York, New York 10023. Open for entire meeting.

Purpose: The objectives of the Agenda Planning Subcommittee are to (1) assist the Chairperson in planning the order and timing of agenda topics for full Council consideration and action to assure that the Secretary will receive advice and/or recommendations on each of its three areas of functional responsibilities under section 1503(a) in an appropriate time and manner; (2) coordinate information about and among subcommittee activities and plans; and (3) provide preliminary review of proposed changes in Council operations.

Agenda: Planning the agenda for the November 13-14 meetings, in Charleston, South Carolina, of the National Council on Health Planning and Development and Subcommittees.

Anyone requiring information regarding the subject Subcommittee should contact Mrs. S. Judy Silsbee, Executive Secretary, National Council on Health Planning and Development, Room 10-27, Center Building, 3700 East-West Highway, Hyattsville, Maryland, 20782. Telephone (301) 436-7175.

Agenda items are subject to change as priorities dictate.

Dated: September 19, 1980.

Irene D. Skinner,

Advisory Committee Management Officer, Health Resources Administration

[FR Doc. 80-29661 Filed 9-24-80; 8:45 am]

BILLING CODE 4110-83-M

Health Services Administration

Advisory Committee; Notice of 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 body scheduled to meet during the month of October 1980:

Name: National Advisory Council on Migrant Health.

Date and Time: October 27-30, 1980, 9:00 a.m.

Place: Ballroom "B", Tampa Hilton Inn, 200 Ashley Lane, Tampa, Florida 33602. Open for entire meeting.

Purpose: The Committee is charged with advising, consulting with, and making recommendations to the Secretary and the Administrator, Health Services Administration, concerning the organization, operation, selection, and funding of Migrant Health Centers and other entities under grants and contracts under section 329 of the Public Health Service Act.

Agenda: Agenda items include: (1) Review the Council's program and interagency recommendations made from the April 1980 meeting; (2) Meet with representative Project Directors and governing board members from area Migrant Health Centers to discuss issues impacting on their projects; (3) Make site visits to health clinics to become more aware of the health care delivery concerns and problems in the area, and labor camps to understand the housing needs of the Florida migrant; (4) Review migrant access to state and local, and private non-profit social services; and (5) Present current status of program efforts to improve health care delivery to migrants.

The meeting is open to the public for observation and participation. Anyone wishing to participate, obtain a roster of members, or other relevant information, should write to or contact MR. JAIME L. MANZANO, Bureau of Community Health Services, Health Services Administration, Room 7A-55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-1153.

Agenda items are subject to change as priorities dictate.

Date: September 17, 1980.

William H. Aspden, Jr.,

Associate Administrator for Management.

[FR Doc. 80-29663 Filed 9-24-80; 8:45 am]

BILLING CODE 4110-84-M

Office of Human Development Services

White House Conference on Aging; Technical Committee; Meeting

The White House Conference on Aging, Technical Committee, was established to provide scientific and technical advice and recommendations to the National Advisory Committee of the 1981 White House Conference on Aging and to the Executive Director of the 1981 White House Conference on Aging in developing issues to be considered and to produce technical documents to be used by the Conference.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Public Law 95-463, 5 U.S.C. App. 1, sec. 10, 1976) that the Technical Committee on Education will hold a meeting on October 2 and October 3, 1980 in Room 5051, North Building, Health and Human Services.

At this meeting the committee will review Issues Committee response to workplan, and to fix assignments of committee members.

Further information on the Technical Committee meeting may be obtained from Mr. Jerome R. Waldie, Executive Director, White House Conference on Aging, Room 4059, 330 Independence Avenue S.W., Washington, D.C. 20201, telephone (202) 245-1914. Technical Committee meetings are open for public observation.

This announcement is being published with less than 15 days advance notice because of difficulties in securing Federal meeting space.

Dated: September 19, 1980.

Mamie Welborne,

HDS Committee Management Officer.

[FR Doc. 80-29669 Filed 9-24-80; 8:45 am]

BILLING CODE 4110-92-M

INTERAGENCY REGULATORY LIAISON GROUP

Consumer Participation; Open Meeting

AGENCY: Interagency Regulatory Liaison Group composed of the Consumer Product Safety Commission (CPSC), the Environmental Protection Agency (EPA), the Food and Drug Administration (FDA), Department of Health and Human Services; the Food Safety and Quality Services (FSQS), Department of

*Commissioner Teige did not participate.

Agriculture; and the Occupational Safety and Health Administration, Department of Labor (OSHA).

ACTION: Notice of exchange meeting.

SUMMARY: IRLG announces a forthcoming consumer exchange meeting to be chaired by Maurice D. Kinslow, Chairman Region IV, IRLG.

DATE: The meeting will be held October 7, 1980, from 1:00 p.m. to 4:00 p.m.

ADDRESS: The meeting will be held in the Environmental Protection Agency's First Floor Conference Room, 345 Courtland Street N.E., Atlanta, Ga.

FOR FURTHER INFORMATION CONTACT: Lisa Whigham, Consumer Product Safety Commission, 1330 West Peachtree Street, N.E., Atlanta, Georgia 30309, Tel. (404) 881–2231.

SUPPLEMENTARY INFORMATION: The purpose of this exchange meeting is to offer leaders of consumer interest groups an opportunity to learn about current government policy and regulations regarding toxic substances, to encourage dialogue between consumers and IRLG Officials; and to contribute to the policymaking decisions on vital issues.

Dated: September 10, 1980.

M. D. Kinslow,

Chairman, Region IV, Interagency Regulatory Liaison Group.

[FR Doc. 80-29665 Filed 9-24-80; 8:45 am]

BILLING CODE 6560-25-M

Reproductive Toxicity Risk Assessment Task Group; Outline of Work Plan and Request for Comments

AGENCY: Interagency Regulatory Liaison Group (IRLG) representing the Consumer Product Safety Commission (CPSC); the Environmental Protection Agency (EPA); the Food and Drug Administration, Department of Health and Human Services (FDA); the Food Safety and Quality Service, Department of Agriculture (FSQS); and the Occupational Safety and Health Administration, Department of Labor (OSHA).

ACTION: Announcement of Reproductive Toxicity Risk Assessment Task Group outline of work plan and request for comments.

SUMMARY: The IRLG has established the Reproductive Toxicity Risk Assessment Task Group to develop criteria to support consistent interpretation and utilization of teratological data by each of the IRLG agencies. The Task Group is inviting comments on its work plan and suggestions relating to the project.

DATES: Comments must be received on or before November 24, 1980.

ADDRESS: Comments should be submitted in duplicate to Susan Guenette, Executive Assistant, IRLG, Room 303, Consumer Product Safety Commission, 1111 18th Street, N.W., Washington, D.C. 20207.

SUPPLEMENTARY INFORMATION: The IRLG has established a Task Group on Reproductive Toxicity Risk Assessment in order to develop criteria to support consistent interpretation and utilization of teratological data by each of the IRLG agencies. The Task Group proposes to:

(a) evaluate data in order to determine what evidence is required to identify a chemical as a probable human teratogen or reproductive toxin;

(b) develop criteria for evaluating data for compound-induced reproductive toxicity in specific animal test systems;

(c) develop criteria for evaluating human exposure data to identify a chemical as a human reproductive toxin;

(d) develop guidelines for estimating risks associated with various levels of exposure to a reproductive toxin.

The proposed document will be developed by the IRLG and reviewed by additional scientists before it is released for public comment.

The document will propose a basis for qualitative evaluation of substances to determine if they present a reproductive hazard. This will include results of epidemiologic studies, animal bioassays, and all other information which can be useful for assisting an evaluation. It will also propose methods to be used for quantitative estimates of risk posed by reproductive toxins.

The document should be a valuable scientific tool to be used to assess risk and the adequacy of experimental and epidemiologic methods used in the evaluation of reproductive toxicity.

The IRLG Reproductive Toxicity Risk Assessment Task Group is soliciting comments on a number of specific issues listed below and comments and suggestions on the draft outline of the proposed approach to developing a risk assessment document.

1. What reliable methods or data are available to help the work group address the question of thresholds for reproductive toxicities?

2. What is the sensitivity and predictability of various test species to known human reproductive toxins?

3. What evidence is needed to identify a substance as a reproductive toxin?

4. Are there reliable animal models that can be used to estimate human risk?

5. What evidence can be gained from pharmacokinetic studies to estimate potential risk to the fetus?

Data and literature citations should be included with all comments. Following is an outline of the topics to be considered in developing a reproductive toxicity risk assessment document:

IRLG Reproductive Toxicity Risk Assessment Group

General Outline

I. Introduction
II. Experimental Determination that a Substance Poses a Reproductive Hazard
A. Definition of Reproductive Toxicity
1. Nature of Reproductive and Developmental Responses
a. Reproductive Function
i. Germ Cell Effects
ii. Other Reproductive Effects
b. Developmental Responses
i. Prenatal
ii. Postnatal
c. Human-Animal Equivalence
2. Estimation of the Number of Reproductive Toxins
a. Reproductive Function Toxins
b. Developmental Response Toxins
c. Human-Animal Correlation
3. Mechanisms of Reproductive Toxicity
B. Epidemiologic Evidence
1. Types of Epidemiologic Evidence
2. Disease Ascertainment
3. Known Human Reproductive Toxins
a. Criteria
b. List of Compounds
c. Uncertainties
C. Evidence From Experimental Animals
1. Test Systems Available for Assessment
2. Criteria for Evaluation of Experimental Design and Conduct
a. Experimental Design
b. Choice of the Animal Model
c. Number of Animals
d. Route of Administration
e. Identity of the Substance Tested
f. Dose Levels
g. Age at Treatment
h. Timing and Duration of Tests in Animals
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The Task Group invites comments on the proposed plan and any other relevant material which might assist the project. Materials received on or before November 24, 1980 will be considered for the preliminary draft. Material received after that date will be considered to the extent possible. Contributions should bear the number IRLG 001 and be submitted in duplicate.

Dated: July 29, 1980.

Dr. Vasilios Frankos,

Chairman, Reproductive Toxicity Risk Assessment Group, Interagency Regulatory Liaison Group.

[FR Doc. 80-29664 Filed 9-24-80; 8:45 am]

BILLING CODE 6560-25-M

DEPARTMENT OF THE INTERIOR

Geological Survey

Outer Continental Shelf; Oil, Gas, and Sulphur Operations; Development and Production Plans; Houston Oil & Minerals Corp.

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Houston Oil & Minerals Corporation has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 2685, Block A-414, High Island Area, offshore Texas.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: September 19, 1980.

E. A. Marsh,

Staff Assistant for Operations.

[FR Doc. 80-29714 Filed 9-24-80; 8:45 am]

BILLING CODE 4310-31-M

Outer Continental Shelf; Oil, Gas, and Sulphur Operations; Development and Production Plan, Ocean Production Co.

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: This Notice announces that Ocean Production Company, Unit Operator of the Ship Shoal Block 113 Federal Unit Agreement No. 14-80-001-2931, submitted on September 12, 1980, a proposed Supplemental Plan of Development/Production describing the activities it proposes to conduct on the Ship Shoal Block 113 Federal Unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002, phone (504) 837-4720, ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: September 18, 1980.

E. A. Marsh,

Staff Assistant for Operations.

[FR Doc. 80-29715 Filed 9-24-80; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Land Management

Miles City District Grazing Advisory Board Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Miles City District Grazing Advisory Board will be held November 12, 1980. The meeting will begin at 10:00 a.m. in the conference room at the Miles City District Bureau of Land Management Office, West Highway 10-12, Miles City, Montana.

The agenda is as follows:

(1) Range Improvements (a) Environmental Assessment Procedures (b) Regulations (c) Wilderness and Organic Act Requirements.

(2) Allotment Management Plans.

(3) Arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral 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 940, Miles City, Montana 59301 by November 7, 1980.

Depending on the number of persons wishing to make statements a time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the District Office and be available for public inspection and reproduction

(during normal business hours) within 30 days following the meeting.

Darrel Pistorius,

Acting District Manager.

[FR Doc. 80-29651 Filed 9-24-80; 8:45 am]

BILLING CODE 4310-84-M

[Serials Nos. I-15370 and I-15356]

Idaho; Notice of Proposed Withdrawal Continuations

September 10, 1980.

The Bureau of Land Management has filed statements of justification for continuation of two existing Public Water Reserve Withdrawals. The Bureau desires to continue the withdrawals in their entirety for a period of 20 years. The continuations would be made pursuant to the authority contained in Section 204(L) of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2754; 43 U.S.C. 1714). The following described land is included in the proposed continuations:

Boise Meridain, Idaho

(I-15356)

Public Water Reserve 107

Secretarial Order of Interpretation No. 160

T. 8 S., R. 38 E.,
Sec. 24, SW¼SW¼.

The area described aggregates 40 acres in Caribou County, Idaho.

(I-15370)

Public Water Reserve 107

BLM Order of Interpretation

T. 8 S., R. 38 E.,
Sec. 24, NW¼SW¼.

The area described aggregates 40 acres in Caribou County, Idaho.

The land is segregated from operation of the public land laws, including location for non-metaliferous minerals under the mining laws. It is otherwise open to the mining and mineral leasing laws. No change in the segregative effect of the withdrawals or use of the lands is proposed.

Notice is hereby given that an oportunity for a public hearing is afforded in connection with the proposed withdrawal continuations. All interested persons who desire to be heard on the proposals must submit a writen request for a hearing to the undersigned officer within 30 days of the date of publication of this notice. Upon determination by the State Director, Bureau of Land Management, that a public hearing will be held, a notice will be published in the **Federal Register** giving the time and place of such hearing. In lieu of or in addition to attendance at a scheduled public hearing, written comments or objections to the proposed withdrawal continuations may be filed with the undersigned officer within 30 days of the date of publication of this notice.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. He will review the withdrawal justifications to insure that continuation would be consistent with the statutory objectives of the programs for which the land is dedicated, the area involved is the minimum essential to meet the desired needs, the maximum concurrent utilization of the land is provided for, and an agreement is reached on the concurrent management of the land and its resources. He will also prepare a report for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and, if so, for how long. The final determination on continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

All communication in connection with these proposed withdrawal continuations should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Federal Building, Box 042, 550 West Fort Street, Boise, Idaho 83724.

Vincent S. Strobel,

Chief, Branch of L&M Operations.

[FR Doc. 80-29713 Filed 9-24-80; 8:45 am]

BILLING CODE 4310-84-M

[Designation Order No. UT-040-002]

Paria, Vermilion, Zion Planning Unit Off-Road Vehicle Designations

AGENCY: Bureau of Land Management.

ACTION: Notice of off-road vehicle designation decisions.

DECISION: Notice is hereby given relating to the use of off-road vehicles on public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR 8340. The following described lands under administration of the Bureau of Land Management are designated as open, limited or closed to off-road motorized vehicle use. Designated and existing roads and trails are identified on maps available, upon request, at the District office.

The 1,461,508 acres affected by the designations are known as the Paria, Vermilion and Zion Planning Units of the Kanab Resource Area located in Garfield and Kane Counties, Utah. These designations are a result of land use recommendations made in the 1978 Paria, Vermilion and Zion Management Framework Plans. Comments received from public meetings, workshops and written responses influenced these designation decisions. These designations are published as final today. Under 43 CFR 4.21, an appeal may be filed within 30 days with the Interior Board of Land Appeals.

A. The designations within the Paria Planning Unit aggregating 828,883 acres of public lands are described below:

Open Designation—Designated areas and trails on public lands where off-road vehicles may be operated, subject to the operating regulations and vehicle standards set forth in subparts 8341 and 8343 CFR 8340. All public lands not otherwise identified as limited or closed will be designated as "open" in the Paria Planning Unit (635,878 acres).

Limited Designations—Designated areas and trails on public lands where the use of off-road vehicles is subject to restrictions deemed appropriate by the authorized officer. The following restrictions apply to public lands in the Paria Planning Unit.

(1) *Limited to Existing Roads and Trails:* Designated lands in this category prohibits cross-country vehicle travel. All vehicle use is restricted to existing roads and trails. The following public lands in the Paria Planning Unit fall in this category:

(a) *Wildlife Habitat (Riparian Areas):* All riparian vegetation areas on Henrieville Creek, Little Creek, Dry Valley Creek, Paria River in T38S, R2W south of the town of Cannonville; Squaw Creek and Willis Creek, south of County road; Death Valley and Round Valley, south of Butler Valley road; Paria River, south of the box to Paria Primitive Area; Wahweap Creek from County road on Four Mile Bench to State Section 32, T41S, R2E; Ripple Creek from confluence of Wahweap to Nipple Spring, Tommy Smith Creek, from confluence of Wahweap to State Section 36, T39S, R1E; Four Mile Creek from confluence Tommy Smith Creek to State Section 32, T39S, R2E; Last Chance Creek from Sec. 7, T40S, R4E, south to Glen Canyon N.R.A. boundary; Dry Wash from Sec. 9, T40S, R4E to confluence with Last Chance Creek; Willow Gulch from Section 13, T39S, R4E, to confluence of Craton Canyon (29,960 acres).

(b) *Fragile Watershed:* Public lands classified as fragile watersheds covering the following lands in:

T36S, R1W: portions of Sections 30, 31
T36S, R2W: portions of Sections 25, 26, 34, 35
T41S, R1E: portions of Section 31

T42S, R1E: portions of Sections 4, 5, 6, 8, 9, 17, 18, 19; all of Section 7
T42S, R2E: portions of Sections 1, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27
T42S, R3E: portions of Sections 1, 11, 12, 13, 14, 24
T42S, R4E: portions of Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 24, 30; all of Sections 15, 17, 18, 19, 20, 21, 22, 23
T40S, R5E: portions of Sections 27, 28, 33, 34, 35
T41S, R5E: portions of Sections 1, 3, 9, 10, 11, 12, 13, 14, 15, 22, 23, 24, 26, 31
T42S, R5E: portions of Sections 6, 7, 8, 16, 17, 18, 19, 20, 21
Total: 30,520 acres.

(c) *Protection of Geologic Values:*

Grosvenor Arch

T39S, R1E: NW¼NE¼, NE¼NW¼ Sec. 6 (total 80 acres).

(d) *Protection of Geologic, Historic, Scenic and Natural Values:*

Paria-Hackberry

T38S, R2W: portions of Section 31
T38S, R3W: portions of Sections 13, 24, 25
T39S, R1W: portions of Sections 9, 10, 11, 12, 13, 17, 18; all of Sections 14, 15, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35
T39S, R2W: portions of Sections 5, 6, 7, 8, 13, 17, 18, 19, 22, 24, 25, 26, 27; all of Sections 28, 29, 30, 31, 33, 34, 35
T39S, R2½W: portions of Sections 1, 12, 13, 24, 25
T39S, R1E: portions of Sections 7, 18, 19, 30
T40S, R1W: portions of Sections 1, 12, 13, 14, 23, 26, 35; all of Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 15, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 33
T40S, R2W: portions of Sections 6, 7, 8, 9, 10, 15, 22, 26, 35; all of Sections 1, 3, 4, 5, 11, 12, 13, 14, 23, 24, 25, 26
T40S, R1E: portions of Section 6
T41S, R1W: portions of Sections 3, 10, 18, 19, 20; all of Sections 4, 5, 6, 7, 8, 9, 17
T41S, R2W: portions of Sections 12, 13, 24; all of Section 1
(The river bed in the Paria River and Sheep Creek are designated as a trail and open to vehicle use)
Total: 61,040 acres
Total Acres in B_1—121,600

(2) *Limited to Designated Roads and Trails:* Designated lands in this category prohibit cross-country vehicle travel. All vehicles are restricted to designated roads and trails. Roads and trails where vehicle travel is permitted will be signed as "Open Road or Trail." The following public lands fall into this category.

(a) *Protection of Geologic, Historic, Archaeologic, Scenic and Natural Values:*

Fifty Mile Mountain

T38S, R4E: portions of Sections 11, 12, 14, 23, 24, 25; all of Section 13
T38S, R5E: portions of Sections 7, 8, 17, 22, 26; all of Sections 18, 19, 20, 21, 27, 28, 29, 30, 31, 33, 34, 35
T39S, R5E: portions of Sections 5, 6, 8, 17, 21, 22, 27, 34, 35; all of Sections 1, 3, 4, 9, 10, 11, 12, 13, 14, 15, 23, 24, 25, 26
T39S, R6E: portions of Sections 5, 6, 8, 9, 15, 21, 22, 28, 29, 31; all of Sections 7, 17, 18, 19, 20, 30
T40S, R5E: portions of Sections 1, 11, 12, 13, 14, 24, 25
T40S, R6E: portions of Sections 6, 7, 8, 9, 17, 18, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30; all of Sections 26, 31, 33, 34, 35
T40S, R7E: portions of Sections 30, 31
T41S, R5E: portions of Sections 1, 12, 13, 24
T41S, R6E: all of Sections 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26
T41S, R7E: portions of Sections 3, 4, 10, 14, 15, 22, 23, 26; all of Sections 5, 6, 7, 8, 9, 17, 18, 19, 20, 21, 27, 28, 29, 30
Total: 64,000 acres

(3) *Limited Season of Use:* Closed to all vehicle use between March 1 to July 1; limited to existing roads and trails between July 26 to February 29.

(a) *Critical Wildlife Habitat:* Antelope fawning area—Wahweap Creek, (3,260 acres)

T42S, R2E: portions of Sections 4, 5, 7, 8, 15, 17, 21, 22, 27, 28, 33, 34

Closed Designation—Designated areas and trails on public lands where use of off-road vehicles is prohibited. Description of the lands are described below:

(a) *Paria Primitive Area:* Paria Primitive Area was designated closed to vehicle use via Executive Order 11644 on February 2, 1972. The lands described in this closure are discribed as:

Salt Lake Meridian, Utah

Kane County

T44S, R1E,
Sec. 6, lots 1, 2, E½NW¼;
Sec. 7, lots 3 and 4.
T43S, R1W,
Sec. 23, NW¼NE¼, S½NE¼, E½NW¼, NW¼NW¼, SE¼;
Sec. 25, W½;
Sec. 26, E½;
Sec. 31, lot 4, NE¼SE¼, SE¼SW¼, S½SE¼;
Sec. 32, S½N½, N½SW¼;
Sec. 33, SW¼NE¼, S½NW¼, N½SW¼, SE¼;
Secs. 35 and 36.
T43S, R2W,
Sec. 27;
Sec. 33, SE¼SW¼;
Sec. 34;
Sec. 36, S½SE¼.
T44S, R1W,
Sec. 1, N½, N½S½, S½SW¼, SW¼SE¼;
Sec. 2;
Sec. 3, S½N½, N½S½;
Sec. 4, NE¼;
Sec. 6, lot 1, NW¼NE¼, NE¼NW¼;
Sec. 11, lots 3 and 4, NE¼NE¼;
Sec. 12.
T44S, R2W
Sec. 1, N½NE¼, NW¼, NW¼SW¼;
Sec. 2, N½S½, S½SW¼, SW¼SE¼;
Sec. 3;
Sec. 4, E½;
Sec. 9, lots 3 and 4, N½NE¼;
Sec. 10, lots 1 and 2, N½NW¼.
Total Acres: 8,595.05*

B. The designations within the Vermilion-Zion Planning Units aggregating 632,625 acres are described below:

Open Designation—Designated areas and trails on public lands where off-road vehicles may be operated, subject to the operating regulations and vehicle standards set forth in subparts 8341 and 8343 CFR 8340. All public land not otherwise identified as limited or closed will be designated as "open" in the Vermilion-Zion Planning Units (593,785 acres).

Limited Designation—Designated areas and trails on public lands where the use of off-road vehicles is subject to restrictions deemed appropriate by the authorized officer. The following restrictions apply to public lands in the Vermilion-Zion Planning Units. Description of the lands are described below:

(1) *Limited to Existing Roads and Trails.* Designated lands in this category prohibits cross-country vehicle travel. All vehicle use is restricted to existing roads and trails. The following public lands in the Vermilion-Zion Planning Units fall in this category:

(a) *Riparian Areas:* All riparian areas on the Virgin River, Orderville Canyon, East Fork Virgin River, Trail Canyon, Thompson Creek, and Skutumpah Creek. (North of Skutumpah Ranch to the Dixie National Forest boundary) (9,050 acres).

(b) *Fragile Watersheds:* Public lands classified as fragile watersheds covering the following lands in:

T39S, R6W: portions of Sections 26, 27, 34, 35 (780 acres).
T40S, R5W: portions of Sections 4, 8, 9 (770 acres).
T40S, R6W: portions of Sections 4, 5, 7, 8, 9, 10, 15, 17, 18, 27, 28, 33, 34 (3,870 acres).
T40S, R7W: portions of Sections 13, 26, 34, 35 (690 acres).
T41S, R7W: portions of Sections 1, 8, 9, 10, 17, 20, 21, 22, (3,250 acres).
Total: 9,360 acres.

(c) *Protection of Natural, Scenic, Archaeological and Municipal Watershed values covering the following lands:*

Diana's Throne:

T41S. R7W, S½ Sec. 28, all Sec. 33, W½W½NW¼, SW¼ Sec. 34.
T42S, R7W, NW¼ Sec. 3, NE¼ Sec. 4 (1,480 acres).

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* Total acres in Paria Primitive Area in Vermilion and Paria Planning Units.

No Man's Mesa:

T40S, R3W; SW¼ Sec. 10; SW¼ Sec. 14, NW¼, W½SW¼ Sec. 23; W½NW¼, SW¼ Sec. 26, E½, NW¼ Sec. 27; NW¼ Sec. 35; all Sections 15, 22, (2,720 acres).

Water Canyon & Sand Springs Trail Head:

T43S, R7W; NW¼, SE¼ Sec. 17; E½ Sec. 20; NE¼, W½ Sec. 21; N½NW¼, SW¼NW¼ Sec. 28; SE¼ Sec. 30, all Sec. 29 (2,040 acres).

Paria-Hackberry:

The riverbed of the Paria River and Sheep Creek will be designated as a trail and open to vehicle use. (See Paria ORV Plan for complete description) (5,880 acres).

Total Acres in B_1: 30,530 acres.

Closed Designation—Designated areas and trails on public lands where use of off-road vehicles is prohibited. Description of the lands are described below: (county maintained roads are not subject to this restriction):

a. *Municipal Watershed.* The municipal watershed for Fredonia, known as Cottonwood Canyon. Vehicles used for maintenance of the existing municipal water system will be permitted to use the existing trails in Cottonwood Canyon, all other vehicles are prohibited. (3,860 acres).

Total Acres in "Closed": 3,860.

Public Lands Totals

Paria Planning Unit: Total acres, 828,883; open designation, 635,878; limited designation, 188,860; closed designation, 8,595.05.[1]

Vermilion-Zion: Total acres, 632,625; open designation, 593,785; limited designation, 30,530; closed designation, 3,860. These designations become effective upon publication in the **Federal Register** and will remain in effect until rescinded or modified by the authorized officer. An environmental assessment describing the impact of these designations is available for inspection at the offices listed below:

ADDRESS: For further information and map about these designations, contact either of the following Bureau of Land Management Offices:

District Manager, Cedar City District Office, 1579 North Main, Cedar City, Utah 84720

Area Manager, Kanab Resource Area, 320 North 1st East, Kanab, Utah 84741

Dated: September 16, 1980.

Morgan S. Jensen,

District Manager.

[FR Doc. 80-20671 Filed 9-24-80; 8:45 am]

BILLING CODE 4310-84-M

[1] Includes lands in Paria Primitive Area in Vermilion Planning Unit.

[Designation Order UT-040-001]

Virgin River Planning Unit Off-Road Vehicle Designation

AGENCY: Bureau of Land Management.

ACTION: Notice of off-road vehicle designation decisions.

DECISION: Notice is hereby given relating to the use of off-road vehicles on public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR 8340. The following described lands under administration of the Bureau of Land Management are designated as open, limited or closed to off-road motorized vehicle use. Designation and existing roads and trails are identified on maps available, on request, at the District Office.

The 519,163.04 acres affected by the designation is known as the Virgin River Planning Unit, which includes all public land in Washington County, Utah. These designations are a result of land use recommendations made in the 1978 Virgin River Management Framework Plan. Comments received from public meetings, workshops and written responses influenced these designation decisions. These designations are published as final today. Under 43 CFR 4.21, an appeal may be filed within 30 days with the Interior Board of Land Appeals.

A. *Open Designation*—Designated areas and trails on public lands where off-road vehicles may be operated, subject to operating regulations and vehicle standards set forth in subparts 8341 and 8343 of 43 CFR 8340. All public lands not otherwise designated as limited or closed will be designated as "open" in the Virgin River Planning Unit (432,926.5 acres).

B. *Limited Designations.* 1. *Limited to Existing Roads and Trails.*—Designated lands in this category prohibit cross-country vehicle travel. All vehicle use is restricted to existing roads and trails on the following described lands:

a. **Beaver Dam Slopes**—27,550.5 acres.

T43S R20W,
Sec. 12, 13, 24, 25, 26;
Sec. 11 E½;
Sec. 14 E½;
Sec. 23 E½;
Sec. 26 E½;
Sec. 35 NE¼;
Sec. 36 N½.
T43S R19W,
Sec. 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30;
Sec. 31 N½;
Sec. 32 N½;
Sec. 33 N½;
Sec. 34 N½;
Sec. 35 N½;
Sec. 36 N½;
Sec. 1 SE¼SE¼.
T43S R18W,
Sec. 10, 9, 7, 18, 17, 16, 19, 30;
Sec. 8 S½, NE¼NE¼, SE¼NE¼, SW¼NE¼, NW¼NW¼, SW¼NW¼, SE¼NW¼;
Sec. 15 N½;
Sec. 20 NW¼, SW½SW½;
Sec. 29 W½W½, SE¼SW¼, S½SE¼;
Sec. 31 N½;
Sec. 32 N½;
Sec. 33 N½;
Sec. 34 NW¼.

b. **Red Mountain**—18,250 acres.

Salt Lake Meridian

T40S R16W,
All of Secs. 34 and 35;
Portions of Secs. 26, 27, 28, and 33.
T41S R16W,
All of Secs. 1, 3, 9, 10, 11, 12, 13;
Portions of Secs. 4, 8, 14, 15, 24.
T40S R15W,
All of Secs. 31, 32;
Portions of Secs. 19, 20, 28, 29, 30, 33.
T41S R15W,
All of Secs. 5, 6, 7, 8, 17, 18, 19, 20, 29;
Portions of Secs. 16, 21, 30, 31.

c. **LaVerkin Creek**—7,840 acres.

T40S R12W,
Sec. 5, 6, 7;
Sec. 8 N½, NW¼SW¼;
Sec. 9 W½NW¼;
Sec. 4. W½SW¼, NW¼, NW¼NE¼.
T39S R12W,
Sec. 16 W½;
Sec. 20 E½W½, E½;
Sec. 21;
Sec. 26 NW¼NE¼, N½NW¼, SW¼NW¼, NW¼SW¼;
Sec. 27, 28;
Sec. 29 NE¼, S½;
Sec. 30 S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 31 NE¼, E½NW¼, SW¼, SE¼;
Sec. 32, 33, 34: NW¼NE¼, NW¼, NW¼SW¼.

2. *Limited to Designated Roads and Trails.* Designated lands in this category prohibit cross-country vehicle travel. All vehicles are restricted to designated roads and trails. Roads and trails where vehicle travel is permitted will be signed as "Open Road or Trail." The following described public lands are designed as limited to designated roads and trails:

a. **Joshua Tree Natural Area and Woodbury Study Area**—3,160 acres.

T43S R18W,
Sec. 15 S½;
Sec. 21 All;
Sec. 22 N½, SW¼;
Sec. 27 W½;
Sec. 28 All;
Sec. 29 E½NW¼, NE¼SW¼, N½, SE¼NE¼.
Total "Limited"—56,800 acres.

C. *Closed Areas*—Designated areas and trails on public lands where use of off-road vehicles is prohibited. The following described lands are designated as "closed."

1. **Beehive Mountain**—320 acres.

T43S R14W,
Sec. 30 E½SW¼SE¼;
Sec. 31 N½NE¼.
2. **Warren Ridge**—480 acres.
T43S R15W
Sec. 1 E½E½E½;
Sec. 12 E½E½E½.
T43S R14W,
Sec. 6 W½W½.
Sec. 7 W½W½.
3. **West Fork of Beaver Dam Wash "The Narrows"**—100 acres.
The "Narrows" is the river channel of the West Fork of the Beaver Dam Wash beginning in SE¼ Sec. 24; T38S, R20W, and ends in SW¼ Sec. 7, T39S, R19W.
4. **Red Cliffs Recreation and Archaeological Site**—1,080 acres.
T41S R14W,
Sec. 14 W½NW¼, NW¼SW¼;
Sec. 15 N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 22 NW¼, W½NE¼, N½SW¼, NW¼SE¼.
5. **Ripple Arch**—440 acres.
T40S R18W,
Sec. 7 N½NW¼, SE¼NW¼, SW¼NE¼; NE¼SW¼; SE¼;
Sec. 18 N½NE¼.
6. **Baker Dam Recreation Site**—200 acres.
T39S R16W,
Sec. 21 NE¼SE¼, SE¼SE¼;
Sec. 22 SW¼SW¼;
Sec. 28 N½NE¼.
7. **Canaan Mountain**—26,816 acres.
T42S R9½W,
Portions of Sections 18, 19, and 30.
T42S R10W,
All of Sections 13, 14, 15, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, and 35;
Portions of Sections 17, 18, 19, 30, and 31.
T42S R11W,
Portions of Sections 21, 22, 23, 26, 27, 34, and 35.
T43S R9½W,
Portions of Section 7.
T43S R10W,
All of Sections 1, 3, 4, 5, 6, 9, 10, 11, 12, and 15;
Portions of Sections 7, 8, 13, 14, 17, 20, 21, 22, 23, 27, 28, and 29.
T43S R11W,
All of Section 1;
Portions of Sections 11 and 12.
Total "Closed"—29,436 acres.

These designations become effective upon publication in the **Federal Register** and will remain in effect until rescinded or modified by the authorized officer. An environmental assessment describing the impact of these designations is available for inspection at the offices listed below.

ADDRESS: For further information and maps about these designations, contact either of the following Bureau of Land Management Offices:

District Manager, Cedar City District Office, 1579 North Main, Cedar City, Utah 84720.
Area Manager, Dixie Resource Area, Dixie Office Building, P.O. Box 726, St. George, Utah 84770.

Dated: September 16, 1980.

Morgan S. Jensen,

District Manager.

[FR Doc. 80-29672 Filed 9-24-80; 8:45 am]

BILLING CODE 4310-84-M

Arizona; Availability of Preliminary Reports on the Mineral Resource Potential of the Vermillion Cliffs-Paria Canyon and Paiute Instant Study Areas in Coconino and Mohave Counties, Ariz., and Kane County, Utah

The Bureau of Land Management announces the availability of the preliminary mineral potential reports covering the Instant Study Areas analyzed in the Arizona Strip Wilderness Draft Environmental Impact Statement and Suitability Report. The Bureau of Land Management will hold the comment period open until December 22, 1980. This will allow those who wish to order the open file reports, from the United States Geological Survey, to receive the reports, review and submit comments to the Bureau.

The reports are available from the U.S.G.S.: Paiute Study Area, number 80-984, $4.25 and Vermillion Cliffs-Paria Canyon Area, number 80-1056, $19.75. Mailing address: U.S. Geological Survey, Stop 914, P.O. Box 25046, Federal Center, Denver, Colorado 80225.

Public reading copies will be available for review at the following locations:

Office of Public Affairs, Bureau of Land Management, Interior Building, 18th and C Streets N.W., Washington, D.C. 20240, Telephone (202) 343-5717.
Arizona State Office, Bureau of Land Management, 2400 Valley Bank Center, Phoenix, Arizona 85073, Telephone (602) 261-3706.
Utah State Office, Bureau of Land Management, 136 E. Temple, Salt Lake City, Utah 84111, Telephone (801) 524-4227.
Arizona Strip District Office, Bureau of Land Management, 196 E. Tabernacle, St. George, Utah 84770, Teplephone (801) 673-3545.
Cedar City District Office, Bureau of Land Management, 1579 N. Main, Cedar City, Utah 84720, Telephone (801) 586-2801.
Kanab Resource Area Office, Bureau of Land Management, 320 North First East, Kanab, Utah 84741, Telephone (801) 644-2672.

Written comments should be submitted to: State Director, U.S. Bureau of Land Management, 2400 Valley Bank Center, Phoenix, Arizona 85073.

Dated: September 17, 1980.

Tom Allen,

Associate State Director.

[FR Doc. 80-29736 Filed 9-24-80; 8:45 am]

BILLING CODE 4310-84-M

[Group 426]

Arizona; Filing of Plat of Survey

September 18, 1980.

1. The plat of survey of lands described below will be officially filed in Arizona State Office, Phoenix, Arizona, effective at 7:45 a.m., on November 3, 1980:

Gila and Salt River Meridian, Arizona

T. 15 N., R. 4 E.

A dependent resurvey of a portion of the exterior boundaries and subdivisional lines and dependent resurvey of a portion of the subdivisions of Section 18, and the survey of a portion of the subdivision lines and survey of subdivisions in Sections 1, 3, 7, 9, 10, 14, 15, 17, 18, 19, 20, 22, 33, and 35.

2. The land encompassed in this survey is located about five miles southeast of the town of Cottonwood, Arizona. Access is by way of a paved Forest Service road, No. 119, which crosses the northern portion of the township. State Highway No. 279 crosses the southwest corner of the township. There are numerous unimproved or lightly graveled roads.

The southwest portion of the township is drained by the Verde River, which has a south-southeast course, entering the township near the southwest corner of Section 7 and leaving the township through Section 33. Oak Creek enters the township near the corner of Section 3 and 4 taking a southerly winding course where it drains into the Verde River in Section 20. The land varies from heavily rolling to nearly level, ranging from 3,200 feet to 3,710 feet above sea level. A small portion of the land along the Verde River and Oak Creek is under irrigation.

Land along the Verde River and Oak Creek is covered with scattered to dense growth of cottonwoods and willows. Portions of the land are covered with mesquite, cedar, catclaw, creosote brush and cacti. The remainder is naturally open or has been cleared.

The small community of Cornville is located in the southwest corner of Section 3, northwest corner of Section 10, northeast corner of Section 9 and the southeast corner of Section 4.

3. Since the lands are withdrawn by the Prescott National Forest and Coconino National Forest, the described lands will not be subject to disposition

under the general public land laws, by reason of the official filing of this plat.

Theresa A. Carmack,

Acting Chief, Branch of Records and Data Management.

[FR Doc. 80-29734 Filed 9-24-80; 8:45 am]

BILLING CODE 4310-84-M

Ely District Multiple Use Advisory Council Meeting

Notice is given in accordance with Pub. L. 92-463, that a meeting of the Ely District Multiple Use Advisory Council will be held on November 13, 1980. The meeting will be held from 10 a.m. to 5 p.m. in the Conference Room of the White Pine County Library, Campton Street, Ely, Nevada 89301.

The agenda will include the following topics:

1. Introduction of Council members.
2. Discussion of Council organization and function.
3. Orientation of Council members to BLM programs, land use planning, and other issues specifically related to the Ely District.
4. Election of Council officers.
5. Arrangements for the next meeting.

The meeting is open to the public. Summary minutes of the meeting will be available for public inspection at the District Office within 30 days following the meeting.

Dated: September 17, 1980.

George W. Cropper,

Acting District Manager.

[FR Doc. 80-29693 Filed 9-24-80; 8:45 am]

BILLING CODE 4310-84-M

[Serials Nos. I-4350, I-15334, I-15336, and I-08047]

Idaho; Proposed Withdrawal Continuations

September 11, 1980.

The Department of Energy has filed a statement of justification for continuation of the existing land withdrawals made by Public Land Orders 318 of May 13, 1946; 545 of Janauary 7, 1949; 637 of April 7, 1950; 691 of December 5, 1950; 1770 of December 19, 1958; and 5489 of February 12, 1975. The withdrawals were made to aid in the establishment and operation of the Idaho National Engineering Laboratory (formerly called The National Reactor Testing Station) in eastern Idaho. The Department of Energy has expressed need to continue the withdrawals in their entirety for a period of 100 years. The continuations would permit nuclear research and development activities, which are vital to the Nation's energy and defense programs, to continue.

With the exception of 40 acres withdrawn for use as a communications site 8-10 miles northeast of Idaho Falls, Idaho, all of the withdrawn lands are located in the Arco Desert, west and northwest of Idaho Falls. The withdrawals involve approximately 511,000 acres of public land which is closed to all forms of appropriation, including entry under the mining and mineral leasing laws. An exception is the 40-acre communication site which remains open to mineral leasing. No change in the segregative effect of the withdrawals or use of the lands is proposed. Legal descriptions, showing the specific lands involved, may be examined by the public during regular working hours at the Idaho Falls BLM District Office or at the Idaho BLM State Office in Boise.

Notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal continuations. All interested persons who desire to be heard on the proposals must submit a written request for a hearing to the undersigned officer on or before October 27, 1980. Upon determination by the State Director, Bureau of Land Management, that a public hearing will be held, a notice will be published in the **Federal Register** giving the time and place of such hearing. In lieu of or in addition to attendance at a scheduled public hearing, written comments or objections to the proposed withdrawal continuations may be filed with the undersigned officer on or before October 27, 1980.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. He will review the withdrawal justifications to insure that continuation would be consistent with the statutory objectives of the programs for which the land is dedicated, the area involved is the minimum essential to meet the desired needs, the maximum concurrent utilization of the land is provided for, and an agreement is reached on the concurrent management of the land and its resources. He will also prepare a report for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and, if so, for how long. The final determination on withdrawal continuations will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

All communication in connection with these proposed withdrawal continuations should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Federal Building, Box 042, 550 West Fort Street, Boise, Idaho 83724.

Vincent S. Strobel,

Chief, Branch of L&M Operations.

[FR Doc. 80-29731 Filed 9-24-80; 8:45 am]

BILLING CODE 4310-84-M

Limitation on Use of Motorized Vehicles on Public Lands

Notice is hereby given that use of motorized vehicles on scattered parcels of public land in the vicinity of Prineville Reservoir and adjacent to the Crooked River between Bowman Dam and the City of Prineville in Crook County, Oregon will be limited. The use of motorized vehicles will be limited to designated roads and trails during times of the year when vehicular travel will not cause unacceptable impacts. This designation is in accordance with the provisions of 43 (CFR 8340) and will not apply to emergency, law enforcement and federal or other government vehicles while being used for official or emergency purposes. The area affected by this designation totals 12,600 acres of public land including all or parts of the following described lands:

Willamette Meridian

T. 16 S., R. 15 E.
Secs. 1, 12, 13 and 14.
T. 16 S., R. 16 E.
Secs. 18, 19, 20, 21, 28, 29, 32, 33 and 34.
T. 16 S., R. 17 E.
Secs. 13, 14, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34 and 35.
T. 16 S., R. 18 E.
Secs. 18 and 19.
T. 17 S., R. 16 E.
Secs. 1, 2, 3, 4, 5, 10, 11, 12, 13, 14, 23 and 24.
T. 17 S., R. 17 E.
Secs. 3, 7, 8, 9, 10, 18 and 19.
Total acreage—12,600.

The purpose of this designation is to protect existing resource values, minimize conflicts among public land users, promote their safety on public lands, and allow off-road vehicle use in accordance with the resource capabilities of these areas. Specific conditions of use and maps showing the roads and trails open to off-road vehicle use are available at the Bureau of Land Management Prineville District Office, P.O. Box 550, Prineville, OR 97754.

Paul W. Arrasmith,

Prineville District Manager.

[FR Doc. 80-29694 Filed 9-24-80; 8:45 am]

BILLING CODE 4310-84-M

Montana; Wilderness Inventory

September 16, 1980.

Notification of Action Taken Concerning Protests Received on the Bitter Creek Wilderness Study Area, Lewistown District, Montana.

This notification is being provided to inform all interested individuals of the action taken after the conclusion of the official protest period established for the Bitter Creek Wilderness Study Area (MT–064–356).

The Bitter Creek WSA is located within the Lewistown BLM District, approximately twenty-five (25) miles northwest of Glasgow, Montana. The wilderness inventory for this unit was conducted in advance of the statewide schedule because of potential conflicts with the proposed Northern Border Leg of the Alaska Natural Gas Transportation System. This unit was intensively inventoried during the 1979 field season for the presence or absence of wilderness characteristics as set forth in Section 2(c) of the 1964 Wilderness Act.

A proposed inventory decision was published in the October 25, 1979, **Federal Register** (page 61464) which indicated that portions of the unit were believed to possess wilderness characteristics and was proposed to become a wilderness study area. That notice also established a 60 day public comment period beginning October 22, 1979, and ending December 20, 1979. All comments received were carefully analyzed, recorded and where appropriate, field checked. A notice was subsequently published in the April 9, 1980, **Federal Register** (page 24254) which announced the Montana State Director's final decision for the Bitter Creek Unit. This notice announced that 59,112 acres of the original 80,144 acre unit possessed wilderness characteristics and would become a designated wilderness study if no protests were received during the official protest period ending May 9, 1980.

Numerous protests were received by the Montana State Director during the protest period. All protests have been carefully considered with the result that the State Director's decision will remain unchanged. Any person adversely affected by this decision has the right of appeal. Appeals should be sent to the Board of Land Appeals, Office of Hearings and Appeals, in accordance with 43 CFR, Part 4. If an appeal is to be submitted to IBLA, notice must be filed in the Montana State BLM Office at P.O. Box 30157, Billings, Montana 59107 on or before October 27, 1980.

All individuals who have submitted written protests will be notified individually of their right of appeal and the procedures to follow. Individuals filing a notice of intent to appeal with the Montana State BLM Office will also be provided with procedural information.

Additional information is available upon request from the Lewistown District BLM Office, Airport Road, P.O. Drawer 1160, Lewistown, Montana 59457, (406) 538–7461 or the Montana State BLM Office, P.O. Box 30157, Billings, Montana 59101, (406) 657–6474.

Michael J. Penfold,

State Director.

[FR Doc. 80–29737 Filed 9–24–80; 8:45 am]

BILLING CODE 4310–84–M

[INT FEIS 80–34]

Nevada; Proposed Livestock Grazing Management Program for the Tonopah Resource Area

AGENCY: Bureau of Land Management.

ACTION: Notice of availability of the final environmental impact statement (FEIS).

SUMMARY: Pursuant to Section 102(2) of the National Environmental Policy Act of 1969, the BLM Battle Mountain District has prepared an FEIS on a proposed livestock grazing management program for the Tonopah Resource Area.

The FEIS utilizes an abbreviated format pursuant to 40 CFR 1503.4(c) and is to be utilized in conjunction with the Draft EIS. The final document consists of a summary of impacts, errata sections for each chapter, and an expanded Chapter 5 on public participation which includes public comments received and responses to the issues raised.

SUPPLEMENTARY INFORMATION: The Tonopah Grazing EIS analyzes the effects of allocating available vegetation to livestock, big game, and wild horses on 3.6 million acres of public lands in northern Nye County, Nevada. The proposal includes recommended grazing management levels by allotment, periods-of-use, utilization levels, grazing treatment, and range improvement of the vegetation resource. Three alternatives were considered along with the proposd action. They are: No Action alternative, No Livestock Grazing alternative, and Livestock Reduction/ Maximizing Wild Horses alternative.

FOR FURTHER INFORMATION CONTACT: Gene Nodine, District Manager, Attention: EIS Team Leader, Battle Mountain District Office, P.O. Box 194, Battle Mountain, NV 89820, (702) 635–5181.

Copies of the FEIS are available for review at the following locations:

Bureau of Land Management, Nevada State Office, 300 Booth Street, Reno, NV 89520, (702) 784–5602.
Bureau of Land Management, Ely District Office, Star Route 5, Box 1, Ely, NV 89301, (702) 289–4865.
Bureau of Land Management, Elko District Office, 2002 Idaho Street, Elko, NV 89801, (702) 738–4071.
Bureau of Land Management, Las Vegas District Office, 4765 W. Vegas Drive, Las Vegas, NV 89102, (702) 385–6403.
Bureau of Land Management, Winnemucca District Office, 705 E. 4th Street, Winnemucca, NV 89445, (702) 623–3676.
Bureau of Land Management, Battle Mountain District Office, North 2nd & Scott Street, Battle Mountain, NV 89820, (702) 635–5181.
Bureau of Land Management, Carson City District Office, 1050 E. Williams Street, Carson City, NV 89701, (702) 882–1631.

Also, copies are available for review at the following public libraries:

Churchill Public Library, 553, S. Main St., Fallon, NV 89406.
Clark County Library, 1401 E. Flamingo Road, Las Vegas, NV 89109.
Elko County Library, Elko, NV 89801.
Esmeralda County Library, Goldfield, NV 89013.
Eureka County Library, Eureka, NV 89316.
Lander County Library, Battle Mountain, NV 89820.
Mineral County Library, 1st and D Street, Hawthorne, NV 89415.
Nevada State Library, Library Building, Carson City, NV 89710.
Nye County Library, Tonopah, NV.
University of Nevada, Reno, Getchell Library, Reno, NV 89507.
University of Nevada, Las Vegas, James R. Dickensen Library, 4505 Maryland Parkway, Las Vegas, NV 89154.
Washoe County Library, 301 S. Center Street, Reno, NV 89505.
White Pine County Library, City Hall, Ely, NV 89301.

A limited number of copies of the draft FEIS are available upon request to the District Manager at the above address.

Dated: September 16, 1980.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 80–29735 Filed 9–24–80; 8:45 am]

BILLING CODE 4310–84–M

Shasta/Clear Creek Off-Road Vehicle Use Designation

Notice is hereby given that Off-Road Vehicle use designations are made on

all the public lands within the Shasta/Clear Creek Planning Unit of the Redding District, which includes approximately 75,000 acres within Shasta County, California. These designations are being made in order to protect the resources of the public lands, promote the safety of all users of those lands, and to minimize conflicts among the various users of those lands. This action applies to off-road vehicles as defined in 43 CFR 8340.0–5A.

This action is in compliance with 43 CFR 8342.2, designation procedures for off-road vehicles and the Shasta/Clear Creek Management Framework Plan. Off-road vehicle use shall be limited to designated vehicle routes. Maps showing the designated vehicle routes are available at the Redding District Office of the Bureau of Land Management, 355 Hemsted Drive, Redding, California, 96002. These designations are effective September 30, 1980.

The public has been involved in these designations through the Bureau's planning process in which the initial decisions to manage off-road vehicle use on these public lands were made, then through the vehicle route inventory and suitability study, and finally through the environmental assessment process.

The public lands within the designated areas will remain open to other resource and recreation uses.

Any person who violates or fails to comply with this designation is subject to arrest as prescribed in 43 CFR 8340.0–7. Penalties for violations may be a fine of not more than $1,000 or imprisonment for not longer than 12 months, or both.

Dated: September 19, 1980.

Jan R. Miller,

Acting District Manager.

[FR Doc. 80–29733 Filed 9–24–80; 8:45 am]

BILLING CODE 4310–84–M

[Colorado 083996 WR]

Recreation and Public Purposes Classification; Revocation

September 18, 1980.

Effective June 4, 1964, the following public lands were classified for disposal under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869; 869–A) under serial number Colorado 083996.

New Mexico Principal Meridian

T. 51 N., R. 2 W.,
Sec. 11, E½;
Sec. 12, All;
Sec. 13, NE¼, N½NW¼, SE¼NW¼, E½SE¼;
Sec. 14, N½NE¼.

All unsurveyed and described according to Protraction Diagram No. 17, approved July 5, 1963, and containing approximately 897 acres.

This classification segregated the lands from all forms of appropriation under the public land laws, except the R&PP Act, and from location and entry under the general mining laws, but not from leasing under the mineral leasing laws.

The classification has been reviewed under Section 204(1), Federal Land Policy and Management Act of 1976 (90 Stat. 2754). It was made originally to protect a proposed public recreation site. However, no improvements have been made nor are any contemplated. The area receives considerable recreational use by campers, particularly during deer and elk hunting seasons, but revoking the classification will not adversely affect this usage. Further, there are no known values which would be jeopardized by restoring the lands to location and entry. Consequently, it has been determined that the classification serves no useful purpose and it is hereby revoked.

At 7:45 a.m. on October 28, 1980, the lands will be open to operation of the public land laws including the general mining laws, subject to valid existing rights and the requirements of applicable law. Inquiries concerning the lands may be addressed to the Bureau of Land Management, Colorado State Bank Bldg., 1600 Broadway, Room 700, Denver, Colorado 80202.

Harold R. Martin,

Acting State Director.

[FR Doc. 80–29690 Filed 9–24–80; 8:45 am]

BILLING CODE 4310–84–M

[Colorado 22999 WR]

Recreation and Public Purposes Act Classification; Continuation

September 18, 1980.

Effective April 27, 1976, the following public lands were classified for disposal under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869; 869–A) under serial Colorado 22999.

Sixth Principal Meridian

T. 14 S., 95 W.,
E½NW¼NW¼E¼, N½SE¼NW¼NE¼, S½NW¼NE¼NW¼NE¼, SW¼NE¼NW¼NE¼, S½NE¼NE¼NW¼NE¼, W½SE¼NE¼NW¼NE¼, containing 16.25 acres.

This classification segregates the lands from all forms of appropriation under the public land laws, except the R&PP Act, and from location and entry under the general mining laws, but not from leasing under the mineral leasing laws.

The classification has been reviewed under Section 204(1), Federal Land Policy and Management Act of 1976 (90 Stat. 2754). The lands are leased to Delta County, Colorado under the R&PP Act for use as a solid waste disposal site.

The classification is serving a useful purpose and is continued so long as the lands are leased under the R&PP Act.

Harold R. Martin,

Acting State Director.

[FR Doc. 80–29690 Filed 9–24–80; 8:45 am]

BILLING CODE 4310–84–M

[Colorado 083502 WR]

Small Tract Classification; Revocation

September 18, 1980.

Classification No. 13, published on pages 811 and 812 of the **Federal Register** on February 8, 1955, classified certain lands for disposal under the Small Tract Act of 1938 (52 Stat. 609, 43 U.S.C. 682a), thereby segregating them from all forms of disposal under the public land laws and the mining laws, but not the mineral leasing laws. The Small tract Act was repealed by Section 702, Federal Land Policy and Management Act of 1976 (90 Stat. 2789); consequently, the classification serves no useful purpose and is hereby revoked. The lands affected are:

Ute Meridian

T. 2 S., R. 1 E.,
Section 4: Lots 5 to 11 inclusive, lot 13, lots 15 to 22 inclusive, lots 24 to 45 inclusive.
The lands described aggregate approximately 60 acres.
Lots 9, 10, 11, 13, and 19, Section 4, are patented.

At 7:45 a.m. on October 28, 1980, the public lands affected by this order shall be open to operation of the public land laws including location under the general mining laws, subject to valid existing rights and the requirements of applicable law. Inquiries concerning the lands may be addressed to the Bureau of Land Management, 1600 Broadway, Room 700, Denver, CO 80202.

Harold R. Martin,

Acting State Director.

[FR Doc. 80–29692 Filed 9–24–80; 8:45 am]

BILLING CODE 4310–84–M

[N–30522]

Nevada; Application

September 18, 1980.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Southwest Gas Corporation filed a right-

of-way application to construct .071 mile of 10¾" and 8⅝" O.D. pipelines and .25 mile of 12¾" O.D. pipeline for the purpose of transporting natural gas across the following public lands:

Mount Diablo Meridian, Nevada

T. 27 N., R. 31 E.,
Sec. 18, Lots 1 & 2.
T. 18 N., R. 25 E.,
Sec. 18, Lot 4.

The proposed pipeline will reinforce and supplement natural gas service for northern Nevada.

The purpose of this notice is to inform the public that the Bureau of Land Management will be processing with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the Chief, Division of Technical Services, Bureau of Land Management, 300 Booth Street, P.O. Box 12000, Reno, Nevada 89520.

Wm. J. Malencik,

Chief, Division of Technical Services.

[FR Doc. 80-29751 Filed 9-24-80; 8:45 am]
BILLING CODE 4310-84-M

INTERSTATE COMMERCE COMMISSION

[Volume No. 340]

Motor Carrier Permanent Authority Decisions; Decision-Notice

Decided: September 19, 1980.

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the **Federal Register.** Protests (such as were allowed to filings prior to March 1, 1979) *will be rejected.* A petition for intervention without leave must comply with Rules 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. The Commission will also consider (a) the nature and extent of the property, financial, or other interest of the petitioner, (b) the effect of the decision which may be rendered upon petitioner's interest, (c) the availability of other means by which petitioner's interest might be protected, (d) the extent to which petitioner's interest will be represented by other parties, (e) the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and (f) the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rule may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission indicating the specific rule under which the petition to intervene is being filed, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulation. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930(a) [formerly section 210 of the Interstate Commerce Act]

In the absence of legally sufficient petitions for intervention, filed on or before October 27, 1980 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices on or before October 27, 1980, or the application shall stand denied.

By the Commission, Review Board Number 2, Members Chandler, Liberman, and Eaton.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, except as otherwise noted.

Volume No. 340

Decided: Sept. 19, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman.

FF–252 Sub 7F (correction) filed June 24, 1980, published in the **Federal Register**, issue of August 7, 1980, and republished, as corrected, this issue. Applicant: CHI-CAN FREIGHT FORWARDING, INC., 3600 S. Western Ave., Chicago, IL 60609. Representative: H. Barney Firestone, 10 South LaSalle St., Suite 1600, Chicago, IL 60603. Freight forwarding, in interstate commerce, through the use of rail and motor carriers, transporting *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, motor vehicles, unaccompanied baggage commodities in bulk, and those requiring special equipment), between ports of entry, on the international boundary line, between the U.S. and Canada in MN, MT, ND, MI, NY, VT, NH, and ME, on the one hand, and, on the other, points in NC, FL, SC, GA, KY, TN, AL, and AR, restricted to import-export traffic only. The purpose of this republication is to delete the word "water" carrier and change it to "motor" carrier instead.

Volume No. 341

Decided: Sept. 19, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill.

MC 125023 (Sub-81F), filed June 27, 1980 and published August 13, 1980 and republished as corrected this issue. Applicant: SIGMA–4 EXPRESS, INC., P.O. Box 9117, Erie, PA 16504. Representative: Paul F. Sullivan, 711 Washington Building, Washington, DC 20005. Transporting: *malt beverages,* in containers, and *equipment, materials, and supplies* (except commodities in bulk) (1) between the facilities of Pabst Brewing Co., at or near Newark, NJ, Milwaukee, WI, Peoria Heights, IL, and Houston County, GA; and (2) between the facilities named in (1) above, on the one hand, and, on the other, points in DE, MD, IL, IN, KY, GA, MI (except upper peninsula), NC, NJ, NY, OH, PA, SC, TN, VA, WI, WV and DC, restricted against traffic from shipper's facilities at Milwaukee, WI, to points in MI. The purpose of this republication is to include MI as destination state.

MC 114273 (Sub-758F), filed June 10, 1980 and published in the **Federal Register** issue of August 7, 1980 and republished as corrected this issue. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in AL, AR, CO, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, VT, VA, WV, WI, and DC. Restricted to traffic originating at or destined to the facilities of Minnesota Mining and Manufacturing Company (3 M Company) or its wholly owned subsidiaries. The purpose of this republication is to show the correct destination State as "TN" in lieu of "IN" as previously published.

Volume No. OP4–060

Decided: Sept. 17, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill. Member Parker not participating.

MC 138676 (Sub-17F), filed June 25, 1980. Applicant: O–J TRANSPORT COMPANY, a corporation, 10290 Gratiot, Detroit, MI 48313. Representative: Robert E. McFarland, 2855 Coolidge, Suite 201A, Troy, MI 48084. Transporting: (1) *automobile parts and materials* used in the manufacture and production of motor vehicles, (2) *such commodities* as are dealt in or used by agricultural equipment and construction equipment manufacturers or dealers, and (3) computer parts and *components,* between points in MI, OH, PA, IN, IL, WI, MO, and KY.

MC 142857 (Sub-6F), filed April 10, 1980. Applicant: MCC TRANSPORTATION CO., INC., Rt. 2, Box 107–B, Hope, AR 71801. Representative: Mark J. Andrews, Suite 1100, 1660 L St. NW., Washington, DC 20036. *Contract carrier,* transporting *malt beverages,* used in the distribution of malt beverages, between points in the U.S., under continuing contract(s) with distributors of Adolph Coors Co., in AR.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80–29632 Filed 9–24–80; 8:45 am]

BILLING CODE 7035–01–M

Motor Carrier Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the **Federal Register** on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applcations involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before November 10, 1980 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. On or before November 24, 1980 an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be

construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contact carrier authority are those where service is for a named shipper "under contract".

Volume No. OP2–049

Decided: September 17, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman.

MC 128273 (Sub-402F), filed September 4, 1980. Applicant: MIDWESTERN DISTRIBUTION, INC., P.O. Box 189, Fort Scott, KS 66701. Representative: Elden Corban (same address as applicant). Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S. NOTE: The person or persons who appear to be engaged in common control with another carrier must either file an application under 49 U.S.C. § 11343(a) (1978) or submit an affidavit indicating why such approval is unnecessary.

Volume No. OP3–022

Decided: September 18, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman.

MC 2304 (Sub-39F), filed September 4, 1980. Applicant: THE KAPLAN TRUCKING CO., a corporation, 6600 Bessemer Ave., Cleveland, OH 44127. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. Transporting *general commodities* (except used household goods, hazardous or secret materials and sensitive weapons and munitions), for the U.S. Govenment, between points in the U.S.

MC 85934 (Sub-126F), filed September 2, 1980. Applicant: MICHIGAN TRANSPORTATION COMPANY, a corporation, P.O. Box 248, 3601 Wyoming Ave., Dearborn, MI 48120. Representative: Martin J. Leavitt, 22375 Haggerty Rd., P.O. Box 400, Northville, MI 48167. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S. Condition: The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application under 49 U.S.C. § 11343 or submit an affidavit indicating why such approval is unnecessary.

MC 95965 (Sub-2F), filed September 4, 1980. Applicant: NICHOLAS J. ASCENZO, INC., 1544 Boone Ave., Bronx, NY 10460. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048. Transporting *general commodities,* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 124965 (Sub-5F), filed September 3, 1980. Applicant: OIL TRANSPORT, INC., 4419 Bainbridge Bldg., Chesapeake, VA 23320. Representative: Blair P. Wakefield, Suite 1001, First and Merchants National Bank Bldg., Norfolk, VA 23510. Transporting *general commodities* (except used household goods, hazardous or secret materials and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 131004F, filed September 3, 1980. Applicant: JOHN I. SKINNER, 5464 Government St., Mobile, AL 36608 Representative: John I. Skinner (same address as applicant). *Broker,* in arranging for the transportation of *general commodities* (except household goods), between points in the U.S.

MC 131014F, filed September 8, 1980. Applicant: ROBERT R. SCHWENIG d.b.a. SENTINEL TRANSPORTATION SYSTEMS CO., 7725 Vale Drive, Whittier, CA 90602. Representative: Robert R. Schwenig, (same address as applicant). *Broker,* in arranging for the transportation of *general commodities* (except household goods), between points in the U.S.

MC 131015F, filed September 9, 1980. Applicant: AAA TRUCKING COMPANY, d.b.a. AAA TRUCK BROKERAGE, 504 S. Main, Suite No. 5, Stillwater, OK 74074. Representative: T. Zack Cooper, Sr. (same address as applicant). As a *broker,* to arrange for the transportation of *general commodities* (except used household goods), between points in the U.S.

MC 135325 (Sub-10F), filed September 4, 1980. Applicant: WEMCO, INC., 3969 Wyoming Ave., Dearborn, MI 48126. Representative: Wilhelmina Boersma, 1600 First Federal Bldg., Detroit, MI 48226. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 144624F, filed September 3, 1980. Applicant: AMERICAN STREVELL TRANSPORT, INC., P.O. Box 26587, 2205 West 15th South, Salt Lake City, UT 84125. Representative: Eugene D. Anderson, 910 Seventeenth St. NW., Suite 428, Washington, DC 20006. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

Volume No. OP4–061

Decided: Sept. 17, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill.

MC 42537 (Sub-65F), filed September 12, 1980. Applicant: CASSENS TRANSPORT COMPANY, a corporation, P.O. Box 468, Edwardsville, IL 62025. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 95876 (Sub-360F), filed September 15, 1980. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Ave. North, St. Cloud, MN 56301. Representative: William L. Libby (same address as applicant). Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 150496 (Sub-5F), filed September 12, 1980. Applicant: P.A.M. TRANSPORT, INC., P.O. Box 188, Tontitown, AR 72770. Representative: Barry Weintraub, Suite 800, 8133 Leesburg Pike, Vienna, VA 22180. Transporting *general commodities,* between New Lisbon, Spiceland, Mays, and Sexton, IN, on the one hand, and, on the other, points in the U.S. Condition: Person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application under 49 U.S.C. 11343(A) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80–29629 Filed 9–24–80; 8:45 am]

BILLING CODE 7035–01–M

Motor Carrier Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplyfying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before November 10, 1980 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain rquirements which will be set forth in a notice that the decision-notice is effective. On or before November 24, 1980, an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

Volume No. OP2–050

Decided: September 17, 1980.

By the Commission, Review Board Number 3, Members Chandler, Eaton, and Liberman.

MC 38403 (Sub-3F), filed September 9, 1980. Applicant: WELLING TRUCK SERVICE, INC., 3610 Tree Court Industrial Drive, Kirkwood, MO 63122. Representative: H. Barney Firestone, 10 South LaSalle St., Suite 1600, Chicago, IL 60603. Transporting (1) *confectionery products, chocolate, cocoa and cocoa compounds, chocolate syrup, and oleomargarine,* and (2) *dessert preparations* and *materials and supplies* used in the manufacture of dessert preparations, between points in St. Louis County, MO, on the one hand, and, on the other, points in IL and KY.

MC 61403 (Sub-294F), filed September 8, 1980. Applicant: THE MASON AND DIXON TANK LINES, INC., P.O. Box 969, Kingsport, TN 37662. Representative: W. C. Mitchell, Suite 1201, 370 Lexington Avenue, New York, NY 10017. Transporting *commodities* in bulk, between points in Beaver County, PA, on the one hand, and, on the other, points in CT, DE, FL, IL, IN, KY, MA, MD, ME, MO, NH, NJ, NY, RI, and WV.

MC 107012 (Sub-574F), filed September 12, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). Transporting *materials, equipment and supplies* used in the manufacture and distribution of barbecue grills, from points in the U.S., to the facilities of ARKLA Industries, Inc., at Paragould, AR.

MC 107403 (Sub-1040F), filed September 10, 1980. Applicant: MATLACK, INC., Ten West Baltimore Ave., Landsdowne, PA 19050. Representative: Martin C. Hynes, Jr., (same address as applicant). Transporting *cement,* from Demopolis and Birmingham, AL, to points in GA, FL, MS, and TN.

MC 113362 (Sub-403F), filed September 11, 1980. Applicant: ELLSWORTH FREIGHT LINES, INC., 310 East Broadway, Eagle Grove, IA 50533. Representative: Milton D. Adams, P.O. Box 429, Austin, MN 55912. Transporting (1) *foodstuffs,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of foodstuffs, (except commodities in bulk), between the facilities of Geo. A. Hormel & Co., in Scott County, IA, on the one hand, and, on the other, points in AL, AR, CT, DE, IL, IN, LA, ME, MD, MA, MS, NE, NH, NJ, NY, OH, OK, PA, RI, TX, VT, VA, WV, and DC.

MC 119632 (Sub-123F), filed September 8, 1980. Applicant: REED LINES, INC., 634 Ralston Avenue, Defiance, OH 43512. Representative: Wayne C. Pence (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), between those points in the U.S. in and east of MN, IA, MO, AR, and LA. Condition: This grant of authority is conditioned upon coincidental cancellation, at applicant's written request, of all its outstanding certificates.

MC 121733 (Sub-4F), filed September 10, 1980. Applicant: SEA-RAIL TRUCKLOADS, INC., 1225 South Jellick, City of Industry, CA 91748. Representative: Miles L. Kavaller, 315 So. Beverly Dr., Suite 315, Beverly Hills, CA 90212. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in AL, AZ, AR, CA, CO, FL, GA, ID, IL, IA, KS, LA, MN, MS, MO, NE, NV, NM, NC, OK, OR, SC, TN, TX, UT, WA, WI, and WY, restricted to traffic originating at or destined to the facilities of the Ralston Purina Company.

MC 139923 (Sub-77F), filed September 5, 1980. Applicant: MILLER TRUCKING CO., INC., P.O. Box Drawer D, Stroud, OK 74079. Representative: Daniel O. Hands, Suite 200, 205 West Touhy Avenue, Park Ridge, Il 60068. Transporting *general commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of International Paper Company. Condition: Any certificate issued in this proceeding, to the extent that it authorizes the transportation of classes A and B explosives, shall be limited in term to a period expiring 5 years from its date of issue.

MC 151632F, filed September 10, 1980. Applicant: EASTWOOD CARRIERS, INC., P.O. Box 1073, Lockhouse Rd., Westfield, MA 01086. Representative: James M. Burns, Suite 413, 1383 Main St., Springfield, MA 01103. Transporting (1) *iron and steel articles,* and (2) *machinery* used in the manufacture of iron and steel articles, between points in Henry and Cook Counties, IL, Worcester County, MA, Alleghany County, MD, York County, ME, Erie County, NY, Stark County, OH, and Beaver County, PA.

Volume No. OP4–059

Decided: September 17, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill. Member Parker not participating.

MC 1977(Sub-47F), filed September 15, 1980. Applicant: NORTHWEST TRANSPORT SERVICE, INC., 5601 Holly St., Commerce City, CO 80022. Representative: Leslie R. Kehl, 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264. Transporting *classes A and B explosives,* between points in AZ, AR, CA, CO, ID, IA, KS, LA, MO, MT, NE, NV, NM, OK, OR, TX, UT, WA, and WY. Condition: The certificate to be issued in this proceeding shall be limited in point of time to a period expiring 5 years from its date of issue.

MC 26396 (Sub-377F), filed September 15, 1980. Applicant: THE WAGGONERS TRUCKING, P.O. Box 31357, Billings, MT 59107. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Transporting (1) *pipe, pipe fittings, and irrigation equipment,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1), between points in NE and KS, on the one hand, and, on the other, points in the U.S.

MC 52657(Sub-757F), filed September 15, 1980. Applicant: ARCO AUTO CARRIERS, INC., 16 West 151 Shore Court, Burr Ridge, IL 60521. Representative: Anthony E. Young, 29 South La Salle St., Suite 350, Chicago, IL 60603. Transporting *new automobiles,* in secondary movements, in truckaway service, between points in AR, CT, DE, KS, KY, LA, ME, MD, MA, MN, MS, MO, MT, NE, NH, NJ, NY, NC, ND, OH, PA, RI, SD, TN, UT, VT, VA, WV, WI, WY, and DC. Condition: Issuance of a certificate in this proceeding is subject to prior or coincidental cancellation, at applicant's written request, of certificate MC–52657.

MC 59617(Sub-7F), filed September 12, 1980. Applicant: WARES' VAN & STORAGE, INC., 1344 Northwest Blvd., Vineland, NJ 08360. Representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105. Transporting *household goods* as defined by the Commission between points in the U.S.

MC 70267 (Sub-16F), filed September 12, 1980. Applicant: ECKERT TRUCKING, INC., 1090 East Springettsbury Ave., York, PA 17405. Representative: Norman T. Petow, 43 North Duke St., York, PA 17401. Transporting (1)(a) *roofing, building and insulation materials,* from the facilities of the CertainTeed Corporation and W. R. Meadows of Pennsylvania, Inc. at points in York County, PA, to points in CT, ME, NH, RI, and VT, (b) *materials and supplies* used in the manufacture, installation and distribution of roofing, building and insulation materials in the reverse direction and, (2) *roofing, building and insulation materials,* from the facilities of W. R. Meadows of Pennsylvania, Inc. at Elgin and Hampshire, IL, to the facilities of W. R. Meadows of Pennsylvania, Inc. at points in York County, PA.

MC 95876 (Sub-359F), filed September 15, 1980. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Ave. No., St. Cloud, MN 56301. Representative: William L. Libby (same address as applicant). Transporting *pipe, pipe fittings, valves and hydrants,* from points in the U.S. to Fargo, ND.

MC 95876 (Sub-361F), filed September 15, 1980. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Ave. No., St. Cloud, MN 56301. Representative: William L. Libby (same address as applicant). Transporting *such commodities* as are dealt in or used by manufacturers and distributors of ice rinks (except commodities in bulk), between points in the U.S.

MC 95876 (Sub-362F), filed September 15, 1980. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Ave. No., St. Cloud, MN 56301. Representative: William L. Libby (same address as applicant). Transporting *crushed stone, and crushed stone products* (except in bulk), from Wheatland, WY, to points in the U.S. (including AK, but excluding HI).

MC 95876 (Sub-363), filed September 15, 1980. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Ave. No., St. Cloud, MN 56301. Representative: William L. Libby (same address as applicant). Transporting (1) *iron and steel articles,* and (2) *materials, equipment and supplies* used in the manufacture and distribution of commodities in (1) (except commodities in bulk), between the facilities of Keystone Group at or near Peoria, Chicago and Chicago Heights, IL, Crawfordsville, IN, Sherman, TX, Santa Clara, CA, and Greenville, SC, on the one hand, and, on the other, points in the U.S.

MC 105566 (Sub-230F), filed September 12, 1980. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1120, Cape Girardeau, MO 63701. Representative: William F. King, Suite 400, Overlook Bldg., 6121 Lincolnia Rd., Alexandria, VA 22312. Transporting (1) *pulp, paper, or allied products, printed matter, and chemicals or allied products,* as described in Items 26, 27, and 28 of the Standard Transportation Commodity Code Tariff, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in Hartford County, CT, and Livingston County, IL, on the one hand, and, on the other, points in AZ, AR, CA, CO, GA, ID, IL, KY, MA, MD, MS, MT, NV, NM, NY, OH, OR, PA, TX, UT, WA, WI, WY, and DC, restricted to traffic originating at or destined to the facilities of W. A. Krueger Company.

MC 105566 (Sub-231F), filed September 12, 1980. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1120, Cape Girardeau, MO 63701. Representative: William F. King, Suite 400, Overlook Bldg., 6121 Lincolnia Rd., Alexandria, VA 22312. Transporting (1) *foodstuffs,* (2) *plastic and rubber articles,* when transported in mixed loads with foodstuffs, and (3) *materials, equipment, and supplies* used in the manufacture of the commodities in (1) and (2) above, between points in St. Joseph County, MI, Franklin County, OH, and Campbell County, VA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 105886 (Sub-34F), filed September 10, 1980. Applicant: MARTIN TRUCKING, INC., E. Poland Ave., Bessemer, PA 16112. Representative: Henry M. Wick, Jr., 2310 Grant Bldg., Pittsburgh, PA 15219. Transporting (1) *scrap,* from points in Beaver and Lawrence Counties, PA, to points in CT, IN, KY, MD, NY, OH, and WV, and (2) *flue dust, mill scale and swarf,* from points in CT, IN, KY, MD, NY, OH, VA, and WV, to points in Beaver and Lawrence Counties, PA.

MC 109397 (Sub-520F), filed September 15, 1980. Applicant: TRI–STATE MOTOR TRANSIT CO., a corporation, P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs (same address as applicant). Transporting *pulp, paper or allied products* as described in Item 26 of the Standard Transportation Commodity Code Tariff, between points in King County, WA, on the one hand, and, on the other, points in the U.S.

MC 121316 (Sub-2F), filed September 12, 1980. Applicant: M K & SONS EXPRESS, INC., 8 Upton St., Peabody, MA 01960. Representative: George J. Cokorogianis (same address as applicant). Transporting *general commodities,* between points in MA, ME, and NH.

Note.—To the extent the certificate granted in this proceeding authorizes the transportation of classes A and B explosives, it shall be limited in point of time to a period expiring 5 years from its date of issue.

MC 130156 (Sub-1F), filed September 15, 1980. Applicant: WEGIEL TRAVEL SERVICE, INC., 1985 Main St., Springfield, MA 01103. Representative: Bronislaw T. Wegiel (same address as applicant). To engage in operations, in interstate of foreign commerce, as a *broker,* at Springfield, MA, in arranging

for the transportation by motor vehicle, of *passengers and their baggage*, in special and charter operations, between points in the U.S., including AK and HI.

MC 141197 (Sub-47F), filed September 12, 1980. Applicant: FLEMING-BABCOCK, INC., 4106 Mattox Road, Riverside, MO 64151. Representative: Tom B. Kretsinger, 20 East Franklin, Liberty, MO 64068. Transporting *animal feed and feed ingredients*, in bulk, in dump vehicles, between points in Clay County, MO, on the one hand, and, on the other, points in IA, NE, AR, OK, CO, and TX.

MC 143127 (Sub-75F), filed September 12, 1980. Applicant: K. J. TRANSPORTATION, INC., 6070 Collet Rd., Victor, NY 14564. Representative: Linda A. Calvo (same address as applicant). Transporting *alcoholic beverages* (except in bulk) and *materials, supplies and equipment* used in the manufacture and distribution of alcoholic beverages (except commodities in bulk), between points in Daviess County, KY, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, CO, OK and TX.

MC 144687 (Sub-3F), filed September 12, 1980. Applicant: CURTIS R. McPEAK, d.b.a. McPEAK TRUCKING, Box 35, Dalton City, IL 61925. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. Transporting (1) *grain storage, handling and drying equipment*, and (2) materials, equipment, and supplies used in the manufacture of the commodities in (1), between points in the U.S., under continuing contract(s) with Grain Systems, Inc., of Assumption. IL.

MC 147486 (Sub-1F), filed September 12, 1980. Applicant: BOARDWALK SHUTTLE SERVICES, INC., 133 New St., Glenside, PA 19038. Representative: Michael J. Korolishin, 1260 Suburban Station Bldg., 1617 J.F.K. Blvd., Philadelphia, PA 19103. Transporting *passengers and their baggage*, between Philadelphia, PA, and Atlantic City, NJ.

MC 148966 (Sub-3F), filed September 12, 1980. Applicant: DROTZMANN, INC., P.O. Box 667, Yankton, SD 57078. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) from the facilities of Terminal Freight Cooperative Association, at (a) Boston, MA, (b) North Bergen, NJ, (c) Philadelphia, PA, and (d) Cleveland, OH, to Seattle, WA, Portland, OR, Los Angeles, CA, and Pocatello, ID, and (2) from the facilities of Terminal Freight Cooperative Association, at Los Angeles, CA, to Seattle, WA, Portland, OR, Pocatello, ID, and Murray, UT.

MC 149026 (Sub-14F), filed September 9, 1980. Applicant: TRANS-STATES LINES, INC., 633 Main St., P.O. Box 1485, Van Buren, AR 72956. Representative: Larry C. Price (same address as applicant). Transporting (1) *chemicals or allied products*, (2) *rubber or miscellaneous plastic products*, and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) and (2) above (except in bulk), as described in items 28 and 30 of the Standard Transportation Commodity Code Tariff, between Fort Smith, AR; Chicago, IL, Compton, CA, and Newnan, GA, on the one hand, and, on the other, points in the U.S. (except AK and HI.)

MC 149137 (Sub-5F), filed September 11, 1980. Applicant: MASTER TRANSPORT SERVICES, INC., 5000 Wyoming, Suite 203, Dearborn, MI 48126. Representative: William B. Elmer, 21635 East Nine Mile Rd., St. Clair Shores, MI 48080. Transporting *industrial cleaning compounds, lubricants, and disinfectants*, between points in Wayne County, MI, on the one hand, and, on the other, points in the U.S.

MC 151057 (Sub-1F), filed September 12, 1980. Applicant: FASHIONABLE FURNITURE MFG. CO., a corporation, 3170 Airway Avenue, Costa Mesa, CA 92626. Representative: Donald R. Hedrick, P.O. Box 88, Norwalk, CA 90650. Transporting *new furniture and new furniture parts*, between points in CA, on the one hand, and, on the other, points in OR, WA, ID, MT, WY, SD, CO, UT, NV, AZ, NM, TX, and OK.

Volume No. OP4–062

Decided: September 18, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones. Member Carleton not participating.

MC 63417 (Sub-294F), September 15, 1980. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same address as applicant). Transporting *wine* (except in bulk), from points in Chautauqua County, NY, to points in AL, GA, KY, TN, and MS.

MC 147157 (Sub-2F), September 15, 1980. Applicant: MARTIN TRANSFER AND STORAGE, INC., P.O. Box 3008, East Dublin, GA 31021. Representative: C. E. Walker, P.O. Box 1085, Columbus, GA 31902. Transporting (1) *paper and paper products* (except in bulk), from the facilities of Bowater Southern Paper Corporation at points in McMinn County, TN, to points in AL, AR, FL, GA, IL, IN, KS, KY, LA, MD, MS, MO NC, OH, OK, PA, SC, TX, VA, and WV, and (2) *waste paper, cores, and materials, supplies and equipment* used in the manufacture of paper and paper products in (1), in the reverse direction, under continuing contract(s) with Bowater Southern Paper Corporation, of Calhoun, TN.

MC 148737 (Sub-5F), September 9, 1980. Applicant: SUNSET EXPRESS CORP., P.O. BOX 27153, Salt Lake City, UT 84125. Representative: Carl I. Sundeaus (same address as applicant). Transporting (1) *ore, refractories, and mill products*, and (2) *equipment, materials, and supplies* using in mining, milling, and refractories operations, between those points in the U.S. in and west of AR, IA, LA, MN, and MO.

MC 150697 (Sub-1F), September 12, 1980. Applicant: RONDELL FEWELL, Route #3, Pawnee, OK 74058. Representative: C. L. Phillips, Room 248, Classen Terrace Bldg., 1411 N. Classen, Oklahoma City, OK 73106. Transporting *livestock feed, feed ingredients, and minerals* (excedpt in tank vehicles), from points in KS, MO, and TX to Pawnee, OK, under continuing contract(s) with Stockman's Mill & Grain, Inc., of Pawnee, OK.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-29631 Filed 9-24-80; 8:45 am]
BILLING CODE 7035-01-M

Finance Applications, Motor Carriers, Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR § 1100.240). An interim proposed final Rule 240 reflecting changes to comport with the Motor Carrier Act of 1980 was published in the July 3, 1980, Federal Register at 45 FR 45529 under Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. §§ 11344 and 11349*. Those rules provide among other things, that opposition to the granting of an application must be filed

with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register**. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 240(C) of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.240(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.240(A)(h).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: September 12, 1980.

By the Commission, Review Board Number 5, Members Krock, Taylor, and Williams. (Board Member Taylor not participating.)

MC-F-14471F, filed August 29, 1980. CROUSE CARTAGE COMPANY (Crouse) (P.O. Box 151, Carroll, IA 51401)—purchase—C. R. McCLOUD, an individual, d.b.a. M & M MOTOR FREIGHT (M&M) (696 Twelfth Street, SE, Mason City, IA 50401). Representative: William S. Rosen, 630 Osborn Bldg., St. Paul, MN 55102. Crouse seeks authority to purchase the interstate and the intrastate operating rights of M&M. Paul E. Crouse, George Crouse, and Kenneth B. Crouse, who control Crouse through stock ownership, seek authority to acquire control of said rights through the transaction. Crouse is purchasing the operating rights of M&M evidenced by (1) Certificate No. MC–97991 (Sub-No. 1), authorizing the common carrier transportation, over regular routes, of *general commodities* (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Mason City and Buffalo Center, IA, serving the intermediate points of Forest City and Thompson, IA: from Mason City over US Hwy 18 to junction US Hwy 69, then over US Hwy 69 to junction IA US Hwy 9, then over IA Hwy 9 to Buffalo Center, and return over the same route; and (2) Certificate of Registration No. MC–97991 (Sub-No. 2), authorizing the transportation of *general commodities,* between Mason City, forest City, Thompson, Buffalo Center, Lakota, Ledyard, Swea City, Armstrong, Estherville, Bancroft, Titonka, Woden, Crystal Lake, junction Hancock County Hwy A and US Hwy 69, Burt, Lone Rock, Fenton and Ringsted, IA, except (a) freight originating at or destined to points intermediate to Mason City and Forest City, and (b) no authority is granted to pick up freight either originating or interlined at Armstrong and destined to Estherville or to pick up freight either originating or interlined at Estherville and destined to Armstrong, or to serve intermediate points in either direction. This certificate of registration was issued by the Interstate Commerce Commission in connection with an underlying intrastate Certificate of Convenience and necessity No. 225, dated August 12, 1954, issued by the Iowa State Commerce Commission. Crouse is a motor common carrier pursuant to certificates issued in MC–123389 and sub-numbers thereunder. Crouse owns all of the outstanding stock of Lawson Truck Line, Inc. Lawson is a motor common carrier pursuant to a certificate issued in MC–54291.

Note.—(1) Crouse intends to tack the authority sought to be acquired with its existing authority. (2) Application for temporary authority has been filed. (3) A directly related application seeking a conversion of the certificate of registration in MC–97991 (Sub-No. 2) into a certificate of public convenience and necessity has been filed in MC–123389 (Sub-No. 54F), published in this same **Federal Register** issue.

Decision-Notice

The following operating rights applications, filed on or after July 3, 1980, are filed in connection with pending finance applications under 49 U.S.C. 10926, 11343 or 11344. The applications are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). Special Rule 247 was published in the Federal Register of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Persons submitting protests to applications filed in connection with pending finance applications are requested to indicate across the front page of all documents and letters submitted that the involved proceeding is directly related to a finance application and the finance docket number should be provided. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. However, the Commission may have modified the application to conform to the Commission's policy of simplifying grants of operating authority.

Findings: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major

regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements as to the finance application *or* to the following operating rights applications directly related thereto filed within 45 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except where the application involves duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice by effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

MC 123389 (Sub-54F), filed August 29, 1980. Applicant: CROUSE CARTAGE COMPANY, P.O. Box 151, Carroll, IA 51401. Representative: William S. Rosen, 630 Osborn Bldg., St. Paul, MN 55102. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring the use of special equipment), between Mason City, IA, and Esterville, IA, serving all intermediate points and the off-route points of Ledyard, Ringsted, Bancroft, Fenton, Lone Rock, Burt, Titonka, Woden, and Crystal Lake, IA: from Mason City over US Hwy 18 to junction US Hwy 69, then over US Hwy 69 to junction IA Hwy 9, then over IA Hwy 9 to Estherville, and return over the same route.

Note.—This application is directly related to MC–F–14471F, published in this same Federal Register issue. This application seeks to convert Iowa Certificate No. 225 to a Certificate of Public Convenience and Necessity.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80–29700 Filed 9–24–80; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 29434]

Duluth, Winnipeg & Pacific Railway Co.—Merger—Duluth, Rainy Lake & Winnipeg Railway Co., and Duluth, Winnipeg & Pacific Railway Co. Exemption Under 49 U.S.C. § 10505 from 49 U.S.C. §§ 11343–11347

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Duluth, Rainy Lake and Winnipeg Railway Company (DRL&W) and Duluth, Winnipeg and Pacific Railway Company of Maine (DWP (Maine)) intend to merge into Duluth, Winnipeg and Pacific Railway Company of Minnesota (DWP (Minnesota)). These affiliated carriers seek exemption of the merger from the requirement of prior approval under 49 U.S.C. §§ 11343–11347.

DATES: Comments must be received on or before October 27, 1980.

ADDRESS: Send comments to: Interstate Commerce Commission, 12th and Constitution Ave. NW., Washington, DC 20423.

All written submissions will be available for public inspection during regular business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Ellen Hanson, 202–275–7245.

SUPPLEMENTARY INFORMATION: On July 31, 1980, DRL&W, DWP (Maine) and DWP (Minnesota) filed a petition under 49 U.S.C. § 10505 to exempt their anticipated merger from the requirement of obtaining prior Commission approval under 49 U.S.C. §§ 11343–11347.

Petitioners claim that the proposed transaction will not adversely affect other carriers, shippers, the public, or the present operations of any of the three companies. They also allege that the transaction will have no adverse affects on energy consumption or on the environment. These assertions should be addressed in the comments.

The Transaction

DRL&W and DWP (Minnesota) are wholly-owned subsidiaries of DWP (Maine). (The latter company is a wholly owned subsidiary of Grand Trunk Corporation (GTC), a Delaware Corporation controlled by the Canadian National Railway Company (CN)). DRL&W and DWP (Minnesota) have no employees, but together they own the right-of-way and track upon which DWP (Maine) operates as a Class II railroad between Ranier and Duluth, MN. Upon consummation of the proposed merger, DWP (Minnesota) will be as the operating carrier and the other two companies will cease to exist. DWP (Minnesota) will succeed to all properties, assets, franchises and obligations of the constituent corporations. It will become the employer of the persons presently employed by DWP (Maine). The net effect of this transaction is that DWP (Minnesota) will become the operating carrier in the place of DWP (Maine). All of its stock will be owned by GTC, as is the case now with DWP (Maine).

Petitioners state that the proposed transaction will involve no change in traffic volumes, markets or customers now served by DWP (Maine). The surviving carrier will continue to provide line haul transportation service between CN on the north and other railroads with which DWP (Maine) now connects.

Petitioners are willing for the proposed exemption to be conditioned by the requirements for employee protection established in *New York Dock Railway-Control-Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

No new capitalization or issuance of securities is anticipated. The objective of the merger is said to be limited to the achievement of administrative savings and corporate simplification.

The Statute

The merger of the properties of two or more carriers into one corporation requires the approval and authority of the Commission under 49 U.S.C. §§ 11343–11347. To seek Commission approval, an application must be filed in compliance with the ICC *Railroad Acquisition, Control, Merger, Consolidation, Coordination Project, Trackage Rights and Lease Procedures*, 49 C.F.R. Part 1111 (1978) (Consolidation Procedures). Petitioners have requested an exemption from 49 U.S.C. §§ 11343–11347 so that they will not have to file an application under the Consolidation Procedures.

Petitioners state that the usual regulatory requirements contained in 49 U.S.C. §§ 11343–11347 would involve unreasonable expense and disproportionate administrative burden and would serve no useful purpose.

We are authorized by 49 U.S.C. § 10505 to exempt from our regulation a transaction because of its limited scope. This exemption is available when we find that continued regulation:

(1) is not necessary to carry out the transportation policy of 49 U.S.C. § 10101;

(2) would be an unreasonable burden on a person, class of persons, or interstate or foreign commerce; and

(3) would serve little or no useful public purpose.

Petitioners contend that this merger is the type of transaction which Congress intended us to exempt. They acknowledge that the exemption will be limited to this merger, and that after the merger DWP (Minnesota) would continue to be subject to Commission regulation.

Before granting an exemption, we are required to provide the opportunity for a proceeding. This request for comments is that opportunity. All comments received along with the petition, will be used to determine whether or not the exemption should be granted.

This proceeding is instituted under the authority of 49 U.S.C. § 10505 and pursuant to 5 U.S.C. §§ 553,559.

This proceeding is not a major Federal action significantly affecting energy consumption or the quality of the human environment.

Dated: September 15, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-29701 Filed 9-24-80; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29439]

Trans Northern, Inc.—Control—Brillion & Forest Junction Railroad Co., and Chippewa River Railroad Co., Exemption Under 49 U.S.C. § 10505 From 49 U.S.C. §§ 11343-11347

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Brillion & Forest Junction Railroad Company (BFJR) and Chippewa River Railroad Company (CVSR) are wholly-owned subsidiaries of Trans Northern, Inc. (Trans Northern). Trans Northern seeks exemption from the requirement of 49 U.S.C. §§ 11343–11347 for prior approval of control of two or more regulated carriers.

DATES: Comments must be received on or before October 27, 1980.

ADDRESSES: Send comments to: Interstate Commerce Commission, 12th and Constitution Ave. NW., Washington, D.C. 20423.

All written submissions will be available for public inspection during regular business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Ellen Hanson, 202–275–7245.

SUPPLEMENTARY INFORMATION: On August 7, 1980, Trans National filed a petition under 49 U.S.C. § 10505, to exempt its control and ownership of BFJR and CVSR, and sharing of common directors and officers, from the requirements of obtaining prior Commission approval under 49 USC §§ 11343–11347.

The Transaction

Both BFJR and CVSR are wholly-owned subsidiaries of Trans Northern, a Michigan corporation formed to own and operate railways. BFJR operates a freight-only short line comprising 8 miles of track between Brillion and Forest Junction, WI. It began operating in June 1978, under authority from the Commission in Service Order No. 1327, *Brillion & Forest Junction Railroad Company Authorized to Operate Over Tracks Abandoned by Chicago and North Western Transportation Company*, issued May 19, 1978, and extended through Amendment 2 to Service Order No. 1327 served July 16, 1979. BFJR received a certificate of public convenience and necessity in 1979 in Finance Docket No. 29057, *Brillion & Forest Junction Railroad Company, Inc.—Operation—Over a Line of Railroad Between Brillion and Forest Junction Railroad in Calumet County, WI.* BFJR operates over trackage owned by a shipper's group known as AFW Realty Company.

CVSR operates a freight-only short line consisting of about 33 miles of track between Eau Claire and Durand, WI, over a former route of the Chicago, Milwaukee, St. Paul and Pacific Railway Company. The line was sold to the Wisconsin State Department of Transportation through an application filed under Section 5(2)(b) of Public Law 96–101, The Milwaukee Railroad Restructuring Act. The application was approved by a decision served February 29, 1980, in Finance Docket No. 29237, *State of Wisconsin-Acquisition of Certain Lines of Chicago, Milwaukee, St. Paul and Pacific Railroad Company.*

The line is now apparently owned by the Wisconsin Department of Transportation and the Western Wisconsin Tri-County Transit Commission (WWTC). CVSR began operations on April 1, 1980, under service order authority and is now operating under ICC Service Order No. 1474, *Various Railroads Authorized To Use Tracks And/Or Facilities of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee)*, issued June 11, 1980, as last extended by Fourth Revised Service Order No. 1474, served August 6, 1980. CVSR plans to begin negotiating a long-term operating contract with the WWTC, and upon reaching agreement, it will apply for permanent operating authority from the Commission. BFJR and CVSR lease their locomotive power from Trans Northern, which presently owns four diesel locomotives and vintage passenger equipment (including two steam locomotives).

Trans Northern states that BFJR and CVSR serve entirely separate regions over 200 miles apart and serve completely different shippers. The two lines do not connect, do not share any common traffic, and do not interact on any level whatsoever. While the two lines share common directors with their owner, they are operated independently as totally separate carriers.

The Statute

The acquisition of control of two or more carriers by a non-carrier requires the approval and authority of the Commission under 49 U.S.C. § 11343. To seek Commission approval, an application must be filed in compliance with the ICC *Railroad Acquisition, Control, Merger, Consolidation, Coordination Project, Trackage Rights and Lease Procedures*, 49 CFR Part 1111 (1978) (Consolidation Procedures). Trans National has requested an exemption from 49 U.S.C. § 11343 so that it will not have to file an application under the Consolidation Procedures. It asserts that the usual regulatory requirements are not necessary to carry out the national transportation policy, would serve no useful public purpose and would be an unreasonable burden on petitioner.

We are authorized by 49 U.S.C. § 10505 to exempt from our regulation a transaction because of its limited scope. This exemption is available when we find that continued regulation:

(1) is not necessary to carry out the transportation policy of 49 U.S.C. § 10101;

(2) would be an unreasonable burden on a person, class of persons, or interstate or foreign commerce; and

(3) would serve little or no useful public purpose.

Trans National maintains that its ownership and control of BFJR and CVSR is the type of transaction which should be exempt under 49 U.S.C. § 10505 because it is of limited scope and preparation of a complete application would be an unreasonable burden upon the parties.

Before granting an exemption, we are required to provide the opportunity for a proceeding. This request for comments is that opportunity. All comments received, along with Trans National's petition, will be used to determine whether or not the exemption should be granted.

This proceeding is instituted under the authority of 49 U.S.C. § 10505 and pursuant to 5 U.S.C. §§ 553, 559.

This proceeding is not a major Federal action significantly affecting energy consumption or the quality of the human environment.

Dated: September 15, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-29699 Filed 9-24-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Finance Applications; Decision-Notice

Correction

In FR Doc. 80-22950, appearing at page 50946 in the issue of Thursday, July 31, 1980, the following should be inserted at the beginning of the first complete paragraph in column one on page 50949:

"MC-125433 Sub. No. 366F, filed January 4, 1980."

BILLING CODE 1505-01-M

Motor Carrier Temporary Authority Application

Correction

In FR Doc. 80-24863, published Monday, August 18, 1980, at page 54880 the following correction should be made in the White Tiger Transportation Co. Inc. application:

On page 54882, second column, in the 15th line from the top of the page, the first word now reading "GO" should read "CO".

BILLING CODE 1505-01-M

Finance Applications; Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). An interim proposed final Rule 240 reflecting changes to comport with the Motor Carrier Act of 1980 was published in the July 3, 1980, **Federal Register** at 45 FR 45529 under Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. §§ 11344 and 11349.* These rules provides among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 240(C) of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.240(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.240(A)(h).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Decided: September 5, 1980.

By the Commission, Review Board number 5, Members Krock, Taylor, and Williams. (In MC-F-14461F, Board Member Taylor votes to publish with an impediment as to duplicating rights being sold and retained.) (In MC-F-14466F and MC-F-14468F, Board Member Taylor not participating.)

MC-F-14461F, filed August 25, 1980. TRANSYSTEMS, INC., (Transystems) (P.O. Box 399, Black Eagle, MT 59414)—purchase (portion)—RICE TRUCK LINES (Rice) (P.O. Box 395, Black Eagle, MT 59414). Representative: Richard S. Mandelson, 1600 Lincoln Center, 1660 Lincoln Street, Denver, CO 80264. Transystems seeks authority to purchase a portion of the interstate operating rights of Rice. J. Michael Rice, M. Kathleen Rice, Rosemary A. Waters and Patrick W. Rice, who own all the issued and outstanding shares of Transystems, seek authority to acquire control of said rights through the transaction. Transystems is purchasing those rights contained in Rice's certificates in MC 52465 (Sub-29 and 30), which authorize the transportation, as a common carrier, over irregular routes, of *petroleum and petroleum products,* in bulk, in tank vehicles, (a) from ports of entry (except Noyes, MN), on the international boundary line between the United States and Canada located in MT, ND, and MN, to points in MT, ND, SD, and MN; and (b) between ports of entry on the international boundary line between the United States and Canada located in ND, MT, and ID, on the one hand, and, on the other, points in AZ, AR, CA, CO, ID, IL, IA, KS, KY, LA, MN, MS, MO, MT, NE, NV, NM, ND, OK, OR, SD, TN, TX, UT, WA, WI, and WY. (3) Rice and Transystems are also affiliated with Figol Distributors Limited, a motor common carrier pursuant to certificates issued in MC-134574 and subnumbers thereunder. (4) In MC-F-14391F, Rice seeks authority to continue in control of Boychuks upon the institution by Boychucks of operations, in interstate or foreign commerce, as a motor common carrier under MC 146840 (Sub-1). (5) The authority being retained by Rice which duplicates that being sold to Transystems is *de minimus.*

Notes.—(1) Transystems and Rice are now commonly controlled under Commission approval in MC-F-8692 and MC-F-14105F. The objective of this application is corporate simplification. (2) Transystems has been granted authority in MC-F-14105F to operate

as a motor common carrier. Transystems also is authorized to operate as a motor contract carrier in MC 144872.

MC–F–14466F, filed August 25, 1980. INTERSTATE DRAYING CO. (Interstate) (8311 Durango S.W., Tacoma, WA 98499)—purchase—MORRIS DRAYING COMPANY (Morris) (190–98th Avenue, Oakland, CA 94603). Representative: Daniel W. Baker, 100 Pine Street, Suite 2550, San Francisco, CA 94111. Interstate seeks authority to purchase the interstate operating rights of Morris. Gary R. McLean, the majority stockholder of Interstate, also seeks authority to acquire control of said rights through the transaction. Interstate is purchasing those rights contained in Morris' Certificates MC 75330 and MC 75330 (Sub-12 and 13), which authorize the transportation, as a motor common carrier, as follows: (1) *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), over irregular routes, between points in Alameda, Oakland, Emeryville, Berkeley, San Leandro, and San Francisco, CA; (2) *general commodities* (except household goods as defined by the Commission, classes A and B explosives, automobiles, trucks, truck trailers, buses, automobile chassis, truck chassis, truck trailer chassis, bus chassis, commodities in bulk, commodities requiring the use of vehicles equipped with mechanical refrigeration, metal cans, and can tops, bottoms, and ends), over regular routes, (a) between San Francisco and Salinas, CA; from San Francisco over U.S. Hwy 101 to San Jose, CA (also from junction U.S. Hwy 101 and CA Hwy 82 at San Francisco, over CA Hwy 82 to junction U.S. Hwy 101 at San Jose, CA), then over U.S. Hwy 101 to Salinas, and return over the same route; (b) between Salinas and Monterey, CA, over CA Hwy 68; (c) between Watsonville and Monterey, CA, over U.S. Hwy 1; (d) Between Redding and Kingsburg, CA: from Redding over Interstate Hwy 5, via Red Bluff, CA, to junction CA Hwy 16, then over CA Hwy 16 to junction CA Hwy 99 at Sacramento, CA (also from Red Bluff, CA, over U.S. Hwy 99 to junction CA Hwy 20, then over CA Hwy 20 to junction CA Hwy 65, then over CA Hwy 65 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction CA Hwy 99), and then over CA Hwy 99 to Kingsburg, and return over the same routes; (e) between Williams and Marysville, CA, over CA Hwy 20; (f) between San Francisco and Sacramento, CA, over Interstate Hwy 80; (g) between Davis and Oroville, CA: from Davis over CA Hwy 113 to junction CA Hwy 99, then over CA Hwy 99 to junction CA Hwy 20, then over CA Hwy 20 to junction CA Hwy 70, then over CA Hwy 70 to Oroville, and return over the same route; (h) between San Francisco and Stockton, CA: from San Francisco over Interstate Hwy 580 to junction Interstate Hwy 205, then over Interstate Hwy 205 to junction Interstate Hwy 5, then over Interstate Hwy 5 to Stockton, and return over the same route; (i) between junction Interstate Hwy 80 and CA Hwy 12, near Fairfield, CA, and junction U.S. Hwy 99 and CA Hwy 12, near Lodi, CA, over CA Hwy 12; (j) between Oakland and Oroville: from Oakland over CA Hwy 24 to junction Interstate Hwy 680 at Walnut Creek, Ca, then over Interstate Hwy 680 to junction CA Hwy 4, then over CA Hwy 4 to junction CA Hwy 160, then over CA Hwy 160 to Sacramento, CA, then over CA Hwy 70 to Oroville, and return over the same route; (k) between junction CA Hwy 4 and Interstate Hwy 80, near Pinole, CA, and Stockton, CA, over CA Hwy 4; (l) between junction CA Hwy 33 and Interstate Hwy 205, near Tracy, CA, and junction CA Hwys 33 and 180 near Mendota, CA, over CA Hwy 33; (m) between junction CA Hwys 33 and 180 and Fresno, CA, over CA Hwy 180; (n) between Watsonville, CA, and junction CA Hwy 152 and CA Hwy 99, near Califa, CA, over CA Hwy 152; (o) between Vernalis, CA, and Modesto, CA, over CA Hwy 132; (p) between Gustine, and Merced, CA, over CA Hwy 110; serving all intermediate points, and off-route points within 20 miles of the above-specified routes; and (3) *buildings,* assembled or partially assembled, (except buildings and buildings in sections mounted on wheeled undercarriages with hitch-ball connectors), from the facilities of Modulux, Inc., at Newark, CA, to points in OR, WA, NV, AZ, UT, MT, WY, ID, CO, NM, and TX. Interstate presently holds no authority from the Commission. However, Interstate is affiliated with Interstate Distributor Company, a motor common carrier pursuant to authority in MC 117201 and a motor contract carrier pursuant to authority issued in MC 125952.

MC–F–14468F, filed August 25, 1980. STANDARD MOTOR FREIGHT, INC. (Standard) (2701 Railroad Street, Pittsburgh, PA 15222)—purchase (portion)—COOPER-JARRETT, INC. (Cooper) (Hanover Plaza, Morristown, NJ 07960). Representatives: John A. Vuono, 2310 Grant Building, Pittsburgh, PA 15219 and William J. Hanlon, Hanover Plaza, Morristown, NJ 07960. Standard seeks authority to purchase a portion of the interstate operating rights of Cooper. Peerless Transport Corp., which controls Standard through ownership of all of its outstanding capital stock, and in turn, Peter J. Sardano (did not join in the application) and Martin W. Snow who jointly control Peerless Transport Corp., seek authority to control said rights through the Transaction. Joinder by Peter J. Sardano. will be required as a condition to this approval. Cooper has authority in MC 35335 (Sub-51) to transport *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those rquiring special equipment), between Uniontown, Brownsville, and Elizabeth, PA, on the one hand, and, on the other, points in OH. Standard is purchasing that portion of Cooper's certificate in MC 35335 (Sub-51) which authorizes the transportation of *general commodities,* usual exceptions, between Uniontown, PA, on the one hand, and, on the other, points in OH. Cooper is retraining authority to transport *general commodities,* usual exceptions, between Brownsville and Elizabeth, PA, on the one hand, and, on the other, points in OH. Standard holds authority pursuant to certificates issued in MC 16340 and sub-numbers thereunder. Standard controls Lighting Express, Inc., through 100 percent stock ownership. Lighing Express, Inc. holds authority to operate pursuant to certificates issued in MC 87786 and sub-numbers thereunder. Peerless Transport Corp., which controls Standard, holds authority to operate pursuant to certificates issued in MC 119689 and sub-numbers thereunder. Impediment: Authorization and approval of this transaction is conditioned upon the prior receipt by the Commission of an affidavit from Martin W. Snow and Peter J. Sardano, who control Peerless, stating that they do jointly control Peerless and that they join in the this application. (Hearing site: Pittsburgh, PA, or Washington, DC.)

Note.—An application for temporary authority has been filed.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80–29797 Filed 9–24–80; 8:45 am]

BILLING CODE 7035–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–86]

Certain Shell Brim Hats; Order No. 4

A request for postponement of the hearing scheduled for September 23,

1980, has been made orally by the Commission investigative attorney on behalf of the Commission and the Complainant. The postponement is requested for the purpose of allowing additional time for pursuing settlement negotiations.

Inasmuch as a postponement can be accommodated by the hearing deadline and the Administrative Law Judge's trial schedule, and appears to be in the best interests of successfully concluding the investigation, I hereby order that the hearing in this matter scheduled for September 23, 1980, be postponed until 10:00 a.m. on October 30, 1980.

The Secretary shall serve a copy of this order and notice upon all parties of record and shall publish it in the **Federal Register.**

Issued: September 19, 1980.

Judge Donald K. Duvall,

Presiding Officer.

[FR Doc. 80-29730 Filed 9-24-80; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 303-TA-14 (Preliminary)]

Plastic Animal Identification Tags From New Zealand

Determination

On the basis of the record [1] developed in investigation No. 303-TA-14 (Preliminary), the Commission unanimously determines that there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury,[2] by reason of imports of plastic animal identification tags from New Zealand, provided for in item 666.00 of the Tariff Schedules of the United States and accorded duty-free treatment, which are allegedly being subsidized by the Government of New Zealand.

Background

On August 1, 1980, the U.S. International Trade Commission and the Department of Commerce each received a petition from Y-Tex Corp., Cody, Wyo., alleging that a bounty or grant is being paid with respect to plastic animal identification tags. Accordingly, the Commission instituted a preliminary countervailing duty investigation under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303), as amended by section 103(b) of the Trade Agreements Act of 1979, to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of the importation of such merchandise into the United States. The statute directs that the Commission makes its determination within 45 days of its receipt of the petition, or in this case by September 15, 1980.

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was duly given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and in the Commission's New York City Office, located at 6 World Trade Center, and by publishing the notice in the **Federal Register** on August 13, 1980 (45 FR 53922). The public conference was held in Washington, D.C., on August 22, 1980, and all persons who requested the opportunity were permitted to appear in person or by counsel.

Statement of Reasons of Chairman Bill Alberger and Commissioner Paula Stern

On the basis of the record in Investigation No. 303-TA-14 (Preliminary), we determine that there is a reasonable indication that an industry in the United States is materially injured by reason of the importation from New Zealand of plastic animal identification tags, provided for in item 666.00 of the Tariff Schedules of the United States, upon which subsidies are allegedly provided by the Government of New Zealand.[1]

Discussion

The Domestic Industry. We find that the industry in this preliminary case consists of all producers of animal identification tags. Since the "industry" under the statute must include all, or at least a major proportion, of the producers of a "like product," it would appear that our conclusion precludes parties from arguing in a final determination that the industry should be defined differently. This is not necessarily the case. For the purposes of our preliminary determination we are compelled to treat one- and two-piece tags as "like products" because the best information available reveals that they are nearly identical in characteristics and end uses. They are generally manufactured in the same facilities and marketed together, as most domestic firms producing one also produce the other. Moreover, Section 771(4)(C) requires us to assess the effects of subsidized imports on production of the narrowest range of products, including the like product, for which the necessary information can be provided. In this case, profitability data, a key element, is only available combined for one- and two-piece tags.

We would not want to preclude any arguments in a final determination that the domestic industry includes only two-piece tags, since virtually all of the imports are of this type. Conversely, we would not want to preclude arguments that the industry is actually broader, and should include other types of identification tags, such as metallic tags, for which data were not provided.

The Question of a Reasonable Indication of Material Injury by the Allegedly Subsidized Imports

Impact on Affected Industry. U.S. demand for animal eartags has increased dramatically over the past three years. Apparent U.S. consumption of such tags rose 44 percent from 1977 to 1979 from 31 million units to 45 million units. In the first six months of 1980, this growth continued as the total tag market increased 1.2 million units over the corresponding period in 1979.

This rapid market growth was stimulated by the introduction of the Allflex two-piece animal eartag by Delta Plastic Ltd. beginning in 1975. The larger U.S. producers of animal eartags began to enter the market with a product similar to the Allflex tag in 1978. From 1977-1979 domestic capacity for firms reporting data grew roughly 38 percent and employment rose more than 50 percent.

These data appear to indicate economic health. However, a thorough examination of the other statutory factors indicates certain weaknesses in the industry which provide the basis for our determination that there is a resonable indication of material injury.

The U.S. eartag industry has been losing market share continuously since 1977 and other indicators of deteriorating economic health have recently surfaced. From January through June 1980 total domestic shipments (one- and two-piece tags) fell two percent. This was the first time such shipments declined during the period under consideration. Sales in the one-piece market which had dropped only two percent from 1977-1979 fell roughly ten percent in the first six months of the year. Although U.S. sales of two-piece tags continued to rise during the same period, they did not keep up the pace set in 1979.

In part the latter point may be explained by the fact that in 1980 the two-piece market does not appear to be growing as rapidly as in 1979 but we

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[1] The record is defined in sec. 207.2(j) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(j)).

[2] Chairman Alberger found only reasonable indication of material injury.

[1] Commissioner Stern also finds a reasonable indication of threat of material injury.

also find it significant that the U.S. share of the growth that is occurring in the two-piece market has slipped: between 1978 and 1979 the two-piece market grew by 64 percent and U.S. producers captured 71 percent of these sales. But, in January and June 1980, when sales of the two-piece eartags grew by 27 percent, U.S. producers captured only 43 percent of the growth.

Inventories of U.S. producers reporting data, which should be at their lowest point as of June 30th,[2] were up 112 percent from June 1979 to June 1980.[3] Inventory problems occurred for three of the four reporting companies. For the third largest producer, inventories rose some 208 percent during this period. For the petitioner, inventories rose 103 percent, and as a result, production of animal tags was halted from July through mid-August of this year.

Available profit data, which cannot be examined on an industry-wide basis,[4] do not reveal a thriving industry. Only one company reported a consistently improving profit picture. Other firms reported either stagnant or declining profits.

The Commission staff was able to confirm seven lost sales with an alleged value of $180,462. Also confirmed was the fact that seven distributors purchased tags from New Zealand to compelent their existing inventories of domestically-produced tags. Since we do not know when these lost sales took place, their significance is difficult to assess. We do not know whether U.S.-made two-piece eartags were available at the time the sales were lost or what the price differential was at the time between the U.S. and imported eartags.

In this particular case, the unavailability of data may be affecting the above indications of material injury. Most critically, in a final case we would hope to have complete data from Temple Tag Co. (the second largest producer), including inventories and financial data, and financial reports on a uniform accounting basis from all producers so that we can aggregate profit-and-loss data for the industry. Data were also not available on productivity, return on investment, cash flow, ability to raise capital and investment.

Impact of the Imports [5]

Volume. In absolute terms U.S. imports of animal eartags from New Zealand have risen significantly since 1977. Such imports increased by 92 percent from 1977 to 1978 and then increased another 24 percent from 1978 to 1979. During January-June 1980 they increased 23 percent over the corresponding period in 1979.

Imports have also been rising relative to U.S. consumption. From 1977-1979 imports from New Zealand increased their share of U.S. consumption by ten percentage points. Moreover, during the first six months of 1980 the imported tags increased their share of the U.S. tag market by another 6.5 percentage points.

Price Considerations. Price data do not show any evidence of a consistent pattern of underselling or price depression, but they do provide indications of price suppression. Delta Plastics Ltd. held its tag prices steady from 1978 until September 1980. The Allflex Holdings Ltd. Annual Report actually reports a decision by the company to "hold our selling price in the USA where we have seen strong efforts by our competitors to regain their declining share of the market."

Meanwhile, U.S. prices rose some 25 percent since January–March 1979, the first period for which price data are available. While costs have fluctuated by company, the petitioner, Y–Tex, has testified that its costs have been rising at a faster rate than the selling price of its animal identification tags.[6] [7]

These price developments have had two results: (1) for sales of two-piece tags, the gap between the prices of imported and domestically-produced tags (with the imported tag higher-priced) has closed. By January–June 1980, in fact, imported tags sold for nearly the same or a penny-a-tag less than the two-piece tags of the two largest U.S. producers; and (2) the gap between the prices of two-piece tags and the U.S.-produced one-piece tags has also narrowed. Thus, the price competitiveness of both domestic two-piece and one-piece tags has weakened in relation to the imported product.

During the investigation the importer stressed the view that any problems experienced by the domestic industry were attributable to a myriad of factors other than the alleged subsidized imports—including a superior imported product, better marketing practices of Delta's U.S. distributors, shifts in consumer taste. It appears that to remain economically viable U.S. companies need to compete successfully in the two-piece market. Though other factors may be at play in thwarting the domestic industry's shift to the newer product, there are indications that price suppression by the importers has been a contributing factor. In this preliminary case, this is sufficient to satisfy our "reasonable indication" standard. If the case returns to us for a final determination, however, the petitioner should focus on the effects of the alleged subsidization; for example, whether it has been used to improve the quality or marketing of the imported product. If the alleged subsidy has been used to improve the competitive posture of the imported product in the domestic market, this may be a factor tending to show how the imports may be injuring the domestic industry.

Threat [8]

To reach an affirmative finding of threat of material injury, the legislative history states that "demonstrable trends—for example, the rate of increase of subsidized . . . exports to the U.S. market, capacity in the exporting country to generate exports, the availability of other export markets and the nature of the subsidy in question (*i.e.*, is the subsidy the sort that is likely to generate exports to the U.S.)—will be important." [9]

At least three of the four demonstrable trends cited as examples above are present in this case. First, exports to the U.S. market have increased rapidly and continuously. Second, the exporting country has the capacity to increase exports significantly. Information obtained from Delta Plastics Ltd. indicates that the New Zealand company sold 48 million tags in fiscal 1979. Currently, the company's plant has a capacity to produce 100 million tags and production in fiscal 1980 is expected to exceed 80 million tags. The petitioner has also indicated that Delta Plastics Ltd. commissioned seven new injection molding machines last year and that the New Zealand company is presently planning the addition of 14,500 square feet to their factory.[10]

[2] Transcript of the Conference, p. 28.

[3] Inventories were also significantly higher in June 1980 than in December 1979 for most reporting companies.

[4] Usable profit data were received from only four of the seven U.S. producers of animal identification tags. The data submitted were not uniform. A number of the firms provided data only on their overall operations, not just on the production of eartags. One of the firms presented its data on a cash basis, whereas the others used the accrual method of accounting. Furthermore, each of the four reporting companies used different accounting years.

[5] Lost sales reflecting the impact of the imports have been discussed previously (see page 6).

[6] Transcript of the Conference, p. 31.

[7] For the final investigation it would be useful to have a fuller background on the cost situation in the U.S. industry, particularly Temple Tag Co.'s costs.

[8] Chairman Alberger, having found a reasonable indication of material injury, does not reach the question of threat in this determination.

[9] Committee on Ways and Means, House Report No. 96–137, 96th Cong., 1st Sess., July 3, 1979, at p. 46.

[10] Post Conference Brief on behalf of Y-Tex Corp., by Lamb and Lerch, August 25, 1979, p. 22.

Third, the nature of the subsidy alleged in this case is clearly likely to generate exports to the U.S. In fact, recent changes in the New Zealand export tax incentives program reward firms not only for increases in their export levels but also for maintenance of their export volume. Information on the availability of other export markets is limited and should be developed more fully should this case return for a final determination. Approximately 50 percent of Delta Plastics Ltd.'s exports have gone to the United States, and the Allflex Holdings Ltd. Prospectus indicates that in fiscal 1980 sales to the USA rose 70 percent.

On the basis of these trends, I find a reasonable indication of a threat of material injury.[11] Should this case return for a final determination, my judgment then will be based on the best available information at that time, which hopefully will enhance the information we now have on the impact of these trends on the state of the domestic industry.

Findings of Fact. (1) U.S. imports of animal identification tags from New Zealand are allegedly subsidized by export incentives provided by the New Zealand government in the form of income tax credits for the exporter. All tags imported from New Zealand are produced by Delta Plastics, Ltd. Imports from New Zealand increased by 92 percent from 1977 to 1978, and then increased by another 24 percent from 1978 to 1979. During January–June 1980, imports of tags from New Zealand increased 23 percent over the corresponding period in 1979.

(2) U.S. imports of animal identification tags from New Zealand took an increasing share of the U.S. tag market: in the period from 1977 to 1979, the imports from New Zealand increased their share of U.S. consumption by 10 percentage points. Furthermore, in the first 6 months of 1980 the imported tags increased their share of the tag market by another 6.5 percentage points.

(3) Apparent U.S. consumption of animal identification tags increased from 31 million units in 1977 to 45 million units in 1979. In the first 6 months of 1980, apparent consumption was 1.2 million units higher than for the corresponding period in the previous year.

(4) Domestic production (of reporting firms) increased by almost 59 percent from 1977 to 1979. Production continued to rise over the first six months of 1980.

(5) Domestic production capacity (of reporting firms) grew from 60 million units in 1977 to 65 million units in 1978 and 83 million units in 1980. Capacity utilization (not including Temple Tags Co.) grew from 37 percent in 1977 to 60 percent in 1978, but then dropped to 43 percent in 1979. During the first six months of 1980 it was up again to 55 percent.

(6) Domestic shipments rose 27 percent in the period 1977–79. However, shipments were down slightly in the first 6 months of 1980 compared to the corresponding period in 1979.

(7) Employment figures from 5 reporting firms, which accounted for 73 percent of U.S. shipments in 1979, reveal steady growth.

(8) At the public conference, Y-Tex stated that the tag industry is seasonal, with 60 percent of the industry sales coming in the first 7 months of any given calendar year. Thus, a producer's inventory should be at its height as of December 31 and at its lowest as of June 30th. However, the largest U.S. producer of tags, Y-Tex Corp, experienced a 103 percent increase in inventories as of June 30, 1980, as compared to the same period in 1979. The third largest U.S. producer of tags experienced a 208 percent increase in inventories of tags as of June 30, 1980, compared to inventory levels of June 30, 1979. As a result of the excessive inventories, Y-Tex closed down production of tags from July through mid-August 1980.

(9) Two U.S. producers supplied the Commission with a list of 32 purchasing firms to which they allegedly lost sales of animal identification tags because of allegedly subsidized imports from New Zealand. The Commission staff was able to confirm seven lost sales with an estimated value of $180,462. In addition to the aforementioned lost sales, the Commission was able to confirm that an additional seven distributors purchased tags from New Zealand to complement their existing inventories of domestically produced tags.

(10) Profit and loss data suggest that, on an industry-wide basis, profit margins are low or nonexistent. Only one firm reports a consistently improving profit picture, while others low or stagnant profitability.

(11) There is no consistent pattern of underselling by the imported product. However, import prices remained generally steady from 1978 to September 1, 1980, when price increases went into effect.

(12) Information obtained from Delta Plastics, Ltd. indicates that the New Zealand company sold 48 million tags in fiscal 1979.[1] Currently the company's plant has a capacity to produce 100 million tags and production in fiscal 1980 is expected to exceed 80 million tags. The Government of New Zealand modified its export program in 1980 in a manner which will increase the export subsidy in the future.[2]

Supporting Statement by the Director of Operations for an Affirmative Preliminary Determination on Plastic Animal Identification Tags From New Zealand (Investigation No. 303–TA–14 (Preliminary))

I. *Recommendation.* On the basis of my review of the information developed during this investigation, I recommend that the Commission determine that there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of the importation of plastic animal identification tags from New Zealand, which are alleged to receive bounties or grants from the Government of New Zealand. The question of material retardation of the establishment of an industry in the United States is not an issue in this investigation as there are seven companies producing plastic animal identification tags in the United States.

II. *The industry.* There are two basic types of plastic animal identification tags produced in the United States—a one-piece tag and a two-piece tag. Seven firms account for approximately 95 percent of domestic shipments of the two types of tags. Counsel for the petitioner contends that there is only one industry being adversely affected by the importation of allegedly subsidized animal identification tags from New Zealand—the domestic producers of animal identification tags. The purpose of all these tags, regardless of their configuration or method of application and regardless of whether they are one-piece or two-piece tags, is the same, i.e., the individual in-herd identification of animals. Therefore, the industry to be viewed in this investigation is the whole animal identification tag industry.[3] Counsel for the importers contends that since the New Zealand imports are only of the two-piece variety, the relevant

[11] The fact that Delta Plastics Ltd., in partnership with the Hanford Co., is in the process of establishing a manufacturing facility in Syracuse, New York, does not automatically preclude an affirmative determination at this preliminary stage. When pressed at the Conference on the relation of this new facility to the level of future New Zealand exports, the importers were non-committal; *see* pages 81, 99 and 102 of Conference Transcript.

[1] Chairman Alberger does not adopt findings regarding threat.

[2] Chairman Alberger includes the recommended determination of the Director of Operations for informational purposes below.

[3] Brief of Lamb & Lerch, p. 45.

U.S. industry should consist only of establishments and companies producing two-piece tags.[4]

Information developed by the Commission indicates that there is only one U.S. industry producing animal identification tags. First, nearly all the machinery and workers employed in the manufacture of one type of tag are or can be employed in the manufacture of the other type of tag. For firms producing both types, price sheets include both and both are marketed by the same sales force. Second, the two types of tags are generally not distinguishable from each other in terms of their respective markets. They pass through the same channels of distribution and are purchased by the same types of customers for the same purpose—in-herd identification. Consumers may prefer one kind over another, but the fact remains that the one- and the two-piece tags are completely interchangeable in their end use. Therefore, I recommend that the Commission find that the appropriate industry for consideration in this investigation consists of those firms which produce animal identification tags, whether of one-piece or two-piece construction.

III. *Material injury.* (1) U.S imports of animal identification tags from New Zealand are allegedly subsidized by export incentives provided by the New Zealand Government in the form of income tax credits for the exporter. All tags imported from New Zealand are produced by Delta Plastics, Ltd. Imports from New Zealand increased by 92 percent from 1977 to 1978, and then increased by another 24 percent from 1978 to 1979. During January–June 1980, such imports increased 23 percent over those in the corresponding period of 1979.

(2) U.S. imports of animal identification tags from New Zealand took an increasing share of the U.S. tag market: in 1977–79, they increased their share of U.S. comsumption by 10 percentage points, and in January–June 1980, by another 6.5 percentage points.

(3) At the public conference, Y-Tex Corp. stated that the tag industry is seasonal, with 60 percent of the industry's sales coming in the first 6 months of any given calendar year. Thus, a producer's inventory should be at its highest level as of December 31 and at its lowest as of June 30. However, the largest U.S. producer of tags, Y-Tex Corp., experienced a 103-percent increase in inventories as of June 30, 1980, compared with those on the corresponding date in 1979. Fearing Manufacturing, the third largest U.S. producer of tags, experienced a 208-percent increase in inventories of tags over the same period. As a result of the excessive inventories, Y-Tex closed down production of tags from July through mid-August 1980.

(4) Two U.S. producers supplied the Commission with a list of 32 purchasing firms to which they allegedly lost sales of animal identification tags because of allegedly subsidized imports from New Zealand. The Commission staff was able to confirm seven lost sales with an estimated value of $180,462. The Commission was able to confirm that an additional seven distributors purchased tags from New Zealand to complement their existing inventories of domestically produced tags.

IV. *Threat of material injury.* (1) While imports from New Zealand increased their share of U.S. consumption by 16.5 percentage points during January 1977–June 1980, considerably greater penetration is possible in the near future. Information obtained from Delta Plastics, Ltd., indicates that the New Zealand company sold 48 million tags in fiscal 1979. Currently the company's plant has a capacity to produce 100 million tags, and production in fiscal 1980 is expected to exceed 80 million tags. Thus, Delta's capacity and production levels will enable it to continue to expand tag exports to the United States. The Government of New Zealand modified its export program in 1980 in a manner which will increase the export subsidy in the future.

V. *Conclusion.* On the basis of the above, I recommend an affirmative determination as to whether there is a reasonable indication of material injury, or threat of material injury, to an industry in the United States by reason of allegedly subsidized plastic animal identification tags from New Zealand.

Statement of Reasons for the Affirmative Determination of Commissioners George M. Moore and Catherine Bedell

On the basis of the record developed in investigation No. 303–TA–14 (Preliminary), we determine that there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of the importation of plastic animal identification tags from New Zealand, provided for in item 666.00 of the Tariff Schedules of the United States (TSUS), upon which subsidies are allegedly provided by the Government of New Zealand.

The following findings and conclusions, based on the record in this investigation, support our determination.

Domestic industry. The first question which we must answer concerns the scope of the industry against which the impact of the subject imports must be assessed.[1] The term "industry" is defined in section 771(4)(A) of the Tariff Act of 1930 (19 U.S.C. 1677(4)(A)) as meaning "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." The term "like product" is in turn defined in section 771(10) of the Tariff Act as meaning "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . . ."

Information developed during the course of the investigation indicates that the relevant domestic industry consists of the facilities in the United States used in the production of both one-piece and two-piece tags. Nearly all the machinery and workers employed in the manufacture of one-piece tags are or can be employed in the manufacture of two-piece tags.[2] For firms producing both types of tags, price sheets include both and both are marketed by the same sales force. Further, the two types of tags are generally not distinguishable from each other in terms of their respective markets. They pass through the same channels of distribution and are purchased by the same types of customers for the same purpose—in-herd identification. Consumers may prefer one kind over another, but the one- and the two-piece tags are completely interchangeable in their end use.

The question of reasonable indication of material injury or the threat thereof. Section 703(a) of the Tariff Act directs that the Commission "shall make a determination, based upon the best information available to it at the time of the determination . . . ." Section 771(7)(A) defines the term "material injury" to mean "harm which is not inconsequential, immaterial, or unimportant." And section 771(7)(B) directs that in making its determination, the Commission shall consider, among other factors, (1) the volume of imports of the merchandise which is the subject of the investigation, (2) the effect of imports of such merchandise on prices in the United States for like products,

[4] Brief of Bronz and Farrell, p. 6.

[1] All of the tags imported from New Zealand are two-piece tags. Both one-piece and two-piece tags are manufactured in the United States.

[2] Report, p. A–1.

and (3) the impact of imports of such merchandise on domestic producers of like products. In light of these directives, we base our decision on the findings of fact and conclusions of law discussed below.

Volume of Imports.—With regard to the volume of imports, the record shows that imports of plastic animal identification tags from New Zealand increased by 92 percent from 1977 to 1978 and then increased by another 24 percent in 1979.[3] In the first 6 months of 1980, imports of tags from New Zealand increased 23 percent over those in the corresponding period of 1979. All plastic identification tags from New Zealand are manufactured by Delta Plastics, Ltd. of Palmerston North.

Imports of plastic animal identification tags from New Zealand took an increasing share of a growing U.S. identification tag market during 1977–79. Such imports increased their share of aggregate apparent U.S. consumption, i.e., of both one- and two-piece tags, by 10 percentage points from 1977 to 1979. In the first 6 months of 1980, imports from New Zealand increased their share by another 6.5 percentage points.[4]

Effect of imports on prices.—Although there has been no consistent pattern of underselling by the imported identification tags, there is evidence of price suppression by the foreign producer, Delta Plastics. In his company's 1980 annual report, the Chairman of Directors of Allflex Holdings, Ltd. (the parent company of Delta), stated that the profit/sales ratio was lower for the income year 1980 because of a decision by Delta to "hold our selling price in the USA where we have seen strong efforts by our competitors to regain their declining share of the market."[5]

Furthermore, at the public conference held in connecton with this investigation, testimony was presented that raw-material and utility costs of the petitioner (Y-Tex Corp.) were increasing at a faster rate than the selling price of its animal identification tags.[6] In view of the substantial alleged subsidy (in the form of income tax credits) and the public acknowledgement by the respondent that it is deliberately holding down prices to maintain market share, it is appropriate to infer that sales of the imported tags have had a suppressing effect on domestic tag prices, notwithstanding some price increases by domestic manufacturers.

[3] Report, p. A–13.
[4] Report, p. A–21.
[5] Annual report of Allflex Holdings, Ltd., p. 4.
[6] Transcript of the conference, p. 33.

Impact of imports on domestic producers.—The record shows that as of June 30, 1980, the first and third largest U.S. producers experienced 103 percent and 208 percent increases, respectively, in inventory levels compared with those in the corresponding period of 1979.[7] Information developed during the course of the investigation indicates that since the domestic industry makes 60 percent of its sales in the first 6 months of a calendar year, inventory levels should be at their lowest level as of June 30. Furthermore, the Commission was able to confirm seven lost sales with an estimated value of $180,000.[8]

The record also shows that in order to reduce excessive tag inventories, the largest U.S. producer (Y-Tex Corp.) instituted promotional sales tactics in 1980 and ceased production of tags from July through mid-August 1980.[9] Another large producer did not produce any two-piece tags during January–August 1980 in order to reduce overstocked inventories.[10]

Threat of material injury.—The record shows that the foreign producer manufactured about 48 million tags in 1979, expects to produce about 80 million tags in 1980, and has an annual plant capacity to produce 100 million tags.[11] Thus, the increasing production levels and underutilized capacity of Delta Plastics indicate an ability for the New Zealand company to continue to expand tag exports to the United States.

In addition, the Government of New Zealand has modified its export incentive program so that benefits paid to Delta Plastics on its exports may increase. This would provide further incentive to increase shipments to the United States.[12]

Conclusion

On the basis of the information available to the Commission at this time, we believe that there is a reasonable indication of material injury, or threat of material injury, to a domestic industry by reason of imports of plastic animal identification tags from New Zealand, provided for in item 666.00 of the TSUS.

Opinion of Vice Chairman Michael J. Calhoun

On the basis of the record developed in investigation number 303–TA–14 (Preliminary), I determine, pursuant to section 303(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(b)), that there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports of plastic animal identification tags from New Zealand as provided for in item 666.00 of the Tariff Schedules of the United States.

[7] Report, pp. A–15 and A–16.
[8] Report, p. A–29.
[9] Report, pp. A–17 and A–27.
[10] Report, p. A–10.
[11] Report, pp. A–7 and A–8.
[12] Report, pp. A–3 and A–4.

Discussion

There are many types of animal identification tags which are used on cattle, hogs, and sheep. Identification tags come in a variety of colors, sizes, and shapes. The animal identification tags under investigation here are attached to the ear, are made of plastic, and are of one- and two-piece construction. There are two methods of application for animal tags: Those tags of one-piece construction require application by cutting the animal's ear; while those of two-piece construction can be applied by piercing the ear and making a small hole as opposed to an incision. The use of two-piece animal identification eartags is a relatively new concept. The Allflex two-piece tagging system was developed in New Zealand and marketed in the United States by Delta Plastics, Limited.

Farmers and ranchers have found that with these identification tags they could, at a distance, identify animals and monitor their performance. Animal identification tags do not replace branding, which is a permanent means of identification for ownership.

Although the Allflex two-piece identification tagging system was developed in New Zealand and marketed extensively throughout the United States by Delta Plastics, Limited, domestic producers have begun to produce and market two-piece tags. One-piece tags are still popular, however they are losing market share to both domestic and imported two-piece tags.

Domestic Industry

In order to analyze the effect of subsidized imports on the domestic industry, that industry first must be defined. Section 771(4)(A) of the Tariff Act of 1930, defines the term industry as,

> [T]he domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product.

And, section 771(10) defines like product as:

> [A] product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.

The merchandise which is imported from New Zealand is animal identification tags of two-piece construction made from plastic in a variety of sizes, shapes, and colors and used on the ear of an animal.

The only producer of animal identification tags in New Zealand is Delta Plastics, Limited, a subsidiary of Allflex Holdings, Limited, Palmerston North, New Zealand. Two-piece identification tags are produced in the United States by entities who produce identification tags of various types, including plastic tags of one and two pieces which are attachable to the ear. A primary question to be considered here is whether all domestic animal identification tags can be considered like products to the two-piece plastic ear tags which are the subject of this investigation and, if not, whether domestic one-piece (in addition to two-piece) plastic ear tags are like products to the imported article. The Senate Finance Committee report which accompanies the Trade Agreements Act of 1979 provides guidance to the Commission in determining the nature of a "like product." According to the report,

[T]he requirement that a product be 'like' the imported article should not be interpreted in such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and articles are not like each other, nor should the definition of 'like product' be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under investigation.[1]

Evidence obtained in this preliminary investigation is not sufficient to determine whether all domestically produced animal identification tags are like products to the two-piece plastic ear tags being imported. There is, however, ample evidence with regard to the narrower question of whether the domestically produced one-piece plastic ear tag is a like product to the imported article. Generally, the two types of tags are not distinguishable from each other interms of their respective markets and pass through the same channels of distribution. Customers purchase two-piece and one-piece tags for the same purposes; namely, in-herd identification of animals. The record thus far established, indicates that while customers may prefer one type of tag over another, the two types of tags are virtually interchangeable in their uses. And, although there are major differences in the method of application of the two types of tags, the record shows that consumers disagree on the effectiveness and on the ease of application of one method relative to the other.

Therefore, based on the data thus far collected, I find that domestically produced animal identification tags attachable to the ear and of both one- and two-piece construction is the like product to the imported article.

Material Injury

Section 771(4)(D) directs the Commission, for purposes of considering material injury, to assess the effects of subsidized imports "in relation to the United States production of a like product if available data permit the separate identification of production in terms of such criteria as the production process or the producers' profits." Section 771(D) further states that,

[I]f the domestic production of the like product has no separate identity in terms of such criteria, then the effect of the subsidized . . . imports shall be assessed by the examination of the production of the narrowest group or range of products, which include a like product, for which the necessary information can be provided.

In this instant case, separate data for one-piece and two-piece identification tags was not available and material injury will be examined on the basis of relevant data for both types of tags.

Section 771(7)(A) defines the term "material injury" to mean "harm which is not inconsequential, immaterial, or unimportant." Section 771(7)(B) provides guidelines for the Commission in making its determination as to material injury. The Commission shall consider, among other things—

(I) The volume of imports of the merchandise which is the subject of the investigation,

(II) The effect of imports of that merchandise on prices in the United States for like products, and

(III) The impact of imports of such merchandise on domestic producers of like products.

(I) Volume of Imports

Imports of animal identification tags from New Zealand took an increasing share of a growing U.S. tag market during 1977–1979. Imports of identification tags from New Zealand increased by 92 percent from 1977 to 1978 and 24 percent from 1978 to 1979. In the first six months of 1980, imports of tags from new Zealand increased 23 percent over the comparable period in 1979. Apparent consumption in the United States for one- and two-piece tags was about 31.4 million in 1977, 40.5 million in 1978, and 45.1 million in 1979. In the total U.S. animal identification tag market, imports from New Zealand increased their share of the U.S. market by 10 percentage points from 1977 to 1979. In the first six months of 1980, imported identification tags increased their share of the total market by 6.5 percentage points over the corresponding period in 1980.

(II) Effects of Imports on Prices

Although the record at present indicates no consistent pattern of underselling for the imported identification tag, there is evidence of price suppression by the foreign producer, Delta Plastics. In its 1980 Annual Report, the producer's parent company explains that the profit/sales ratio was lower for the income year 1980 because of a decision by Delta to "hold our selling price in the USA where we have seen strong efforts by our competitors to regain their declining share of the market." On the other hand, the petitioner has represented that their raw material and utility costs are increasing at a faster rate than their selling price, but that they could not raise prices at a proportionate rate because of the imported product.

(III) Impact of Imports on Domestic Producers

Information developed during the course of this investigation indicates that since the domestic industry makes 60 percent of its sales in the first six months of a calendar year, inventory levels should be at their lowest level as of June 30. However, inventories for domestic producers were at their highest during this period in 1980. As of June 30, 1980, the largest and third largest producers in the U.S. experienced increases, respectively, of 103 percent and 208 percent in inventory levels when compared to the comparable period in 1979.

Threat of Material Injury

To reach an affirmative finding of the threat of material injury, the legislative history states that—

[D]emonstrable trends—for example, the rate of increase of subsidized . . . exports to the U.S. market, capacity in the exporting country to generate exports, the availability of other export markets and the nature of the subsidy in question (i.e., is the subsidy the sort that is likely to generate exports to the U.S.?) will be important.[1]

As noted above, exports to the U.S. market have increased rapidly and continuously. The New Zealand company presently has the capacity to increase exports significantly. Delta Plastics, Limited, sold 48 million

[1] Committee on Finance, U.S. Senate, Report No. 96–249, 96th Cong., 1st Session, pp. 90–91.

[1] Committee on Ways and Means, House Report No. 96–317, 96th Cong., 1st Session, p. 47.

identification tags in fiscal year 1979. Currently, the company's plant has a capacity to produce 100 million tags and is expected to produce 80 million identification tags in 1980. Seven new injection molding machines have been commissioned by Delta and the company is presently planning the addition of 14,500 square feet to its factory.

The nature of the alleged subsidy from the Government of New Zealand is an export tax incentive program which rewards firms for increases in exports and the maintenance of those exports. In 1977 New Zealand exported 78 percent of its produce, in 1978 84 percent, and in 1979 87 percent. Approximately 50 percent of Delta's exports go to the U.S. market and in the absence of evidence to the contrary it is only reasonable to assume that the U.S. will continue to receive such a share of New Zealand's exports.

Causality. Commission evidence confirms that seven lost sales with an alleged estimated value of $180,462 were attributable to imported identification tags. It was also confirmed that seven distributors purchased tags from New Zealand to supplement their existing inventories of domestically produced identification tags. One of the reasons given for lost sales was that the two-piece tag was an advanced systems design over the one-piece tag and it was easier to apply.

The petitioner argues that Delta has been able to accomplish its high level of market penetration by using the export taxation credit to advertise and promote its product extensively. Consequently, petitioners seem to suggest that without such a subsidy, the imported article would not be as successfully marketed, penetration levels would not be as great and the domestic producers would not be suffering the material injury indicated. In view of the rather weak lost sales data thus far gathered, the critical nexus between the evidence of material injury discussed above and the allegedly subsidized imports largely rests with this novel allegation by petitioners regarding the use of the subsidy made by the importers.

I am not yet prepared to wholly endorse such an argument. However, I think the theory is sufficient, in view of the evidence so far collected, to establish the essential nexus between material injury and subsidized imports in this preliminary case which, it must be remembered, involves the question of a *reasonable* indication of material injury by reason of subsidized imports.

Conclusion

In view of these facts, it is my view that there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports of plastic animal identification tags from New Zealand.

Issued: September 15, 1980.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-29758 Filed 9-24-80; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. AA1921-66A]

Television Receiving Sets From Japan; Investigation and Hearing

AGENCY: U.S. International Trade Commission.

ACTION: Initiation of an investigation under section 751(b) of the Tariff Act of 1930.

SUMMARY: This action initiates an investigation under section 751(b) of the Tariff Act of 1930, 19 U.S.C. 1675(b), to determine whether changed circumstances exist which indicate that an industry in the United States would not be threatened with material injury if the antidumping finding concerning television receiving sets from Japan was revoked.

On March 4, 1971, the Commission determined that an industry in the United States was being injured by reason of the importation of television receivers that were being, or were likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921. An application for a review of this determination was filed with the Commission by Sanyo Electric Co., Ltd., and Sanyo Electric, Inc., on July 28, 1980. Similar applications were filed on August 4, 1980, by counsel for Matsushita Electrics Industries Co., Ltd., Matsushita Electric Corp. of America, Panasonic Hawaii, Inc., and Panasonic Sales Co. and by counsel for Hitachi Ltd., Hitachi Sales Corp. of American, and Hitachi Sales Corp. of Hawaii on August 26, 1980. Letters supporting the applications were filed by Victor Co. on August 7, 1980, Mitsubishi Electronic Corp. on August 25, 1980, and Sharp Electronics Corp. on August 20, 1980. Memorandums opposing institution of the investigation were filed by Zenith Radio Corp. on August 13, 1980, and counsel for the Electronic Industries Association and the Committee to Preserve American Color Television on August 20, 1980. On the basis of the applications and the memorandums filed in opposition, the Commission voted on September 16, 1980, to institute an investigation pursuant to section 751(b) of the Tariff Act of 1930 and section 207.45 of the Commission's Rules of Practice and Procedure (19 CFR 207.45).

DATE: The 120-day statutory period for this investigation began on September 16, 1980, the date of institution. The deadline for the Commission's determination is January 13, 1981.

FOR FURTHER INFORMATION CONTACT: Daniel F. Leahy, U.S. International Trade Commission, 202-523-1369.

SUPPLEMENTARY INFORMATION: *Proposed rule change.* Participants in the investigation should be aware that the Commission voted on August 6, 1980, to propose an amendment to section 207.45 of the Rules of Practice and Procedure, which implements section 751 of the Tariff Act of 1930. The proposed revision was published for comment at 45 FR 54086 (Aug. 14, 1980). In the event that the Commission adopts the proposed amendment, the Commission would in this case determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of television receivers from Japan if the antidumping order was revoked.

Public hearing.—A public hearing in connection with the investigation will be held on November 12, 1980, in the Commission's Hearing Room, U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436, beginning at 10:00 a.m., e.s.t. Requests to appear at the public hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m., e.s.t.) on November 7, 1980. For further information, consult the Commission's Rules of Practice and Procedure, Part 207, Subpart C (44 FR 76457), effective January 1, 1980.

Prehearing statements.—The Commission will prepare and place on the record by October 23, 1980, a staff report containing preliminary findings of fact. Parties to the investigation will submit to the Commission a prehearing statement by November 7, 1980. Statements should include the following:

(a) Exceptions, if any, to the preliminary findings of fact contained in the staff report;

(b) Any additional or proposed alternative findings of fact;

(c) Proposed conclusions of law;

(d) Any other information and arguments which a party believes

relevant to the Commission's determination in this investigation; and

(e) A proposed determination for adoption by the Commission.

Written submissions.—Any persons may submit to the Commission on or before the prehearing statement due date any written statements of information pertinent to the subject matter of the investigation. A signed original and 19 true copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the Rules of Practice and Procedure (19 CFR 201.6). All written submissions except business confidential data will be available for public inspection.

Issued: September 18, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-29738 Filed 9-24-80; 8:45 am]

BILLING CODE 7020-02-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering and Applied Science; Notice of Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Engineering and Applied Science; Subcommittees for Applied Social and Behavioral Sciences and Applied Physical, Mathematical and Biological Sciences and Engineering; Subcommittee for Intergovernmental Programs.

Date and Time: October 13, 1980—9 a.m. to 5 p.m.

Place: 800 21st Street, N.W., Room 426, Washington, D.C. 20006.

Type of Meeting: Open.

Contact Person: Ms. Mary F. Chezmar, Executive Secretary, Advisory Committee for Engineering and Applied Science, Room 537, National Science Foundation, Washington, D.C. 20550, Telephone: (202) 357-9571.

Summary Minutes: Ms. Mary Chezmar, Room 537, National Science Foundation, Washington, D.C. 20550.

Purpose of Advisory Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to Engineering and Applied Science activities and programs.

Agenda: October 13, 1980, 9:00 a.m.-5:00 p.m.—Long-range planning, FY 1981 budget; Organizational structure.

M. Rebecca Winkler,

Committee Management Coordinator.

September 22, 1980.

[FR Doc. 80-29670 Filed 9-24-80; 8:45 am]

BILLING CODE 7555-01-M

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550. Telephone (202) 357-7934.

SUPPLEMENTARY INFORMATION: On July 31, 1980, the National Science Foundation published a notice in the **Federal Register**, page 51004, of permit applications received. On September 8, 1980 permits were issued to the following applicants:

David F. Parmelee
Robert E. Ricklefs
David E. Murrish
William J. Zinsmeister
John G. Baust
Arthur L. DeVries

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 80-29648 Filed 9-24-80; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 80-39]

Safety Recommendations and Responses; Availability

Marine Safety Recommendation Letters

Recently issued by the National Transportation Safety Board are 33 marine safety recommendations which stemmed from investigations of three major accidents occurring within the past year.

Collision of U.S. Tankship EXXON CHESTER and Liberian Freighter M/V REGAL SWORD in the Atlantic Ocean near Cape Cod, Massachusetts, June 18, 1979.—About 1713 e.d.t., the two vessels collided in dense fog in the Atlantic Ocean southeast of Cape Cod about 1 nautical mile (nmi) east of the Boston Harbor Traffic Lane Inbound. As a result of the collision, the REGAL SWORD sank and the bow of the EXXON CHESTER was extensively damaged. No one was injured.

Investigation indicated that the EXXON CHESTER had been navigating in dense fog, with visibility barely past the vessel's bow. Although the master had watched a radar target's range decrease from about 6 nmi, on a bearing of about 5° to port, and disappear in his radar sea return at ¾ nmi, he did not reduce his speed of about 10 knots to a safer speed. The master heard a vessel's foghorn forward and to port when the radar target was 4 nmi away. He waited until the distance was 3 nmi before turning and did not attempt to use the vessel's bridge-to-bridge radiotelephone. If the master's radar interpretation was correct, his right turn maneuver should have increased the closest point of approach; however, it did not, and the target vessel entered his radar sea return. He had ceased watching the radar at the 3-nmi distance and thus had no idea of the bearing on which the target vessel entered his radar sea return. He made another right turn, having no idea of its effect on the situation. In an effort to improve the situation, he made it worse. After he saw the REGAL SWORD crossing his bow, his last minute effort, to avoid the collision by coming hard left, failed.

The Safety Board notes that although the officers on watch on the EXXON CHESTER had been certificated as "radar observer" and made radar observations assisted by an automated radar plotting aid (ARPA), they failed to properly interpret the observations. The master had no formal training on the operation of the ARPA.

Further, the Board notes that 33 CFR Part 26 implements the provisions of the Vessel Bridge-to-bridge Radiotelephone Act which requires vessels of tonnage equivalent to that of the EXXON CHESTER and the REGAL SWORD to have a VHF radiotelephone to use for safe operation on the navigable waters of the United States. The regulation further requires that a listening watch on a given frequency be maintained and, when necessary, that transmissions be sent confirming navigation intentions of vessels. Had both vessels been required by international agreement to meet a comparable bridge-to-bridge radiotelephone regulation in international waters, the collision might have been averted by a timely confirmation of the intention of each vessel by VHF radiotelephone. The use of VHF bridge-to-bridge radiotelephone on a common navigation channel should

be made mandatory for all but very small vessels on all international waters. Although the Intergovernmental Maritime Consultative Organization (IMCO) has had such a proposal under consideration since September 1978, there is no indication it will be adopted in the near future.

Accordingly, the Safety Board on September 12 recommended that—

United States Coast Guard:

Expedite the processing of the notice of proposed rulemaking under Docket CGD No. 76–193a which would require radar applicants for observer endorsements to complete an approved radar training course at least once every 5 years. (M–80–53)

Request that the agenda for the January 1981 session of IMCO Subcommittee of Safety of Navigation be modified as necessary to insure timely discussion of an adoption of an international agreement requiring use of bridge-to-bridge radiotelephone for navigation purposes in international waters. (M–80–54)

Exxon Company, U.S.A.:

Require that masters assigned to a vessel equipped with an automated radar plotting aid successfully complete formal training in its use before assignment. (M–80–55)

Liberian Tankship M/V SEATIGER Explosion and Fire, Sun Oil Terminal, Nederland, Texas, April 19, 1979.—About 2140 c.s.t., the SEATIGER, which had suspended pumping seawater ballast into its cargo tanks because of electrical storms in the area, exploded, burned, and sank at a berth at the Sun Oil Terminal. The tankship was severely damaged in the area of its cargo tanks. Two crewmembers were killed. The total losses resulting from the explosion were estimated to be $35 million. The terminal berth was out of service for 180 days.

The SEATIGER arrived at Berth No. 3, at 1040 on April 18, 1979, and berthed portside to. The draft of the vessel arriving at the terminal was 37 ft 5 in. Discharging of the cargo commenced at 1500. During the discharging of the cargo of crude oil, the tank valves were hydraulically operated from the pumping control station located on the main deck in the forward part of the deckhouse. Discharging was temporarily suspended from 1717 to 1815 and from 1935 to 2100 because of electrical storms, but then contined throughout the night and into the next day.

Testimony revealed that the closed gauging system for determining the amount of cargo in the tanks was defective in several of the tanks. The gauges in Nos. 2 center, 2 port, 3 center, and 5 port tanks were found to be inoperative. With the closed gauging system not functioning properly, the ship's master elected not to use the vessel's inert gas system, reasoning that when the ullage covers were opened to monitor the pumping, the gas would be exhausted to the atmosphere instead of providing a blanket of noncombustible gas over the surface of the cargo inside the tanks.

The Safety Board notes that the cargo tanks of the SEATIGER were neither inerted nor in a gas-free condition. The tanks were vented into a common line that led to the vertical vent pipe attached to the port kingpost located just aft of the cargo manifold. Highly explosive vapors were allowed to vent to the atmosphere through the vent pipe. Discharging was completed about 1630 on April 19 and ballasting began at 2050 with the vent system still open. The top of the vent pipe was fitted with a flame arrester with a hinged cover. Inspection of the flame screen after the accident revealed that it had been improperly installed. It had been placed upside down so that four small positioning tabs extending from one end were not placed down in the vent pipe. With the flame screen incorrectly installed, the clearance around the edge between the screen and the cover was improper, and the hinged cover could not be secured correctly to provide a tight closure. In addition to the vapors passing through the mash of the flame screen, they rose vertically and passed out around the edge of the hinged cover. When lightning struck the top of the vent mast, the vapors on the vent exterior ignited, the flame traveled through the improperly installed flame screen, down the mast through the vent pipes on deck, and ignited the vapors in the tanks, which resulted in the explosion.

Flame arresters that are designed for flame quenching in a vent pipe system are found in various configurations. The cylindrical, double-mesh screen type installed on the SEATIGER was apparently repaired, when required, by the ship's crew. It could not be determined whether the fit would have been proper if the screen had been installed correctly. The location on top of the mast discouraged inspection and maintenance although it almost insured that it would be one of the first parts of the vessel to be struck by lightning.

The Board states that improper installation of the flame screen in the vent mast contributed to the cause of the explosion. With the flame screen in the inverted position, it would not fit correctly in the vent pipe, and the vent pipe cover could not be closed tight enough to provide a proper seal. The design of flame screens which permits one manner of installation in a flame arrester would probably present occurrences such as this. To insure that a similar condition does not occur on a U.S. vessel, future Coast Guard approval of designs of flame arrestors should require this feature.

As a result of its investigation of the SEATIGER accident, the Safety Board on September 10 directed letters to the following addresses, recommending that—

United States Coast Guard:

Include in the Coast Guard boarding officer's checklists for loaded oil tank vessels entering United States ports, a checklist item on the condition of inert gas systems. (M–80–56)

Require all foreign and domestic crude oil carriers of 20,000 dwt and above that are equipped with an inert system to place the system in operation while in the United States waters except when cargo tanks are gas free. (M–80–57)

Require oil terminals to include in their "Declaration of Inspection Prior to Bulk Cargo Transfer" as required by 33 CFR 156.50 and 46 CFR 35.35–60 that the installed inert gas system be in operation before cargo transfer is commended. (M–80–58)

Require all foreign and domestic crude oil carriers that are transferring cargo at United States ports to advise the local Coast Guard Captain-of-the-Port if a malfunction occurs in their inert gas system, and to suspend transfer operations until permission is granted by the Coast Guard to resume operations. (M–80–59)

Instruct inspectors who conduct biennial or midperiod examinations of tank vessels to inspect all flame screens, including those installed in flame arresters, regardless of location, and require them to be placed in satisfactory condition as necessary. (M–80–60)

Include in the approval requirements of drawings and specifications for flame arrestors that flame screens be physically incapable of incorrect installation. (M–80–61)

American Bureau of Shipping:

Instruct surveyors who conduct annual surveys of tank vessels to examine all flame screens, including those installed in flame arresters, regardless of location, and have them placed in satisfactory condition as necessary. (M–80–62)

Sun Oil Terminals, Inc.:

Provide a rapid means of emergency communication between vessels berthed at the terminal and the terminal office during the period between the completion of discharging and the sailing of the vessel. (M–80–63)

Collision of the U.S. Coast Guard Cutter BLACKTHORN and the U.S. Tankship CAPRICORN, Tampa, Florida, January 28, 1980.—About 2021 e.s.t., the BLACKTHORN and the CAPRICORN collided in Tampa Bay. The BLACKTHORN capsized and sank, and 23 Coast Guardsmen were drowned.

Although refloated, the BLACKTHORN was a total loss. The CAPRICORN experienced hull damage from the collision and subsequent grounding. The cost of repairs to the tankship was estimated at $600,000 and the cost of salvaging the BLACKTHORN was estimated at $1 million.

The Safety Board has found that the failure of the BLACKTHORN to keep to the proper side of the channel—the result of its commanding officer's inadequate supervision of navigation by his inexperienced officer-of-the-deck—caused the cutter's collision with the tankship. Contributing to the nighttime accident were the failure of the BLACKTHORN's commanding officer and the CAPRICORN's pilot to establish a passing agreement by radio or whistle signal, and the commanding officer's failure to keep himself aware of all traffic in the channel. The sudden capsizing of the BLACKTHORN, which resulted from the snagging of the tanker's anchor in the cutter's side plating and the anchor chain becoming taut as the ships moved apart, contributed to the high loss of life.

Investigation showed that the ships collided port-bow to port-bow in the south side of an 18-degree bend in the channel just east of the intersection of two navigation ranges. BLACKTHORN was leaving port and was on a westerly heading; CAPRICORN was inbound. Twenty-seven Coast Guardsmen survived the sinking of the cutter. There were no injuries aboard the CAPRICORN, which ran aground after the collision. The BLACKTHORN's sinking in the channel closed the busy port of Tampa to large ships for 22 days. Twenty ships were trapped in port until after the BLACKTHORN was raised.

Investigation showed that an inexperienced officer-of-the-deck (OOD) was "conning"—directing the BLACKTHORN's movement—just before the collision. When the tanker was first sighted, the OOD asked the executive officer to radio the CAPRICORN to make a passing agreement. The attempted radio contact was unsuccessful, but another vessel's transmission which the OOD heard on the BLACKTHORN's radio led him to believe the agreement had been reached. The commanding officer had seen a large contact on the BLACKTHORN radar. Looking forward, he sighted a large cruse ship which was preceding BLACKTHORN out of the bay, assumed it was the radar contact he had just seen, and turned to study a lower bay chart. The OOD ordered a right turn which be believed would keep the cutter on the north side of the channel so that the BLACKTHORN and the CAPRICORN could pass port-to-port. It was not until this course change that the commanding officer first saw the CAPRICORN—now less than 400 yards ahead. He took the conn from the OOD, ordered the rudder angle increased, then called for hard right rudder.

Earlier, the pilot of the CAPRICORN had made two unsuccessful attempts to radio the BLACKTHORN for a passing agreement. Expecting BLACKTHORN to make the needed right turn to stay in the channel, the pilot had anticipated a port-to-port passing. When it appeared that BLACKTHORN was not going to turn and would be crossing CAPRICORN's bow to leave the channel, the pilot ordered 10-degree left rudder to try to pass starboard-to-starboard. A hard-left rudder order came just 15 seconds before impact. Neither vessel sounded the proper whistle signal to advise the other of its intended course.

The Safety Board notes that the BLACKTHORN's commanding officer had been on shore duty for 5 years prior to taking command of the cutter 6 months before the accident. The OOD had reported aboard for his first seagoing assignment in the Coast Guard 7 months previously. The cutter was in drydock in Tampa for more than three months of that time, and none of the BLACKTHORN deck officers ever had sailed out of Tampa Bay. The Board said that the OOD's testimony—that a one-degree change he saw in bearings of the tanker from the cutter showed there was no risk of collision—dramatically illustrates that the conning of the BLACKTHORN had been left to a novice. An experienced mariner would not have reached such a conclusion from so small a bearing change. The commanding officer was unaware of the CAPRICORN until seconds before the collision, although he was on the BLACKTHORN's bridge and ultimately in charge of its navigation. An officer who had been ashore as long as the BLACKTHORN's commanding officer should not have been selected for command without first having been subjected to a comprehensive refresher course.

The Board further notes that when the BLACKTHORN capsized, its emergency lighting system did not function. No abandon-ship call was made on its public address system, nor could liferafts be launched. Survivors used debris and loose lifejackets to keep afloat until they were picked up by a nearby shrimp boat and a Coast Guard rescue vessel.

In its recommendation letter forwarded September 11 to the U.S. Coast Guard, the Safety Board notes that in an accident where the vessel capsizes before survival equipment can be utilized, it can be expected that crewmen will find themselves in the water and at the mercy of the elements. It is important, therefore, that they be trained in water survival techiques; e.g., basic swimming skills, how to conserve one's energy, whether to stay with the vessel, how to don a lifepreserver in the water, the importance of staying together, and the dangers of hypothermia. A number of survivors from the BLACKTHORN believed that their water survival training was inadequate. The Safety Board believes that the Coast Guard should review its current water survival training programs.

The Safety Board further notes that from the data collected and correlated in an unofficial study made by Commander William J. Ecker, USCG, entitled "Casualty Analysis of Selected Waterways," and this accident, there is a need for a higher level of vessel traffic service (VTS) in Tampa Bay. Had there been, for example, a regulation prohibiting meeting in bends in the main shipping channel, this accident might have been avoided. The Board concludes that the Coast Guard should reevaluate the VTS needs in Tampa Bay and should take action to increase the safety of navigation on the waterway through a higher level of VTS.

None of BLACKTHORN's principal survival craft, her own four or the borrowed 15-man inflatable liferafts, was effective in saving lives. Instead, a wooden watchstander's shack, wooden planks, and lifejackets were used as flotation until rescue boats arrived. Two of the liferafts, the Mark 3 liferafts, were over 24 years old. U.S. Navy standards (adopted for Coast Guard use) state that Mark 3 liferafts should be disposed of because of fabric deterioration and a civilian liferaft expert testified that they should never be used. The Safety Board urges the Coast Guard to examine all Mark–5 inflatable liferafts on all Coast Guard cutters and to immediately replace all Mark–3 liferafts with Coast Guard-approved liferafts in accordance with Commandant Instruction M 14070.10 dated January 2, 1979.

BLACKTHORN's liferaft installation did not meet the intent of the Naval Ships' Technical Manual (adopted for Coast Guard use) that liferafts should be located to permit ready manual overboard launching, since the 385-lb liferafts were stowed 7 ft from the side of the cutter and one deck up. This required the liferafts to be carried down from the 02 level to the 01 level before

launching. If the liferafts were to be dropped to the 01 level by releasing the stowage baskets, the liferafts probably would be damaged. The Safety Board believes that the Coast Guard should examine the location of liferaft stowage on all cutters to insure that the liferafts can be readily launched in an emergency. BLACKTHORN's hydrostatic releases for its liferafts were set to activate at water depths within the Navy standard of 10 to 40 ft. However, buoy tenders, operate primarily in water depths of less than 40 ft. Therefore, the Safety Board believes that the Coast Guard should adopt the merchant vessel standard that hydrostatic releases be set between 5 and 15 ft for Coast Guard cutters. In this case, the setting of the hydrostatic releases was not a factor in the effectiveness of the liferafts since their flexible containers were not buoyant. The Coast Guard should use buoyant containers for liferafts on Coast Guard cutters.

The Safety Board notes that the CAPRICORN was exempted from having a motor lifeboat and gravity davits because it was converted before May 26, 1965. This accident illustrates the difficulty of maneuvering hand-propelled lifeboats during an emergency and the delays involved in launching lifeboats using sheath, screw-type davits. The Board does not believe that outdated lifesaving equipment should be permitted to remain in service indefinitely. The Coast Guard should establish a service life after which all lifesaving equipment on U.S. merchant vessels should be upgraded to meet current vessel standards.

The Safety Board's September 10 recommendation letter reiterates recommendation M–76–8, issued to Coast Guard following investigation of the SS C.V. SEAWITCH—SS ESSO BRUSSELS (Belgium) collision in New York Harbor, June 2, 1973. Recommendation M–76–8 asked Coast Guard to require installation of an automatic recording device to preserve vital navigational information aboard oceangoing tankships and containerships. (See 41 FR 10481, March 11, 1976.) In addition to reiterated recommendation M–76–8, the Safety Board recommends that Coast Guard:

Require all Coast Guard candidates for command or designation as qualified deck watch officer on Coast Guard cutters over 100 ft in length to pass an examination similar to that required for corresponding merchant marine licenses and to be reexamined on a periodic basis. (M–80–64)

Require all Coast Guard candidates for command or designation as qualified deck watch officer on Coast Guard cutters over 100 ft in length to take a course in basic ship stability. (M–80–65)

Require all Coast Guard candidates for designation as engineering officer on Coast Guard cutters over 100 ft in length to take a course in basic ship stability and loading data for the cutter to which assigned. (M–80–66)

Require all Coast Guard personnel designated as commanding officer of cutters over 100 ft in length to have a period of underway training before assuming command if they have been ashore for an extended period. (M–80–67)

Require that the commanding officer of each Coast Guard cutter insure that all personnel are aware of the location of all lifesaving equipment, such as lifejackets, before getting underway. (M–80–68)

Require that the commanding officer of each Coast Guard cutter insure that all personnel are aware of how liferafts are launched before getting underway. (M–80–69)

Review current water survival training programs for Coast Guard personnel assigned to cutters, and, increase the effectiveness of these programs. (M–80–70)

Require that commanding officers of Coast Guard cutters over 100 ft in length employ pilots when the commanding officer is unfamiliar with pilotage waters. (M–80–71)

Require commanding officers of Coast Guard cutters over 100 ft in length to conform to local practice regarding exchange of information with local pilot associations regarding their movements in pilotage waters, unless such exchange would not be in the interest of national security. (M–80–72)

Require commanding officers of Coast Guard cutters over 100 ft in length to broadcast security calls when getting underway to inform other vessels of their presence, unless such information would not be in the interest of the national security. (M–80–73)

Modify the lights of Coast Guard buoytenders to comply as closely as possible to the regulations by moving the forward masthead light as far forward as possible and rescind or modify the exemption for Coast Guard buoy tenders in appendix B of 33 CFR Subchapter DD—Implementation and Interpretation of the 72 COLREGS. (M–80–74)

Prohibit ships from meeting in bends in Tampa Bay. (M–80–75)

Emphasize to all commanding officers of Coast Guard cutters the important obligation to sound whistle signals in accordance with the appropriate rules of the road. (M–80–76)

In conjunction with appropriate Federal and State agencies, relocate the intersection of the Intercoastal Waterway and the Southwest Channel and the main shipping channel in Tampa Bay away from buoy 2A. (M–80–77)

Reevaluated the proposed level of vessel traffic service (VTS) in Tampa Bay and determine if a higher level of VTS is needed. (M–80–78)

Require all U.S. merchant vessels over 1,600 gross tons to be equipped with at least one motor lifeboat on each side and gravity davits throughout. (M–80–79)

Inventory the liferafts on all Coast Guard cutters and replace all Mark 3 liferafts with Coast Guard-approved liferafts immediately. (M–80–80)

Conduct a one-time inspection of all Mark-5 liferafts on Coast Guard cutters and replace or repair them as necessary. (M–80–81)

Examine the stowage location of liferafts on all Coast Guard cutters and insure that the location permits ready manual overboard launching. (M–80–82)

Require that the hydrostatic releases on buoy tenders and other Coast Guard cutters which operate principally in coastal waters be set between 5 and 15 ft, as required by Coast Guard regulation for merchant vessels. (M–80–83)

Provide all liferafts used on Coast Guard cutters with buoyant containers so that they will float to the surface if the cutter sinks. (M–80–84)

Examine the reliability of automatic emergency lighting aboard Coast Guard cutters and make necessary modifications. (M–80–85)

Copies of the Safety Board's formal investigation reports concerning each of the above three marine accidents are being prepared for distribution and will be available in the near future. With the exception of recommendation M–80–80, issued in connection with the BLACKTHORN-CAPRICORN collision, all of the above-reported recommendations are designated "Class II, Priority Action," Recommendation M–80–80 is designated "Class I, Urgent Action."

Railroad Safety Recommendation Letters

R–80–36 to the Federal Railroad Administration, September 12, 1980.— On November 17, 1979, Union Pacific Freight Train LAM 16, traveling westbound at about 50 mph, struck a displaced bridge at Devils Slide, Utah, and derailed. Five locomotive units, 56 train cars, and parts of the bridge were damaged or destroyed. Damage was estimated in excess of $5 million.

Investigation showed that the westbound span of the bridge, which was over a county road, had been displaced about 30 inches laterially by a piece of heavy construction equipment that was too large to pass beneath the bridge. Although the bridge was displaced, the circuitry for the signal system was still intact and the preceding signal displayed a clear aspect. The engineer on westbound LAM 16 noticed the bridge displacement but he did not have sufficient time to stop the train before entering the bridge structure.

The Safety Board notes that in April 1978 a four-barge tow collided with a fixed span railroad bridge on the Southern Pacific Railroad near Berwick Bay, La. the collision knocked the span from its supporting piers into the river. Furtunately, an on-duty bridge tender alerted the railroad concerning the

displaced brdige span. However, since many railroad bridges do not have tenders, the Safety Board believes that the potential exists for a catastrophic railroad accident due to a railway bridge being displaced unless some type of electro/mechanical warning mechanism is installed.

Accordingly, the Safety Board recommends that FRA:

Study the feasibility of installing a mechanism which can be incorporated in the automatic block system to indicate when bridges are displaced. (Class II, Priority Action) (R–80–36)

R–80–37 to National Railroad Passenger Corp. (Amtrak), September 15, 1980.—About 6:35 p.m., on July 9, 1980, Amtrak passenger train No. 225, moving westbound at 60 mph on track No. 3 at Linden, N.J., was passing Amtrak Rail Extra No. 4934, moving eastbound at 30 mph on track No. 2. As the trains passed, a 15-foot piece of buffer rail, which was protruding from a car on Rail Extra 4934, struck and penetrated the first car of passenger train No. 225. One passenger was killed, and 19 passengers were injured.

Passenger train No. 225 consisted of six self-propelled, electrically-driven commuter cars. Each car was 85 feet long and had four-wheel motor-driven trucks. Rail Extra No. 4934 included 28 flat cars. Each flat car was equipped with two racks to carry continuous welded rails. The first car of passenger train No. 225 was struck on the corner and under the floor of the opposite side from the engineer, and the steps on the corner of the car were destroyed. The rail then penetrated the side of the car between the fourth window and the car floor and entered the car. The sixth and seventh seats were torn loose from the floor and were destroyed, and the center partition also was destroyed.

Investigation showed that Rail Extra No. 4934 had been loaded with continuous welded rail at New Haven, Conn., and had proceeded to Bristol, Pa., where, for 2 days, the continuous welded rail had been unloaded. During the unloading process, the short pieces of buffer rails, used to support the ends of the continuous welded rail in the carrying racks, were removed from the continuous welded rail after the unloading.

Pieces of buffer rail apparently were laid loosely on the floor of the last two rail cars, since after the accident five 8- to 12-foot buffer rails were found loose on the floors of the cars. The rail that struck the passenger train had shifted so as to protrude from the side of the 31st car.

The Safety Board notes that the practice of allowing loose rail to lie unsecured on the floor of a flat car as a train moves over the track is dangerous and presents a serious threat to the traveling public, as well as to railroad employees. Therefore, the Board recommends that the National Railroad Passenger Corporation:

Immediately establish procedures for the securement of all material carried on flat cars of a continuous welded rail train and maintenance of way work trains. (Class I, Urgent Action) (R–80–37)

R–80–38 to the Federal Railroad Administration, September 12, 1980.—On January 18, 1979, a bridge on the Illinois Central Gulf Railroad over the Alabama River, Hunter, Ala., collapsed while a 68-car freight train was crossing the bridge. One bridge span and five freight cars fell into the river. One of the cars, a bulkhead flatcar, was transporting cast-iron pipe at the time of the accident. Although all evidence could not be recovered and evaluated, there was sufficient evidence to indicate that the load of pipe shifted, struck the bridge, and caused the bridge to collapse.

More recently, on April 13, 1980, a highway bridge over railroad tracks near Mascot, Nebr., collapsed after the bridge's support structure was struck by steel beams protruding from a Burlington Northern Railroad gondola car. The steel beams had shifted on the car because of improper design of the tiedowns.

The Safety Board notes that from the beginning of 1977 through 1978, two fatalities and 24 injuries resulted from 256 accidents which were caused by shifted loads or loads falling off cars. Shifting loads have caused unbalanced forces which have resulted in overheated bearings or derailments due to off center loading. Shifting loads can get outside the clearance envelope and strike stationary trackside objects or other trains passing on adjacent tracks. There have been incidents wherein shifting loads have struck or fallen on persons in the vicinity of passing trains. While not a direct result of improper loading, the accident at Linden, N.J., where rail from a railroad work train sideswiped a passenger train (see recommendation R–80–36, above), is typical of the consequences that can occur due to improper loading.

Accordingly, the Safety Board recommends that FRA:

Promulgate regulations to ensure that safe open-top loading and securement procedures are established and adhered to on all railroads. (Class II, Priority Action) (R–80–38)

Responses to Safety Recommendations

Aviation

A–80–47 and –48, from the Federal Aviation Administration, August 29, 1980.—Response is to recommendations issued June 3 as a result of investigation of a fatal accident involving a Gulfstream American Model AA–1B aircraft which crashed shortly after takeoff from Melbourne (Fla.) Regional Airport last November 29. (See 45 FR 39987, June 12, 1980.) Investigation revealed that the handle of the fuel selector value, P/N SP2358B3, was selected to the right tank position; however, the right port of the valve was blocked completely and the left port was blocked partially by the valve's plastic core.

FAA reports that its Southern Region Engineering and Manufacturing Branch, working directly with Gulfstream American Corporation, was able to induce a failure similar to the one found on the accident airplane by striking the valve handle with a 12-pound hammer and imparting a bending force on the core through the shaft. Based on this testing and our evaluation of data, FAA believes that the failure on the accident aircraft occurred due to impact damage. A copy of the test results performed by Gulfstream American Corporation is attached to FAA's response.

Further, FAA notes that a survey of its Maintenance Analysis Center records discloses one other case of a fuel selector valve plastic core failure and nine cases of fuel selector valve binding. The valve core failure occurred on April 11, 1977, on a Gulfstream American Model AA–1. The failure of this valve was due to overtorquing of the valve handle and was accomplished by gripping the valve with a device other than the airplane manufacturer's furnished handle, providing a larger moment. One of the nine remaining difficulty reports cited a shaft seal leak. The other eight were all reported during the 1978 winter season in the Long Island, N.Y., area. Six of these eight reports involve two airplanes and FAA believes all eight reports only involve three airplanes. FAA does not consider these reports to define an adverse trend, and, after reviewing the eight reports, FAA concludes that no corrective action is warranted at this time.

Specific to recommendation A–80–47, which asked FAA to issue an Airworthiness Directive for all Gulfstream American model aircraft to require disassembly of the fuel selector valve for inspection, cleaning, and lubrication at 100-hour intervals, FAA says it does not believe that an Airworthiness Directive is warranted to

require disassembly, inspection, cleaning, and lubrication at 100-hour intervals. FAA believes that the specified 500-hour interval required in the Aircraft Maintenance Manual is adequate. FAA states, "Shorter disassembly intervals introduce the possibility for faulty reassembly and introduction of contaminates."

In response to recommendation A–80–48, which asked FAA to evaluate the design of fuel selector valve, P/N SP2358B3, and require correction of any deficiencies found during the evaluation, FAA reports that it has conducted an evaluation of the design and believes it is adequate. FAA notes that this valve is in common use in general aviation small aircraft and has a good service history. The valve was greatly improved by the introduction of the plastic core material in lieu of a bronze material used earlier. FAA does not find that any corrective action is necessary toward improving the design further, but will continue to monitor the valve and will take corrective action if the monitoring indicates it is necessary.

A–80–49, from the Federal Aviation Administration, September 9, 1980.—Response is to a recommendation issued June 11 following investigation of the crash of an Aerospatiale Alouette III helicopter near Ogden, Utah, on December 14, 1978. The recommendation asked FAA to issue an Operations Alert Bulletin to remind operators of Aerospatiale helicopters of the requirement to set altimeters to read actual altitude above mean sea level for reference during all flight operations below 18,000 feet mean sea level as specified in 14 CFR 91.81. (See 45 FR 41550, June 19, 1980.)

In response, FAA maintains that the procedure being followed by the Aerospatiale helicopter pilots in computing performance capabilities is satisfactory. However, good operating procedure should be followed by setting the current altimeter setting in the altimeter prior to takeoff. "The hazards of operating, especially at night, at low altitudes or when specific altitude information is necessary without accurate altitude data is obvious," FAA states. An Air Carrier Operations Bulletin, A–80–3, Altimeter Setting, Aerospatiale Alouette III Helicopters, emphasizing proper procedures and the potential safety problem is presently in the coordination process within FAA. FAA will forward to the Safety Board a copy of this bulletin when it becomes available.

Highway

H–80–16 through –20, from the Federal Highway Administration, August 21, 1980.—Response is to recommendations issued last March 5 in conjuction with the Safety Board's highway safety effectiveness evaluation, "Detection and Control of Unsafe Interstate Commercial Drivers Through the National Driver Register, State Driver Licensing Policies, and the Federal Motor Carrier Safety Regulations." (See 45 FR 16363, March 13, 1980.)

Recommendation H–80–16 called on FHWA to revise the commercial driver disqualification provisions of the Federal Motor Carrier Safety Regulations (FMCSR) to provide that the specified disqualifying driving offenses shall be disqualifying without regard to the type of highway vehicle driven at the time of the offense or whether the driver was on or off duty. In response, FHWA notes that driver qualification requirements of the FMCSR, effective January 1, 1971, required a commercial driver to be disqualified for the conviction of a serious driving offense without regard to the type of vehicle driven. On September 5, 1972, a U.S. District Court in Minnesota found that that rule had no rational basis in fact, and that it was arbitrary, capricious, and unreasonable. Following the court decision, the FMCSR were amended to require that the disqualifying offense must have occurred while driving a motor vehicle in the employ of a motor carrier or in furtherance of a commercial enterprise in interstate, intrastate, or foreign commerce. FHWA says it is developing an advance notice of proposed rulemaking which will attempt to obtain information, both quantitative and qualitative in nature beyond the Safety Board's report, that will unequivocally demonstrate a direct relationship between offenses committed in private vehicles and the safety of operation of a commercial vehicle.

Recommendation H–80–17 asked FHWA to evaluate the need for, and feasibility of, specifying in the FMCSR a threshold level of traffic violations, based upon the total number and relative seriousness of the violations, above which a driver is disqualified to operate a commercial vehicle, and within 1 year publish the findings of the evaluation in the **Federal Register** for public comment or initiate appropriate rulemaking. FHWA reports that during the rulemaking action of 1970 concerning the revision of driver qualification and disqualification rules, it was proposed that certain moving violations be the basis of disqualification (34 FR 9080). The proposal provided for disqualification based on three or more moving traffic violations within 3 years. Upon review of the comments to the docket, it was determined that the proposal was too discriminatory for implementation. The decision was based on (1) the disparity of motor vehicle law enforcement from State to State, and (2) the lack of a uniform rule as to what constitutes a moving violation. The proposal was withdrawn. These concerns are still valid, FHWA states. Through issuance of an advance notice of proposed rulemaking, FHWA will seek information concerning ways to establish disqualification rules aimed at those persons who repeatedly violate existing traffic laws.

Recommendation H–80–18 asked FHWA to evaluate the compliance of motor carriers with the FMCSR requirements pertaining to driver disqualification, driver screening, annual review of driving records, and maintenance of driver qualification files, and within 1 year publish the findings of the evaluation in the **Federal Register** for public comment or initiate appropriate rulemaking. In response, FHWA discusses its ongoing program to develop an automated data system to provide noncompliance data and statistics and provide comparative evaluations. The current schedule for this project calls for meaningful statistics to be available by the end of 1981. When findings are available, an annual report will be published. To meet the Safety Board's recommended timeframe for publication, a diversion of personnel from the development of the system would be required in order to manually perform the work. FHWA holds the opinion that the use of only 1 year's data is not a valid basis upon which to make regulatory decisions. FHWA will hold with its original schedule. Since periodic reports are planned, no purpose would be served by publication of findings in the **Federal Register.**

In response to recommendation H–80–19, which asked FHWA to evaluate the compliance of motor carriers who are owner-operators with the driver record review and driver disqualification provisions of the FMCSR and within 1 year publish the findings of the evaluation in the **Federal Register** for public comment or initiate appropriate rulemaking, FHWA states that it does not believe the recommendation as worded to be practical because: (1) There is no single universal definition of the term "owner-operator," and the term is applied to at least four different operations in the motor carrier industry; (2) no useful purpose is served in manually performing this effort in view of the information system discussed in

connection with recommendation H–80–18; (3) there is no means available from the States to identify "owner-operators," even assuming that this term could be defined, and to notify FHWA of license revocation or suspension; and (4) "owner-operators" who complied with the regulations would immediately cease to be an owner-operator and would no longer be a part of the group being studied.

With respect to recommendation H–80–20, which called on FHWA to fully define in the FMCSR the information that a motor carrier must request from an applicant driver's former employer(s) when making the investigations and inquiries required by the regulations, FHWA in response discusses the current wording of the FMCSR for prospective employee investigation and the joint FHWA/NHTSA study of licensing programs including a system of Federal licensing and monitoring of drivers of heavy duty motor vehicles. FHWA points out that the current regulation was written to give the employing motor carrier as much latitude as possible. FHWA states that a more definitive rule could possibly aid motor carriers in their search for high calibre employees. FHWA is developing an advance notice of proposed rulemaking which will address the Board's recommended action.

Note.—Copies of the Safety Board's recommendation letters, as well as responses and related correspondence, are provided free of charge. All requests for copies must be in writing, identified by recommendation number. Address requests to: Public Inquiries Section, National Transporation Safety Board, Washington, D.C. 20594.

(49 U.S.C. 1903(a)(2), 1906)

Margaret L. Fisher,

Federal Register Liaison Officer.

September 22, 1980.

[FR Doc. 80–29742 Filed 9–24–80; 8:45 am]

BILLING CODE 4910–58–M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Notice of Issuance and Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft, temporarily identified by its task number, SS 926–4 (which should be mentioned in all correspondence concerning this draft guide), is proposed Revision 1 to Regulatory Guide 1.23 and is entitled "Meteorological Programs in Support of Nuclear Power Plants." The guide is being revised as a result of the lessons learned from the accident at Three Mile Island Nuclear Station, other operating experience, and additional staff review. This proposed revision to the guide describes meteorological measurement programs acceptable to the NRC staff for providing meteorological data needed to estimate potential radiation doses to the public resulting from actual routine or accidental releases of radioactive materials to the atmosphere. It provides expanded guidance in several areas, including special considerations for emergency preparedness.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Comments on both drafts should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, by November 20, 1980.

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, 1717 H Street NW., Washington, D.C. 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, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. 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 16th day of September 1980.

For the Nuclear Regulatory Commission.

Karl R. Goller,

Director, Division of Siting, Health and Safeguards Standards, Office of Standards Development.

[FR Doc. 80–29684 Filed 9–24–80; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guide; Notice of Issuance and Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Revision 1 to Regulatory Guide 1.58, "Qualification of Nuclear Power Plant Inspection, Examination, and Testing Personnel," describes methods acceptable to the NRC staff for the qualification of inspection, examination, and testing personnel for all types of nuclear power plants. It endorses with certain exceptions ANSI N45.2.6–1978, "Qualifications of Inspection, Examination, and Testing Personnel for Nuclear Power Plants." This guide has been revised as a result of public comment and additional staff review.

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. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Copies of active guides may be purchased at the current Government Printing Office price. A subscription service for future guides in specific divisions is available through the Government Printing Office. Information on the subscription service and current prices may be obtained by

writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Publications Sales Manager.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 17th day of September 1980.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Standards Development.

[FR Doc. 80-29676 Filed 9-24-80; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-313 and 50-368]

Arkansas Power & Light Co.; Notice of Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 46 and 15 to Facility Operating License Nos. DPR-51 and NPF-6, issued to Arkansas Power and Light Company (the licensee), which revised the Technical Specifications for operation of Arkansas Nuclear One, Unit Nos. 1 and 2, respectively, (the facilities) located in Pope County, Arkansas. The amendments are effective as of the date of issuance.

The amendments revised the Environmental Technical Specifications relating to the design objective for radioactive gaseous releases, the requirements for a quarterly report on radioactive gaseous releases, the allowable hourly radioactive gaseous release rate, and the maximum allowable radioactive gaseous releases in a calendar quarter. The revisions comply with the applicable requirements of 10 CFR Part 50, Appendix I.

The application for these amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in these license amendments. Prior public notice of these amendments was not required since these amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the licensee's application for amendments dated October 31, 1979, (2) Amendment No. 46 to License No. DPR-51 and Amendment No. 15 to License No. NPF-6, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Arkansas Polytechnic College, Russellville, Arkansas. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 16th day of September 1980.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 80-29680 Filed 9-24-80; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-295 and 50-304]

Commonwealth Edison Co.; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 57 to Facility Operating License No. DPR-39, and Amendment No. 54 to Facility Operating License No. DPR-48 issued to the Commonwealth Edison Company (the licensee), which revised Technical Specifications for operation of Zion Station, Units 1 and 2 (the facilities) located in Zion, Illinois. The amendments are effective as of the date of issuance.

The amendments provide an immediate but temporary Technical Specification change to allow maintenance to be performed on circulating water pumps during power operation.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated August 15, 1980, (2) Amendment Nos. 57 and 54 to License Nos. DPR-38 and DPR-49, respectively, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Zion-Benton Public Library District, 2600 Emmaus Avenue, Zion, Illinois 60099. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 9th day of September, 1980.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 80-29678 Filed 9-24-80; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-329-OM and 50-330-OM]

Consumers Power Co. (Midland Plant, Units 1 and 2); Notice of Reconstitution of Board

Ivan W. Smith, Esq., was Chairman of the Atomic Safety and Licensing Board for the above proceeding. Because of a schedule conflict, Mr. Smith is unable to continue his service on this Board.

Accordingly, Charles Bechhoefer, Esq., whose address is Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, is appointed Chairman of this Board. Reconstitution of the Board in this manner is in accordance with Section 2.721 of the Commission's Rules of Practice, as amended.

Dated at Bethesda, Maryland, this 19th day of September, 1980.

Robert M. Lazo,

Acting Chairman, Atomic Safety and Licensing Board Panel.

[FR Doc. 80-29685 Filed 9-24-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-334]

Duquesne Light Co. et al.; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 30 to Facility Operating License No. DPR-66 issued to Duquesne Light Company, Ohio Edison Company, and Pennsylvania Power Company (the licensees), which revised Technical Specifications for operation of the Beaver Valley Power Station, Unit No. 1 (the facility) located in Beaver County, Pennsylvania. The amendment is effective as of the date of issuance.

The amendment revises the radiological Technical Specifications in Appendix A to reflect the installation of a new Steamline Break Protection System.

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. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amemdment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated October 27, 1978 as supplemented by letters dated March 7, May 7, August 28 and October 18, 1979, (2) Amendment No. 30 to License No. DPR-66 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 10th day of September 1980.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 80-29677 Filed 9-24-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-302]

Florida Power Corp., et al.; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 33 to Facility Operating License No. DPR-72, issued to the Florida Power Corporation, City of Alachua, City of Bushnell, City of Gainesville, City of Kissimmee, City of Leesburg, City of New Smyrna Beach and Utilities Commission, City of New Smyrna Beach, City of Ocala, Orlando Utilities Commission and City of Orlando, Sebring Utilities Commission, Seminole Electric Cooperative, Inc., and the City of Tallahassee (the licensees) which revised the Technical Specifications for operation for the Crystal River Unit No. 3 Nuclear Generating Plant (the facility) located in Citrus County, Florida. The amendment is effective as of the date of issuance.

This amendment revises the technical Specification requirements for inspection of steam generator tubes in areas which are distinguished by unique operating conditions and/or physical construction.

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. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated February 15, 1980, (2) Amendment No. 33 to License No DPR-72, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Crystal River Public Library, Crystal River, Florida. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 17th day of September 1980.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating Reactors Branch #4, Division of Licensing.

[FR Doc. 80-29679 Filed 9-24-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-367]

Northern Indiana Public Service Co. (Bailey Generating Station, Nuclear 1); Notice of Oral Argument

Notice is hereby given that, in accordance with the Appeal Board Chairman's order of September 17, 1980, oral argument on the appeals of the City of Gary, Indiana, *et al.*, and George Schultz from so much of the Licensing Board's August 7, 1980 special prehearing conference order as denied their petitions for leave to intervene in this construction permit extension proceeding will be heard at *10:00 a.m. on Thursday, October 2, 1980*, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.

Dated: September 17, 1980.

For the Appeal Board.

C. Jean Bishop,

Secretary to the Appeal Board.

[FR Doc. 80-29675 Filed 9-24-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-286]

Power Authority of the State of New York; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 33 to Facility Operating License No. DPR-64 issued to the Power Authority of the State of New York (the licensee), which revised the license for operation of the Indian Point Nuclear Generating Unit No. 3 (the facility), located in Westchester County, New York. The amendment is effective as of the date of issuance and is to be fully implemented within 30 days of Commission approval in accordance with the provisions of 10 CFR 73.40(b).

The amendment adds a license condition to include the Commission-

approved Safeguards Contingency Plan as part of the license.

The licensee's filing 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. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

The licensee's filing dated April 30, 1980, revised June 20, 1980 are being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR 9.12.

For further details with respect to this action, see (1) Amendment No. 33 to License No. DPR–64 and (2) the Commission's related letter to the licensee dated September 12, 1980. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the White Plains Public Library, 100 Market Avenue, White Plains, New York. A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 12th day of September, 1980.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 80–29681 Filed 9–24–80; 8:45 am]

BILLING CODE 7590–01–M

[Docket 50–389]

Florida Power & Light Co., St. Lucie Plant, Unit No. 2; Notice of Issuance of Amendment to Construction Permit and Availability of Decision

Notice is hereby given that pursuant to a Decision, dated July 30, 1980, by the Atomic Safety and Licensing Appeal Board, the Nuclear Regulatory Commission has issued Amendment No. 1 to Construction Permit No. CPPR–144 issued to Florida Power and Light Company for construction of the St. Lucie Plant, Unit No. 2 located on Hutchinson Island in St. Lucie County, Florida.

The Appeal Board Decision directed modification of Construction Permit No. CPPR–144 to include a condition requiring the applicant's Final Safety Analysis Report to demonstrate the ability of the St. Lucie Plant, Unit No. 2 to be safely controlled through a complete loss of ac power.

The Nuclear Regulatory Commission has found that the provisions of the amendment complies with the requirements of the Atomic Energy Act of 1954, as amended, and the Commission's regulations published in 10 CFR Chapter I and has concluded that the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

The Commission has determined that the issuance of this amendment will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the amendment is encompassed by the overall action evaluated in the Final Environmental Statement.

For futher details with respect to this action, see (1) the Atomic Safety and Licensing Appeal Board Decision (ALAB–603), dated July 30, 1980, and (2) Amendment No. 1 to Construction Permit No. CPPR–144. Both of these items are available for public inspection at the Commission's Public Document Room, located at 1717 H Street NW., Washington, D.C. 20555 and at the Indian River Community College Library, 3209 Virginia Avenue, Ft. Pierce, Florida 33450.

A copy of items 1 and 2 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 18th day of September, 1980.

For the Nuclear Regulatory Commission.

B. J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 80–29682 Filed 9–24–80; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–327]

Tennessee Valley Authority; Notice of Issuance of Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Facility Operating License No. DPR–77, to Tennessee Valley Authority (licensee) which authorizes operation of the Sequoyah Nuclear Plant, Unit 1 (the facility) at reactor core power levels not in excess of 3411 megawatts thermal (100 percent power) in accordance with the provisions of the license and the Technical Specifications. Prior to power operation at power levels exceeding 5 percent, certain related construction items must be completed.

The Sequoyah Nuclear Plant, Unit 1 is a pressurized water nuclear reactor located at the licensee's site in Hamilton County, Tennessee, about 9.5 miles northeast of Chattanooga.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on March 25, 1974 (39 FR 11131). The notice of issuance of license of February 29, 1980 for fuel loading and low power testing was published in the **Federal Register** on March 10, 1980 (45 FR 15349).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) License for Fuel Load and Low Power Testing dated February 29, 1980 and amendments thereto; (2) Facility Operating License No. DPR–77, complete with Technical Specifications, and (3) the reports of the Advisory Committee on Reactor Safeguards dated December 11, 1979, July 15, 1980, and September 8, 1980; (4) Commission's Safety Evaluation Report (NUREG–0011) dated March 1979, Supplement No. 1 dated February 1980, Supplement No. 2 dated August, 1980, and Supplement 3 dated September 1980; (5) the Final Safety Analysis Report and amendments thereto; (6) the Final Environmental Statement prepared by Tennessee Valley Authority in July 1974; (7) the Commission's Environmental Impact Appraisal dated May 1979; (8) NRC Flood Plain Review of Sequoyah Nuclear Plant Site dated July 18, 1980; and (9) Discussion of the Environmental

Effects of the Uranium Fuel Cycle dated September 1980.

These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and the Chattanooga Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37402. A copy of Facility Operating License No. DPR-77 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. A copy of item (4) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing to U.S. Nuclear Regulatory Commission, Attention: Sales Manager, Washington, D.C. 20555. GPO deposit account holders can call 301-492-9530.

Dated at Bethesda, Maryland, this 17th day of September, 1980.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 80-29674 Filed 9-24-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

The Toledo Edison Co., and the Cleveland Electric Illuminating Co.; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 31 to Facility Operating License No. NPF-3, issued to The Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), 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 is effective as of its date of issuance.

This amendment modifies Limiting Conditions for Operation for the Containment Purge and Exhaust Isolation Valves. This action allows the plant, which is in cold shutdown, to heatup and operate at power with these valves inoperable, provided that the containment purge penetrations have been rendered passive by completing Action statement b. or c. of Technical Specification 3.6.3.1.

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. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated August 22, 1980, (2) Amendment No. 31 to License No. NPF-3, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Ida Rupp Public Library, 310 Madison Street, Port Clinton, Ohio. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 8th day of September 1980.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 80-29683 Filed 9-24-80; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 239, 2232 b.), the Advisory Committee on Reactor Safeguards will hold a meeting on October 9-11, 1980, in Room 1046, 1717 H Street, NW, Washington, DC. Notice of this meeting was published in the Federal Register on August 22, 1980.

The agenda for the subject meeting will be as follows:

Thursday, October 9, 1980

8:30 A.M.-9:30 A.M.: Opening Session (Open)—The Committee will hear and discuss the report of the ACRS Chairman regarding matters to be considered during a meeting with the Chairman, Nuclear Safety Oversight Committee, a meeting with the NRC Chairman and NRC Commissioners who may be present, and miscellaneous matters relating to ACRS activities.

9:30 A.M.-11:30 A.M.: Meeting with Chairman, Nuclear Safety Oversight Committee (Open)—The Committee will meet with the Chairman of the Nuclear Safety Oversight Committee and other members who may be present to discuss the role of the ACRS in the nuclear regulatory process.

11:30 A.M.-1:00 P.M. and 2:00 P.M.-4:30 P.M.—Quantitative Risk Criteria (Open)—The Committee members will disuss the proposed ACRS report to NRC regarding proposed risk criteria for the regulation of nuclear facilities.

4:30 P.M.-6:00 P.M.: Nuclear Data Link (Open)—The Committee will hear and discuss a report from members of the NRC Staff regarding a proposed Nuclear Data Link to monitor conditions at nuclear facilities.

6:00 P.M.-6:15 P.M.: Future Schedule (Open)—The Committee will discuss the proposed future schedule for subcommittee and full Committee activities.

Friday, October 10, 1980

8:30 A.M.-10:30 A.M. Proposed NRC Regulation (10 CFR 50) regarding Fire Protection in Nuclear Facilities (Open)—The Committee will hear and discuss comments from members of the NRC Staff and representatives of the nuclear industry regarding the proposed NRC rule (10 CFR 50) regarding fire protection provisions in nucelar facilities.

10:30 A.M.-12:00 Noon: Review of NRC Regulatory Requirements and Operating Nuclear Power Plants (Open)—The Committee will discuss the proposed NRC plan, with members of the NRC Staff, to review NRC reguatory requirements and reevaluate operating nuclear power plants in accordance with upgraded criteria.

1:00 P.M.-2:00 P.M.: Meeting with NRC Chairman and Commissioners (Open)—The Committee will meet with the NRC Chairman and other NRC Commissioners who may be present to discuss various safety related matters including the NRC Safety Research Program budget for FY 1982, implementation of ACRS recommendations on Unresolved Safety Issues and selective use of probabilistic assessment by the NRC Staff.

Portions of this session will be closed as required to discuss information the premature disclosure of which might significantly frustrate implementation of proposed agency action.

2:00 P.M.-4:00 P.M.: Quantitative Risk Criteria (Open)—The Committee will continue discussion of its proposed report to NRC regarding quantitative

risk criteria for regulation of nuclear facilities.

4:00 P.M.–5:00 P.M.: Provisions for Decay Heat Removal from Nuclear Plants (Open)—The Committee will hear and discuss a status report with members of the NRC Staff regarding the seismic design of Auxiliary Feedwater Systems.

5:00 P.M.–6:30 P.M.: Proposed ACRS Reports/Memoranda (Open)—The Committee members will discuss proposed ACRS reports/memoranda regarding the design and performance of BWR hydraulic scram systems and NRC requirements for inspection of primary system pressure containing boundaries.

Saturday, October 11, 1980

8:30 A.M.–4:00 P.M.: Concluding session (Open)—The Committee will complete preparation of its reports/memoranda to NRC regarding items discussed during this meeting.

The Committee will also hear and discuss the reports of its Subcommittees on a number of safety related matters including the ACRS report to Congress on the NRC Safety Research Program, the Diablo Canyon Nuclear Power Station systems interaction review, and NRC proceedings regarding the storage and disposal of radioactive wastes.

The Committee will discuss proposed candidates for appointment to the ACRS and proposed procedures for strengthening the ACRS role in the regulatory process.

Portions of this session will be closed as necessary to protect information the release of which would represent an unwarranted invasion of personal privacy.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 1, 1979 (44 FR 56408). In accordance with these procedures, oral or written statements may be presented by members of the public, 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 Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a telephone call to the ACRS Executive Director (R. F. Fraley) prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to protect information the release of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)) and to protect information the premature disclosure of which might significantly frustrate implementation of proposed agency action (5 U.S.C. 552b(c)(9)(B)).

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 ACRS Executive Director, Mr. Raymond F. Fraley, or in his absence the Acting ACRS Deputy Director, Mr. Morton W. Libarkin (telephone 202/634–3265), between 8:15 A.M. and 5:00 P.M. EDT.

Dated: September 22, 1980.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 80–29673 Filed 9–24–80; 8:45 am]

BILLING CODE 7590–01–M

[Dockets Nos. 50–329–OL and 50–330–OL]

Consumers Power Co. (Midland Plant, Units 1 and 2); Reconstitution of Board

Ivan W. Smith, Esq., was Chairman of the Atomic Safety and Licensing Board for the above proceeding. Because of a schedule conflict, Mr. Smith is unable to continue his service on this Board.

Accordingly, Charles Bechhoefer, Esq., whose address is Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, is appointed Chairman of this Board. Reconstitution of the Board in this manner is in accordance with Section 2.721 of the Commission's Rules of Practice, as amended.

Dated at Bethesda, Maryland, this 19th day of September, 1980.

Robert M. Lazo,

Acting Chairman, Atomic Safety and Licensing Board Panel.

[FR Doc. 80–29686 Filed 9–24–80; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–250]

Florida Power & Light Co., Turkey Point Plant, Unit No. 3); Issuance Director's Decision Under 10 CFR 2.206

On July 30, 1980, Martin H. Hodder and Cheryl Anderson Flaxman on behalf of residents and home owners in South Florida, all of whom live in sufficiently close proximity to the Turkey Point Plant to have their health, welfare, safety, property and enjoyment of the environmental jeopardized by the unsafe operation of the Turkey Point Plant Unit No. 3, requested that an order be issued to the Florida Power and Light Company to show cause why the Turkey Point Plant Unit No. 3 should not be shutdown by July 31, 1980 to perform a steam generator inspection and repair. The petition has been treated as a request for action under 10 CFR 2.206 of the Commission's regulations. Upon review of the petition, the Director of Nuclear Reactor Regulation has determined not to grant the requested relief. Accordingly, the petition is denied.

Copies of the Director's Decision are available for inspection in the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555, and in the local public document room at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199. A copy of this decision will also be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations.

As provided in 10 CFR 2.206(c), this decision will constitute the final action of the Commission twenty (20) days after the date of issuance, unless the Commission on its own motion institutes a review of this decision within that time.

Dated at Bethesda, Maryland, this 18th day of September 1980.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 80–29687 Filed 9–24–80; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 70–820; Special Nuclear Material License No. SNM–777]

United Nuclear Corp.; Establishment of Local Public Document Rooms

Notice is hereby given that the Nuclear Regulatory Commission (NRC) has designated both the Cross Mill Public Library, Charlestown, Rhode Island, and the University of Rhode

Island, Kingston, Rhode Island, as the official NRC Local Public Document Rooms (LPDRs) for the proposed decommissioning of United Nuclear Corporation's (Licensee) Wood River Junction Facility in Wood River, Rhode Island.

All documents related to the licensee's proposed decommissioning and all subsequent documents will be available for inspection and copying at both the Cross Mill Public Library and the University of Rhode Island Library. The Cross Mill Public Library is located at 1 Old Post Road, Charlestown, Rhode Island 02813. The Cross Mill Public Library's hours of operation are 6 p.m. to 9 p.m. Monday, 9 a.m. to 12 noon Tuesday, 1 p.m. to 5 p.m. Wednesday, 9 a.m. to 12 noon and 6 p.m. to 9 p.m. Thursday, 1 p.m. to 5 p.m. Friday and 1 p.m. to 5 p.m. Saturday. Self-service reproduction facilities are available to the public at the cost of 15¢ per printed page. For further information, interested parties in the Charlestown area may contact the LPDR directly through Mrs. Ann Crawford, Librarian, telephone number (401) 364–6211.

The University of Rhode Island Library is located at the University of Rhode Island, Kingston, Rhode Island 02881. The University Library's hours of operation are 8 a.m. to 5 p.m. Monday through Friday. Self-service reproduction facilities are available at 10¢ per printed page. For further information, interested parties in the Kingston area may contact the LPDR directly through Mr. Tom Reynolds, Librarian, telephone number (401) 792–2606.

Parties outside the service area of the Charlestown and Kingston LPDRs may address their requests for records to the NRC's Public Document Room at 1717 H Street N.W., Washington, DC 20555, telephone number (202) 634–3273. The cost of ordering records from the NRC Public Document Room is 8¢ per printed page, plus tax and postage.

Questions concerning the availability of documents at the LPDRs or the NRC's local public document room program should be addressed to Ms. Jona L. Souder, Chief, Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone number (301) 492–7536.

Dated at Bethesda, Maryland, this 16th day of September, 1980.

For the Nuclear Regulatory Commission.

Joseph M. Felton,

Director, Division of Rules and Records, Office of Administration.

[FR Doc. 80-29688 Filed 9-24-80; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Explanation of Projects To Develop New Federal Assistance Policies and Invitation for Public Participation

September 15, 1980.

AGENCY: Office of Management and Budget.

ACTION: Explanation of projects to develop new Federal assistance policies and invitation for public participation.

SUMMARY: The Office of Management and Budget semi-annual agenda of regulations published in the Federal Register of August 11, 1980, contains one item that includes several sub-items dealing with policy reviews which may lead to new government-wide assistance policies. This notice is to provide additional information on these initiatives and to invite public participation therein.

FOR FURTHER INFORMATION CONTACT: The person listed in this notice for each specific policy area should be contacted for additional information about that specific area. For questions about the overall effort, contact Thomas L. Hadd, Chief, Assistance Policy Branch, Intergovernmental Affairs Division, Office of Management and Budget, Room 5217 NEOB, Washington, D.C. 20503, Telephone (202) 395–5156.

BACKGROUND: In March of 1980, the Director of OMB submitted to Congress a report entitled "Managing Federal Assistance in the 1980's." The report culminated a two-year study required by the Federal Grant and Cooperative Agreement Act (Pub. L. 95–224). The report included a list of problem areas where new government-wide assistance policies may be needed. Public participation is both invited and encouraged in the six areas outlined below. OMB is reviewing its circular structure to see how many circulars may be needed to cover existing assistance policies plus any new policies that may be adopted. Thus each of the following six policy areas might be treated by a single circular or as a part of a more comprehensive guidance document. At this stage priority will be assigned to questions of need for new policies, and their content if needed.

THE SIX POLICY AREAS:

1. *Policies, processes, and agency performance standards for managing generally applicable requirements for domestic assistance programs.* The Federal Grant and Cooperative Agreement Act required OMB to study the feasibility of a comprehensive system of guidance for federal assistance activities, and report to Congress for implementing the system. The study found major problems in the application of general federal policies, (e.g. protecting the environment, preventing discrimination, and conserving energy) and administrative requirements to assistance programs. The study report to Congress indicated the system of guidance should initially concentrate on these problems.

Each assistance program affected by these generally applicable requirements must serve multiple federal objectives. There appears to be a need for policies and a process for the development implementation, and evaluation of these requirements. Major issues include:

—To what degree should these requirements be standardized for all programs, applicants, and recipients? If they need to be kept flexible, how can recipients be assured of consistent instructions from different federal agencies?

—By what methods can the necessary interagency coordination and cooperation be achieved without inordinate time delays or increased costs?

—How can the performance of agencies in complying with the new policies and processes be measured and assured?

—What policies and procedures will assure compliance with generally applicable requirements without detracting from assistance agencies' primary program objectives?

Proposed policies will be published in the Federal Register for public comment during September 1980.

Contact person, Thornton Parker, Assistance Policy Branch, IGA, OMB, (202) 395–3070.

2. *Policies for resolving program related disputes with applicants and recipients of grants and cooperative agreements.* The OMB study found that the volume and severity of assistance related disputes are rising. Recipients are taking an increasing number of disputes to court, in part because of inadequate resolution processes among agencies administering assistance programs. Major issues include:

—What minimum standards for dispute resolution should apply to all assistance agencies?

—What types of dispute resolution mechanisms are most appropriate, fair, speedy, economical, and acceptable?

—What provisions need to be made for legal and administrative review?

A draft of proposed guidance is expected to be published in the Federal Register for public comment in October, 1980.

Contact persons: John Settle, Chairman, Grant Appeals Board,

Department of Health and Human Services, (202) 245–0222, or Thornton Parker, Assistance Policy Branch, IGA, OMB (202) 395–3070.

3. *Additional guidance to Federal agencies for implementing the Federal grant and Cooperative Agreement Act,* (Pub. L. 95–224). The Federal Grant and Cooperative Agreement Act authorizes OMB to issue supplementary interpretative guidelines to promote consistent implementation of the Act. Initial guidance was published as a Federal Register notice, August 18, 1978 (Volume 43, No. 161, pages 36860–36865). Experience with the act and this preliminary guidance, plus the OMB study, have revealed numerous additional issues in need of resolution through revised guidance. These issues include:

—How should the Act apply to federal funding of research and development?

—How should the Act apply to international transactions?

—Where a program provides assistance to the public through intermediaries, how does the Act apply to relationships with the intermediaries?

—What types of federal relationships or transactions if any, should be excluded from coverage under the Act?

—How can the Act be used more effectively as a policy, program, and project management vehicle?

—What added concept development and definition is necessary to enhance the operational utility of the "grant-cooperative agreement" distinction established by the Act?

Draft revisions to the OMB guidance are expected to be published in the **Federal Register** for public comment by December, 1980.

Contact person: Carl Blakely, Assistance Policy Branch, IGA, OMB, (202) 395–3070.

4. *Policies for treatment of commercial and industrial organizations (for-profits) under grant-type assistance programs.* In the past, federal agencies have largely refrained from using grants and cooperative agreements in awards to for-profit organizations. The Federal Grant and Cooperative Agreement Act has the potential effect of expanding the use of such awards.

OMB Circulars A–102 and A–110 establish policies and standards for grants with state and local governments, universities, hospitals and non-profit organizations. There are no comparable government-wide policies to guide management of assistance awards to for-profit organizations. An inventory of individual federal agency practices and policies related to assistance awards to for-profit organizations is now being developed. Major issues include:

—To what extent and in what areas are government-wide policies for treatment of commercial and industrial organizations needed?

—What statutory or administrative provisions act to inhibit for-profit organizations from participation in assistance awards? Does such inhibition impair the achievement of federal objectives?

—To what degree should these policies and standards parallel or differ from established procurement policies?

—What goals should be advanced in policies governing the management of assistance awards to commercial and industrial organizations?

A draft of proposed guidance is expected to be published in the **Federal Register** for public comment by December, 1980.

Contact person: Gerald Fill, Assistance Policy Branch, IGA, OMB, (202) 395–3070.

5. *Policies for the treatment of fees and profits under assistance awards.* Agency practices differ in the treatment of fees and profits under grants and cooperative agreements. With increasing use of these assistance instruments with both non-profit and for-profit organizations, recipients and federal agencies have expressed a need for policy guidance in this area. The major issues include:

—Under what conditions should for-profit organizations receive fees or profits?

—Under what conditions should non-profit organizations receive fees?

—How should fees and profits be treated in relation to cost sharing requirements?

A draft of proposed guidance is expected to be published in the **Federal Register** for public comment during the fall or winter of 1980–81.

Contact person: Gerald Fill, Assistance Policy Branch, IGA, OMB (202) 395–3070.

6. *Policies for competition under assistance programs.* One of the purposes of the Federal Grant and Cooperative Agreement Act is to encourage competition in the award of grants and cooperative agreements. There is no government-wide policy on assistance competition and the practices of the agencies vary widely. Major issues include:

—What should be the definition of competition under assistance programs?

—What factors are legitimate bases for assistance competition?

—What can be learned from experience with procurement competition that should be considered during the development of policies for assistance competition?

—How should competition involving both for-profit and non-profit organizations be handled?

A draft of proposed guidance is expected to be published in the **Federal Register** for public comment by December, 1980.

Contact persons: Gerald Yamada, Office of General Counsel, Environmental Protection Agency, (202) 755–0784, or Gerald Fill, Assistance Policy Branch, IGA, OMB, (202) 395–3070.

Anyone interested in providing views or suggestions on any of these projects is invited to do so directly to the contact person. All public contributions to these policy reviews will be available for public inspection and will form a portion of the public record of this project.

Linda L. Smith,

Acting Budget and Management Officer, Office of Management & Budget.

[FR Doc. 80–29650 Filed 9–24–80; 8:45 am]

BILLING CODE 3110–01–M

President's Commission for a National Agenda for the Eighties; Meeting

September 17, 1980.

AGENCY: Office of Management and Budget.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given for a meeting of the Executive Committee of the President's Commission for a National Agenda for the Eighties, scheduled October 2, 1980 from 9:00 a.m. to 6:00 p.m. in Washington, D.C. The meeting will be held at the Federal Home Loan Bank Board Building, 1700 G Street, NW., in the Board Room.

The purpose of the meeting is to discuss elements of the Commission's report.

Available seats will be assigned on a first-come basis.

The meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: President's Commission for a National Agenda for the Eighties, Office of Administration, 744 Jackson Place Northwest, Washington, D.C. 20006, (202) 275–0616.

Brenda Mayberry,

Acting Budget and Management Officer.

[FR Doc. 80–29752 Filed 9–24–80; 8:45 am]

BILLING CODE 3110–01–M

Agency Forms Under Review

Background

September 17, 1980.

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 USC, Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its reponsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last list was published. The list has all the entries for one agency together and grouped into new forms, revisions, extensions, or reinstatements. Some forms listed as revisions may only have a change in the number of respondents or a reestimate of the time needed to fill them out rather than any change to the content of the form. The agency clearance officer can tell you the nature of any particular revision you are interested in. Each entry contains the following information:

The name and telephone number of the agency clearance officer (from whom a copy of the form and supporting documents is available);
The office of the agency issuing this form;
The title of the form;
The agency form number, if applicable;
How often the form must be filled out;
Who will be required or asked to report;
An estimate of the number of forms that will be filled out;
An estimate of the total number of hours needed to fill out the form; and
The name and telephone number of the person or office responsible for OMB review.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. Our usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the **Federal Register** but occasionally the public interest requires more rapid action.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review. If you experience difficulty in obtaining the information you need in reasonable time, please advise the OMB reviewer to whom the report is assigned. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed a the end of each entry.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Jim J. Tozzi, Assistant Director for Regulatory and Information Policy, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503.

DEPARTMENT OF AGRICULTURE

Agency Clearance Officer—Richard J. Schrimper—447–6201

New Forms

Farmer's Home Administration, 7 CFR 1944–A, Rural Housing Loan Policies, Procedures and Authorizations, FMHA–431–3, 440–34, 1944–6, 6A, 1944–12, and 1944–36.
On occasion Individuals applying for housing loans, 513,250 responses, 294,960 hours.
Charles A. Ellett, 395–7340

Revisions

Food and Nutrition Service, Child Care Food Program and Related Forms, FNS 82, 341, 342, 344, 345, 345–1, 430, 431, 432, and 433.
On occasion Child Care institutions/facilities, 138,188 responses, 94,846 hours.
Charles A. Ellett, 395–7340

DEPARTMENT OF COMMERCE

Agency Clearance Officer—Edward Michals—377–3627

New Forms

Bureau of the Census
Followup Card for the Housing Unit Coverage Check
D–824
Single time
Households from 10 census district offices, 7,500 responses, 625 hours
Off. of Federal Statistical Policy and Standard, 673–7974

Industry and Trade Administration
Survey of Industry Interest in Export Trading Company
ITA–827P and ITA–828P
Single time
U.S. textile and apparel firms, 300 responses, 150 hours
Off. of Federal Statistical Policy and Standard, 673–7974

Office of Minority Business Enterprise
National Minority Business Data Bank-Company Profile
Annually
Minority owned businesses, 10,000 responses, 5,000 hours
William T. Adams, 395–4814

Revisions

Bureau of the Census
Footwear
MA–31A; MA–31A (ASM)
Annually
Footwear manufacturers, 750 responses, 990 hours
Off. of Federal Statistical Policy and Standard, 673–7974

DEPARTMENT OF EDUCATION

Agency Clearance Officer—William A. Wooten—426–5030

New Forms

Office of Education
IMS Program Application—MAP
IMS 105
Annually
Predominately private nonprofit museums, 200 responses, 200 hours
Laverne V. Collins, 395–6880

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Agency Clearance Officer—Robert G. Masarsky—755–5184

Reinstatements

Policy Development and Research
Measurement of Respondent Burden
Single time
200 households in Phila., Pa., 200 responses, 200 hours
Richard Sheppard, 395–6880

C. Louis Kincannon,

Acting Deputy Assistant Director for Reports Management.

[FR Doc. 80–29744 Filed 9–24–80; 8:45 am]
BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21720; 70-6495]

American Electric Power Co., Inc.; Proposal of Holding Company To Act as Surety for Subsidiary

September 22, 1980.

Notice is hereby given that American Electric Power Company, Inc. ("AEP"), 2 Broadway, New York, New York 10004, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 12(b) and 12(f) of the Act and Rule 45 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

AEP requests approval of a surety bond in the amount of $51,000,000 that is to be posted with the Public Service Commission of West Virginia ("State Commission") prior to December 10, 1980, by AEP as surety and Appalachian Power Company ("Appalachian") as principal.

On July 8, 1980, Appalachian filed with the State Commission new increased rates for electric service in West Virginia. By order dated August 4, 1980, the State Commission suspended the increased rates until December 10, 1980, pending its investigation of such increased rates. The new increased rates can be made effective on and after December 10, 1980, subject to the posting by Appalachian of an appropriate bond to assure the making of appropriate refunds to its customers, including interest thereon at a rate later to be determined by the State Commission, in the event the State Commission's final order in the proceeding should require refunds to be made. It is stated that the State Commission has indicated that it would permit AEP to become a surety for Wheeling in lieu of Wheeling posting the said bond. It is expected that the amount of the bond for the new increased rates will not exceed $51,000,000, which is equal to the estimated additional annual revenue that the new increased rates will provide.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $2,500. The Public Service Commission of West Virginia has authorized the proposed transaction. No other State commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than October 20, 1980 request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other actions as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereto.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 80-29728 Filed 9-24-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17158; File No. SR-NASD-80-10]

NASD Options Proposal

AGENCY: Securities and Exchange Commission.

ACTION: Extension of comment period.

SUMMARY: The Commission has published notice of a proposed rule change submitted by the National Association of Securities Dealers to amend its rules to provide for the over-the-counter trading of standardized options. In view of the significant and novel issues raised by the proposal the Commission has determined to extend to November 28, 1980 the period for public comment.

FOR FURTHER INFORMATION CONTACT: Stuart Strauss, Esq. or Pat Payne, Esq., Division of Market Regulation, 500 North Capitol St. NW., Washington, D.C. 20549, (202) 272-2405 or (202) 272-2841.

SUPPLEMENTARY INFORMATION: Pursuant to 19(b)(2) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(2) (the "Act"), and Rule 19b-4 thereunder, the National Association of Securities Dealers, Inc. ("NASD") submitted on June 12, 1980 a proposed rule change to provide for the over-the-counter trading of standardized options. Notice of the proposed rule change was given by Securities Exchange Act Release No. 16979 (June 15, 1980) which was published in the **Federal Register** on August 11, 1980 (45 FR 53295). The purpose of this release is to extend the comment period on the NASD proposal to November 28, 1980. The NASD options proposal raises a number of signficant issues pertaining to the regulatory environment in which standardized options are traded. The proposal would for the first time provide for standardized options trading in the over-the-counter market. The NASD proposal also raises the question of whether it would be appropriate to permit a broker-dealer simultaneously to act as a marketmaker in both an option and the security underlying the option. Moreover, the proposal raises the question of whether marketmakers in options on securities traded exclusively over-the-counter should be required to assume affirmative and negative marketmaking obligations. Additionally, the NASD proposal raises a number of market surveillance issues, since the establishment of an over-the-counter market for the trading of standardized options may provide new opportunities for price manipulation and misuse of market information.

Accordingly, the Commission believes that the comment period should be extended in order to ensure an adequate opportunity for all interested persons to comment upon these specific issues raised by the NASD proposal.

All interested persons are invited to submit in writing, no later than November 28, 1980, 25 copies of their views concerning the proposed rule change to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. All communications should refer to File No. SR-NASD-80-10 and will be available for public inspection at the Commission's Public Reference Room 1100 L Street, NW., Washington, D.C.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

September 22, 1980.

[FR Doc. 80-29729 Filed 9-24-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17156; September 19, 1980/File No. SR-Phlx-80-23]

Self-Regulatory Organizations; Proposed Rule Change by Philadelphia Stock Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-24, 16 (June 4, 1975), notice is hereby given that on September 15, 1980, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission proposed rule changes as follows: *The Philadelphia Stock Exchange's Statement of the Terms of Substance of the Proposed Rule Change.*

The Philadelphia Stock Exchange, Inc. ("PHLX") pursuant to Rule 19b-4(a)(ii) proposes to modify its policies concerning the (1) fixed price intervals at which exercise prices for call and put options series are determined and (2) minimum price movement in the underlying security necessary for the introduction of additional series of options.

Presently exercise prices are generally fixed at 5 point intervals for underlying securities trading below 50, 10 point intervals for underlying securities trading between 50 and 200, and 20 point intervals for underlying securities trading above 200. The PHLX proposes that exercise prices be fixed at five point intervals for all underlying securities trading below 100 and ten point intervals for all underlying-securities trading above 100.* The PHLX may, however, depart from this general practice whenever it determines that such action would be in the public interest.

Presently new exercise prices ordinarily are introduced when the underlying security has moved upward or downward to the mid-point of the appropriate price interval. The PHLX now proposes to ordinarily introduce series with new exercise prices when the underlying security trades at the exercise price of options series which are currently open for trading (Example—XYZ October 30 Puts have previously been opened for trading. Under the proposed rule change, PHLX would ordinarily open XYZ October 25 Puts, as well as XYZ 25 Puts for the other two expiration months then the subject of trading, when the underlying security trades at 30.) PHLX's Statement of Basis and Purpose of *Proposed Rule Changes.*

The purpose of the proposed change in exercise price intervals is to enable the PHLX to set the exercise price of series of options opened for trading at a price per share which is closer to the market price per share at which the underlying stock is traded in the primary market.

The purpose of the proposed change concerning the introduction of new exercise prices once the underlying security has traded at the exercise price of options series which are currently being traded is to insure the existence of both in-the-money and out-of-the-money options series except for those series which expire in less than 60 days.

The increased availability of options series at prices closer to the price of the underlying stock and of in-the-money and out-of-the-money options series provided by the proposed rule changes will offer public investors greater opportunities to limit their risk through increased hedging and other purchasing and writing strategies. Specialists and Registered Options Traders would be better able to make fair and orderly markets in these issues. The public would thus be afforded greater access to a narrow continuous, two-sided market.

The basis of the proposed rule change is found in Section 6(b)(5) of the Act which provides in pertinent part that the rules of the Exchange be designed to facilitate transactions in securities and protect investors and the public interest.

No comments were solicited or received.

PHLX does not believe that the proposed rule change will impose any burden on competition.

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 above-mentioned 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.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 "L" Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted within twenty-one days of the day of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

September 19, 1980.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 80-29702 Filed 9-24-80; 8:45 am]

BILLING CODE 8010-01-M

*This proposed change was the subject of a previous 19b filing (see SR-PHLX 77-5) which filing was withdrawn at the request of the Commission during the options moratorium.

SMALL BUSINESS ADMINISTRATION

Chrysler Credit SBL Corp., Application for Eligibility Determination as a Small Business Lending Company

An application for Eligibility Determination as a Small Business Lending Company has been filed by Chrysler Credit SBL Corporation (Applicant), 900 Tower Drive, Troy, Michigan 48098, with the Small Business Administration pursuant to Section 120.4(b) of SBA Regulations (13 CFR 120.4(b), 1980) promulgated under the Small Business Act.

As a Small Business Lending Company (SBLC), under Subsection (b) mentioned above, the applicant will be engaged solely in the making of loans in participation with SBA, to small business concerns, in accordance with applicable SBA Regulations, and it will be subject to supervision and examination by the SBA.

The Applicant is incorporated under the laws of the State of Michigan and will commence operations with an initial capitalization of $2,215,418. It intends to conduct business on a nationwide basis, lending money to Chrysler product dealers. It will sell in the Secondary Market the SBA's guaranteed portions of these loans.

Chrysler Financial Corporation, 900 Tower Drive, Troy, Michigan 48098 is the parent of the Applicant and owns 100% of its outstanding common stock.

The Officers and Directors of the Applicant are:

Name and Title

Gordon E. Areen, President and Director, 3932 Maple Hill East, West Bloomfield, MI 48033.

Robert E. Baker, Vice President and Director, 4327 Stoneleigh Rd, Bloomfield Hills, MI 48013.

Edwin E. Grote, Executive Vice President and Director, 312 Lakewood Dr., Bloomfield Hills, MI 48013.

Jeremiah E. Farrell, Vice President, 631 Kingsley Trail, Bloomfield Hills, MI 48013.
William L. Tupper, Vice President, 3738 Post Oak Dr., West Bloomfield, MI 48033.
John J. Bongiorno, Controller, 3634 Ridgeland Ct., West Bloomfield, Mi.
Robert A. Link, Secretary, 945 Harmon, Birmingham, MI 48009.
William R. Bleisch, Assistant Controller, 2822 Kilburn Ct., Rochester, MI.
Marilyn Cooper, Assistant Treasurer, 385 Bellarmine Dr., Rochester, MI 48063.
Clifford A. Smith, Assistant Controller, 2280 Academy, Troy, MI 48084.
James R. Schell, Treasurer, 551 Whitehall Rd., Bloomfield Hills, MI.

Matters involved in SBA's consideration of the application include the general business reputation and character of management, and probability of successful operation of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Act and Regulations promulgated thereunder.

Notice is hereby given that all interested parties may, not later than October 10, 1980, submit to SBA written comments on the proposed Applicant and/or its management. Any such communication should be addressed to: Wayne Foren, Director, SBLC Operations, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in all regional editions of the Wall Street Journal. (Catalogue of Federal Assistance Program No. 59.012 Small Business Loans).

Dated: September 11, 1980.

Rita M. McCoy,

Associate Administrator for Financial Assistance.

[FR Doc. 80-29760 Filed 9-24-80; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council; Meeting

The Small Business Administration Region X Advisory Council, located in the geographical area of Boise, Idaho, will hold a public meeting at 9:30 a.m. (MDT) Tuesday, October 21, 1980, at the Royal Restaurant "Executive Room," 1112 Main, Boise, Idaho, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Verne A. Leighton, District Director, U.S. Small Business Administration, 1005 Main Street, Boise, Idaho 83702—(208) 334-1096.

Dated: September 18, 1980.

Michael B. Kraft,

Director, Office of Advisory Councils.

[FR Doc. 80-29759 Filed 9-24-80; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council; Public Meeting

The Small Business Administration Region X Advisory Council, located in the geographical area of Seattle, will hold a public meeting at 9:00 a.m., on Thursday, October 16, 1980, at the New Federal Building, 915 2nd Avenue, Room 1456, Seattle, Washington, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Maxine Wood, District Director, U.S. Small Business Administration, Room 1744 Federal Building, 915 2nd Avenue, Seattle, Washington 98174—(206) 442-7791.

Dated: September 18, 1980.

Michael B. Kraft,

Director, Office of Advisory Councils.

[FR Doc. 80-29643 Filed 9-24-80; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council; Public Meeting

The Small Business Administration Region X Advisory Council, located in the geographical area of Spokane, Washington, will hold a public meeting at 9:30 a.m. (PDT), Monday, October 20, 1980, in the Main Center, Third Level, Spokane Chamber of Commerce, West 1020 Riverside Avenue, Spokane, Washington, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Valmer W. Cameron, District Director, U.S. Small Business Administration, U.S. Court House, Room 651, Post Office Box 2167, Spokane, Washington 99210, (509) 456-3781.

Dated: September 18, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80-29642 Filed 9-24-80; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-80-27]

Petitions for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemptions received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviaiton Regulations (14 CFR Chapter I) and of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before: October 15, 1980.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW, Washington, D.C. 20591; telephone (202) 42-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on September 22, 1980.

Edward P. Faberman,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

Docket No.	Petitioner	Regulations affected	Description of relief sought
		Petitions for Exemptions	
20780	Washington National Commuter Airlines Association (WNCAA).	14 cfr 159.40	Emergency relief by October 1, 1980, to permit operators of small "quiet" commuter-type aircraft to provide service to Washington National Airport beyond curfew hours.
20774	JETFLIGHT	14 CFR 135.89(b)(3)	To permit operation of petitioner's Learjet Model 250 aircraft up to and including FL 410 without requiring one pilot to wear and use an oxygen mask at all times above FL 350
		Disposition of Petitions for Exemptions	
20295	Ozark Air Lines	14 CFR 61.39(a) (1) and (b)	To allow certain of the petitioner's pilots to take the flight test for an airline transport pilot certificate even though they have not passed the written test for that certificate within the previous 24 months. *Granted 9/16/80.*
20792	Airborne Express, Inc	14 CFR 121.371(a) and 121.378	To permit petitioner to use foreign repair stations to repair, overhaul, and inspect parts for use on its Caravelle aircraft. *Granted 9/18/80.*

[FR Doc. 80-29695 Filed 9-24-80; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Mecklenburg County, N.C.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Mecklenburg County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Ronald E. Heinz, Division Administrator, Federal Highway Administration, 310 New Bern Avenue, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone (919) 755-4346.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS) on a proposed extension of LaSalle Street in Mecklenburg County. The proposed action would be the construction of a four lane urban arterial street connecting Statesville Avenue and Graham Street in Charlotte. The proposed action is needed to provide improved access, particularly from I-77 and areas west, to the intensely developed area along Graham Street. It will reduce traffic infiltration on adjacent neighborhood streets and provide more direct and convenient access for commercial traffic to the industrial development on Graham Street.

Alternatives under consideration include (1) the "no-build", (2) improving existing facilities, (3) locations for a new non-control of access four lane urban arterial, and (4) public transportation. The new location alternatives will involve four lane curb and gutter roadways with varying amounts of widening of existing streets and new construction.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State and local agencies. Public meetings and meetings with local officials have been held in the study area and a public hearing will also be held. Information on the time and place of the public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment at the time of the hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program.

Issued on September 18, 1980.

Roger D. Lewis,

Assistant Division Administrator, Raleigh, N.C.

[FR Doc. 80-29753 Filed 9-24-80; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[FRA Waiver Petition Docket HS-80-10]

East Cooper & Berkeley Railroad Co.; Petition for Exemption From the Hours of Service Act

In accordance with 49 CFR Section 211.41 and Section 211.9, notice is hereby given that the East Cooper and Berkeley (EC&B) has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45 U.S.C. 64a(e)). That petition requests that the EC&B be granted authority to permit certain employees to continuously remain on duty for in excess of twelve hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified exployees to continuously remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than fifteen employees who are subject to the statute, to seek an exemption from this twelve hour limitation.

The EC&B seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not to exceed sixteen hours. The petitioner indicates that granting this exemption is in the public interest and will not adversly affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views or comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket Number, Docket Number HS–80–10, and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received before October 31, 1980, will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 8211, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

(Sec. 5 of the Hours of Service Act of 1969 (45 U.S.C. 64a), 1.49 (d) of the regulations of the Office of the Secretary, 49 CFR 1.49 (d))

Issued in Washington, D.C., on September 17, 1980.

J. W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 80–29425 Filed 9–24–80; 8:45 am]

BILLING CODE 4910–06–M

[FRA Waiver Petition Docket HS–80–11]

Port Utilities Commission of Charleston; Petition for Exemption From the Hours of Service Act

In accordance with 49 CFR Section 211.41 and Section 211.9, notice is hereby given that the Port Utilities Commission of Charleston (PUCC) has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91–169, 45 U.S.C. 64a(e)). That petition requests that the PUCC be granted authority to permit certain employees to continuously remain on duty for in excess of twelve hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to continuously remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than fifteen employees who are subject to the statute, to seek an exemption from this twelve hour limitation.

The PUCC seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not to exceed sixteen hours. The petitioner indicates that granting this exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views or comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket Number, Docket Number HS–80–11, and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received before October 31, 1980, will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 8211, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

(Sec. 5 of the Hours of Service Act of 1969 (45 U.S.C. 64a), 1.49(d) of the regulations of the Office of the Secretary, 49 CFR 1.49(d))

Issued in Washington, D.C., on September 17, 1980.

J. W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 80–29424 Filed 9–24–80; 8:45 am]

BILLING CODE 4910–06–M

[FRA Waiver Petition Docket HS–80–9]

Port Terminal Railroad of South Carolina; Petition for Exemption From the Hours of Service Act

In accordance with 49 CFR Section 211.41 and Section 211.9, notice is hereby given that the Port Terminal Railroad of South Carolina (PTRSC) has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91–169, 45 U.S.C. 64a(e)). That petition requests that the PTRSC be granted authority to permit certain employees to continuously remain on duty for in excess of twelve hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to continuously remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than fifteen employees who are subject to the statute, to seek an exemption from this twelve hour limitation.

The PTRSC seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not to exceed sixteen hours. The petitioner indicates that granting this exemption is in the public interest and will not adversly affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views or comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket Number, Docket Number HS–80–9, and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received before October 31, 1980, will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 8211, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

(Sec. 5 of the Hours of Service Act of 1969 (45 U.S.C. 64a), 1.49 (d) of the regulations of the Office of the Secretary, 49 CFR 1.49 (d))

Issued in Washington, D.C., on September 17, 1980.

J. W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 80–29426 Filed 9–24–80; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

Ford Motor Co.; Denial of Petition for Rulemaking

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

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking submitted by the Ford Motor Company to amend Part 567, *Certification.* The Ford petition asked that the certification regulation be amended to provide an additional location for the vehicle certification lable. The agency concludes for the

reasons stated below that an additional label location is not in the interest of safety and is not needed at this time.

FOR FURTHER INFORMATION CONTACT: Mr. David Fay, Engineering Systems Staff, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–426–2817).

SUPPLEMENTARY INFORMATION: On June 25, 1980, the Ford Motor Company petitioned the agency to amend Part 567, *Certification,* to permit an additional location on a vehicle for the vehicle certification label. Previously, Ford had requested, through procedures outlined in Part 567, for an additional location for the certification label on its Escort/Lynx 4-door station wagon. Based upon the information supplied in the Ford request, the agency granted Ford the right place its label for those vehicles on the left rear door pillar post. Ford's petition would make this location acceptable for all vehicles.

Part 567 currently requires certification labels to be located in one of five acceptable locations. All of these locations are at or near the driver's position. The regulation provides also that any manufacturer who is unable to locate its labels in one of the appropriate areas may request an additional location. Accordingly, the regulation provides a considerable amount of flexibility for the location of certification labels.

The Ford petition would have the agency permit a label location that is not in the driver's seating position area. The agency does not believe that this proposed amendment is necessary or in the interest of efficient enforcement of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 *et seq.*). The existing label locations were carefully chosen by the agency when the regulation was issued to balance the agency's desire for a uniform location while providing flexibility for a vehicle manufacturer. It was recognized, at that time, that some manufacturers might have difficulty complying with a requirement that a label be located in one specified location. Therefore, the agency permitted the label to be located in five locations. It was also understood, however, that a uniform location would make the label more useful to individuals in need of the label information. For this reason the agency selected five locations all within a small area near the driver's seating position.

It would lessen the effectiveness of the labels to have additional locations for them for all vehicles, and it does not seem to be necessary at this time. these labels are now frequently used as a source of tire consumer information, and therefore, their location should be as uniform as possible so that consumers will know where to find this vital information. For trucks and other vehicles likely to be manufactured in two-or-more stages, it is important that final-stage manufacturers have ready access to chassis-cab labels. Similarly, State enforcement officials should not have to scour through vehicles to determine where their certification labels are located unless a real need is apparent for additional label locations. Some import officials have, on occasion, delayed the importation of vehicles, because they have been confused by the location of their certification labels.

Ford petitioned the agency, because its smaller sized vehicles were not designed with the location of the certification label in mind. As a result of this, the label apparently cannot be located in any of the five positions. To ease Ford's problem, the agency has allowed Ford to locate its label in an additional location. NHTSA does not believe that other manufacturers should be encouraged to relocate their labels, however. The agency hopes that manufacturers will design their vehicles so that their labels can be attached in the locations historically provided for them. NHTSA notes that other manufacturers, both domestic and foreign, have been producing vehicles for years that are as small or smaller than the new Ford cars and whose certification labels can be located in the appropriate areas. Accordingly, the agency sees no need at this time to impair the benefits of uniform label location by providing an additional location that is not in the driver's seating area.

In accordance with the foregoing, Ford's petition is denied.

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

Issued on: September 16, 1980.

Joan Claybrook,

Administrator.

[FR Doc. 80–29422 Filed 9–24–80; 8:45 am]

BILLING CODE 4910–59–M

Denial of Petition for Rulemaking

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

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking submitted by Mr. Charles A. Wright. Mr. Wright asked the agency to amend its braking requirements in a manner that would provide an additional method of emergency braking. The agency has reviewed Mr. Wright's petition and concludes that an additional braking system is not necessary at this time, and that the system proposed by Mr. Wright might decrease the level of safety in heavy duty vehicles.

FOR FURTHER INFORMATION CONTACT: Mr. John Machey, Office of Crash Avoidance, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–426–1715).

SUPPLEMENTARY INFORMATION: On March 20, 1980, Mr. Charles A. Wright petitioned the agency to amend its brake standards applicable to heavy vehicles in a manner that would require an additional emergency brake system independent of other vehicle brake systems. On April 24, 1980, Mr. Wright supplied additional information to the agency concerning the device that he proposed.

Mr. Wright's device is designed for use on trucks, trailers, and buses. The device consists of verticle guide rods mounted in front of the rear wheels to which wheel chocks are attached. The chocks are mechanically retained in an upright position and can be released when needed. Their release allows the chocks to engage the road surface where they move beneath the wheels and stop the wheels from turning. Mr. Wright suggests that his system is valuable, because it would provide an independent emergency brake system.

The agency has evaluated Mr. Wright's petition and concludes that it would not enhance the safety of vehicles. Existing vehicles are produced with emergency brake systems. When those systems are properly maintained, they proide adequate supplemental braking for vehicles. Therefore, the agency is not aware of a safety need that would justify the requirement of an additional emergency brake system on vehicles.

Beyond the lack of a safety need for an additional emergency brake system, the agency is conerned that the proposed system might degrade the safety achieved by existing brake systems. Currently, Standard No. 121, *Air Brake Systems,* requires the provision of emergency brakes that can be modulated during application. Mr. Wright's device is not capable of modulation. Once it is activated, the driver has no more control of the system. It causes the wheels to lock completely. NHTSA has for years attempted, through rulemaking, to arrive at methods to prevent wheel lock-up. The agency has ample data showing

that wheel lock-up is a safety hazard that should be avoided if possible. Accordingly, the agency believes that it would not be in the interest of safety to require an additional emergency brake system that would always result in wheel lock-up.

Other factors also have lead the agency to conclude that Mr. Wright's device would not be in the interest of safety. Actuation of the device is made through the use of a separate lever by the vehicle driver. In an emergency, the driver's attention should be directed toward the road not toward finding an additional emergency brake device to actuate. Also, no data exist for the device's impact upon stops on wet or icy road surfaces where vehicle control is always a problem. The agency concludes that this device might worsen vehicle control in these circumstances. For all the reasons cited above, the agency denies Mr. Wright's petition.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1391, 1407); delegation of authority at 49 CFR 1.50)

Issued on: September 19, 1980.

Joan Claybrook,

Administrator.

[FR Doc. 80-29746 Filed 9-24-80; 8:45 am]

BILLING CODE 4910-6901-M

[Docket No. IP80-4; Notice 2]

Gillig Corp.; Denial of Petition for Determination of Inconsequential Noncompliance

This notice denies the petition by Gillig Corp. of Hayward, California to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.120, Motor Vehicle Safety Standard No. 120, *Tire Selection and Rims for Vehicles Other Than Passenger Cars.* The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published in the **Federal Register** on April 17, 1980 (45 FR 26210) and an opportunity afforded for comment.

Paragraph S5.3 of Standard No. 120 requires, as of September 1, 1977, for certain information to be permanently attached to a vehicle other than a passenger car, either on the certification label or on a separate tire information label. This information includes the type designation for rims appropriate for the vehicle's tires (S5.3.2) and the cold inflation pressure for the tires (S5.3.3). In the course of a compliance investigation (CIR 2053) NHTSA discovered both items lacking from a 1978 model PT 477 transit bus manufactured by Gillig.

In reply to NHTSA's inquiry, Gillig surmised that there were no more than 116 PT 477 buses without the proper information plus 15 of the type PT 3208. Additionally, tire and rim data may be lacking from an unspecified number of buses Model 636 D-119, Model 555 DT-39, Model 426 D-106, and Model 855 D-33. Gillig argued that the noncompliance was inconsequential as the vehicle owners are school and transit districts staffed with professional service personnel, generally familiar with tires and rims and the tire inflation pressures appropriate for particular vehicle usage and loading.

No comments were received on the petition.

The agency has not found Gillig's arguments persuasive. The type of information molded on the sidewall is the cold inflation pressure for the maximum load rating while the missing information is the inflation pressure at GVWR for the tire sizes recommended. The loading value assigned to the buses may be such that the tires may not be operated at the maximum permissable load and may have a lower assigned tire inflation pressure value for handling and stability. Even though the buses may be serviced by professional tire personnel, the presence of the information will resolve any doubtful instances that may arise, and assures all concerned that the vehicle's load carrying capacity is not exceeded for the tires that are on it.

Accordingly, petitioner has not met its burden of persuasion with respect to the noncompliance herein described, and its petition is hereby denied.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on September 19, 1980.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 80-29745 Filed 9-24-80; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 188
Thursday, September 25, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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[M-293 Amdt. 4, September 23, 1980]

CIVIL AERONAUTICS BOARD.

Notice of addition of items to the September 24, 1980 meeting.

TIME AND DATE: 2 p.m., September 24, 1980.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

5a. Docket 37020, Alaska Bush Points Show Cause Proceeding; Docket 36815, Alaskan Carriers Fitness Investigation; Dockets 38590 and 37958, Applications of Great Northern Airlines, Inc. Order declining review, issuing and amending Certificates and Order to Show Cause (OGC)

9a. Docket 38488, Application of People Express for a certificate of public convenience and necessity for 27 New York/Newark markets (Subpart Q) (Memo 9814-B, BDA)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

SUPPLEMENTARY INFORMATION: Item 5a is being added late because staff work on this item was completed on September 22. Prompt action is necessary so that the Board can dispose of this item as quickly as possible. The Bureau placed an action date of September 24th on Item 9a but failed to request expedited review from the Office of General Counsel (OGC). OGC has already submitted its comments which the staff has incorporated into the draft order, and, in the interest of expediting this case. Accordingly, the following Members have voted that Items 5a and 9a be added to the September 24th agenda and that no earlier announcement of these additions was possible:

Chairman Marvin S. Cohen.
Member Elizabeth E. Bailey.
Member Gloria Schaffer.
Member George A. Dalley.
Member James R. Smith.

[S-1778-80 Filed 9-23-80; 3:42 pm]

BILLING CODE; 6320-01-M

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[M-293 Amdt. 3, September 19, 1980]

CIVIL AERONAUTICS BOARD.

Notice of addition of items to the September 24, 1980 meeting agenda.

TIME AND DATE: 2 p.m., September 24, 1980.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

13a. Dockets 38627 and 38625—Imperial Airlines' notice and exemption request to terminate service between El Centro, California, and Phoenix, Arizona, before the expiration of the 90-day notice period.

13b. Dockets 37262 and 38649, Ozark's and air Illinois' termination notices, respectively, at Mount Vernon, Illinois

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-1765-80 Filed 9-22-80; 4:16 pm]

BILLING CODE 6320-01-M

3

[M-293 Amdt. 2, September 19, 1980]

CIVIL AERONAUTICS BOARD.

Notice of addition of an item for the September 24, 1980 meeting agenda.

TIME AND DATE: 2 p.m., September 24, 1980.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

4a. (a) NPRM to allow the use of tariffs that state prices as maximum instead of fixed amounts;

(b) Dockets 38157, 38242, 36308, 38309, 38447 and 38554—Applications by Pan American World Airways, Braniff Airways, Singapore Airlines, Japan Air Lines, Philippine Airlines, and Korean Air Lines for exemptions to permit acceptance of tickets of other carriers at fares not on file;

(c) Docket 38284—Application by Northwest Airlines for exemption to charge passenger fares and cargo rates lower than those in their effective tariffs;

(d) Docket 38298—Application by Trans World Airlines for exemption to pay commissions to forwarders, now prohibited by section 296.32 of the Board's Economic Regulations. (OGC, BDA)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-1766-80 Filed 9-22-80; 9:17 pm]

BILLING CODE 6320-01-M

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[M-293 Amdt. 1, September 18, 1980]

CIVIL AERONAUTICS BOARD. Notice of change of time for the September 24, 1980 meeting agenda.

TIME: *Changed* from 9:30 a.m. to 2 p.m.

PLACE: Room 1027, Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: The Civil Aeronautics Board Sunshine Meeting.

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-1767-80 Filed 9-22-80; 4:17 pm]

BILLING CODE 6320-01-M

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COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., Thursday, September 25, 1980.

PLACE: 2033 K Street NW., Washington, D.C. fifth floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: First Quarter Budget Programs, Plans, and Priorities.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-1770-80 Filed 9-23-80; 12:22 pm]

BILLING CODE 6351-01-M

6

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that

at 2:30 p.m. on Monday, September 29, 1980, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Applications for Federal deposit insurance:

First Bank of Avon, a proposed new bank, to be located at 38340 U.S. Highway 6, Avon, Colorado, for Federal deposit insurance.

Community State Bank of Galva, a proposed new bank, to be located at the intersection of Southeast 2nd Street and Seventh Avenue on U.S. Route 34, Galva, Illinois, for Federal deposit insurance.

First American State Bank, a proposed new bank, to be located at the intersection of Harrison Avenue and Belmont Street, Centralia, Washington, for Federal deposit insurance.

Application for consent to establish a branch:

Provident Savings Bank, Jersey City, New Jersey, for consent to establish a branch at 666 Beverly-Rancocas Road, Willingboro, New Jersey.

Application for consent to merge and establish branches:

Fulton Bank, Harrisburg, Pennsylvania, an insured State nonmember bank, for consent to merge, under its charter and title, with The Denver National Bank, Denver, Pennsylvania, and for consent to establish the three offices of The Denver National Bank as branches of the resultant bank.

Notice of acquisition of control:

Bank of Palm Springs, Palm Springs, California.

Request pursuant to section 19 of the Federal Deposit Insurance Act for consent to service of persons convicted of offenses involving dishonesty or a breach of trust as directors, officers, or employees of insured banks:

Names of person and of bank authorized to be exempt form disclosure pursuant to the provisions of subsection (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6)).

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 44,464-L—Franklin National Bank, New York, New York.

Case No. 44,472-L—Banco de Ahorro de Puerto Rico, Hato Rey, Puerto Rico.

Memorandum and Resolution re: First State Bank, Foss, Oklahoma.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents, or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: September 22, 1980.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1771-80 Filed 9-23-80; 1:58 pm]

BILLING CODE 6714-01-M

7

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, September 29, 1980, to consider the following matters:

Disposition of minutes of previous meetings.

Request by the Comptroller of the Currency for a report on the competitive factors involved in a proposed merger of The First National Bank of Atlanta, Atlanta, Georgia, and Cobb County Bank, Powder Springs, Georgia.

Request by the Board of Governors of the Federal Reserve System for a report on the competitive factors involved in the proposed merger of The Connecticut Bank and Trust Company, Hartford, Connecticut, and The Danbury Bank and Trust Company, Danbury, Connecticut.

Recommendation with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Gibbs, Roper, Loots & Williams, Milwaukee, Wisconsin, in connection with the liquidation of American City Bank & Trust Company, National Association, Milwaukee, Wisconsin.

Memorandum re: Reimbursement for Expenditures for Increase in Insurance Coverage to $100,000.

Memorandum re: Guidelines for Hiring Property Managers or Agents.

Reports of committees or officers:

Minutes of the actions approved by the Committee on Liquidations, Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.

Reports of the Director of the Division of Bank Supervision with respect to applications or requests approved by him and the various Regional Directors pursuant to authority delegated by the Board of Directors.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: September 22, 1980.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1772-80 Filed 9-23-80; 1:58 pm]

BILLING CODE 6714-01-M

8

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Changes in Subject Matter of Agency Meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, September 22, 1980, the Corporation's Board of Directors determined, on motion of Chairman Irvine H. Sprague, seconded by Director William M. Issac (Appointive), concurred in by Mr. Lewis G. Odom, Jr., acting in the place and stead of Director John G. Heimann (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of an application by Stewardship Bank of Oregon, a proposed new bank, to be located at 1918 N.E. 181st Avenue, Multnomah County (P.O. Portland), Oregon, for Federal deposit insurance.

The Board further determined, by that same majority vote, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of The Cape Cod Five Cents Savings Bank, an operating noninsured mutual savings banks in Harwich Port, Massachusetts, for Federal deposit insurance.

Recommendations regarding the liquidation of assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 44,477–NR—United States National Bank, San Diego, California.

Case No. 44,478–NR—United States National Bank, San Diego, California.

Case No. 44,479–NR—United States National Bank, San Diego, California.

Case No. 44,480–NR—United States National Bank, San Diego, California.

Memorandum and Resolution re: Surety Bank & Trust Company, Wakefield, Massachusetts.

The Board further determined, by that same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters added to the agenda in a meeting open to public observation; and that the matters added to the agenda could be considered in a closed meeting by authority of subsections (c)(6), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(9)(B), and (c)(10)).

Dated: September 22, 1980.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S–1773–80 Filed 9–25–80; 1:57 pm]

BILLING CODE 6714–01–M

9

[FR No. 1732]

FEDERAL ELECTION COMMISSION.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, September 25, 1980 at 10 a.m.

CHANGE IN MEETING: The following matter has been added to this open session:

1980 Election and Related Matters
DNC and DSCC Petition for Rulemaking

* * * * *

DATE AND TIME: Tuesday, September 30, 1980 at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Personnel, Litigation, Audits, Audit and Compliance Thresholds.

* * * * *

DATE AND TIME: Wednesday, October 1, 1980 at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C. (fifth floor).

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Any matters not concluded on September 30, 1980.

* * * * *

DATE AND TIME: Thursday, October 2, 1980 at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Certifications.
Advisory Opinions:
Draft AO 1980–103—David Price, Executive Director, North Carolina State Democratic Executive Committee.
Draft AO 1980–105—Robert C. Dopf, Secretary-Treasurer, Pro-Life Action Council.
Draft AO 1980–107—Robert P. Visser (Reagan-Bush Committee).
Draft AO 1980–108—Mitchell Rogovin (John Anderson Loan Agreement(s)).
Draft AO 1980–109—Steven R. Bailey (on behalf of James Hansen).
1980 Election and Related Matters.
Appropriations and Budget.
Pending Legislation.
Classification Actions.
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Public Information Officer; telephone: 202–523–4065.

Marjorie W. Emmons,

Secretary to the Commission.

[S–1779–80 Filed 9–23–80; 3:42 pm]

BILLING CODE 6715–01–M

10

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 62603, September 19, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., September 24, 1980.

CHANGE IN MEETING: The following item has been added:

Item Number, Docket Number, and Company

CAG–21—RP74–61 (PGA79–1), RP76–10, RP74–61 (PGA79–2), RP76–10, TA80–1–31 (PGA80–1), Arkansas Louisiana Gas Co.; RP72–142 (PGA79–2), RP76–135, RP78–76, TA80–1–43 (PGA80–1), Cities Service Gas Co.; RP72–122 (PGA79–1a), RP79–1, RP72–122 (PGA79–2), TA80–1–32 (PGA80–2), Colorado Gas Interstate Corp.; RP73–65 (PGA79–2), RP73–65 (PGA79–2a), TA80–1–21 (PGA80–1), TA80–1–21 (PGA80–2), Columbia Gas Transmission Corp.; RP79–47 (PGA79–4a, PGA79–4b), RP72–157, RP72–157 (PGA79–5), TA80–1–22 (PGA80–1), TA80–1–22 (PGA80–2, PGA80–2a, PGA80–2b), Consolidated Gas Supply Corp.; RP75–46 (PGA79–5), RP77–17, RP72–134, Eastern Shore Co.; RP72–155 (PGA79–1a), RP78–18, RP72–155 (PGA79–2), RP79–12, TA80–1–33 (PGA80–1), El Paso Natural Gas Co.; RP72–136 (PGA79–1), RP72–136 (PGA79–2), TA80–1–34 (PGA80–1), Florida Gas Transmission Co.; RP79–8 (PGA79–1, PGA79–1a), RP72–32, Kansas-Nebraska Natural Gas Co.; RP73–91 (PGA79–2), McCulloch Interstate Gas Corp.; RP73–43 (PGA79–1a), RP73–43 (PGA79–2), TA80–1–15 (PGA80–1), Mid Louisiana Gas Co.; RP72–149 (PGA79–4a), RP72–149 (PGA79–5, PGA79–5a), RP72–149 (PGA79–5b), TA80–1–25 (PGA80–1), Mississippi River Transmission Corp.; RP71–125 (PGA79–1, PGA79–1a), RP71–125 (PGA79–2b), TA80–1–26 (PGA80–1), Natural Gas Pipeline Co. of America; RP72–154 (PGA79–2), RP74–27, RP78–50, TA80–1–37 (PGA80–1), Northwest Pipeline Corp.; RP72–115 (PGA79–2), TA80–1–38 (PGA80–1), Oklahoma Natural Gas Gathering Corp.; CP76–104 (PGA79–2), Pacific Interstate Transmission Co.; RP73–36 (PGA79–1b), RP73–36 (PGA79–2), RP73–36 (PGA79–3a), RP78–62, TA80–1–28 (PGA80–1), Panhandle Eastern Pipe Line Co.; RP73–89 (PGA79–2), RP77–6, RP73–89 (PGA79–2a), RP77–6, TA80–1–6 (PGA80–1), Sea Robin Pipeline Co.; RP78–58 (PGA79–2), South Texas Natural Gas Gathering Co.; RP73–64 (PGA79–2), TA80–1–7 (PGA80–2), Southern Natural Gas Co.; RP73–114 (PGA79–2), RP73–114 (PGA79–2a), Tennessee Gas Pipeline Co.; RP74–41 (PGA79–2a), RP74–41 (PGA79–3), TA80–1–17 (PGA80–1), Texas Eastern Transmission Corp.; RP72–156 (PGA79–1a), RP72–156 (PGA79–2), TA80–1–18 (PGA80–1), Texas Gas Transmission Corp.; RP73–3 (PGA79–1a), RP73–3 (PGA79–2), RP73–3 (PGA79–2a), TA80–1–29 (PGA80–1), Transcontinental Gas Pipe Line Corp.; RP73–35 (PGA79–3), RP78–11, TA80–1–30 (PGA80–1), Trunkline Gas Co.; RP72–133 (PGA79–2), RP72–133 (PGA79–2a), TA80–1–11 (PGA80–1), United Gas Pipe Line Co.; RP72–41 (PGA79–3), Western Transmission Corp.; RP74–52 (PGA79–1a), RP74–52 (PGA79–2), TA80–1–42 (PGA80–1), Transwestern Pipeline Co.

Kenneth F. Plumb,

Secretary.

[S–1776–80 Filed 9–24–80; 2:09 pm]

BILLING CODE 6450–85–M

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FEDERAL MARITIME COMMISSION.

TIME AND DATE: 9 a.m., September 29, 1980.

PLACE: Hearing Room One, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Docket Nos. 78–35, et al—Allied Chemical S.A. and Allied Chemical International Corp. v. Farrell Lines, Inc. and Pacific America Container Express a/k/a Pace Line—Consideration of the Record.
2. Docket No. 80–48: Proposed Rule on Appeals of Denials of Requests for Information—Consideration of the Record.

Portion closed to the public:

1. Enforcement Claim Arising Out of Docket No. 80–1—Petition of Sunmark, Inc. for Declaratory Order.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Assistant Secretary (202) 523–5725.

[S–1769–80 Filed 9–22–80; 4:38 pm]

BILLING CODE 6730–01–M

12

FEDERAL MARITIME COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 62963, September 22, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9 a.m., September 24, 1980.

CHANGES IN THE MEETING: Time of the meeting changed from 9 a.m. to 10 a.m. on September 24, 1980. Addition of the following item to the open session:

3. Special Permission No. F–4067—India Pakistan Conference—Roll of Bunker Surcharge Into General Rate Structure.

Addition of the following item to the closed session:

1. Docket No. 80–6—Specific Commodity Rates of Far Eastern Shipping Company in the Philippines/U.S. Pacific Coast Trade and U.S. Gulf/Australia Trade.

[S–1775–80 Filed 9–23–80; 1:59 pm]

BILLING CODE 6730–01–M

13

[OP0401]

PAROLE COMMISSION.

National Commissioners (the Commissioners presently maintaining offices at Washington, D.C. Headquarters).

TIME AND PLACE: 9:30 a.m., Wednesday, October 1, 1980.

PLACE: Room 724, 320 First Street NW., Washington, D.C. 20537.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 10 cases in which inmates of federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Case Analyst, National Appeals Board (202) 724–3094.

[S–1777–80 Filed 9–23–80; 3:42 pm]

BILLING CODE 4410–01–M

14

[Meeting No. 1253]

TENNESSEE VALLEY AUTHORITY.

TIME AND DATE: 10:15 a.m., e.d.t., Monday, September 29, 1980.

PLACE: Conference Room B–32, West Tower, 400 Commerce Avenue, Knoxville, Tennessee.

STATUS: Open.

MATTERS FOR ACTION:

Old Business Items

1. Req. No. 827370—250-ton polar crane for Yellow Creek Nuclear Plant, Unit 1.
Req. No. 170183 (Reissue)—Load management control system for the Load Management Air-Conditioning Cycling Program.
3. Payments to states and counties in lieu of taxes for fiscal year ending September 30, 1980, as provided under Section 13 of the TVA Act, as amended.
4. Contribution rates to the TVA Retirement System for fiscal year 1981 and determination of maximum amount to be credited under the Merit Incentive Supplemental Retirement Income Plan.

New Business Items

A—Project Authorizations:
1. No. 2072.10—Amendment to project authorization for direct production of ammonium polyphosphate from wet-process phosphoric acid.
2. No. 3344.1—Amendment to project authorization for an additional dust removal system for the Granular Combination Fertilizer Unit in Muscle Shoals, Alabama.
3. No. 3461.2—Amendment to project authorization for modification of the Urea Unit in Muscle Shoals, Alabama.
4. No. 3464.1—Amendment to project authorization for falling curtain process for granulation of urea and other fertilizers.
5. No. 3525—Provide a 161-kV delivery point for the Florida Steel, Tennessee, 161-kV Substation.
6. No. 3529—Solicitation, development, and long-term lease for a western area radiological laboratory in Muscle Shoals, Alabama.

B—Purchase Awards:
1. Req. No. 583275—Indefinite quantity term contract for crushed stone for Phipps Band Nuclear Plant.

C—Power Items:
1. Letter agreement with Mississippi Power & Light Company, Jackson, Mississippi, for relocation of a delivery point from company's system to TVA near Tillatoba, Mississippi.
2. Supplement to letter agreement with Nuclear Regulatory Commission covering arrangements for use of TVA reactor simulator facilities for training purposes.
3. Agreement with Tishomingo County Electric Power Association covering distributor's participation in TVA's Load Management Residential Energy Use Display Meters Field Test.
4. Amendments to Interchange Agreements between TVA and other electric systems covering purchase and resale of power.

D—Personnel Items:
1. Personal services contract with Pickard, Lowe and Garrick, Inc., Irvine, California, for assistance to TVA in the performance of a probabilistic risk assessment of the Browns Ferry Nuclear Plant, Unit 1, requested by the Office of Engineering Design and Construction.
2. Renewal of personal services contracts with various contractors for architectural, engineering, and design services, requested by the Office of Engineering Design and Construction (Bechtel Power Corporation, San Francisco, California; Burns and Roe, Inc., Gradell, New Jersey; Ebasco Services Incorporated, New York, New York; Gibbs & Hill, Inc., New York, New York; Gilbert Associates, Incorporated, Reading, Pennsylvania; Sargent & Lundy, Chicago, Illinois; Stone & Webster Engineering Corporation, Boston, Massachusetts; and United Engineers & Constructors, Inc., Philadelphia, Pennsylvania).
3. Personal services contract with Radian Corporation for performance of a process and environmental test program of the Texaco gasification process at the Ruhrchemie/Ruhrkohle gasification facility in Oberhausen-Holten, Federal Republic of Germany.
4. Personal services contract with TRW, Inc., for performance of an environmental test program of the Koppers-Totzek gasification process at the Nitrogen Fertilizer Industries, S.A. gasification facility in Ptolemais, Greece.
5. Personal services contract with GKT Gesellschaft Fur Kohle-Technologie mbH for performance of a process test program of the Koppers-Totzek gasification process at the Nitrogen Fertilizer Industries, S.A. gasification facility in Ptolemais, Greece.

E—Real Property Transactions:
1. Grant of permanent easement to the Guntersville Water and Sewer Board, Guntersville, Alabama, for construction, operation, and maintenance of sanitary sewerlines, effecting approximately 2.9 acres of Guntersville Reservoir land in Marshall County, Alabama—Tract XTGR–133S.
2. Grant of permanent easement to A. F. Barnett for agricultural and residential use, affecting approximately 20 acres of TVA's Fabius Coal Mine land in Jackson County, Alabama—Tract XACOR–1E.

F—Unclassified
*1. Interagency agreement with the Department of Energy for TVA application of integrated on-farm alcohol production system.
2. Amendments to Memorandum of Understanding between the National

Institute for Occupational Safety and Health (NIOSH) and TVA concerning research related to occupational safety and health of TVA employees.

3. Delegation of authority to approve and execute contracts, in line with approved budgets and workplans, relating to tva's program for mitigating adverse socioeconomic impacts resulting from large construction projects.
4. Revision of TVA Organization Bulletin I.
5. Designation of agency official for purposes of the Ethics in Government Act of 1978 requiring TVA employees in certain positions to make financial disclosure reports at specific times, and designation of ethics counselor under Executive Order No. 11222.
*6. Settlement of action brought by TVA against Heede International, Inc., and The Black Clawson Company for damages resulting from the collapse of a Heede International, Inc., tower crane at the Widows Creek Steam Plant.
7. Interim budget plan for fiscal year 1981.

CONTACT PERSON FOR MORE INFORMATION: Graven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: September 22, 1980.

[S–1768–80 Filed 9–22–80; 4:23 pm]

BILLING CODE 8120–01–M

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UNITED STATES RAILWAY ASSOCIATION.

DATE AND TIME: 9 a.m., October 2, 1980.

PLACE: Board Room, Room 2–500, fifth floor, 955 L'Enfant Plaza North SW., Washington, D.C.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED BY THE BOARD OF DIRECTORS: Portions closed to the public:

9 a.m.

1. Consideration of internal personnel matters.
2. Review of Conrail proprietary and financial information for monitoring and investment purposes.
3. Litigation report.

Portions open to the public:

10:30 a.m.

4. Approval of minutes of the September 4, 1980 Board of Directors meeting.
5. Report on Conrail monitoring.
6. Consideration of Conrail drawdown request for October.
7. Federal Financing Bank Loan Rollover for the Section 211(h) Program.
8. Transfer of Missouri-Kansas-Texas Loan and monitoring to FRA.
9. Staff Compensation Plan for fiscal year 1981.
10. Fiscal year 1982 Budget Submission.
11. Amendments to Audit Committee Order.
12. Contract Actions (extensions and approvals).
13. Legislative Report.

CONTACT PERSON FOR MORE INFORMATION: Alex Bilanow (202) 426–4250.

[S–1774–80 Filed 9–23–80; 1:59 pm]

BILLING CODE 8240–01–M

*Approved by individual Board members. This would give formal ratification to the Board's action.

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FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 a.m., September 30, 1980.

PLACE: 1700 G. Street NW., sixth floor, Washington, D.C.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202–377–6677).

MATTERS TO BE CONSIDERED:

Conversion to a State-Chartered Mutual Association—Mutual Federal Savings & Loan Assocation of Pensacola, Pensacola, Florida.
Extension of Time—United First Federal Savings & Loan Association, Sarasota, Florida.
Receiver's Report—Carlsbad Savings & Loan Association, Carlsbad, Carlsbad, New Mexico.
Branch Office Application—Savers Federal Savings & Loan Assocation, Little Rock, Arkansas.
Privacy Act of 1974—Annual Republication of Record Systems—Federal Register Document.
Branch Office Application—Arkadelphia Federal Savings & Loan Association, Arkadelphia, Arkansas.
Redesignation of Home Office—Reliance Federal Savings & Loan Association of New York, Jamica, New York.
Executive Order 12160—Consumer Program—Federal Register Document.

No. 394, September 23, 1980.

[S–1780–80 Filed 9–23–80; 3:48 pm]

BILLING CODE 6720–01–M

federal register

Thursday
September 25, 1980

Part II

Securities and Exchange Commission

[Release Nos. 33-6231, 33-6232, 33-6233, 33-6234, 33-6235, and 33-6236]

Integrated Disclosure Program

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 231, 239, 240, 241, and 249

[Releases Nos. 33-6231; 34-17114; AS-279]

Amendments to Annual Report Form, Related Forms, Rules, Regulations, and Guides; Integration of Securities Acts Disclosure Systems

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of amendments to the present annual report form required to be filed by most publicly-owned companies, Form 10-K, and to related forms, rules, regulations and guides under the Securities Act of 1933 and the Securities Exchange Act of 1934. The amendments are part of a series of revisions and proposals intended to improve disclosure, reduce disclosure burdens, and to facilitate the integration of the disclosure systems under the two Acts.

EFFECTIVE DATE: For all filings and reports pursuant to the Securities Act of 1933 and the Securities Exchange Act of 1934 with respect to fiscal years ended after December 15, 1980. However, the Commission will accept filings and reports complying with the amendments beginning immediately for those wishing to use them.

FOR FURTHER INFORMATION CONTACT: Prior to the effective date of the amendments, contact William H. Carter at (202) 272-2604, William E. Toomey at (202) 272-2573, or William E. Morley at (202) 272-2573. Thereafter, contact only William E. Toomey or William E. Morley.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced certain amendments to Form 10-K (17 CFR 249.310), the annual report form required to be filed by most publicly-owned companies, and a number of related rule, regulation, form and guide changes. The rule and regulation changes include: Amendments to Rule 14a-3 (17 CFR 240.14a-3) and Rule 14c-3 (17 CFR 240.14c-3) with respect to annual reports to security holders; expansion of Regulation S-K (17 CFR 229.20) to include three new items: Management's Discussion and Analysis of Financial Condition and Results of Operations; Selected Financial Data; and Market Price of the Registrant's Common Stock and Related Security Holder Matters; amendments to regulation S-K Item 1, Description of Business; and amendments to related forms, rules and guides under the Securities Act of 1933 ("Securities Act") (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a et seq.). The amendments to Form 10-K and related revisions are part of a series of changes and proposals intended to improve disclosure in certain important areas, to reduce some of the burdens of disclosure by eliminating obsolete or duplicative requirements, and to facilitate the integration of filings made under the Securities Act and the Exchange Act. Three other releases issued today adopt changes relating to: (1) Uniform financial statement instructions for certain forms and reports required pursuant to the Securities Act and the Exchange Act; (2) amendments to Regulation S-X (17 CFR 210) designed to eliminate, to the extent possible, the differences between the requirements of generally accepted accounting principles and those of Regulation S-X; and (3) a new simplified form for the registration of securities issued in certain merger and reorganization transactions.[1] In addition, two other releases issued today propose changes to Form 10-Q (17 CFR 249.308a) under the Exchange Act and propose three new registration forms under the Securities Act.[2]

Form 10-K

A. *Introduction.* The Commission today is adopting and proposing major changes in the Securities Act and Exchange Act disclosure systems. These changes are designed to improve the disclosure made to investors and other users of financial information, to facilitate the integration of the two disclosure systems into the single disclosure system long advocated by many commentators,[3] and to reduce current impediments to combining informal security holder communications, such as annual reports to security holders, with official Commission filings.

This release deals with format and content changes in the Form 10-K and in the annual report to security holders. Under the system in effect as a result of these changes, minimum disclosure requirements have been developed by the Commission for the Form 10-K and the annual report to security holders. To the extent these disclosure requirements have common elements, the Commission has made it easier now to simply incorporate from the annual report to security holders to the Form 10-K, if registrants so choose.

The Commission has determined to require only portions of the Form 10-K and the annual report to security holders to have equivalent disclosure because these documents are not necessarily used in an identical manner. Disclosure requirements in annual reports evolved in the context of shareholders making voting decisions. The Form 10-K has traditionally confirmed information previously delivered to investors and other users making economic decisions about the company and, as a result, has been more detailed. The Commission recognizes that the information content in Form 10-K not only was originally formulated for a specialized use, but that within those groups which have utilized the Form there are different constituences. Those constituencies which have been the most frequent users of Form 10-K information are institutional investors, professional security analysts and sophisticated individual investors. The Commission believes that it continues to be appropriate to focus primarily on these frequent user constituencies in formulating Form 10-K requirements, but that such a focus would not be appropriate in formulating requirements for the annual report to security holders.

With regard to the content of the restructured Form 10-K, several items in the present Form have been deleted and others have been simplified or have been moved to schedules or exhibits. The prime focus of this effort has been to eliminate unnecessary or duplicative disclosure throughout Commission filings through the further expansion of Regulation S-K and to relegate disclosures of a technical or supplementary nature to schedules or exhibits which are available to users upon request.

Insofar as the annual report to security holders is concerned, the principal effort has been to standardize disclosure items to make them consistent with similar requirements in Commission filings. In particular, the focus has been primarily upon financial disclosure to provide uniformity in form, content and timing of the required information.

B. *Background and Development of New Form 10-K.* The Commission's review of the purpose and utility of the

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[1] Securities Act Release Nos. 6234, 6233, and 6232 (September 2, 1980).

[2] Securities Act Release Nos. 6236 and 6235 (September 2, 1980).

[3] *See generally* Cohen, "Truth in Securities" Revisited, 79 Harv. L. Rev. 1340 (1968); SEC, *Disclosure to Investors* (Wheat Report) (1969); Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission, Committee Print 95-29, House Committee on Interstate and Foreign Commerce, 95th Cong., 1st Sess., November 3, 1977 ("Advisory Committee").

Form 10–K led it to believe that there is a basic information package which most, if not all, investors expect to be furnished. Further, it has become apparent that this basic information package, which in the context of Form 10–K developed to support the current information requirements of an active trading market, is virtually identical to the similar information package independently developed in connection with the registration and sale of newly issued shares under the Securities Act. The essential content of these Form 10–K and registration statement information packages includes audited financial statements, a summary of selected financial data appropriate for trend analysis, and a meaningful description of the registrant's business and financial condition.

The restructured Form 10–K which the Commission is adopting today is specifically designed to segregate the basic information package contained in that Form from proxy related or supplemental information. In this regard, the new Form 10–K is structured in four parts. The first part retains the detailed disclosure requirements relating to business, properties, legal proceedings and beneficial ownership. Much of this information, which in the past has been required primarily in Securities Act filings and not in annual reports to security holders, has been placed in a supplemental role. The second part consists of the basic disclosure package which is common to both Securities Act and Exchange Act filings. The third part consists of the traditional proxy disclosure information relating to directors and executive officers and management remuneration. Finally, the fourth part contains requirements for financial statement schedules and, in accordance with a recent Commission release, scaled-down requirements for exhibits.[4]

Although the revised Form 10–K is designed to promote the integration of the Securities Act and Exchange Act disclosure systems, which was the basic goal set forth in the report of the Advisory Committee, the restructured format of the new form does not precisely follow that suggested by the Advisory Committee. That Committee recommended a relatively unstructured document which would encourage registrants to combine informal annual and quarterly reports to security holders into single documents to be filed as Form 10–K's and 10–Q's. The new Form 10–K continues to encourage the combination of formal and informal reports. However, the new form changes the emphasis from the Form 10–K (which the Advisory Committee emphasized) to the basic disclosure package, wherever it appears. As a result, where the Advisory Committee envisioned the Form 10–K as the document to be integrated with the Securities Act filing, the new Form 10–K permits registrants to utilize the minimum disclosure package from the annual report to security holders sent with the proxy statement, from the Form 10–K, or to completely restate it.

Furthermore, the Commission does not believe it would be appropriate at this time to adopt the Advisory Committee approach and to mandate a totally combined Form 10–K and annual report to security holders in order to produce the readable Form 10–K which would be needed to form the basis for integration. Such a mandate might be overly burdensome on some registrants and could adversely affect the annual report to security holders.[5] Under these circumstances, the Commission believes that it would be wise to encourage combination on a voluntary basis. In the meantime, the detailed disclosure will remain available in the filed Form 10–K in order to supplement the more abbreviated presentation in the annual report to security holders.

C. *Annual Report to Security Holders.* In a release issued on January 10, 1974,[6] the Commission amended Rules 14a–3 and 14c–3 to require that annual reports to security holders contain a variety of information, including certified financial statements, a summary of operations, a management analysis, a brief description of the issuer's business, a lines of business breakdown, an identification of the issuer's directors and executive officers, and an identification of the principal market in which securities entitled to vote were traded. These requirements were based on substantially similar requirements in the then existing Form 10–K. In requiring this new information, the Commission made the following statement:

> The annual report to security holders has long been recognized as the most effective means of communication between management and security holders. Such reports are readable because they generally avoid legalistic and technical terminology and present information in an understandable, and often innovative, form. * * * The Commission believes it is in the public interest that all security holders be provided with meaningful information regarding the business, management, operations and financial position of the issuer and that the annual report to security holders is the most suitable vehicle presently available for providing this information.

The Commission continues to believe that all security holders should be provided with meaningful information and that the changes in the Form 10–K requirements on which the annual report to security holder requirements were based should also be made in the annual report because of the importance of the disclosure. This results in a uniformity of the minimum disclosure package in the annual report to security holders and in Form 10–K. This uniformity has been achieved by adopting uniform financial statement requirements, by amending Regulation S–X, by adopting new provisions in Regulation S–K and by adopting several changes in Rules 14a–3 and 14c–3. The equivalency of the minimum disclosure package in both documents not only satisfies shareholder and investor needs, it also should avoid duplication by allowing issuers to use the disclosure in the annual report to security holders to satisfy some of the requirements of Form 10–K and, if they choose, when selling securities to the public. The changes made today in the annual report to security holders do not mean, however, that any further changes in Form 10–K will be reflected automatically in the annual report to security holders.

The Commission is aware that increasing the amount of required disclosure in annual security holder reports involves a risk that readability may be impaired. Although it is difficult to predict with certainty what the effect may be, the Commission does not believe that the changes implemented today should or will have general adverse consequences. The Commission staff, however, will continue to monitor the situation and, if adverse effects do occur, the new disclosure requirements will be revisited promptly.[7]

[4] Securities Act Release No. 6230 (August 27, 1980).

[5] The inability to assure in all cases that there will be a single document which will be usable as a combined report to security holders and Form 10–K arises primarily because of the Business, Properties and Legal Proceedings disclosures called for under Items 1, 2 and 5 of Regulation S–K and because of certain parent and subsidiary financial statements required by Regulation S–X. Although it is hoped that most registrants will have little difficulty in presenting these items in a combined document, there is considerable evidence that in some cases the sheer volume of the disclosure called for by these items would aversely impact the readability of the registrant's annual reports to security holders.

[6] Exchange Act Release No. 10591 (January 10, 1974) [39 FR 3820].

[7] In this regard the Commission's integration efforts are part of an ongoing project which is presently scheduled to continue for at least two more years. Monitoring will occur in the context of that program and, as has been recently the case with respect to bank holding company disclosures (Guide 61; Securities Act Release No. 6221 (July 8, 1980) (45 FR 47138)) and remuneration disclosures (Item 4 of Regulation S–K; Securities Act Release

Footnotes continued on next page

With the same information appearing in the annual report to security holders and in Part II of the Form 10–K, the Commission is hopeful that most, if not all, registrants will incorporate that portion of the annual report to security holders into the Form 10–K. Because of the benefits of this type of incorporation both to registrants and to the Commission staff, the January 15, 1980 release proposed mandatory incorportion of portions of the annual report into the Form 10–K and optional incorporation of portions of the annual report into certain Securities Act filings. The mandatory incorporation feature was severely criticized by the commentators.[8] As a result of this criticism, this mandatory feature has been eliminated. Instead, the four-part Form 10–K system has been designed to encourage, but not to require, the combination of annual reports and Form 10–K's into one document. For example, the revised financial statement requirements have been designed to require that only the financial statements of the registrant and its subsidiaries consolidated must appear in the annual report and in the financial statement section of the Form 10–K, Part II. The other financial statements and schedules have been designated "financial statements schedules" and have been placed in Part IV of the Form 10–K. This permits a less detailed minimum disclosure package, which is more compatible with a combined presentation, while nonetheless preserving in a separate information package the more detailed finanical data for those who want it.

It should be emphasized that the minimal content changes adopted by the Commission today are not intended to change the basic structure or quality of existing security holder reports. Indeed, the Commission continues to believe that the communicative style of these reports is generally excellent and that, by and large, these reports do not include the type of boilerplate disclosures and disclaimers which frequently do appear in formal Commission filings. It is hoped that the type of attention to style which is evidenced by better examples of security holder reports will continue to have a salutary effect on all of the report content, whether or not the particular information is also a part of the Form 10–K.

D. *Conclusion.* The system adopted today will be carefully monitored for effectiveness, and future alternative systems will not be foreclosed. For example, consideration is still being given to approaches which might differentiate between user constituencies and which might give a security holder the option of receiving a simplified annual report containing summary indicators and other data in lieu of the traditional annual report or in lieu of the financial statement section of such report. This type of approach would be based upon an as yet unproven hypothesis that some users, particularly certain individual investors, either rely on financial advisers and therefore do not use detailed disclosure, or are overwhelmed by the technical nature or volume of presently required disclosure.[9] The Commission expects that these as well as other issues relating to concepts of differential disclosure will be pursued and studied as the integrated disclosure system evolves.

Table of Changes From Previous Form 10–K

Item and Status

General Instructions. Revised.
Cover Page. Revised.

Part I

Item 1. Business. Revised (In revised Regulation S–K Item 1).
Item 2. Summary of Operations. Deleted (Replaced by Selected Financial Data, New Item 6).
Item 3. Properties. Unchanged (New Item 2).
Item 4. Parents and Subsidiaries. Deleted (But replaced by an exhibit).
Item 5. Legal Proceedings. Unchanged (New Item 3).
Item 6. Increases and Decreases in Outstanding Securities and Indebtedness. Deleted.
Item 7. Changes in Securities and Changes in Security for Registered Securities. Deleted.
Item 8. Defaults Upon Senior Securities. Deleted.
Item 9. Approximate Number of Equity Security Holders. Deleted (But replaced by a requirement in new Regulation S–K Item 9).
Item 10. Submission of Matters to a Vote of Security Holders. Deleted.
Item 11. Indemnification of Directors and Officers. Deleted.
Item 12. Financial Statements, Exhibits filed, and Reports on Form 8–K. Revised (New Item 11).

Part II

Item 13. Security Ownership of Certain Beneficial Owners and Managers. Unchanged (New Item 4).
Item 14. Directors and Executive Officers of the Registrant. Unchanged (New Item 9).
Item 15. Management Remuneration and Transactions. Unchanged (New Item 10).
Signatures. Revised.
Instructions as to Financial Statements. Deleted (Replaced by New Item 8).
Instructions as to Exhibits. Revised (Per New Regulation S–K Item 7).
Supplemental Information. Revised.

The new Form 10–K consists of four parts containing the items outlined below. The information required by Parts I and II, or any portion thereof, at the registrant's option, may be supplied by incorporating the information from an annual report to security holders either furnished to the Commission pursuant to Rule 14a–3(b) or Rule 14c–3(a) or otherwise meeting the requirements of Rule 14a–3(b), provided the incorporated portion contains the disclosure required by the appropriate items of Parts I and II of Form 10–K. Conversely, the information required by Part III must be supplied by incorporating by reference from the election of directors proxy statement (or information statement), if such statement has been or will be filed within 120 days of the end of the fiscal year.

Outline of New Form 10–K

General Instructions

Cover Page.

Part I

Item 1. Business.
Item 2. Properties.
Item 3. Legal Proceedings.
Item 4. Security Ownership of Certain Beneficial Owners and Management.

Part II

Item 5. Market for the Registrant's Common Stock and Related Security Holder Matters.
Item 6. Selected Financial Data.
Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.
Item 8. Financial Statements and Supplementary Data.

Footnotes continued from last page
No. 6210 (May 6, 1980) (45 FR 31733)), in the context of the Commission's ongoing program to monitor the effectiveness of its rules.

[8] Over 300 letters containing substantive comments were received in response to the January 15, 1980 release proposing the new Form 10–K and the related forms, rules and guides changes. The comments were obviously the product of serious thought and drafting and many elements of them have been incorporated into these final rules. Most commentators, in addition to making specific suggestions, many of which are discussed later in this release in connection with particular forms, rules and guides, addressed the overall structure of the new Form 10–K and the related disclosure system, particularly as it involved the annual report to security holders. While a number of the letters supported the original proposal which would have used the annual report to security holders as the principal disclosure document, others were concerned about the effect such a mandate would have on the readability of the annual report, or on the Securities Act liability of directors for the report, or on what they foresaw as the beginning of a major incursion of the Commission into management's security holder communication.

[9] It is interesting to note, however, that studies such as that conducted by Professors Lucia S. Chang and Kenneth S. Most at Florida International University indicate that the typical "unsophisticated small investor" often is quite sophisticated. L. Chang and K. Most, Financial Statements and Investment Decisions (1979).

Part III

Item 9. Directors and Executive Officers of the Registrant.

Item 10. Management Remuneration and Transactions.

Part IV

Item 11. Exhibits, Financial Statement Schedules and Reports on Form 8-K.

Signatures.

Supplemental Information

Discussion of Items in New Form 10–K Which Are Unchanged From Previous Form 10–K

Item 2. Properties. (Item 3 of previous Form 10–K). Except for the numbering, this Item is unchanged from the existing *Item 3, "Properties" (Item 2 of Regulation S–K).*

A thorough analysis was made of Item 2 of Regulation S–K. Consideration was made of such factors as the comments received on the Item when it was originally proposed for comment in May of 1977 [10] as well as of comments received pursuant to the January 15, 1980 proposing release.[11] Virtually all the commentators addressing the Item felt it should not be changed. Accordingly, on the bases of the careful work that originally went into drafting Item 2, the Commission's short experience with the Item (since March 31, 1978), the weight of the comments in favor of no change, and the importance of maintaining the integrity of Regulation S–K with its attendant value to the integration of Form 10–K into Securities Act filings, the Commission has decided that Item 2 should not be revised at this time.

Item 3. Legal Proceedings. (Item 5 of previous Form 10–K). Except for the numbering the Item is unchanged from the previous Item 5, "Legal Proceedings." The underlying Regulation S–K Item 5, "Legal Proceedings," was recently adopted (July 28, 1978) [12] and only a few commentators felt that any changes should be made. Accordingly, the Commission does not believe it is necessary to revisit this disclosure at the present time.

Item 4. Security Ownership of Certain Beneficial Owners and Management. (Item 13 of previous Form 10–K).

Item 9. Directors and Executive Officers of the Registrant. (Item 14 of previous Form 10–K).

Item 10. Management Remuneration and Transactions. (Item 15 of previous Form 10–K).

All three of these Items have recently been the subject of the comment process, Item 10 (Item 15 of previous Form 10–K; also Item 4 of Regulation S–K) having been adopted as recently as December 4, 1978.[13] Certain aspects of these Items are still being reconsidered at present time. Accordingly, the Commission does not feel it appropriate or necessary to amend these Items now.

Discussion of Items in Previous Form 10–K Which Have Been Deleted From New Form 10–K

Item 2. Summary of Operations. The basis for deleting this Item is contained in the discussion of the new Item 6 relating to selected financial data. Briefly, however, this Item was deleted as a consequence of two basic decisions. First, the Commission believes that five-year information is relevant primarily where it can be related to trends in the registrant's continuing operations. The Summary was not limited to this type of information about trends. Second, as a result of the change of focus of Management's Discussion and Analysis to a discussion of the financial statements, which now include statements of income for three years, the Summary of Operations is no longer the subject of that discussion and, therefore, its presentation is no longer needed. Although several commentators disagreed with this deletion, the overwhelming majority approved of it.

Because of the deletion of the Summary of Operations from the Form 10–K and the insertion of Selected Financial Data, corresponding changes are being made in a number of Securities Act and Exchange Act forms, such as Form S–1 (17 CFR 239.11) and Form 10 (17 CFR 249.210) (*See* Text of Proposed Forms and Rules).

The Office of the Chief Accountant is currently considering the comments received in response to a concept release (Securities Act Release No. 6196, March 7, 1980 (45 FR 16498)) which addresses the utility of historical and pro forma ratios of earnings to fixed charges and earnings to combined fixed charges and preferred dividends ("ratios"). A rule proposal is expected to be considered in the near future. However, until amended rules are adopted, the present requirements for presentation of the ratios must be maintained. For this reason, the present ratio instructions in the Summary of Operation Items of Forms S–1, S–11 (17 CFR 239.18), 10 and 10–K and in the Statements of Income Item of Form S–7 (17 CFR 239.26) (Items which are being deleted by this release) are being retained in the forms as part of the new Item entitled "Selected Financial Data." It should be noted that these ratio requirements are being included in the Forms as an interim measure and are expected to be revised and perhaps placed elsewhere in the future.

Item 4. Parents and Subsidiaries. In the proposed new Form 10–K, the Commission deleted this Item in favor of a new exhibit requiring a list of "all" subsidiaries as suggested by the Advisory Committee. While a few commentators stated that no such exhibit, in any form, should be required, most commentators did not object to the exhibit if insignificant subsidiaries need not be named. The Commission agrees with the Commentators that listing all subsidiaries would be too burdensome and accordingly has decided to adopt the exhibit with only the names of significant subsidiaries being required.

Item 6. Increases and Decreases in Outstanding Securities and Indebtedness.

Item 7. Changes in Securities and Changes in Security for Registered Securities.

Item 8. Defaults Upon Senior Securities.

Item 10. Submission of Matters to a Vote of Security Holders.

Item 11. Indemnification of Directors and Officers.

The above five Items were omitted by the Advisory Committee from its Form 10–K, were the subject of an express inquiry in Release No. 34–15068,[14] and were also the subject of comments in Release No. 33–6176. A significant number of commentators on both Releases agreed with the Advisory Committee that all of these Items should be deleted, either because the information called for is not generally useful (this was felt to be particularly true of Item 11, Indemnification of Directors and Officers) or because the informaton is available elsewhere (i.e., in Form 10's, Form 10–Q's, or in the financial statements). Several commentators indicated that this information would have to be disclosed either in the text or in the notes to the Financial statements, if material, even if there is no specific item requirement covering the particular event or transaction. The Commission agrees with these commentators and accordingly has omitted these items from the new Form 10–K.

Item 9. Approximately Number of Equity Security Holders. This Item has

[10] Securities Act of 1933 Release No. 5826 (May 10, 1977) (42 FR 26010).

[11] Securities Act of 1933 Release No. 6176 (January 15, 1980) (45 FR 5972).

[12] Securities Act Release No. 5949 (July 28, 1978) (43 FR 34402).

[13] Securities Act Release No. 6003 (Dec. 4, 1978) (43 FR 58181).

[14] Securities Exchange Act Release No. 15068 (August 16, 1978) (43 FR 37460).

been deleted, but the substance has been added to new Item 5 of Form 10–K (New Item 9 of Regulation S–K), which deals with market information concerning the registrant's common stock and related security holder matters. The Commission believes that the information concerning the number of holders of common stock will have greater utility in this context. The commentators, to the extent they addressed this Item, generally agreed with this approach.

Discussion of Form 10–K Items and Instructions Which Are New or Are Revised From Current Form 10–K

General Instruction A. Rule as to Use of Form 10–K

A technical amendment has been made to this Instruction to make it clear that only the schedules under Article 12 of Regulation S–X, and not all financial statement schedules, may be filed up to 120 days after the end of the fiscal year.

General Instruction D. Signatures and Filing of Report

In the January 15, 1980 Release, it was proposed that this Instruction be expanded to require that the Form be signed on behalf of the issuer by the registrant's principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least a majority of the board of directors or persons performing similar functions.

Many commentators either did not address or did not oppose requirements as to additional officers' signatures. However, the proposed change concerning directors' signatures was disapproved of by most of the commentators. The main thrusts of the objections to director signatures were concerns over the expense and logistics of obtaining the signatures in a timely fashion or over the extent, if any, to which the signatures might increase director liability. Moreover, few of those responding thought that signing the Form 10–K would appreciably increase director awareness of or participation in its preparation.

The Commission has given careful consideration to the objections of the commentators concerning director signatures. It has, nevertheless, concluded that a requirement for the signatures of a majority of a registrant's directors—in addition to those of its principal executive officer, its principal financial officer, and its controller or principal accounting officer—is an appropriate one under the circumstances. The Commission believes that just as its rules and the administrative focus of the Division of Corporation Finance are being realigned to reflect the shift in emphasis toward relying on periodic disclosure under the Exchange Act, so too the attention of the private sector, including management, directors, accountants, and attorneys, must also be refocused towards Exchange Act filings if a sufficient degree of discipline is to be instilled in the system to make it work. With an expanded signature requirement, the Commission anticipates that directors will be encouraged to devote the needed attention to reviewing the Form 10–K and to seek the involvement of other professionals to the degree necesssary to give themselves sufficient comfort. In the Commission's view, this added measure of discipline is vital to the disclosure objectives of the federal securities laws, and outweighs the potential impact, if any, of the signature on legal liability. The Commission has given attention to the concerns of commentators over the expense and logistics of obtaining the requisite signatures, but believes they do not constitute an undue obstacle to the imposition of this requirement.[15]

The Commission recognizes, however, that this requirement may result in certain hardships and inconveniences. It has therefore instructed the staff to report to it on the results of imposing the requirement after an appropriate time has passed, and the Commission will revisit the question if such action appears necessary or appropriate at that time.

General Instruction F. Information as to Employee Stock Purchase, Savings and Similar Plans

The substance of this instruction has not been changed although some confusing and unnecessary language has been deleted.

General Instruction G. Information To Be Incorporated by Reference

First, this Instruction includes the requirement as to incorporation by reference contained under Instruction F of the previous Form 10–K. Second, it reflects the change from the proposals, as discussed above, making the incorporation of certain annual report to security holders information optional with the registrant rather than mandatory. Third, the requirement in the proposal that the annual report to security holders and the proxy be delivered with the Form 10–K has been deleted. Upon analyzing the comments and the existing requirements, it became evident that the existing Form 10–K delivery requirements encompassed only existing security holders. As such persons already receive the annual report and proxy, the Commission believes that the proposed requirement was an unnecessary and burdensome expansion of a registrant's duties. Accordingly, it was deleted.

General Instruction H. Registrants Filing on Form S–18

The language of this Instruction has been revised, for purposes of clarity, from that contained in the previous Form 10–K. This revision is intended to make it clear that persons filing on Form 10–K who are allowed to used Form S–18 disclosure for certain items are only permitted to follow the Form S–18 disclosure requirements, as differentiated from being permitted to use the actual disclosures contained in their Form S–18, which may be out of date for Form 10–K purposes.

Cover Page

The requirement that the number of common shares outstanding be disclosed has been revised to be given as of the most recent practicable date, rather than as of the year end. This disclosure is included in the Form for purposes of Rule 144 under the Securities Act, and having the information more current is believed to be of greater value than having information which is usually almost 90 days old when filed.

Two technical changes have also been made in the cover page. The first requires disclosure of the market value of the voting stock held by non-affiliates of the registrant. The purpose of this change is to obtain data to be evaluated in connection with possible future changes in the eligibility requirement of various Securities Act registration forms. The second requires, for microfiche purposes, a listing of the documents incorporated by reference.

Item 1. Business. This Item merely incorporates the revised Item 1 of Regulation S–K with the exception that the discussion of the development of the registrant's business need only include developments since the beginning of the fiscal year.

In Release No. 33–6176 it was proposed to amend paragraph (b) of Item 1 of S–K to conform to the proposed new three-year requirement for statements of income. In addition, two specific questions were asked: Commentators were asked to consider (1) the advisability of requiring Item 1 disclosure to be included in annual reports to security holders in its current form or as modified by proposed

[15] *See*, e.g., Instruction D to Form 10–K and also Rule 12b–11(b) relating to the signing of reports.

changes; and (2) the advisability of conforming the present detailed segments reporting requirements in paragraph (b) of Item 1 to the similar but somewhat less extensive requirements in SFAS 14.

The Commission agrees with the commentators that to require Item 1 disclosure to be included in the annual report to security holders may seriously affect that document's readability. However, the Commission believes that to reduce the Item 1 segment disclosure to conform to SFAS 14 would result in the loss of some relevant and material information. Accordingly, the Commission has decided to make only three changes in the Item 1 segment requirements: (1) Amend relevant portions to conform to the new three-year requirement for statements of income; (2) delete transitory provisions no longer needed; and (3) delete the requirement for information on intraenterprise sales due to the marginal disclosure received in response to this requirement in the past. Notwithstanding the changes to be made in the segment data requirements, however, it should be noted that significant trend data might still be presented in the Selected Financial Data called for under Item 6 of the new Form 10–K, and some registrants might find it advisable to include five-year selected segment data in that context.

A thorough analysis was made of the other provisions of Item 1 of Regulation S–K prior to the issuance of the January 15, 1980 release. Consideration was given to such factors as the comments received on the Item when it was originally proposed for comment in May of 1977,[16] as well as to comments received on the existing Form 10–K in the Commission's release of August 16, 1978.[17] Moreover, most commentators addressing the Item in response to the January 15, 1980 release wanted Item 1 kept generally intact. Accordingly, on the bases of the careful work that went into drafting Item 1, the Commission's short experience with the Item (since March 31, 1978), the importance of maintaining the integrity of Regulation S–K as it relates to Securities Act filings, and the recent comments, the Commission believes that no substantive revisions other than the one referred to above should be made at this time.

Item 4. Securitiy Ownership of Certain Beneficial Owners and Management. While there has been no change in the language of this Item, which utilizes existing Item 6 of Regulation S–K, it should be noted that this disclosure has been moved from Part III of the new Form 10–K, the Part which can be completed by incorporation of a proxy or information statement, to Part I. The reason for the move is to eliminate the necessity of amending Form 10–K in the future if certain revisions in the proxy statements now being considered are adopted. These revisions would focus beneficial ownership, for proxy purposes, on voting power, leaving Item 6 of Regulation S–K as a non-proxy item.

Item 5. Market for the Registrant's Common Stock and Related Security Holder Matters. This Item contains the disclosure required by new Item 9 of Regulation S–K which must be included both in the annual report to security holders and in the Form 10–K (incorporation by reference from the annual report to security holders being optional with the registrant). As proposed, this new S–K Item required market information for all of the registrant's securities, the number of equity security holders, and information on dividends paid as well as on dividend policy.

The proposed item constituted an amalgam of paragraph (8) of Rule 14a–3 [17 CFR 240.14a–3] (which required market price information to be included in the annual report to security holders), Guide 26 of the Guides for Preparation and Filing of Registration Statements under the Securities Act of 1933 (17 CFR 231.4936) (which required a statement of a registrant's dividend policy), and Item 9 of the previous Form 10–K (which required information as to the approximate number of equity security holders.) The January 15, 1980 proposing release also asked commentators to consider whether the Item should be expanded to require the presentation of market data either of a general nature or of an industry specific nature and whether, if such data were required, it should be presented in one or more specific graphic forms.

The commentators pointed out that the market data requirements, as proposed, would include debt securities, which was much broader disclosure than the Commission had ever previously required and of debatable value. The Item accordingly has been revised to limit the market data to that for common stock only, which is the most relevant market information for most investors and users. The Commission has also amended the requirement on dividend policy to make such disclosure completely optional with the registrant. This change was made since it appears that dividend policy requirements generally have not elicited meaningful disclosure, but rather have resulted in meaningless boilerplate. The title of the Item has accordingly been changed to reflect the deletion of the dividend policy requirement.

An additional instruction has been added to obtain data on currency restrictions, taxation, etc. on dividends payable to United States holders of foreign securities. Concurrently, the Commission is also rescinding Guide 26, Statement of Dividend Policy, from the Guides for Preparation and Filing of Registration Statements Under the Securities Act of 1933. Finally, it was decided not to implement the inquiries concerning possible market data disclosure, largely because it is generally difficult to relate any index to a particular registrant. Item 6. Selected Financial Data.

In the Form 10–K as proposed in Release No. 33–6176 the Summary of Operations called for under Item 2 of the previous Form 10–K was deleted and in lieu thereof a new item calling for Selected Financial Data was inserted (which would become new Item 10 of Regulation S–K). This new requirement was designed to present significant five-year trend data relating to a registrant's financial condition and results of continuing operations. Although a registrant, under the proposal, was permitted to include other financial information in addition to that specified, it was expected that any presentation of additional information would not unnecessarily emphasize income or revenues as opposed to other components of financial condition.

The deletion of the present summary and the substitution of Selected Financial Data [18] reflected the Commission's concern that operations summaries have duplicated information otherwise available in income statements and may have unduly emphasized income over other enterprise performance measures. The Commission recognized that a detailed specification of the contents or format of a summary might not cure the perceived deficiencies. Accordingly, it hoped that the proposal would strike a reasonable balance between specified content and a flexible approach which permits registrants to select the data which best

[16] Securities Act Release No. 5826 (May 10, 1977) (42 FR 26010).

[17] Securities Exchange Act Release No. 15068 (August 16, 1978) (43 FR 37460).

[18] See the discussion of the deletion of the Summary of Operations on page 18 *supra* (Discussion of Items in Previous Form 10–K Which Have Been Deleted From New Form 10–K; Item 2. Summary of Operations) regarding the inclusion of certain ratios from the Summary into Selected Financial Data.

indicates performance. For example, those registrants who present the information relating to the impact of inflation and current prices on their business required by SFAS 33 [19] would be encouraged to combine the summary information required by SFAS 33 with the information required by the proposed new Item.

Almost all the commentators favored the deletion of the Summary of Operations, and most of these also approved of the Selected Financial Data Item as a disclosure concept, although a significant number objected to certain specific aspects of it. For example, a number believed elements such as cost of sales and interest expense should be included while others questioned the value of including working capital or some other measure of liquidity in the Item. The Commission has decided to adopt Item 6, but has determined not to increase the disclosure requirements of the Item as proposed or its specificity in order to avoid decreasing a registrant's flexibility. However, the Item clearly encourages registrants to include those additional elements which they believe will aid investors and other users. The requirement to include working capital or some other measure of liquidity has been deleted. The Commission has concluded that there are potentially numerous indicators of liquidity in a given business and to require display of each for five years may be impractical. Further, the Commission believes that the disclosures required by the new Management's Discussion and Analysis should be adequate to address liquidity and trends therein. Finally, the instruction concerning SFAS 33 has been slightly revised to make it clear that the SFAS 33 data may be combined with this Item.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations. The Form 10–K, as proposed, incorporated an entirely restructured Management's Discussion and Analysis. Additionally, this Item was moved from the Guides to become new Item 11 in Regulation S–K.

The major features of the proposed new Item were as follows:

(1) The discussion was to be focused on the financial statements and no longer centered upon a summary of operations. Indeed, as has been indicated above, the Summary of Operations would be eliminated.

(2) The proposed Item called for discussion of at least three financial aspects of the registrant's business—liquidity, capital resources, and results of operations.

(3) Within each area of the discussion there would be emphasis upon favorable or unfavorable trends and upon the identification of significant events or uncertainties.

(4) A discussion focused on individual segments would be required only if, in the registrant's judgment, it would be appropriate to an understanding of the registrant's business.

(5) Information concerning the effects of inflation and changing prices would be required.

(6) The percentage tests and line-by-line analysis encouraged by the present requirements contained in Guides 1 and 22 [20] would be eliminated. However, the proposed Item indicated that the causes for material changes in line items should be discussed.

(7) The proposed Item would not specifically require projections or other forward-looking information, although the presentation of this type of information on a voluntary basis would be encouraged.

(8) No specific provisions with respect to the location of management's discussion in the annual report to security holders were included.

The changes in Management's Discussion and Analysis were proposed as the result of the Commission's concerns that the disclosure elicited by the present requirements of Guides 1 and 22 is not fulfilling originally contemplated objectives. Instead, existing percentage tests are applied without regard to any concept of materiality or significance to the registrant's business. Accordingly, although some portions of the resulting discussion may be meaningful, the meaningful discussion is often obscured by the inclusion of material which is of little relevance.

The Commission was also concerned that the focus of the requirements of Guides 1 and 22 may be too narrow. In today's environment there is a growing need to analyze an enterprise's liquidity and capital resources, in addition to its revenues and income. The narrow approach set forth in Guides 1 and 22 does not ordinarily produce a discussion which focuses upon the financial condition of the enterprise as a whole.

Finally, the Commission, as it has indicated on a number of occasions, was concerned about the adequacy of disclosures with respect to the impact of inflation and changing prices on individual registrants' businesses. Although the Commission does not believe that it would be appropriate at this time to expand the applicability of SFAS 33 beyond that established by the Financial Accounting Standards Board, it does believe that all registrants, including those which are not required to present SFAS 33 information, should make some textual presentation with respect to these matters. In this regard the Commission believes that Management's Discussion and Analysis should contain information which changes the potentially confusing situation involving inflation impact disclosure into a meaningful discussion of the effects of changing prices on the registrant's business.

The Management's Discussion and Analysis, as proposed, evoked extensive and diverse responses from the commentators. Some rejected it in its entirety, others endorsed it to the letter. Some felt that it was too specific and eliminated needed flexibility, others wanted more specific guidance. The main areas of concern, however, were three: First, there were various problems with the concepts of liquidity and capital resources; second, there was general disapproval of any disclosure requirements relating to inflation and changing prices, and third, there were various objections to those aspects of the Item which were seen as forward looking.

As was stated earlier in this release and in the proposing release, the Commission believes there is a growing need in today's environment to analyze enterprise liquidity and capital resources.[21] Therefore, the disclosure requirements concerning liquidity and capital resources have been retained, although in somewhat modified form. While the Commission recognizes that the terms "liquidity" and "capital resources" lack some precision in definition, it is believed that additional specificity would decrease the flexibility needed by management for a meaningful discussion. Moreover, the liquidity section has been revised to de-emphasize working capital and to emphasize the right and obligation of management to use whatever liquidity parameters they deem to be most appropriate.

In a similar manner, the Commission believes that disclosure on inflation and changing prices should be retained despite the early state of its development. Revisions have been

[19] "Financial Reporting and Changing Prices."

[20] Guides for Preparation and Filing of Registration Statements Under the Securities Act of 1933 (17 CFR 231.4936).

[21] The Commission is aware of the Financial Accounting Standards Board's project on Funds Flows and Liquidity and does not intend to preempt that project in any way by proceeding with these new disclosure requirements. Moreover, the Commission intends to re-examine these requirements in the light of the findings of that project, when completed.

made, however, to clarify that nothing more than SFAS 33 data is needed from those required to supply it and that the SFAS 33 type of detailed analysis is not necessary for those smaller registrants not required to comply with SFAS 33.

An effort also has been made to distinguish between those aspects of the Items which are entirely forward looking in nature, and hence encouraged but not mandated, and those mandated aspects which, although they look to the future, are basically present fact, such as a future labor cost increase established by an existing contract which will clearly increase future costs.

A number of other changes of a lesser nature have been made, often in response to specific comments. It is indicated that liquidity and capital resources discussions may be combined. Segment disclosure, if made, need not include every segment and registrants may use other breakdowns, such as company subdivisions, if investor understanding would thereby be improved. Causes of material changes in line items need be described only to the extent necesssary to an understanding of a registrant's business as a whole. Foreign registrants are permitted to use their own country's version of SFAS 33, if it exists, and are requried to discuss any governmental factors having a material impact on United States security holders.

Finally, as suggested in the proposing release, this new Item 11 of Regulation S–K is also being made a part of other Securities Act and Exchange Act forms (*See* Text of Amended Forms, Rules and Guides).

Item 8. Financial Statements and Supplementary Data. Concurrently with the publication of this release the Commission, under cover of separate releases, is adopting uniform financial statement instructions and various amendments to Regulation S–X which are designed to facilitate the implementation of the proposed integrated disclosure system.[22] Although reference should be made to the two adoping releases for full details, the principal goals of the amendments are to adopt uniform three-year income statement and statement of changes in financial position and two-year balance sheet requirements for all registration forms as well as for the annual report to security holders and Form 10–K, and to eliminate, to the extent possible, the differences between the requirements of generally accepted accounting principles and those of Regulation S–X.

However, the Commission has determined to retain the substance of former Instruction 9 of the Instructions as to Financial Statements of Form 10–K for registrants using Form S–18. Thus, this Item 8 provides that a registrant may include audited financial statements prepared in accordance with generally accepted accounting principles in the Form 10–K which it files for the year in which it had a registration statement on Form S–18 become effective. The financial statements would include consolidated statements of income, statements of changes in financial condition, and statements of other stockholders' equity for the registrant's two, rather than three, most recently ended fiscal years and a balance sheet as of the end of each of those years. For the earlier of the two years, the registrant would furnish financial statements and the balance sheet previously disclosed in its Form S–18. After this first Form 10–K is filed, compliance with Regulation S–X would be phased prospectively into effect. Two minor technical amendments designed to clarify the application of the instruction as discussed in Securities Act Release No. 6049 [23] also have been made.

Item 11. Exhibits, Financial Statement Schedules, and Reports on Form 8–K. Recently, in Release No. 33–6230,[24] the Commission adopted extensive revisions in the general exhibit requirements applicable to a number of forms including the Form 10–K. An addition has been made to this Item as adopted in Release No. 33–6230 to label the financial statements and schedules which are filed in Part IV of the Form 10–K but which are not required in the annual report to security holders pursuant to Rule 14a–3 (or Rule 14c–3) as "financial statement schedules." The reason for the new term "financial statement schedules" is to distinguish such documents from the other exhibits filed as part of Form 10–K for purposes of Form 10–K mailings to security holders and for microfiche processing, among others. For example, security holders requesting a copy of the Form 10–K from a registrant will receive, at no charge, copies of the financial statement schedules but will not receive copies of any exhibits.

Finally, a new exhibit requiring the preparation of a list of the registrant's significant subsidiaries and setting forth limited data concerning subsidairies has been added to the recently adopted Itm 7, Exhibits, of Regulation S–K. This list replaces Item 4 of the previous Form 10–K and would be repeated in each annual filing or an express reference to the most recent list filed would be included.

Signatures. This section has been amended, as explained above, to provide for the signatures of a registrant's principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and at least a majority of its board of directors or persons performing similar functions.

Supplemental Information To Be Furnished With Reports Filed Pursuant to Section 15(d) of the Act by Issuers Which Have Not Registered Securities Pursuant to Section 12 of the Act. This section has been amended to make it clear that any materials incorporated by reference into the Form 10–K, and hence already furnished to the Commission, need not be supplied again pursuant to the provisions hereunder.

Amendments to Form 10 Under the Exchange Act—Discussion

The changes in Form 10 reflect the deletion of Item 2, Summary of Operations, and its replacement by Regulation S–K Items 10 and 11, Selected Financial Data and Management's Discussion and Analysis of Financial Condition and Results of Operations, respectively.

Amendments to Forms S–1, S–7, and S–11 Under the Securities Act—Discussion

The changes in the above Forms reflect the deletion of the Summary of Operations and Statements of Income from these Forms and their replacement by Regulation S–K Items 10 and 11, Selected Financial Data and Management's Discussion and Analysis of Financial Condition and Results of Operations, respectively. The Commission, however, has decided not to delete or amend, at this time, the Summary of Earnings requirements in Item 14 of Schedule 14A which contains the Summary of Earnings requirements for Form S–14.

Amendments to Rule 14a–3 and Rule 14c–3—Discussion

The changes in Rule 14a–3 and Rule 14c–3 are minimal and are basically technical in nature, that is, they are made to reflect other substantive rule and regulation amendments adopted in this release and the two accounting releases.[25] Subparagraphs (b)(1),[26] (b)(2),

[22] Securities Act Release Nos. 6233 and 6234 (September 2, 1980).

[23] Securities Act Release No. 6049 (April 3, 1979) (44 FR 21562).

[24] Securities Act Release No. 6230 (August 27, 1980).

[25] Securities Act Release Nos. 6233 and 6234 (September 2, 1980).

[26] On April 17, 1980, the Commission issued Accounting Series Release No. 277 (45 FR 27747)

Footnotes continued on next page

and (b)(3) of Rule 14a–3 and subparagraphs (a)(1) [27], (a)(2), and (a)(3) of Rule 14c–3 are amended to reflect the proposed new uniform Regulation S–X financial statement instructions. Subparagraph (b)(4) of Rule 14a–3 and subparagraph (a)(4) of Rule 14c–3 are revised to delete the reference to the Summary of Operations and to replace it with proposed Items 10 and 11 of Regulation S–K, Selected Financial Data and Management's Discussion and Analysis of Financial Condition and Results of Operations, respectivly. The disclosure currently contained in subparagraph (b)(8) of Rule 14a–3 and subparagraph (a)(8) of Rule 14c–3 is deleted and a reference to the new Regulation S–K Item 9, Market Price of the Registrant's Common Stock and Related Security Holder Matters, which is a revised and expanded version of that subparagraph, is inserted. Subparagraph (b)(9) of Rule 14a–3 and subparagraph (a)(9) of Rule 14c–3 are expanded to indicate that if a registrant prepares an annual report to security holders which meets all the Form 10–K disclosure requirements, it need not also supply a Form 10–K to requesting security holders. In addition these two Items are revised to indicate that the "financial statement schedules" are to be delivered to requesting security holders. Finally, subparagraph (c) of Rule 14a–3 and subparagraph (b) of Rule 14c–3 are revised to reflect the fact that General Instruction G to the new Form 10–K permits certain information from the annual report to security holders to be incorporated by reference into the Form 10–K and that such parts of the annual report are therefore "filed" for purposes of Section 18 of the Exchange Act.

Amendments to Guides for Preparation and Filing of Reports and Registration Statements Under the Securities Exchange Act of 1934—Discussion

Guide No. 1 Summary of Operations. This Guide is rescinded due to the deletion of Item 2, Summary of Operations, from Form 10–K and Form 10.

Guide No. 4 Integrated Reports to Shareholders. The revisions in this Guide are minimal and are only technical changes necessitated by the changes in Form 10–K and in the annual report to security holders.

Amendments to Guides for Preparation and Filing of Registration Statements Under the Securities Act of 1933—Discussion

Guide No. 22 Summary of Earnings. This Guide is rescinded due to the deletion of Summary of Operations and the Statements of Income from Forms S–1, S–7 and S–11.

Guide No. 26 Statement of Dividend Policy. This Guide is rescinded as no longer necessary and appropriate in view of the adoption of Item 9 of Regulation S–K, as discussed above.

Text of Amended Forms, Rules, and Guides

17 CFR Chapter II is amended as follows:

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. By amending § 249.310 to read as follows:

§ 249.310 Form 10–K, annual report pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934.

This form shall be used for annual reports pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934 for which no other form is prescribed. Reports on this form shall be filed within 90 days after the end of the fiscal year covered by the report. However, all schedules required by Article 12 of Regulation S–X may, at the option of the registrant, be filed as an amendment to the report not later than 120 days after the end of the fiscal year covered by the report. Such amendment shall be filed under cover of Form 8.

Form 10–K

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

General Instructions

A. Rule as to Use of Form 10–K. This Form shall be used for annual reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 (the "Act") for which no other form is prescribed. Reports on this form shall be filed within 90 days after the end ot the fiscal year covered by the report. However, all schedules required by Article 12 of Regulation S–X may, at the option of the registrant, be filed as an amendment to the report not later than 120 days after the end of the fiscal year covered by the report. Such amendment shall be filed under cover of Form 8.

B. Application of General Rules and Regulations. (1) The General Rules and Regulations under the Act (17 CFR Part 240) contain certain general requirements which are applicable to reports on any form. These general requirements should be carefully read and observed in the preparation and filing of reports on this Form.

(2) Particular attention is directed to Regulation 12B which contains general requirements regarding matters such as the kind and size of paper to be used, the legibility of the report, the information to be given whenever the title of securities is required to be stated and the filing of the report. The definitions contained in Rule 12b–2 should be especially noted. *See also* Regulations 13A and 15D.

C. Preparation of Report. (1) This Form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report on paper meeting the requirements of Rule 12b–12. Except as provided in General Instruction G, the answers to the items shall be prepared in the manner specified in Rule 12b–13. The report shall contain the item numbers and captions of all items but the text of such items may be omitted.

(2) Except where information is required to be given for the fiscal year or as of a specified date, it shall be given as of the latest practicable date.

(3) Attention is directed to Rule 12b–20, which states: "In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading."

D. Signature and Filing of Report. Three complete copies of the report, including financial statements, financial statement schedules, exhibits, and all other papers and documents filed as a part thereof, and five additionsal copies which need not include exhibits, shall be filed with the Commission. At least one complete copy of the report, including financial statements, financial statement schedules, exhibits, and all other papers and documents filed as a part thereof, shall be filed with each exchange on which any class of securities of the registrant is registered. At least one complete copy of the report filed with the Commission and one such copy filed with each exchange shall be manually signed. Copies not manually signed shall bear typed or printed signatures.

The report shall be signed by the registrant, and on behalf of the registrant by its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least the majority of the board of directors or persons performing similar functions.

E. Disclosure With Respect to Foreign Subsidiaries. Information required by any item or other requirement of this form with respect to any foreign subsidiary may be omitted to the extent that the required disclosure would be detrimental to the registrant. However, financial statements and financial statement schedules, otherwise required, shall not be omitted pursuant to this Instruction. Where information is omitted pursuant to this Instruction, a statement shall

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Footnotes continued from last page

which announced the adoption of amendments to Regulation S–X that permit oil and gas producers to disclose certain required information as supplemental information accompanying, but outside, the financial statements. However, the Commission did not intend by this action to affect its proposal in Securities Act Release No. 6176 to require disclosure in annual reports to security holders of all financial information required by Regulation S–X except certain exhibits and financial statement schedules. An instructional note has accordingly been added to the amendments to Rule 14a–3(b)(1) and Rule 14c–3(a)(1) to clarify that annual reports to security holders must include the information required by revised Rule 4–10(k) of Regulation S–X.

[27] *Id.*

be made that such information has been omitted and the names of the subsidiaries involved shall be separately furnished to the Commission. The Commission may, in its discretion, call for justification that the required disclosure would be detrimental.

F. Information as to Employee Stock Purchase, Savings and Similar Plans. Attention is directed to Rule 15d–21 which provides that separate annual and other reports need not be filed pursuant to Section 15(d) of the Act with respect to any employee stock purchase, savings or similar plan if the issuer of the stock or other securities offered to employees pursuant to the plan furnishes to the Commission the information and documents specified in the Rule.

G. Information to be Incorporated by Reference. (1) Attention is directed to Rule 12b–23 which provides for the incorporation by reference of information contained in certain documents in answer or partial answer to any item of a report.

(2) The information called for by Parts I and II of this Form (Items 1 through 8 or any portion thereof) may, at the registrant's option, be incorporated by reference from the registrant's annual report to security holders furnished to the Commission pursuant to Rule 14a–3(b) or Rule 14c–3(a) or from the registrant's annual report to security holders, even if not furnished to the Commission pursuant to Rule 14a–3(b) or Rule 14c–3(a): *Provided*, Such annual report contains the information required by Rule 14a–3.

Note.—In order to fulfill the requirements of Part I of Form 10–K the incorporated portion of the annual report to security holders must contain the information required by Items 1–4 of Form 10–K, to the extent applicable.

(3) The information called for by Part III (Items 9 and 10) shall be incorporated by reference from the registrant's definitive proxy statement (filed or to be filed pursuant to Regulation 14A) or definitive information statement (filed or to be filed pursuant to Regulation 14C) which involves the election of directors, if such definitive proxy statement or information statement is filed with the Commission not later than 120 days after the end of the fiscal year covered by the Form 10–K. However, if such definitive proxy or information statement is not filed with the Commission in the 120-day period, the Items comprising the Part III information must be filed as part of the Form 10–K, or as an amendment to the Form 10–K under cover of Form 8, not later than the end of the 120-day period. It should be noted that the information regarding executive officers called for by Item 3 of Regulation S–K may be included in Part I of Form 10–K under an appropriate caption. *See* Instruction 4 to Item 3(b) of Regulation S–K (17 CFR 229.20).

(4) No item numbers or captions of items need by contained in the material incorporated by reference into the report. However, the registrant's attention is directed to Rule 12b–23(e) regarding the specific disclosure required in the report concerning information incorporated by reference. When the registrant combines all of the information in Parts I and II of this Form (Items 1 through 8) by incorporation by reference from the registrant's annual report to security holders and all of the information in Part III of this Form (Items 9 and 10) by incorporation by reference from a definitive proxy statement or information statement involving the election of directors, the, notwithstanding General Instruction C(1), this Form shall consist of the facing or cover page, those sections incorporated from the annual report to security holders, the proxy or information statement, and the information, if any, required by Part IV of this Form, signatures, and a cross reference sheet setting forth the item numbers and captions in Parts I, II and III of this Form and the page and/or pages in the referenced materials where the corresponding information appears.

H. Registrants Filing on Form S–18. If the registrant is subject to the reporting requirements of Section 15(d) of the Exchange Act and such obligation arises solely because the registrant has filed a registration statement on Form S–18 (17 CFR 239.28) which has become effective during the last fiscal year, the registrant may comply with the disclosure requirements of Form S–18 Item 6, Description of Business; Item 10, Remuneration of Directors and Officers; and Item 13, Interest of Management and Others in Certain Transactions, in lieu of complying with the disclosure requirements of Item 1, Business, and Item 10, Management Remuneration and Transactions, herein. Item 6 of this Form, Selected Financial Data, may be omitted at the election of such registrant.

If a registrant remains subject to Section 15(d), or becomes subject to Section 12, after the year of its Form S–18 offering, it will then be required to comply with the general Form 10–K item requirements for its subsequent reports.

I. Omission of Information by Certain Wholly-Owned Subsidiaries. If, on the date of the filing of its report on Form 10–K, the registrant meets the conditions specified in paragraph (1) below, then such registrant may furnish the abbreviated narrative disclosure specified in paragraph (2) below.

(1) Conditions for availability of the relief specified in paragraph (2) below.

(a) All of the registrant's equity securities are owned, either directly or indirectly, by a single person which is a reporting company under the Act and which has filed all the material required to be filed pursuant to section 13, 14, or 15(d) thereof, as applicable, and which is named in conjunction with the registrant's description of its business;

(b) During the preceding thirty-six calendar months and any subsequent period of days, there has not been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within thirty days, with respect to any indebtedness of the registrant or its subsidiaries, and there has not been any material default in the payment of rentals under material long-term leases; and

(c) There is prominently set forth, on the cover page of the Form 10–K, a statement that the registrant meets the conditions set forth in General Instruction I(1) (a) and (b) of Form 10–K and is therefore filing this Form with the reduced disclosure format.

(2) Registrants meeting the conditions specified in paragraph (1) above are entitled to the following relief:

(a) Such registrants may omit the information called for by Item 6, Selected Financial Data, and Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations provided that the registrant includes in the Form 10–K a management's narrative analysis of the results of operations explaining the reasons for material changes in the amount of revenue and expense items between the most recent fiscal year presented and the fiscal year immediately preceding it. Explanations of material changes should include, but not be limited to, changes in the various elements which determine revenue and expense levels such as unit sales volume, prices charged and paid, production levels, production cost variances, labor costs and discretionary spending programs. In addition, the analysis should include an explanation of the effect of any changes in accounting principles and practices or method of application that have a material effect on net income as reported.

(b) Such registrants may omit the list of subsidiaries exhibit called for by Item 7 of Regulation S–K (17 CFR 229.20).

(c) Such registrants may omit the information called for by the following otherwise required Items: Item 4, Security Ownership of Certain Beneficial Owners and Management; Item 9, Directors and Executive Officers of the Registrant; and Item 10, Management Remuneration and Transactions.

(d) In response to Item 1, Business, such registrant only need furnish a brief description of the business done by the registrant and its subsidiaries during the most recent fiscal year which will, in the opinion of management, indicate the general nature and scope of the business of the registrant and its subsidiaries, and in response to Item 2, Properties, such registrant only need furnish a brief description of the material properties of the registrant and its subsidiaries to the extent, in the opinion of the management, necessary to an understanding of the business done by the registrant and its subsidiaries.

Securities and Exchange Commission,
Washington, D.C.

Form 10–K

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the fiscal year ended _____
Commission file number _____

(Exact name of registrant as specified in its charter)

(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification No.)

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code _____

Securities registered pursuant to Section 12(b) of the Act:

Title of each class

Name of each exchange on which registered

Securities registered pursuant to Section 12(g) of the Act:

(Title of class)

(Title of class)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ——, No ——.

State the aggregate market value of the voting stock held by nonaffiliates of the registrant. The aggregate market value shall be computed by reference to the price at which the stock was sold, or the average bid and asked prices of such stock, as of a specified date within 60 days prior to the date of filing. (See definition of affiliate in Rule 405, 17 CFR 230.405).

Applicable Only to Registrants Involved in Bankruptcy Proceedings During the Preceding Five Years

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Section 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court.
Yes ———— No ————

(Applicable Only to Corporate Registrants)

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date.

Documents Incorporated by Reference

List hereunder the following documents if incorporated by reference and the Part of the Form 10–K (e.g., Part I, Part II, etc.) into which the document is incorporated: (1) Any annual report to security holders; (2) Any proxy or information statement; and (3) Any prospectus filed pursuant to Rule 424(b) or (c) under the Securities Act of 1933. The listed documents should be clearly described for identification purposes (e.g., annual report to security holders for fiscal year ended December 24, 1980).

Part I

[See General Instruction G(2)]

Item 1. Business. Furnish the information required by Item 1 of Regulation S–K (17 CFR 229.20) except that the discussion of the development of the registrant's business need only include developments since the beginning of the fiscal year for which this report is filed.

Item 2. Properties. Furnish the information required by Item 2 of Regulation S–K (17 CFR 229.20).

Item 3. Legal Proceedings. Furnish the information required by Item 5 of Regulation S–K (17 CFR 229.20).

Item 4. Security Ownership of Certain Beneficial Owners and Management. Furnish the information required by Item 6 of Regulation S–K (17 CFR 229.20).

Part II

[See General Instruction G(2)]

Item 5. Market for the Registrant's Common Stock and Related Security Holder Matters. Furnish the information required by Item 9 of Regulation S–K (17 CFR 229.20).

Item 6. Selected Financial Data. Furnish the information required by Item 10 of Regulation S–K (17 CFR 229.20).

In addition, (a) if debt securities are registered under Section 12 of the Act, the registrant may, at its option, show in tabular form for each fiscal year the ratio of earnings to fixed charges. If appropriate, the ratio of earnings to fixed charges for such periods shall also be shown on a total enterprise basis in a position of equal prominence with the ratio for the registrant or the registrant and its consolidated subsidiaries (*See* Accounting Series Release No. 122).

(b) Earnings shall be computed after all operating and income deductions except fixed charges and taxes based on income or profits and after eliminating undistributed income of unconsolidated subsidiaries and 50 percent or less owned persons. In the case of utilities, interest credits charged to construction shall be added to gross income and not deducted from interest.

(c) The term "fixed charges" shall mean (i) interest and amortization of debt discount and expense and premium on all indebtedness; (ii) such portion of rentals as can be demonstrated to be representative of the interest factor in the particular case; and (iii) in case consolidated figures are used, preferred stock dividend requirements of consolidated subsidiaries, excluding in all cases items eliminated in consolidation.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations. Furnish the information required by Item 11 of Regulation S–K (17 CFR 229.20).

Item 8. Financial Statements and Supplementary Data. Financial statements meeting the requirements of Regulation S–X (17 CFR 210) and the supplementary financial information specified by Item 12 of Regulation S–K (17 CFR 229.20) shall be filed. Financial statements of the registrant and its subsidiaries consolidated [as required by Rule 14a–3(b)] shall be filed under this Item. Other financial statements and schedules required under Regulation S–X may be filed as "Financial Statement Schedules" pursuant to item 11, Exhibits, Finance Statement Schedules, and Reports on Form 8–K, of this form.

Notwithstanding the above, if the issuer is subject to the reporting provisions of Section 15(d) and such obligation results solely from the issuer having filed a registration statement on Form S–18 which became effective under the Securities Act of 1933 during the last fiscal year, or such obligation applies as to the first or second fiscal year after the registration statement on Form S–18 became effective solely because the issuer had on the first day of the pertinent fiscal year 300 or more record holders of any of its securities to which the Form S–18 related, audited financial statements for the issuer, or for the issuer and its predecessors, may be presented as provided below. The report of the independent accountant shall in all events comply with the requirements of Article 2 of Regulation S–X.

(a) A Form 10–K filed for the fiscal year during which the registrant had a registration statement on Form S–18 become effective may include the following financial statements prepared in accordance with generally accepted accounting principles:

(1) A balance sheet as of the end of each of the two most recent fiscal years; and

(2) Consolidated statements of income, statements of changes in financial condition, and statements of other stockholders' equity for each of the two fiscal years preceding the date of the most recent audited balance sheet being filed.

(b) A Form 10–K filed for the first fiscal year after the registrant had a registration statement on Form S–18 become effective may include financial statements prepared as follows:

(1) Financial statements for the most recent fiscal year prepared in accordance with Regulation S–X, Form and Content of and Requirements for Financial Statements; and

(2) Financial statements previously disclosed in accordance with paragraph (a) for the prior year. These statements do not need to include the compliance items and schedules of Regulation S–X, but should be recast to show the same line items as are set forth for the most recent fiscal year.

(c) A Form 10–K filed for the second fiscal year after the registrant had a registration statement on Form S–18 become effective may include financial statements for the two most recent fiscal years prepared in accordance with Regulation S–X (17 CFR Part 210).

Part III

[See General Instruction G(3)]

Item 9. Directors and Executive Officers of the Registrant. Furnish the information required by Item 3 of Regulation S–K (17 CFR 229.20).

Item 10. Management Remuneration and Transactions. Furnish the information required by Item 4 of Regulation S–K (17 CFR 229.20).

Part IV

Item 11. Exhibits, Financial Statement Schedules, and Reports on Form 8–K. (a) List the following documents filed as a part of the report:

1. All financial statements;

2. Those financial statement schedules required to be filed by Item 8 of this Form, and by paragraph (d) below.

3. Those exhibits required to be filed by Item 7 of Regulation S–K (17 CFR 229.20) and by paragraph (c) below; and Instruction. Where any financial statement, financial statement schedule, or exhibit is incorporated by reference, the incorporation by reference shall be set forth in the list required by this Item. For purposes of all rules concerning incorporation by reference a financial statement schedule shall constitute an "exhibit." *See* Rule 12b–23.

(b) Reports on Form 8–K. State whether any reports on Form 8–K have been filed during the last quarter of the period covered by this report, listing the items reported, any financial statements filed and the dates of any such reports.

(c) Registrants shall file, as exhibits to this Form, the exhibits required by Item 7 of Regulation S–K (17 CFR 229.20).

(d) Registrants shall file, as financial statement schedules to this Form, the financial statements required by Regulation S–X (17 CFR 210) which are excluded from the annual report to shareholders by Rule 14a-3(b)(1), including (1) separate financial statements of the registrant only (where consolidated financial statements of the registrant and its subsidiaries are included); (2) separate financial statements of subsidiaries not consolidated and fifty percent or less owned persons; (3) separate financial statements of consolidated majority-owned subsidiaries of the registrant engaged in diverse financial activities; (4) separate financial statements of affiliates whose securities are pledged as collateral; and (5) schedules.

Signatures

[See General Instruction D]

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Registrant) _____
By (Signature and Title) * _____
Date _____

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

(Signature and Title) * _____
(Date) _____

* * * * *

(Signature and Title) * _____
(Date) _____

Supplemental Information to be Furnished With Reports Filed Pursuant to Section 15(d) of the Act by Registrants Which Have Not Registered Securities Pursuant to Section 12 of the Act.

(a) Except to the extent that the materials enumerated in (1) and/or (2) below are specifically incorporated into this Form by reference (in which case *see* Rule 12b–23(d)), every registrant which files an annual report on this Form pursuant to Section 15(d) of the Act shall furnish to the Commission for its information, at the time of filing its report on this Form, four copies of the following:

(1) Any annual report to security holders covering the registrant's last fiscal year; and

(2) Every proxy statement, form of proxy or other proxy soliciting material sent to more than ten of the registrant's security holders with respect to any annual or other meeting of security holders.

(b) The foregoing material shall not be deemed to be "filed" with the Commission or otherwise subject to the liabilities of Section 18 of the Act, except to the extent that the registrant specifically incorporates it in its annual report on this Form by reference.

(c) If no such annual report or proxy material has been sent to security holders, a statement to that effect shall be included under this caption. If such report or proxy material is to be furnished to security holders subsequent to the filing of the annual report on this Form, the registrant shall so state under this caption and shall furnish copies of such material to the Commission when it is sent to security holders.

2. By revising Item 2 of § 249.210 to read as follows:

§ 249.210 Form 10, general form for registration of securities pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934.

* * * * *

Item 2. Selected Financial Data; Management's Discussion and Analysis of Financial Condition and Results of Operations.

Furnish the information required by Items 10 and 11 of Regulation S–K (17 CFR 229.20).

In addition, (a) if debt securities are being registered, the registrant may, at its option, show in tabular form for each fiscal year the ratio of earnings to fixed charges. If appropriate, the ratio of earnings to fixed charges for such periods shall also be shown on a total enterprise basis in a position of equal prominence with the ratio for the registrant or the registrant and its consolidated subsidiaries.

(b) Earnings shall be computed after all operating and income deductions except fixed charges and taxes based on income or profits and after eliminating undistributed income of unconsolidated subsidiaries and 50 percent or less owned persons. In the case of utilities, interest credits charged to construction shall be added to gross income and not deducted from interest.

(c) The term "fixed charges" shall mean (i) interest and amortization of debt discount and expense and premium on all indebtedness; (ii) such portion of rentals as can be demonstrated to be representative of the interest factor in the particular case; and (iii) in case consolidated figures are used, preferred stock dividend requirements of consolidated subsidiaries, excluding in all cases items eliminated in consolidation.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S–K

3. Section 229.20 is amended as follows:

a. Item 1 is amended as set forth below by: revising paragraphs (b)(1), (c)(1)(i), the introductory text of paragraph (c)(2) and paragraph (c)(2)(i), the introductory text of paragraph (d) and paragraph (d)(3); by deleting paragraph (d)(4); by revising instructions 2 and 3 and deleting instruction 4 in the instructions to item 1 (d); and by revising Appendix A.

b. Item 7 (which was added at 45 FR 58825, Sept. 5, 1980) is amended in paragraph (a) by adding item 22 to Table II. Item 7 is also amended by adding paragraph (b) (22). These additions are set forth below.

c. Items 9, 10, and 11, are added as set forth below. (Item 8 is reserved for future use.)

§ 229.20 Information required in document.

Item 1. Description of business. * * *

(b) *Financial information about industry segments*—(1) *Industry segments.* State for each of the registrant's last three fiscal years or for each fiscal year the registrant has been engaged in business, whichever period is shorter, the amounts of revenue from sales to unaffiliated customers, operating profit or loss and identifiable assets attributable to each of the registrant's industry segments. (See Appendix A for a suggested tabular format for presentation of this information.)

(i) The prior period information shall be retroactively restated in the following circumstances, unless not material, with appropriate disclosure of the nature and effect of the restatement.

(A) When the financial statements of the registrant as a whole have been retroactively restated.

(B) When there has been a change in the way the registrant's products or services are grouped into industry segments and such change affects the segment information being reported. Restatement is not required when a registrant's reportable segments change solely as a result of a change in the nature of its operations or as a result of a segment losing or gaining in significance.

(ii) If the registrant includes in the document interim period financial information, discuss any facts relating to the performance of any of the segments during the period which, in the opinion of management, indicate that the three-year segment financial data may not be indicative of current or future operations of the segment. Comparative financial information shall be included to the extent necessary to the discussion.

Instructions to Item 1(b)(1). 1. To the extent that the financial information included pursuant to this Item complies with generally accepted accounting principles, the registrant may include in its financial statements a cross reference to this data in lieu of presenting duplicative information about its segments in the financial statements [Conversely, a registrant may cross reference to the financial statements.].

2. In determining what information about the industry segments is material to an understanding of the registrant's business taken as a whole and therefore should be disclosed, the registrant should take into

* Print the name and title of each signing officer under his signature.

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account both quantitative and qualitative factors such as the significance of the matter to the registrant (for example, whether a matter with a relatively minor impact on the company's business is represented by management to be important to its furture profitability), the pervasiveness of the matter (for example, whether it affects or may affect numerous items in the segment information) and the impact of the matter (for example, whether it distorts the trends reflected in the segment information). Situations may arise when information should be disclosed about a segment, although the information in quantitative terms may not appear signficant to the registrant's business taken as a whole.

* * * * *

(c) *Narrative description of business.*

(1) * * *

(i) The principal products produced and services rendered by the registrant in the industry segment and the principal markets for, and methods of distribution of, the segment's principal products and services. In addition, state for each of the last three fiscal years the amount or percentage of total revenue contributed by any class of similar products or services which accounted for 10 percent or more of consolidated revenue in either of the last three fiscal years or 15 percent or more of consolidated revenue if total revenue did not exceed $50,000,000 during either of such fiscal years.

* * * * *

(2) The matters specified in paragraphs (c)(2)(i) through (iv) of this section shall be discussed with respect to the registrant's business in general. Where material, identify the industry segments to which these matters are significant.

(i) If material, the estimated amount spent during each of the last three fiscal years on company-sponsored research and development activities determined in accordance with generally accepted accounting principles. In addition, state the estimated dollar amount spent during each of such years on material customer-sponsored research activities relating to the development of new products, services or techniques or the improvement of existing products, services or techniques.

* * * * *

(d) *Financial information about foreign and domestic operations and export sales.* State for each of the registrant's last three fiscal years, or for each fiscal year the registrant has been engaged in business, whichever period is shortest, the amounts of revenue (with sales to unaffiliated customers and sales or transfers to other geographic areas shown separately), profitability, and identifiable assets attributable to each of the registrant's geographic areas and the amount of export sales in the aggregate or by appropriate geographic area to which the sales are made. (*See* Appendix B for a suggested tabular format for presentation of this information.)

* * * * *

(3) If the registrant includes in the document interim period financial information, discuss any facts relating to the information furnished pursuant to this paragraph (d) which, in the opinion of management, indicate that the three year financial data for foreign and domestic operations or export sales may not be indicative of current or future operations. Comparative information shall be included to the extent necessary to the discussion.

Instructions to Item 1(d). 1. * * *

2. *See* Instruction 1 to Item 1(b)(1).

3. In determining what information about the geographic areas and export sales is material to an understanding of the registrant's business taken as a whole and therefore should be disclosed, the registrant should take into account both quantitative and qualitative factors such as the significance of the matter to the registrant (for example, whether a matter with a relatively minor impact on the company's business is represented by management to be important to its future profitability), the pervasiveness of the matter (for example, whether it affects or may affect numerous items of the information) and the impact of the matter (for example, whether it distorts the trends reflected in the geographic area or export sales information). Situations may arise when information should be disclosed about the geographic areas or export sales, although the information in quantitative terms may not appear significant to the registrant's business taken as a whole.

* * * * *

Appendix A—Industry Segments

The table set forth below is illustrative of the format that might be used for presenting the segment information required by paragraphs (b) and (c)(1)(i) of Item 1 of Regulation S–K regarding industry segments and classes of similar products or services.

Financial Information Relating to Industry Segments and Classes of Products or Services

	Year—		
	1	2	3
Sales to unaffiliated customers:			
Industry segment A:			
Class of product 1			
Class of product 2			
Industry segment B:			
Class of product 1			
Class of product 2			
Industry segment C:			
Other industries			
Operating profit or loss:			
Industry segment A			
Industry segment B			
Industry segment C			

Financial Information Relating to Industry Segments and Classes of Products or Services—Continued

	Year—		
	1	2	3
Other industries			
Indentifiable assets:			
Industry segment A			
Industry segment B			
Industry segment C			
Other industries			

* * * * *

Item 7. Exhibits.

(a) * * *

* * * * *

Table II.—*Securities Exchange Act of 1934—Frequently Used Forms*

	Form 10	8-K	10-Q	10-K
*	*	*	*	*	*	*
(22) Subsidiaries of the registrant				X

(b) * * *

* * * * *

(22) List all subsidiaries of the registrant, the state or other jurisdiction of incorporation or organization of each, and the names under which such subsidiaries do business. The names of particular subsidiaries may be omitted if the unnamed subsidiaries, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as of the end of the year covered by this report. (See the definition of "significant subsidiary" in Rule 1.02(v) (17 CFR 210.1–02(v)) of Regulation S–X). This list should be repeated in each annual filing or an express reference made to the most recent filing containing a complete and accurate list.

Item 8. [Reserved For Future Use]

Item 9. Market Price of the Registrant's Common Stock and Related Security Holder Matters.

(a) Identify the principal market or markets on which the registrant's common stock is being traded and, if a principal market for such stock is an exchange, state the high and low sales prices for the stock as reported in the consolidated transaction reporting system or, if not so reported, on such principal exchange for each quarterly period during the past two years. If the principal market for such common stock is not an exchange, state the range of high and low bid quotations for each quarterly period during the past two years, the source of such quotations and, if there is no market for such stock (excluding limited or sporadic quotations), furnish a statement to that effect.

(b) Set forth the approximate number of holders of common stock securities of the registrant as of the latest practicable date.

(c) State the frequency and amount of any dividends paid during the past two years with respect to such common stock and briefly describe any restriction on the issuer's present or future ability to pay such dividends.

(d) Where registrants have a record of paying no dividends although earnings indicate an ability to do so, they are encouraged to consider the question of their intention to pay cash dividends in the foreseeable future and, if no such intention exists to make a statement of that fact in the filing. Registrants which have a history of paying dividends are also encouraged to indicate whether there is a present expectation that dividends will continue to be paid in the future.

Instructions. 1. The computation of the approximate number of holders of such common stock may be based upon the number of record holders or may also include individual participants in security position listings. See Rule 17Ad–8 (17 CFR 240.17Ad–8). The method of computation which is chosen should be indicated.

2. If the registrant is a foreign issuer: (a) Describe briefly any governmental laws, decrees or regulations in the country in which the registrant is organized relating to restrictions on the export or import of capital, including but not limited to foreign exchange controls, affecting the remittance of dividends, interest and other payments to nonresident holders of the registrant's securities.

(b) State whether there are any limitations, either by the law of the country under which the registrant is organized or in the charter or other constituent document of the registrant, on the right of foreigners to hold or vote securities. Outline briefly any such limitations.

(c) Outline briefly all taxes, including withholding provisions, to which United States security holders are subject under existing laws and regulations of the foreign country of origin. A brief description of pertinent provisions of any reciprocal tax treaties between such foreign country and the United States regarding withholding should be included. If there are no such treaties, so state.

Item 10. Selected Financial Data.

Furnish in comparative columnar form a summary of selected financial data for the registrant, for

(a) Each of the last five fiscal years of the registrant (or for the life of the registrant and its predecessors, if less), and

(b) Any additional fiscal years necessary to keep the summary from being misleading.

Instructions. 1. The purpose of the summary of selected financial data shall be to supply in a convenient and readable format selected data which highlight significant trends in the registrant's financial condition and results of operations.

2. Subject to appropriate variation to conform to the nature of the registrant's business, the following items shall be included in the summary: net sales or operating revenues; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long-term obligations and redeemable preferred stock (including long-term debt, capital leases, and redeemable preferred stock as defined in ASR 268); and cash dividends declared per common share. Registrants may include additional items which they believe would enhance an understanding of and would highlight trends in their financial condition and results of operations.

3. Those registrants which are required to provide five-year summary information in accordance with SFAS 33 may combine such information with the selected financial data appearing pursuant to this Item.

4. All references to the registrant in the Summary and in these Instructions shall mean the registrant and its consolidated subsidiaries.

Item 11. Management's Discussion and Analysis of Financial Condition and Results of Operations.

Discuss registrant's financial condition, changes in financial condition and results of operations. The discussion shall provide information as specified in paragraphs (a), (b) and (c) of this section with respect to liquidity, capital resources, and results of operations, and should also provide such other information which the registrant believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations. Discussions of liquidity and capital resources may be combined whenever the two topics are interrelated. Where in the registrant's judgment a discussion of segment information or of other subdivisions of the registrant's business would be appropriate to an understanding of such business, the discussion should focus on each relevant, reportable segment or other subdivision of the business and on the registrant as a whole.

(a) *Liquidity.* Identify any known trends or any known demands, commitments, events or uncertainties which will result in or which are reasonably likely to result in the registrant's liquidity increasing or decreasing in any material way. If a material deficiency is identified, indicate the course of action which the registrant has taken or proposes to take to remedy the deficiency. Identify and separately describe internal and external sources of liquidity, and briefly discuss any material unused sources of liquid assets.

(b) *Capital resources.* (1) Describe the registrant's material commitments for capital expenditures as of the end of the latest fiscal period, and indicate the general purpose of such commitments and the anticipated source of funds needed to fulfill such commitments.

(2) Describe any known material trends, favorable or unfavorable, in the registrant's capital resources. Indicate any expected material changes in the mix and the relative cost of such resources. This discussion should consider changes between equity, debt and any off-balance sheet financing arrangements.

(c) *Results of operations.* (1) Describe any unusual or infrequent events or transactions or any significant economic changes which materially affected the amount of reported income from continuing operations and, in each case, indicate the extent to which income was so affected. In addition, describe any other significant components of revenues or expense which, in the registrant's judgment, should be described in order to understand the registrant's results of operations.

(2) Describe any known trends or uncertainties which have had or which the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations. If the registrant knows of events which will cause a material change in the relationship between costs and revenues (such as known future increases in costs of labor or materials or price increases or inventory adjustments) the change in the relationship should be disclosed.

(3) To the extent that the financial statements disclose material increases in net sales or revenues, provide a narrative discussion of the extent to which such increases are attributable to increases in prices or to increases in the volume or amount of goods or services

being sold or to the introduction of new products of services.

(4) For the three most recent fiscal years of the registrant, or for those fiscal years beginning after December 25, 1979, or for those fiscal years in which the registrant has been engaged in business, whichever period is shorter, discuss the impact of inflation and changing prices on the registrant's net sales and revenues and on income from continuing operations.

Instructions. 1. The registrant's discussion and analysis shall be of the financial statements and of other statistical data which the registrant believes will enhance a reader's understanding of its financial condition, changes in financial condition and results of operations. Generally, the discussion should cover the three year period covered by the financial statements and should utilize year-to-year comparisons or any other formats which in the registrant's judgment enhance a reader's understanding. However, where trend information is relevant, reference to the five year selected financial data appearing in Item 10 of Regulation S–K may be necessary.

2. The purpose of the discussion and analysis should be to provide to investors and other users information relevant to an assessment of the financial condition and results of operations of the registrant as determined by evaluating the amounts and certainty of cash flows from operations and from outside sources. The information provided in this Item 11 need only include that which is available to the registrant without undue effort or expense but which does not clearly appear in the registrant's financial statements.

3. The discussion and analysis should specifically focus on material events and uncertainties known to management which would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This would include description and amounts of (a) matters which would have an impact on future operations and have not had an impact in the past, and (b) matters which have had an impact on reported operations and are not expected to have an impact upon future operations.

4. Where the consolidated financial statements reveal material changes from year to year in one or more line items, the causes for the changes should be described to the extent necessary to an understanding of the registrant's businesses as a whole: *Provided, however,* If the causes for a change in one line item also relate to other line items, no repetition is required and a line-by-line analysis of the financial statements as a whole is not required or generally appropriate. Registrants need not recite the amounts of changes from year to year which are readily computable from the financial statements. The discussion should not merely repeat numerical data contained in the consolidated financial statements.

5. The term "liquidity" as used in paragraph (a) of this Item refers to the ability of an enterprise to generate adequate amounts of cash to meet the enterprise's needs for cash. Except where it is otherwise clear from the discussion, the registrant should indicate those balance sheet conditions or income or cash flow items which the registrant believes may be indicators of its liquidity condition. Liquidity generally should be discussed on both a long-term and short-term basis. The issue of liquidity should be discussed in the context of the registrant's own business or businesses. For example, a discussion of working capital may be appropriate for certain manufacturing, industrial or related operations but might be inappropriate for a bank or public utility.

6. Registrants are encouraged, but not required, to supply forward-looking information. This is to be distinguished from presently-known data which will impact upon future operating results, such as known future increases in costs of labor or materials. This latter data may be required to be disclosed. Any forward-looking information supplied is expressly covered by the safe harbor rule for projections. See Securities Act Release No. 6084 (June 25, 1979) (44 FR 38810).

7. Registrants which are required to provide narrative explanations of supplementary information disclosed in accordance with paragraph 37 of SFAS 33 may combine such explanations with the registrant's discussion and analysis required pursuant to this provision or may supply such information separately. If such statement is combined, the supplementary information required by SFAS 33 shall be located in reasonable proximity to the discussion and analysis. If such statement is not combined the discussion of the impact of inflation otherwise required by ths item may be omitted but an appropriate cross reference to the explanation required by paragraph 37 of SFAS 33 shall be made. Foreign registrants need not comply with SFAS 33 but if, in its home country, a foreign registrant must satisfy requirements that are analogous to SFAS No. 33, then such analogous presentation shall be given.

8. Registrants which are not required to provide explanations of supplementary information disclosed in accordance with SFAS 33 (including foreign private registrants) may discuss the effects of inflation and changes in prices in whatever manner appears appropriate under the circumstances. Although voluntary compliance with SFAS 33 is encouraged, it is not required. All that is required is a brief textual presentation of management's views. No specific numeric financial data need be presented.

9. All references to the registrant in the discussion and in these instructions shall mean the registrant and its subsidiaries consolidated.

10. Foreign private registrants should also discuss briefly any pertinent governmental economic, fiscal, monetary, or political policies or factors which have materially affected or could materially affect, directly or indirectly, company operations or investments by United States nationals.

PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

4. Part 231 is amended by rescinding Guide 22, "Summary of Earnings," of the Guides for the Preparation and Filing of Registration Statements Under the Securities Act of 1933 (Securities Act of 1933 Release No. 4936 (Dec. 9, 1968) [33 FR 18617]; Securities Act of 1933 Release No. 5520 (August 14, 1978) [39 FR 31894]).

5. Part 231 is amended by rescinding Guide 26, "Statement of Dividend Policy," of the Guides for the Preparation and Filing of Registration Statements Under the Securities Act of 1933 (Securities Act of 1933 Release No. 4936 (December 9, 1968) (33 FR 18617)).

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

6. By revising Item 6 and amending the Instructions As to Summary Prospectuses of § 239.11 to read as follows:

§ 239.11 Form S–1, registration statement under the Securities Act of 1933.

* * * * *

Item 6. Selected Financial Data; Management's Discussion and Analysis of Financial Condition and Results of Operations. Furnish the information required by Items 10 and 11 of Regulation S–K (17 CFR 229.20).

In addition, (a)(1) If debt securities are being registered, the registrant shall show in tabular form for each fiscal year or other period the ratio of earnings to fixed charges. If appropriate, the ratio of earnings to fixed charges for such periods shall also be shown on a total enterprise basis in a position of equal prominence with the ratio for the registrant or the registrant and its consolidated subsidiaries (see Accounting Series Release No. 122). There shall also be shown for the most recent fiscal year or twelve months a pro forma ratio of earnings to fixed charges, adjusted to give effect to (i) the issuance of the securities being registered, (ii) any issuance, retirement or redemption of securities during such period, or (iii) any issuance, retirement or redemption of securities after, or presently proposed for one year after, such period.

(2) Earnings shall be computed after all operating and income deductions except fixed charges and taxes based on income or profits and after eliminating undistributed income of unconsolidated subsidiaries and 50 percent or less owned persons. In the case of utilities, interest credits charged to construction shall be added to gross income and not deducted from interest.

(3) The term "fixed charges" shall mean (i) interest and amortization of debt discount and expense and premium on all indebtedness; (ii) such portion of rentals as can be demonstrated to be representative of

the interest factor in the particular case; and (iii) in case consolidated figures are used, preferred stock dividend requirements of consolidated subsidiaries, excluding in all cases items eliminated in consolidation.

(b) If long-term debt or preferred stock is being registered, there shall be shown the annual interest requirements of such long-term debt or the annual dividend requirements on such preferred stock. To the extent that an issue represents refunding or refinancing, only the additional annual interest or dividend requirements shall be stated. If preferred stock is being registered, there shall also be shown in tabular form for each fiscal year or other period the ratio of earnings to combined fixed charges and preferred dividend requirements.

(c) For the purpose of computing the pro forma ratio required in paragraph (a)(1), an assumed maximum interest rate may be used on securities as to which the interest rate has not yet been fixed, which assumed rate shall be shown.

* * * * *

Instructions as to Summary Prospectuses

A summary prospectus used pursuant to Rule 434A (17 CFR 230.434a) shall at the time of its use contain such of the information specified below as is then included in the registration statement. All other information and documents contained in the registration statement may be omitted.

(a) As to Item 1, the aggregate offering price to the public, the aggregate underwriting discounts and commissions and the offering price per unit to the public; as to item 2(a), the name of the managing underwriter or underwriters and a brief statement as to the nature of the underwriter's obligation to take the securities; as to Item 2(c), a brief statement as to the manner of distribution; as to Item 3, a brief statement of the principal purposes for which the proceeds are to be used; Item 4; Item 5; as to Item 6, only the selected financial data (Item 10 of Regulation S–K) and the ratio of earnings to fixed charges (Sub-items 6a–6c) need be provided; Item 7, if the registrant was organized within 5 years; as to Item 9, a brief statement of the general character of the business done and intended to be done; Item 11(a); as to Item 12, a brief statement of the nature and present status of any material pending legal proceedings; as to Item 13, only 13(a) (1) and (2); as to Item 14(a), a brief statement as to interest and maturity provisions; as to Item 15, information corresponding to the foregoing and Item 18(b) as to outstanding options to purchase securities of any class being registered.

* * * * *

7. By revising Item 6 and amending Instruction 1(g) of the Instructions as to Summary Prospectuses of § 239.26 to read as follows:

§ 239.26 Form S–7, for registration under the Securities Act of 1933 of securities of certain issuers.

* * * * *

Item 6. Selected Financial Data; Management's Discussion and Analysis of Financial Condition and Results of Operations. Furnish the information required by Items 10 and 11 of Regulation S–K (17 CFR 229.20).

In addition, (a)(1) if debt securities are being registered, the registrant shall show in tabular form for each fiscal year or other period the ratio of earnings to fixed charges. If appropriate, the ratio of earnings to fixed charges for such periods shall also be shown on a total enterprise basis in a position of equal prominence with the ratio for the registrant or the registrant and its consolidated susidiaries (see Accounting Series Release No. 122). There shall also be shown for the most recent fiscal year or twelve months a pro forma ratio of earnings to fixed charges, adjusted to give effect to (i) the issuance of the securities being registered, (ii) any issuance, retirement or redemption of securities during such period, or (iii) any issuance, retirement or redemption of securities after, or presently proposed for one year after, such period.

(2) Earnings shall be computed after all operating and income deductions except fixed charges and taxes based on income or profits and after eliminating undistributed income of unconsolidated subsidiaries and 50 percent or less owned persons. In the case of utilities, interest credits charged to construction shall be added to gross income and not deducted from interest.

(3) The term "fixed charges" shall mean (i) interest and amortization of debt discount and expense and premium on all indebtedness; (ii) such portion of rentals as can be demonstrated to be representative of the interest factor in the particular case; and (iii) in case consolidated figures are used, preferred stock dividend requirements of consolidated subsidiaries, excluding in all cases items eliminated in consolidation.

(b) If long term debt or preferred stock is being registered, there shall be shown the annual interest requirements of such long term debt or the annual dividend requirements on such preferred stock. To the extent that an issue represents refunding or refinancing, only the additional annual interest or dividend requirements shall be stated. If preferred stock is being registered, there shall also be shown in tabular form for each fiscal year or other period the ratio of earnings to combined fixed charges and preferred dividend requirements.

(c) For the purpose of computing the pro forma ratio required in paragraph (a)(1), an assumed maximum interest rate may be used on securities as to which the interest rate has not yet been fixed, which assumed rate shall be shown.

* * * * *

Instructions as to Summary Prospectuses

1.* * *

(g) As to Item 6, only the Selected Financial Data (Item 10 of Regulation S–K) and the ratio of earnings to fixed charges (Sub-items 6a–6c) need be provided.

* * * * *

8. By amending Item 6 of § 239.18 to read as follows:

§ 239.18 Form S–11, for registration under the Securities Act of 1933 of securities of certain real estate companies.

* * * * *

Item 6. Selected Financial Data; Management's Discussion and Analysis of Financial Condition and Results of Operations. Furnish the information required by Items 10 and 11 of Regulation S–K (17 CFR 229.20).

In addition, (a)(1) if debt securities are being registered, the registrant shall show in tabular form for each fiscal year or other period the ratio of earnings to fixed charges. If appropriate, the ratio of earnings to fixed charges for such periods shall also be shown on a total enterprise basis in a position of equal prominence with the ratio for the registrant or the registrant and its consolidated subsidiaries (see Accounting Series Release No. 122). There shall also be shown for the most recent fiscal year or twelve months a pro forma ratio of earnings to fixed charges, adjusted to give effect to (i) the issuance of the securities being registered, (ii) any issuance, retirement or redemption of securities during such period, or (iii) any issuance, retirement or redemption of securities after, or presently proposed for one year after, such period.

(2) Earnings shall be computed after all operating and income deductions except fixed charges and taxes based on income or profits and after eliminating undistributed income of unconsolidated subsidiaries and 50 percent or less owned persons.

(3) The term "fixed charges" shall mean (i) interest and amortization of debt discount and expense and premium on all indebtedness; (ii) such portion of rentals as can be demonstrated to be representative of the interest factor in the particular case; and (iii) in case consolidated figures are used, preferred stock dividend requirements of consolidated subsidiaries, excluding in all cases items eliminated in consolidation.

(b) If long-term debt or preferred stock is being registered, there shall be shown the annual interest requirements of such long-term debt or the annual dividend requirements on such preferred stock. To the extent that an issue represents refunding or refinancing, only the additional annual interest or dividend requirements shall be stated. If preferred stock is being registered, there shall also be shown in tabular form for each fiscal year or other period the ratio of earnings to combined fixed charges and preferred dividend requirements.

(c) For the purpose of computing the pro forma ratio required in paragraph (a)(1), an assumed maximum interest rate may be used on securities as to which the interest rate has not yet been fixed, which assumed rate shall be shown.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

9. In § 240.14a–3, by amending paragraphs (b)(1)–(4) and (b)(8) and the text of (b)(9) preceding the note and the text of paragraph (c) preceding the note to read as set forth below.

§ 240.14a-3 Information to be furnished to security holders.

* * * * *

(b) * * *

(1) The report shall include, for the registrant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years and audited statements of income and changes in financial position for each of the three most recent fiscal years prepared in accordance with Regulation S–X (Part 210 of this chapter), except that the provisions of Article 3, other than § 210.3–06(e), shall not apply and only substantial compliance with Articles 6, 7, 7A and 9 is required. Any financial statement schedules or exhibits or separate financial statements which may otherwise be required in filings with the Commission may be omitted. Investment companies registered under the Investment Company Act of 1940 need include financial statements only for the last fiscal year. If the financial statements of the registrant and its subsidiaries consolidated in the annual report filed or to be filed with the Commission are not required to be audited, the financial statements required by this paragraph may be unaudited.

Note.—Information required by § 210.4–10(k) (1) through (4) of Regulation S–X, applicable to oil and gas companies, is to be included as part of the financial statements included in the report. In addition, the oil and gas information required by § 210.4–10(k) (5) through (8) of Regulation S–X, which may be reported as supplemental information accompanying the financial statements, shall be included in the report.

(2) Financial statements and notes thereto shall be presented in roman type at least as large and as legible as 10-point modern type. If necessary for convenient presentation, the financial statements may be in roman type as large and as legible as 8-point modern type. All type shall be leaded at least 2 points.

(3) The report shall contain the Supplementary Financial Information specified by Item 12 of Regulation S–K (17 CFR 229.20).

(4)(i) The report shall contain Selected Financial Data in accordance with the provisions of Item 10 of Regulation S–K (17 CFR 229.20).

(ii) The report shall contain Management's Discussion and Analysis of the issuer's financial condition and results of operations in accordance with the provisions of Item 11 of Regulation S–K (17 CFR 229.20).

* * * * *

(8) The report shall contain the market price of the issuer's common stock and related security holder matters in accordance with the provisions of Item 9 of Regulation S–K (17 CFR 229.20).

(9) Management's proxy statement, or the report, shall contain an undertaking in bold face or otherwise reasonably prominent type to provide without charge to each person solicited, on the written request of any such person, a copy of the issuer's annual report on Form 10–K including the financial statements and the financial statement schedules, required to be filed with the Commission pursuant to Rule 13a–1 under the Act for the issuer's most recent fiscal year, and shall indicate the name and address of the person to whom such a written request is to be directed. In the discretion of management, an issuer need not undertake to furnish without charge copies of all exhibits to its Form 10–K provided that the copy of the annual report on Form 10–K furnished without charge to requesting security holders is accompanied by a list briefly describing all the exhibits not contained therein and indicating that the issuer will furnish any exhibit upon the payment of a specified reasonable fee which fee shall be limited to the issuer's reasonable expenses in furnishing such exhibit. If the issuer's annual report to security holders complies with all of the disclosure requirements of Form 10–K and is filed with the Commission in satisfaction of its Form 10–K filing requirements, such issuer need not furnish a separate Form 10–K to security holders who receive a copy of such annual report.

Note.—* * *

* * * * *

(c) Seven copies of the report sent to security holders pursuant to this rule shall be mailed to the Commission, solely for its information, not later than the date on which such report is first sent or given to security holders or the date on which preliminary copies of solicitation material are filed with the Commission pursuant to Rule 14a–6(a), whichever date is later. The report is not deemed to be "soliciting material" or to be "filed" with the Commission or subject to this regulation otherwise than as provided in this Rule, or to the liabilities of Section 18 of the Act, except to the extent that the issuer specifically requests that it be treated as a part of the proxy soliciting material or incorporates it in the proxy statement or other filed report by reference.

Note.—* * *

* * * * *

In § 240.14c–3, by amending paragraphs (a) (1)–(4), (a)(8) and the text of (a)(9) preceding the note, and the text of paragraph (b) preceding the note to read as follows:

§ 240.14c–3 Annual report to be furnished to security holders.

(a) * * *

(1) The report shall include, for the registrant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years and audited statements of income and changes in financial position for each of the three most recent fiscal years prepared in accordance with Regulation S–X (Part 210 of this chapter), except that the provisions of Article 3, other than § 210.3–06(e), shall not apply and only substantial compliance with Articles 6, 7, 7A and 9 is required. Any financial statement schedules or exhibits or separate financial statements which may otherwise be required in filings with the Commission may be omitted. Investment companies registered under the Investment Company Act of 1940 need include financial statements only for the last fiscal year. If the financial statements of the registrant and its subsidiaries consolidated in the annual report filed or to be filed with the Commission are not required to be audited, the financial statements required by this paragraph may be unaudited.

Note.—Information required by § 210.4–10(k) (1) through (4) of Regulation S–X, applicable to oil and gas companies, is to be included as part of the financial statements included in the report. In addition, the oil and gas information required by § 210.4–10(k) (5) through (8) of Regulation S–X, which may be reported as supplemental information accompanying the financial statements, shall be included in the report.

(2) Financial statements and notes thereto shall be presented in roman type at least as large and as legible as 10-point modern type. If necessary for convenient presentation, the financial statements may be in roman type as large and as legible as 8-point modern type. All type shall be leaded at least 2 points.

(3) The report shall contain the Supplementary Financial Information specified by Item 12 of Regulation S–K (17 CFR 229.20).

(4)(i) The report shall contain Selected Financial Data in accordance with the provisions of Item 10 of Regulation S–K (17 CFR 229.20).

(ii) The report shall contain Management's Discussion and Analysis of the issuer's financial condition and results of operations in accordance with the provisions of Item 11 of Regulation S–K (17 CFR 229.20).

* * * * *

(8) The report shall contain the market price of the issuer's common stock and related security holder matters in accordance with the provisions of Item 9 of Regulation S–K (17 CFR 229.20).

(9) The information statement, or the report, shall contain an undertaking in bold face or otherwise reasonably prominent type to provide without charge to each person furnished a copy of the information statement, on the written request of any such person, a copy of the issuer's annual report on Form 10–K including the financial statements and the financial statement schedules required to be filed with the Commission pursuant to Rule 13a–1 under the Act for the issuer's most recent fiscal year, and shall indicate the name and address of the person to whom such a written request is to be directed. In the discretion of management, an issuer need not undertake to furnish without charge copies of all exhibits to its Form 10–K provided that the copy of the annual report on Form 10–K furnished without charge to requesting security holders is accompanied by a list briefly describing all the exhibits not contained therein and indicating that the issuer will furnish any exhibit upon the payment of a specified reasonable fee which fee shall be limited to the issuer's reasonable expense in furnishing such exhibit. If the issuer's annual report to security holders complies with all of the disclosure requirements of Form 10–K and is filed with the Commission in satisfaction of its Form 10–K filing requirements, such issuer need not furnish a separate Form 10–K to security holders who receive a copy of such annual report.

Note.—* * *

* * * * *

(b) Seven copies of the report sent to security holders pursuant to this rule shall be mailed to the Commission, solely for its information, not later than the date on which such report is first sent or given to security holders or the date on which preliminary copies of the information statement are filed with the Commission pursuant to Rule 14c–5, whichever date is later. The report is not deemed to be "filed" with the Commission or subject to this regulation otherwise than as provided in this rule, or to the liabilities of Section 18 of the Act, except to the extent that the issuer specifically requests that it be treated as a part of the information statement or incorporates it in the information statement or other filed report by reference.

Note.—* * *

* * * * *

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND THE GENERAL RULES AND REGULATIONS THEREUNDER

11. Part 241 is amended by rescinding Guide 1, "Summary of Operations," of the Guides for the Preparation and Filing of Reports and Proxy and Registration Statements Under the Securities Exchange Act of 1934 (Securities Exchange Act of 1934 Release No. 10961 (August 14, 1974; 39 FR 31894)).

12. Part 241 is amended by amending Guide 4, "Integrated Reports to Shareholders," of the Guides for the Preparation and Filing of Reports and Proxy and Registration Statements Under the Securities Exchange Act of 1934 (Securities Exchange Act of 1934 Release No. 13639 (June 17, 1977; 42 FR 31780)) to read as follows:

Guide 4. Integrated Reports to Security Holders. Annual and quarterly reports to security holders may be combined with the required information of Form 10–K and Part I of Form 10–Q and be suitable for filing with the Commission when the following conditions are satisfied:

(a) The report contains full and complete answers to all items required by Form 10–K or Part I of Form 10–Q. When responses to a certain item of required disclosure are separated within the report, an appropriate cross-reference should be made. If the information required by Part III of Form 10–K is omitted by virtue of General Instruction G, a definitive proxy or information statement shall be filed.

(b) Any additional information or exhibits contained in the report shall meet the requirements of Rules 12b–20 (17 CFR 240.12b–20) and 12b–30 (17 CFR 240.12b–30) of the Securities Exchange Act of 1934.

(c) For purposes of Form 10–K, its cover page and the required signatures shall be included. For purposes of Form 10–Q, its cover page, appropriate responses to Part II and the required signatures shall be included. Additionally, as appropriate, a cross-reference sheet should be filed indicating the location of information required by the items of the form.

(d) Any pictorial or graphic representations shall comply with the provisions of Guide 8 of the Guide for Preparation and Filing of Registration Statements (Securities Act Release No. 5171 (July 20, 1971)).

(e) The report should contain a disclaimer of any action on the part of this Commission to approve or disapprove the report or to pass upon its accuracy or adequacy.

(f) An annual report to security holders prepared on an integrated basis may also be submitted in satisfaction of Rule 14a–3 (17 CFR 240.14a–3) under the Securities Exchange Act of 1934. When filed as the annual report on Form 10–K, responses to the Items of that form are subject to Section 18 of the Act.

(g) A quarterly report to security holders filed in satisfaction of the requirements of Part I of Form 10–Q is not deemed to be "filed" for the purpose of Section 18 of the Act but is subject to all other provisions of the Act (Rules 13a–13(d) (17 CFR 240.13a–13(d)), 15d–13(d) (17 CFR 240.15d–13(d)).

Authority: The amendments to the forms and guides prescribed under the Securities Act of 1933 are being adopted pursuant to the authority in Sections 6, 7, 8, 10 and 19(a) of the Act. The amendments to Rule 14a–3, Rule 14c–3, and the forms and guides prescribed under the Securities Exchange Act of 1934 are being adopted pursuant to the authority in Sections 12, 13, 15(d) and 23(a) of that Act. The amendments to Regulation S–K are being adopted pursuant to all of the 1933 and 1934 Act provisions referred to above.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; secs. 12, 13, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 203(a), 49 Stat. 704; sec. 202, 68 Stat. 686; secs. 3, 4, 6, 78 Stat. 565–568, 569, 570–574; secs. 1, 2, 82 Stat. 454; sec. 28(c), 84 Stat. 1435; secs. 1, 2, 84 Stat. 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 18, 89 Stat. 117, 118, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 204, 91 Stat. 1494, 1498, 1499, 1500; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78l, 78m, 78o(d), 78w(a))

By the Commission.

George A. Fitzsimmons,

Secretary.

September 2, 1980.

[FR Doc. 80–27813 Filed 9–19–80; 10:30 am]

BILLING CODE 8010–01–M

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17 CFR Parts 201, 229, 230, 239, and 240

[Release Nos. 33–6232; and 34–17115]

Business Combination Transactions—New Short Form for Registration and Related Rule Amendments

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of Form S–15, an optional experimental short form for registration under the Securities Act of 1933 of securities issued in certain business combination transactions. At the same time, the Commission also announces the adoption of related amendments to the proxy rules under the Securities Exchange Act of 1934, to the exhibits item of Regulation S–K (Standard instructions for filing forms under Securities Act of 1933 and Securities Act of 1934,) to the Commission's Rules of Practice, and to the rule as to incorporation by reference under the Securities Act. The adoption of Form S–15 and the related rule amendments is

part of the Commission's ongoing rulemaking effort designed to integrate the disclosure systems under the Securities Act and the Exchange Act and to streamline and make less burdensome the disclosure requirements imposed on registrants by those disclosure systems.

EFFECTIVE DATE: October 27, 1980. However, persons desiring to use the new Form prior to that date may do so, provided that they comply with all applicable provisions of the form.

FOR FURTHER INFORMATION CONTACT: Prior to the effective date, contact Catherine Collins McCoy, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington. D.C. 20549 (202–272–2589); thereafter, contact William E. Toomey or William E. Morley, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202–272–2573).

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the adoption of new Form S–15 (17 CFR 239.29), an optional experimental form which may be used to register under the Securities Act of 1933 (the "Securities Act") (15 U.S.C. 77a et seq.) securities issued in business combination transactions meeting certain specified criteria, and the adoption of related amendments to a number of Commission rules and regulations. As adopted, Form S–15 provides for an abbreviated prospectus to be delivered to security holders together with copies of the issuer's latest annual report to security holders. This Form generally will be available for Securities Act registration where the issuer meets the conditions as to the use of Form S–7 (17 CFR 239.27)[1] and the business combination transaction pursuant to which the registered securities are to be issued does not affect certain financial results of the issuer by more than 10%. Although the Form is not specifically limited to a maximum number of offerees, the Commission anticipates that it will be most appropriate for registration where the number of offerees is relatively small so that delivery of an annual report will not involve unusual effort or expense. In this regard, the Form presents an attractive alternative to using Rule 146 (17 CFR 230.146), the operation of which, it is claimed, has proved difficult for some issuers.

The amendments to Rule 24 of the Commission's Rules of Practice (17 CFR 201.24) and to Rule 411 under the Securities Act (17 CFR 230.411) permit incorporation by reference into a Securities Act registration statement of material contained in annual reports to security holders furnished to the Commission pursuant to Rule 14a–3 (17 CFR 240.14a–3) or Rule 14c–3 (17 CFR 240.14c–3) under the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a et seq. (1976 and Supp. I 1977)). The amendment to Item 7 (Exhibits) of Regulation S–K (17 CFR 229.20) adds Form S–15 to that Item's provisions. Finally, the amendments to Rules 14a–3 (17 CFR 240.14a–3), 14a–6 (17 CFR 240.14a–6) and 14a–12 (17 CFR 240.14a–12) of Regulation 14A (17 CFR 240.14a–1 et seq.) and to Rules 14c–2 (17 CFR 240–14c–2) and 14c–5 (17 CFR 240.14c–5) of Regulation 14C (17 CFR 240.14c–1 et seq.) provide that the informational and filing requirements of those Regulations, where applicable to the business combination transaction, would be satisfied when Form S–15 is used to register the issued securities under the Securities Act. The specific provisions of Form S–15 and the related amendments adopted today are discussed in greater detail below under "Synopsis of Form S–15 and Related Amendments."

Background

Proposed Form S–15 and related rule amendments were published for public comment on January 15, 1980,[2] simultaneously with three other releases which, taken together, constituted a major effort to achieve a simplified and integrated disclosure system. Those other actions were (1) proposed amendments to Form 10–K (17 CFR 249.310), Regulation S–K (17 CFR 229.20), and Rule 14a–3;[3] (2) proposed amendments to Regulation S–X (17 CFR Part 210) which would establish uniform financial statement instructions for certain forms and reports required to be filed pursuant to the Securities Act and the Exchange Act and for annual reports to security holders;[4] and (3) proposed amendments to Regulation S–X which would require certain additional accounting disclosures in annual reports to security holders and would eliminate, to the extent possible, the differences between the requirements of that regulation and the requirements of Generally Accepted Accounting Principles ("GAAP").[5] The Commission today also announced final rulemaking action on each of these three matters; in this regard, attention is directed to Securities Act Release No. 6231, September 2, 1980 (Form 10–K, Rule 14a–3 and Regulation S–K); Securities Act Release No. 6234, September 2, 1980 (Uniform Financial Statement Instructions); and Securities Act Release No. 6233, September 2, 1980 (General Revision of Regulation S–X).

As was indicated in the January release proposing amendments to Form 10–K, Rule 14a–3 and Regulation S–K,[6] the Commission considered the four proposals published together in January to be the first of a number of steps anticipated to be taken in order to achieve integration and simplification of existing disclosure requirements. At that time, the Commission broadly outlined the design of a simplified Securities Act disclosure system integrated with the Exchange Act system by relying to varying degrees upon both formal and informal, *i.e.*, filed and unfiled, documents prepared pursuant to Exchange Act requirements. Specifically, the Commission anticipated delineating three general categories or levels of companies, with the degree of required disclosure and of document dissemination differing with each level. The Commission has now developed three new proposed Securities Act registration statement forms to be used by companies in the three levels and is publishing those proposed forms for comment[7] concurrently with the adoption of Form S–15 and of the other final rule amendments announced today, and the proposal for comment of amendments to Form 10–Q (17 CFR 249.308a) which will make that Form consistent with the new Form 10–K.[8]

The proposed forms (denominated Forms A, B and C for purposes of proposal discussion), particularly proposed Form B, raise a number of issues which also arose in the context of Form S–15 and which are not yet resolved. These issues include (1) whether delivery of the annual report to security holders with the prospectus should be mandatory or optional, (2) which documents should be incorporated by reference into prospectuses, (3) for what transactions

[1] These conditions include a minimum earnings test and a requirment that the registrant has provided continuous disclosure to investors pursuant to the reporting requirements of Sections 13(a), 14 and 15(d) of the Exchange Act. *See* Note 13 infra.

[2] Securities Act Release No. 6177 (January 15, 1980) (45 FR 5934).

[3] Securities Act Release No. 6176 (January 15, 1980) (45 FR 5972).

[4] Securities Act Release No. 6179 (January 15, 1980) (45 FR 5963).

[5] Securities Act Release No. 6178 (January 15, 1980) (45 FR 5943).

[6] Securities Act Release No. 6176.

[7] Securities Act Release No. 6235 (September 2, 1980).

[8] Securities Act Release No. 6236 (September 2, 1980).

abbreviated prospectuses are appropriate, and (4) how to ensure equivalent disclosure when issuers have the option of prospectus presentation or annual report delivery. Rather than delay adoption of Form S–15 until such time as all issues associated with the Commission's integration program have been resolved, however, the Commission has determined to adopt Form S–15 at this time as an experiment. A number of commentators on proposed Form S–15 specifically urged that the Commission consider and adopt Form S–15 independently of the other parts of its integration program so that the benefit of its savings would be made available as soon as possible, regardless of any delaying problems encountered in implementing the other proposals. Form S–15's prompt adoption, on an experimental basis,[9] is responsive to those commentators' views. More importantly, however, the Commission believes that experience with Form S–15 and its mandatory use of the issuer's annual report to security holders will provide empirical data as to its operation and usage which will be a valuable aid in evaluating proposed Form B, which as proposed would provide issuers with the option of either delivering the annual report or providing equivalent disclosure in the prospectus.

Proposed Form S–15 generated substantial public commentary. The commentators were overwhelmingly in favor of the Commission's goals of simplyfying the disclosure provided to investors, reducing the burdens and costs which Securities Act registration imposes on issuers and integrating further the disclosure requirements of the Securities Act and Exchange Act. The majority of commentators believed proposed Form S–15 to be a significant step toward accomplishing those goals and urged that the Commission promptly adopt the new Form. A substantial number of helpful specific comments and suggestions were offered in connection with proposed Form S–15, quite a few of which are reflected in changes made from Form S–15 as proposed to Form S–15 as adopted. These specific comments, as well as others not directly reflected in the text of the form and rule amendments as adopted, are discussed below in the "Synopsis" portion of the release.

[9] Securities Act Release No. 6177 stated that proposed Form S–15, if adopted, would be in the nature of an experiment and that its use and effects would be carefully watched so that the Commission could consider the advisability of either expanding or limiting its availability.

Synopsis of Form S–15 and Related Amendments

The following brief synopsis is intended to assist interested parties in their understanding of the new Form and related rule amendments. Respects in which the Form and rule amendments differ from those as proposed are included in this discussion. Attention is directed to the text of the proposals for a more complete understanding.

I. Form S–15

A. *Availability.* General Instruction A to Form S–15 provides that the form is available only for registration of securities issued (a) in transactions of the character specified in Rule 145(a) (17 CFR 230.145),[10] (b) in a merger where applicable State law does not require a vote of the security holders of the company being acquired ("short form mergers") or (c) in an exchange offer for securities of another person where the amount of securities already held and the amount of securities to be sought in the exchange offer aggregate at the time of filing will exceed 50% of that class of securities of the other person. As proposed, the transactions for which Form S–15 would have been available were limited to transactions of the character specified in Rule 145 (a)(2) and (a)(3) and exchange offers resulting in the issuer's acquisition of 80% of the voting power of the other person. A substantial number of the public commentators on proposed Form S–15 recommended that the Form's use be greatly expanded. While the Commission believes that the experimental value of Form S–15 might be impaired were its use expanded significantly beyond that proposed, it has determined that inclusion of Rule 145(a)(1) transactions,[11] short form mergers, and exchange offers to acquire a majority but not 80% is consistent with and compatible with the limited purpose for which Form S–15 is adopted.

A Form S–15 transaction must also meet the five conditions set forth in General Instruction A. The first condition restricts the Form's use to transactions where relatively small companies are acquired by substantially larger companies.[12] Under this condition, the effect of the transaction must not be a change of more than 10% between the items listed in General Instruction A.1(a) (gross sales and operating revenues, net income, total assets, and total shareholders' equity) for the issuer on a pro forma combined consolidated basis giving effect to the transaction in question. In addition, the total purchase price must not exceed 10% of the issuer's total assets. This provision differs from proposed General Instruction A.1(b), which would have provided instead that the total purchase price must not exceed 10% of the aggregate market value of voting stock held by nonaffiliates. A number of commentators believed the condition proposed was too restrictive and too difficult to apply as a practical matter. The condition as adopted addresses these concerns while still ensuring that the Form will not be used for transactions which have a substantial effect on the issuer. In this regard, a Note was added to condition A.1 to indicate that, while the Form may be used for multiple simultaneous acquisitions, it may only be so used if the condition is met on both an individual and an aggregate basis.

The second condition requires the issuer of the securities being registered to meet the requirements for the use of Form S–7 (17 CFR 239.26) [13] and to have furnished its latest annual report to security holders pursuant to Rule 14a–3 or 14c–3. The fact that the issuer will have been filing Exchange Act reports for at least three years, and that certain information about the issuer is thus already publicly available and disseminated, enables the Commission to reduce the actual prospectus disclosure requirements with respect to the issuer. The eligibility criteria of

[10] Where the transaction pursuant to which securities are to be registered on Form S–15 is of the character specified in Rule 145 (a)(1), (a)(2) or (a)(3), the provisions of Rule 145 (c) and (d) will be applicable to persons and parties deemed underwriters with respect to those securities.

[11] Rule 145(a)(1) transactions are reclassifications of securities, other than stock splits, reverse stock splits, or changes in par value, which involve the substitution of a security for another security.

[12] The test for the effect of the transaction used in General Instruction A to proposed Form S–15 is similar to the tests set forth in Securities Act Release No. 4950 (February 20, 1980) for determining whether relief should be granted from the requirement for 3-year certified financial statements of companies acquired or to be acquired. It should be noted, however, that the test in General Instruction A to proposed Form S–15 is to be used only for purposes of determining the availability of such Form, and that, for all purposes other than Form S–15 availability and disclosure requirements, the standards and positions expressed in Release No. 4950 remain unchanged.

[13] Generally, an issuer may use Form S–7 if it (a) has a class of securities registered under Section 12 (15 U.S.C. 78*l*) or is required to file reports pursuant to Section 15(d) (15 U.S.C. 78o(d)) of the Exchange Act; (b) has been subject to the requirements of Section 12 or 15(d), and has filed all applicable reports, for 36 calendar months prior to the filing of the registration statement and has timely filed all required reports for the past twelve calendar months; (c) has not defaulted in payments on preferred stock, indebtedness for borrowed money or long-term leases during the past 36 months; and (d) has had consolidated net income of at least $250,000 for three of the last four fiscal years, including the most recent fiscal year.

proposed Form B [14] which would, if adopted, replace Form S–7, are not as strict as those of Form S–7.[15] Should Form B be adopted as proposed, Form S–15 would be amended accordingly so that General Instruction A.2 would be met if the issuer qualifies for the use of Form B.

This second condition, as adopted, reflects a change made in response to a point raised by a number of commentators. Proposed General Instruction A.2 required the issuer to have furnished an annual report to security holders for its latest fiscal year. This provision would have had the effect of precluding the Form's use for the period between the end of the issuer's fiscal year and the time an annual report is prepared and disseminated to security holders. The Commission does not believe such preclusion is necessary or appropriate. Therefore, the requirement of General Instruction A.2 as adopted is that the issuer have furnished its latest annual report to security holders. Corresponding changes were also made to Items 6 and 9 of Form S–15.

The third condition to the use of Form S–15 is that the transaction pursuant to which the registered securities are being issued has been approved or recommended by the boards of directors of both parties to the transaction. A clarifying phrase has been added to the condition which specifies the Commission's intent that this condition must be met as of the date of effectiveness of the registration statement. While not all the commentators who addressed this condition agreed that it is necessary, the Commission believes that it is a useful means to ensure that the abbreviated Form S–15 format is not used for transactions where fuller disclosure may be appropriate.

The fourth condition provides that the prospectus must be delivered to security holders at least 20 days prior to the meeting date or the date of vote, consent or authorization or the date the transaction is consummated. Changes were made from the language as proposed to clarify that the solicitation is to be made in accordance with applicable state or federal law, but in no event later than 20 days prior, and to clarify that 20-day prior delivery is required even where no meeting is held and no vote, consent or authorization is solicited.

As proposed, Form S–15 would have been unavailable for transactions where either the issuer or the company being acquired engages in significant oil and gas related operations. The Commission believed this exclusion, which was similar to the exclusion of such companies from use of Form S–18 (17 CFR 239.28) and Rule 242 (17 CFR 230.242), was appropriate because of the staff's current study of oil and gas disclosure requirements. The public commentators who addressed this condition, however, unanimously urged that companies engaged in oil and gas related operations not be excluded from using Form S–15. The Commission now requires such companies' annual reports to security holders prepared pursuant to Rule 14a–3 to contain the same financial information about oil and gas operations as is called for by Regulation S–X.[16] Accordingly, because of the unique and limited circumstances of Form S–15, and its experimental nature, the Form as adopted is available where the issuer or the company being acquired engages in significant oil and gas operations. Should the staff's on-going study of oil and gas disclosure requirements culminate in further amendments to existing requirements, those amendements would automatically be reflected in Form S–15 through its use of the annual report to security holders and its reference to Regulations S–K and S–X.

Finally, Form S–15 is available only when neither the issuer nor the company being acquired is a registered investment company. This provision is the same as that contained in proposed Form S–15, in connection with which the Commission invited comment as to whether the Form should be available to registered investment companies and, if so, what, if any, conditions and modifications to Form S–15 would be appropriate. Five commentators responded to this invitation for comment, all recommending that investment companies be able to use either Form S–15 or a similarly abbreviated form. A number of helpful detailed suggestions were submitted as to appropriate conditions to such a form's use and approaches to prospectus content and document delivery requirements. These comments also reinforce the Commission's belief that Form S–15 would require at least some modifications before it would be feasible for investment companies to use the Form. While the Commission has determined not to make Form S–15 available for investment company use at this time, it is considering the comments received in this regard in connection with its ongoing overall review of disclosure requirements for investment companies.

With the limited exception of the addition of the few types of business combination transactions noted above, and the deletion of the prohibitions for resales and for companies engaged in oil and gas operations, the availability of Form S–15 as adopted is not expanded from that of proposed Form S–15. The Commission is conscious of the public commentators' overwhelming encouragement to expand the number and types of companies and transactions for which Form S–15 could be used. Nevertheless, the Commission has decided to adopt Form S–15 at this time with its availability provisions essentially as proposed in the important respects of relative transaction size and issuer qualification to use Form S–7 so that it may gain experience with the form's use and effects. Based upon that experience, the Commission may subsequently ease some of the restrictions on Form S–15 availability, particularly at such time as the staff has had the opportunity to develop an appropriate disclosure requirement with respect to pro forma financial information.

B. *Other General Instructions.* General Instructions B and C are similar to instructions to all Securities Act forms, indicating the application of the rules and regulations under the Securities Act and specifying what documents comprise the registration statement. These instructions are adopted as proposed. The instruction requesting issuers to advise the staff of their intention to file a registration statement of Form S–15 has been deleted because experience with the instruction in existing forms has proved it to be ineffective.

Securities Act Release No. 6177, publishing proposed Form S–15 for comment, did not specifically address the Guides for the Preparation and Filing of Registration Statements under the Securities Act of 1933 (the "Guides")[17] or their applicability to registration statements on proposed Form S–15. The Guides represent policies and practices followed by the Division of Corporation Finance in administering the various disclosure requirements of the Securities Act and the forms adopted thereunder.

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[14] Securities Act Release No. 6235 (September 2, 1980).

[15] Proposed Form B eligibility differs from existing Form S–7 in that (1) the issuer must have had positive net income for two out of the three last fiscal years (rather than net income of $250,000 for three out of the last four years), including the most recent year and (2) the prohibition on defaults in payments on preferred stock, indebtedness and long-term leases has been somewhat modified.

[16] *See* Securities Act Release No. 6231 (September 2, 1980).

[17] Securities Act Release No. 4936 (December 9, 1968) (33 FR 18671), as amended.

As such, they are able to be applied flexibly, when and where appropriate. Some Guides specifically indicate that they are applicable only to registration statements filed on certain forms, e.g., Guide 11 applies to Form S–1 (17 CFR 239.11), Guide 28 applies to Forms S–1 and S–7 (17 CFR 239.26), Guide 30 applies to Forms S–1 and S–7, and Guide 59 applies to Forms S–1 and S–2 (17 CFR 239.12).

A number of public commentators questioned the applicability of the Guides, and in particular Guide 61, Statistical Disclosure by Bank Holding Companies, to proposed Form S–15. At the time proposed Form S–15 was published, Guide 61 by its terms specifically applied only to registration statements filed on Forms S–1, S–7 and S–14. The Commission did not believe Guide 61 disclosure would be necessary or appropriate in an abbreviated prospectus like that of Form S–15 and, therefore, did not propose to amend Guide 61 to include Form S–15. The Commission still believes that Guide 61 disclosure is unnecessary in Form S–15. In light of recent amendments to Guide 61, however, which, among other things, broadened its applicability to registration statements for which financial statements are required,[18] the Commission also believes it is appropriate at this time to state explicitly that it does not intend Guide 61 to be applicable to Form S–15 registration statements.

All other existing Guides, rules and regulations under the Securities Act are equally as applicable to Form S–15, where appropriate, as to any other Securities Act form for the registration of securites. In this regard, the Commission notes that it is engaged in an ongoing program of reviewing and reevaluating the rules, forms and Guides under the Securities Act and the Exchange Act. The first step in this program is the overall review of all of the Guides, a major project which was begun in December, 1979,[19] and which should result in the promulgation of proposed changes in the future.[20]

General Instruction D sets forth the relationship of Form S–15 to the proxy or information rules under the Exchange Act, where such are applicable to the transaction. The Form S–15 prospectus may be in the form of and may serve as the proxy or information statement used in connection with the transaction. It would be deemed to meet the informational and filing requirements of the proxy or informational rules under Section 14 of the Exchange Act, and Regulations 14A and 14C thereunder. All other provisions of those Regulations would still apply. A new paragraph (c) has been added to General Instruction D to make it clear that, where Sections 13(e), 14(d) or 14(e) of the Exchange Act apply to the transaction, the rules and regulations thereunder are still applicable to the transaction regardless of the provisions of Form S–15.

General Instruction E, Availability of the Prospectus for Reoffers or Resales, represents a change from the provision of Form S–15 as proposed, which would have prohibited use of the Form S–15 prospectus for reoffers or resales of securities acquired pursuant to that registration statement by affiliates of the issuer or by any other persons who may be deemed underwriters of such securities. As adopted, the Form S–15 prospectus will be available for such reoffers or resales, if (1) the additional information called for is provided in the prospectus, (2) the selling shareholders have an intent to make such offers and sales within sixteen months, and (3) the prospectus so used is updated in accordance with Section 10(a)(3) of the Securities Act. Most of the public commentators who addressed the proposed Form's resale prohibition believed the Form should be able to be used for that purpose, and the Commission believes that such use may be allowed without sacrificing the disclosure provided to investors. Indeed, because the Form S–15 issuer must meet the conditions to the use of Form S–7, the resale prospectus which generally would otherwise be available to be used would be that of Form S–16, which requires delivery of less information about the issuer than does Form S–15.[21]

A new General Instruction F has been added to make explicit the Commission's intention that, while Form S–15 relies heavily upon the concurrently adopted amendments to Form 10–K, Rule 14a–3, and Regulation S–K,[22] the delayed implementation requirements of these amendments nevertheless will not operate to delay the availability of Form S–15. Therefore, annual reports to security holders prepared with respect to fiscal years ending prior to December 15, 1980, may be used in connection with Form S–15 registration even though such annual reports are not required to contain the disclosure required to be presented in annual reports for fiscal years ending after that date. The Commission recognizes the differences in the levels of required disclosure. As a practical matter, however, requiring full implementation of the amended annual report disclosure items could delay by more than a year the availability of Form S–15 to issuers who might otherwise qualify to use and choose to use the new form. Additionally, a long delay to await full implementation of the annual report amendments would also delay the experimental use of annual reports to security holders in a Securities Act context. Accordingly, the Commission has determined to make Form S–15 available immediately.

C. *Information Required in the Prospectus.* Form S–15 provides for a short prospectus which will provide investors with the information necessary to make an investment decision presented in a comprehensible style and format. This is accomplished by requiring the issuer's latest annual report to security holders to be delivered with the prospectus. The issuer's business description, financial statements, industry segment information, market information with respect to its common stock, selected financial data, and management's discussion and analysis will be incorporated by reference from the annual report rather than presented in the prospectus itself. The prospectus, then, will contain only disclosure with respect to (1) the transaction pursuant to which the registered securities are being issued, (2) the company being acquired, and (3) any additional information about the issuer which needs to be disclosed to update that presented in the annual report delivered with the prospectus.

1. *Multiple Document Delivery.* The Form S–15 multiple document delivery approach takes advantage of one of the most useful and readable disclosure documents produced under the existing disclosure systems, the annual report to security holders prepared pursuant to Rule 14a–3 or 14c–3, both to ensure that the disclosure provided concerning the issuer is comprehensible and to reduce expenses and duplication by making use of an existing document.[23] In order that

[18] Securities Act Release No. 6221 (July 8, 1980).

[19] Securities Act Release No. 6163 (December 5, 1979).

[20] Future changes in the Guides would, of course, be in addition to those made by rescinding a number of Guides (Securities Act Guides 22, Summary of Earnings, and 26, Statement of Dividend Policy, and Exchange Act Guide 1, Summary of Operations) as part of the final rulemaking amending Form 10–K, Rule 14a–3, and Regulation S–K. Securities Act Release No. 6231 (September 2, 1980).

[21] Form S–16 (17 CFR 239.27) is available for secondary offerings if securities of the same class are listed and registered on a national securities exchange or are quoted on the automated quotation system of a national securities association.

[22] Securities Act Release No. 6231 (September 2, 1980).

[23] The Commission has long recognized the annual report to security holders to be one of the most effective means of communication between management and security holders. *See* the

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the prospectus which the annual report accompanies be equally comprehensible, issuers are urged to present information therein in as clear and concise a style as possible.

It should be noted that Form S–15 is an optional form; Forms S–1 (17 CFR 239.11) and S–14 (17 CFR 239.23) are still available should an issuer who qualifies to use Form S–15 nevertheless prefer not to delivery its annual report. A number of commentators argued: (1) That Form 10–K, rather than the annual report to security holders, should be used as the integrating document accompanying the prospectus; and (2) that issuers should be given the option of annual report delivery or presentation in the prospectus of information equivalent to that in the annual report. The Commission believes that the annual report is the preferable document and that issuers are provided sufficient opportunity to update and supplement their annual reports in the prospectus and, accordingly, need not be granted the option of presenting the annual report information in the prospectus.

While Form S–15 as adopted requires delivery of an annual report, the issue of presentation within the prospectus remains under consideration. Pending resolution of this issue, it is anticipated that S–15 as adopted will be used primarily to register those offerings not made to such a great number of offerees that mandatory annual report delivery would involve significant reproduction costs. Adopted on an experimental basis, it is believed that Form S–15 will produce meaningful data on the use of annual reports, in conjunction with shortened prospectuses, for Securities Act purposes. When the Commission considers proposed Form B, which as proposed would make annual report delivery optional, it thus will be able to add empirical data to the views expressed by the public commentators on proposed Form B. Experience with Form S–15 and the comments received on proposed Form B may also lead the Commission to amend Form S–15 appropriately.

If the company being acquired has a class of securities registered pursuant to Section 12 of the Exchange Act and has furnished an annual report to security holders pursuant to Rule 14a–3 or Rule 14c–3 for its latest fiscal year, then the issuer has the option of delivering such annual report with the prospectus and the issuer's annual report. If that option is elected, the prospectus will contain the same disclosure with respect to the company being acquired as with respect to the issuer, *i.e.*, only disclosure with respect to subsequent events and interim periods. Unlike the case for the issuer, the annual report which could be so used is that for the latest fiscal year, not the latest report furnished. The Commission believes it is appropriate that disclosure needs with respect to the company being acquired only be satisfied by annual report delivery if that report is for the latest full fiscal year.

2. *Disclosure Items.* The Form S–15 prospectus itself is required to contain the following information: Item 1, summarized information about the two companies' businesses, the transaction at hand, and comparative per share data; Item 2, terms of the transaction; Item 3, a description of the company being acquired which is of the same nature as would have been called for in a report prepared pursuant to Rule 14a–3; Item 4, certain proxy information; Item 5, information about the interests of affiliates in the transaction; Item 6, additional information about the issuer as to interim financial information, subsequent material changes and availability of reports and other information; Item 7, additional information about the company being acquired as to interim financial information, subsequent material changes, changes in control and availability of reports and other information; Item 8, additional information required if the prospectus is to be used for reoffers or resales; and Item 9, statements as to material incorporated by reference.

The Form S–15 prospectus disclosure requirements reflect a number of changes from the provisions of proposed Form S–15. First, an instruction has been added to Item 2(c), which calls for an outline of the material features of the proposed transaction, in order to emphasize that only a brief summary of the acquisition agreement terms is to be included in the prospectus. The agreement itself need not be included in the prospectus. The second sentence of Item 2(d), concerning dividends in arrears and defaults, was deleted because it was unnecessary; an issuer with defaults would not qualify to use Form S–7 and therefore could not use Form S–15.

The provision in proposed Item 2(c) calling for disclosure of the reasons management of the company being acquired has for engaging in the transaction is adopted as proposed. A number of commentators objected that this provision is unnecessary and undesirable; the Commission believes, however, that this disclosure is appropriate. Like Form S–14, Form S–15 may serve the dual purpose of securities registration and proxy solicitation, where Regulation 14A or 14C is applicable to the transaction. In that event, the Form S–15 prospectus is also the proxy or information statement of the company being acquired. Item 2(e), which called for a brief description by the company being acquired of any other matters material to the fairness of the transaction to unaffiliated security holders, has been deleted. It is important for documents prepared pursuant to the federal securities laws to contain disclosure with respect to matters bearing on fairness in order for unaffiliated security holders to determine whether their rights under state law have been protected.[24] The Commission believes, however, that the provisions of Items 2 and 5 of Form S–15 as adopted adequately address this concern and that, accordingly, an explicit item in Form S–15 is not necessary. Moreover, the Commission plans to consider existing registration forms for all business combinations in the next phase of its review of Securities Act and Exchange Act rules and forms, and the issue of an explicit fairness disclosure item will be revisited at that time.

An instruction has been added to Item 3(b) to point out that the Commission may waive any of the financial information requirements of Item 3 (b)(vi), (vi), and (vii) which it deems appropriate. This instruction is similar to that contained in Item 15(c) of Schedule 14A (17 CFR 240.14a–101) and indicates that the existing financial statement waiver procedures used in the Form S–14 context will be operative in the Form S–15 context as well. In addition, part of the five-year period for which selected financial data is required by Regulation S–K may be waived if unduly burdensome.

The Commission made a specific inquiry of commentators as to what beneficial ownership disclosure was thought appropriate in Form S–15, voting power alone or Regulation S–K, Item 6 disclosure. The majority of the

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discussion in two of the other releases published today, Securities Act Release Nos. 6231 and 6235 (September 2, 1980), of the Commission's reasons for including the annual report to security holders in its integration program. *See also* Securities Exchange Act Release No. 11079 (October 31, 1974) and Securities Exchange Act Release No. 10591 (January 10, 1974).

[24] *See Sante Fe Industries, Inc.* v. *Green*, 430 U.S. 462, 474 n.14 (1977); *Wright* v. *Heizer Corp.*, 560 F.2d 236, 250 (7th Cir. 1977), *cert. denied*, 434 U.S. 1066 (1978); and *SEC* v. *Parklane Hosiery Co.*, 588 F.2d 1083, 1088–9 (2d Cir. 1977), with respect to the materiality of information which would be useful to security holders in challenging a transaction under state law.

commentators who responded to this inquiry favored consistency of beneficial ownership disclosure and, therefore, preferred Item 6 disclosure in Form S–15. Accordingly, Item 4 as adopted is unchanged from the proposal and refers to the requirements of Items 6(a) and 6(b) of Regulation S–K.

The public commentators who discussed the problem of updating the issuer's latest annual report overwhelmingly favored an approach which would grant issuers the greatest amount of flexibility in determining how best to update that report. Accordingly, Item 6 of Form S–15 has been changed to add a new paragraph (a) which calls for financial and other information as of the end of the most recent fiscal quarter for which a Form 10–Q has been filed. The information is to be in the form required by Part I of Form 10–Q (17 CFR 249.308a) but may be provided by any one of three means: (1) Inclusion in the prospectus; (2) delivery of the Form 10–Q with the prospectus and annual report; or (3) delivery with the prospectus and annual report of the issuer's latest quarterly report to security holders if that report contains the required information. The other change to Item 6 is to add an undertaking, where the Form 10–Q delivery option is not chosen, to provide the issuer's latest Form 10–Q without charge upon request. Similar provisions with respect to the company being acquired have been added to Item 7 of Form S–15. This Item is applicable if the acquired company has a class of securities registered under Section 12 of the Exchange Act, has furnished an annual report to security holders pursuant to Rule 14a–3 or Rule 14c–3 for its latest fiscal year, and such annual report is being used in place of prospectus disclosure.

Both Items 6 and 7 have also been changed to add significant business combinations accounted for as purchases to those matters for which financial information may be required in the prospectus if not reflected in the financial statements in the annual report(s) delivered with the prospectus. This change was made in response to the suggestion of the commentators, as was the addition to Item 7(b) of the term "material" to identify what changes must be described thereunder. The latter change was necessitated by the inadvertent omission of the term in the proposal.

New Item 8, to be complied with if the Form S–15 prospectus is to be used for reoffers and resales, calls for (1) information in regard to the persons on whose behalf the securities are offered; (2) information with respect to the consummation of the proposed transaction and (3) information, including financial statements, necessary to make the prospectus current. This Item was modeled after Item 2 of Form S–14.

Item 9, which requires certain statements to be made as to information delivered with the prospectus and incorporated by reference therein, reflects a change from the Item as proposed. The Commission, concerned about ensuring prospectus readability, specifically inquired of commentators whether the detailed description of material incorporated by reference into the Form S–15 registration statement should (1) be required in the prospectus, (2) be allowed only in Part II of the Form, or (3) be placed in either location, or both, at the issuer's option. Because there may be equally valid reasons for choosing to include the detailed description in either part of the registration statement, the Commission has decided to adopt the third alternative and thus afford issuers maximum flexibility. At the same time, however, issuers are cautioned to avoid legalistic descriptions which would impair the readability of the prospectus.

D. *Information Not Required in the Prospectus.* Part II of Form S–15 is similar to that part of other forms adopted for Securities Act registration of securities. It is a part of the registration statement filed with the Commission but is not delivered to security holders.

The provisions of Part II of Form S–15 are as follows. First, Item 10 requires an undertaking by the issuer to deliver with each prospectus a copy of its latest annual report to security holders, as well as a copy of the annual report of the company being acquired if that report has been used to satisfy prospectus disclosure requirements with respect to business, financial and other information about the company being acquired.

Item 10 as adopted deletes the requirement in this Item of proposed Form S–15 that the issuer's undertaking to transmit certain material with the prospectus be dated as of a date not more than twenty days prior to the effective date of the registration statement. A number of commentators questioned the necessity for such a dating requirement and pointed to the practical problems it could raise, such as creating the necessity for filing a pre-effective amendment merely because the undertaking has become stale. Because the Commission does not wish to impose any unnecessary burdens upon issuers, the proposed undertaking dating provision is not included in the Form as adopted.

Next, Item 11 requires a statement specifically incorporating by reference into the registration statement (a) certain portions of the annual report(s) to security holders and (b) any reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act by the issuer, as well as by the company being acquired if the latter is subject to those reporting requirements, for periods subsequent to that covered by the annual report(s) delivered with the prospectus. A new Item 12 requires undertakings similar to those required by Form S–8 (17 CFR 239.16b) and Form S–14 dealing with appropriately updating prospectuses. This new Item was necessitated by the expansion of Form S–15 to resales and reoffers by persons deemed underwriters. The remaining provisions deal with the interests of experts named in the registration statement (Item 13) and with exhibits to the registration statement as required by Item 8 of Regulation S–K (Item 14).

Form S–15 does not require that the issuer's latest proxy statement must be delivered along with the annual report to security holders and the prospectus. Item 4 of Form S–15 calls for the same disclosure as to directors and executive officers and beneficial ownership of securities which is contained in the proxy statement. Disclosure as to management remuneration (Item 4 of Regulation S–K) would not be contained in the documents actually delivered to security holders. This information is incorporated by reference into the registration statement, however, because it is either contained in the issuer's latest Form 10–K report or is incorporated by reference therein from the issuer's latest proxy statement. Most commentators who responded to the Commission's specific invitation to comment on this point agreed that there should not be a requirement to deliver the proxy statement with the Form S–15 prospectus.

II. Related Amendments

A. *Rules on Incorporation by Reference.* Form S–15 requires incorporation by reference into the registration statement of certain information contained in the annual report to security holders. That report, prepared pursuant to Regulation 14A or 14C, particularly Rule 14a–3 or 14c–3 thereof, is furnished to the Commission for its information, but is not deemed "filed" with the Commission.[25] The

[25] Rule 14a–3(c) (17 CFR 240.14a–3(c)) provides: "Seven copies of the report sent to security holders

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Commission is amending Rule 24 of its Rules of Practice (17 CFR 201.24) and Rule 411 (17 CFR 230.411) which make clear that information contained in such reports, though the reports are not deemed filed with the Commission, nevertheless may be incorporated by reference into a registration statement filed pursuant to the Securities Act. The company is still responsible for the information incorporated as if it had been set forth in the prospectus. These amendments are adopted as proposed.

B. *Rules 14a–3, 14a–6, 14a–12, 14c–2, 14c–5.* Exchange Act Rule 14a–3(a) (17 CFR 240.14a–3(a)) provides that no solicitation subject to the proxy rules shall be made unless each person solicited is concurrently furnished or has previously been furnished a written proxy statement containing the information specified in Schedule 14A (17 CFR 240.14a–101) under that Act. The Commission is amending Rule 14a–3 to provide that material filed in a Form S–15 registration statement under the Securities Act containing the information required by that Form satisfies the requirements of the Rule.

The Commission is amending Exchange Act Rule 14a–6(j) (17 CFR 240.14a–6(j)) to provide that material filed in an S–15 registration statement under the Securities Act satisfies the filing requirements of the proxy rules under the Exchange Act. This amendment enables registrants to avoid filing copies of the registration statement as a proxy statement under the Exchange Act and paying a proxy filing fee.

Rule 14a–12 under the Exchange Act (17 CFR 240.14a–12) provides that solicitations in opposition to prior solicitations may be made before furnishing security holders a written proxy statement containing the information specified in Schedule 14A if certain conditions are met, including that no form of proxy be furnished to security holders prior to the time the written proxy statement required by Rule 14a–3(a) is furnished. Where a proxy statement then meeting the requirements of Schedule 14A has already been furnished to security holders, however, this latter condition is inapplicable.

Since the amendment to Rule 14a–3(a) provides that a proxy statement included in a registration statement filed under the Securities Act on Form S–15 may contain the information specified in that Form in lieu of the information specified in Schedule 14A, the Commission is amending Exchange Act Rule 14a–12(a) to refer to Rule 14a–3(a) and to delete the reference to Schedule 14A.

Rule 14c–2(a) under the Exchange Act (17 CFR 240.14c–2(a)) requires an issuer subject to the information rules to transmit to its security holders a written information statement containing the information specified in Schedule 14C. To provide similar treatment for proxy material and information statements, the Commission is amending Rule 14c–2 to provide that material filed in a Form S–15 registration statement satisfies the requirements of the Rule.

Also in order to provide similar treatment for proxy material and information statements, the Commission is amending Exchange Act Rule 14c–5(e) (17 CFR 240.14c–5(e)) to provide that material filed in a Form S–15 registration statement under the Securities Act satisfies the filing requirements of Regulation 14C under the Exchange Act. In such instances, no information statement filing fee is required. The foregoing amendments to Regulations 14A and 14C are adopted exactly as proposed.

C. *Item 7 (Exhibits) of Regulation S–K.* As was indicated in Securities Act Release No. 6177, which published proposed Form S–15 for comment, the proposed Form assumed that the Commission's then outstanding proposal to incorporate uniform exhibit requirements into Item 7 of Regulation S–K would be adopted. It was therefore contemplated that at such time as the Commission decided to adopt Form S–15, new Item 7 of Regulation S–K would be amended by adding a new column to Table I thereof indicating that the following exhibits would be required for filings on Form S–15: plan of acquisition, reorganization arrangement, liquidation or succession; instruments defining the rights of security holders; opinion re legality; opinion re tax matters; and material contracts. Item 7 (Exhibits) of Regulation S–K was adopted by the Commission on August 27, 1980.[26] Accordingly, the Commission is adopting the amendment thereto described in the proposal published in Securities Act Release No. 6177, with the addition of a requirement for a letter re unaudited financial information which provides consistency of Securities Act exhibit requirements in this regard.

Text of Form and Rule Amendments

17 CFR Chapter II is amended as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. By adding § 239.29 to read as follows:

§ 239.29 Form S–15, optional form for registration of securities to be offered in certain business combination transactions.

SECURITIES AND EXCHANGE COMMISSION

Form S–15—Registration Statement Under the Securities Act of 1933

.....
(Exact name of issuer as specified in its charter)

.....
(State or other jurisdiction of incorporation or organization)

.....
(Primary Standard Industrial Classification Code Number

.....
(I.R.S. Employer Identification Number)

.....

.....
(Address, including Zip Code, and telephone number, including area code, of issuer's principal executive offices)

.....

.....
(Name, address and telephone number of agent for service)

.....
(Approximately date of commencement of the proposed sale of the securities to the public)

Calculation of Registration Fee

Title of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

[26] Securities Act Release No. 6230 (August 27, 1980).

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pursuant to this rule shall be mailed to the Commission, solely for its information. * * * The report is not deemed * * * to be 'filed' with the Commission or subject to this regulation otherwise than as provided in this rule or to the liabilities of Section 18 of the Act, except to the extent that the issuer specifically requests that it be treated as a part of the proxy soliciting material or incorporates it in the proxy statement by reference." Rule 14c–3(b) (17 CFR 240.14c–3(b)) contains a similar provision.

Form S–15—General Instructions

A. *Rule as to Use of Form S–15.* Form S–15 may be used for registration under the Securities Act of 1933 of securities to be issued either (a) in a transaction of the type specified in Rule 145(a) (§ 230.145(a); (b) in a merger in which a vote of the security holders of the company being acquired is not required pursuant to applicable state law; or (c) in an exchange offer for securities of another person if the securities sought to be acquired together with any securities owned by the issuer at the time of the filing of the registration statement will aggregate in excess of 50% of the class of securities which is the subject of the exchange; Provided, that each of the following conditions is met:

1. (a) The change in each of the following items for the issuer on an historical basis compared to those for the issuer on a pro forma consolidated basis giving effect to the transaction does not exceed 10 percent for the latest fiscal year (with respect to items (i) and (ii)) and as of the end of the latest fiscal year (with respect to items (iii) and (iv)):

(i) Gross sales and operating revenues;

(ii) Net income;

(iii) Total assets; and

(iv) Total shareholders' equity.

(b) The total purchase price (market value of the securities being registered as of the date of filing the registration statement plus any additional cash consideration being offered) does not exceed 10% of the issuer's total assets as of the end of the latest fiscal year for which a report on Form 10–K (§ 249.310) has been filed.

Note.—Form S–15 may be used to register securities to be issued pursuant to more than one single acquisition transaction. In order for the Form to be used in connection with simultaneous acquisitions or exchange offers of more than one company, however, the conditions of Instruction A.1. above must be met on both an individual and an aggregate basis.

2. At the time of filing the registration statement, the issuer (a) meets the requirements for the use of Form S–7 (§ 239.26), (b) has furnished its latest annual report to security holders pursuant to Rule 14a–3 (§ 240.14a–3) or Rule 14c–3 (§240.14c–3) and (c) such report contains audited year-end financial statements as of a fiscal year end not more than fifteen months prior to the date the registration statement becomes effective.

3. On or prior to the date of effectiveness of the registration statement, the transaction has been approved or recommended by the boards of directors, or other similar governing bodies, of the issuer and of the company being acquired.

4. The prospectus is delivered to the security holders whose vote, consent or authorization is solicited in accordance with the provisions of any applicable federal or state law but in no event later than 20 days prior to the date on which the meeting of such security holders is held or, if no such meeting is held, the earlier of the date of such vote, consent or authorization or the date the transaction is consummated.

5. Neither the issuer nor the company being acquired is a registered investment company.

B. *Application of General Rules and Regulations.* Attention is directed to the General Rules and Regulations under the Act, particularly those comprising Regulation C (§ 230.400 to § 230.494). That Regulation contains general requirements regarding the preparation and filing of the registration statement. Rules 405, 411, 412, and 439 should be especially noted.

C. *Documents Comprising Registration Statement.* The registration statement shall consist of the facing sheet of the Form, a prospectus containing the information called for by Part I, the information and undertaking called for by Part II, signatures, consents of experts, exhibits and any other information or documents filed as a part of the registration statement.

D. *Compliance With Proxy or Information Rules.* 1. If a corporation or other person submits to its security holders entitled to vote or consent a proposal to approve the transaction in which the securities being registered are to be issued, and such person's submission to its security holders is subject to Regulation 14A (§§ 240.14a–1 to 14a–101 of this chapter) or 14C (§§ 240.14c–1 to 14c–101) under the Securities Exchange Act of 1934, then the provisions of such Regulations shall apply in all respects to such person's submission, except that (a) the prospectus may be in the form of a proxy or information statement and shall contain the information required by this Form in lieu of that required by Schedule 14A (§ 240.14a–101) or 14C (§ 240.14c–101) of Regulation 14A or 14C under the Securities Exchange Act of 1934; and (b) copies of the preliminary and definitive proxy or information statement, form of proxy or other material filed as a part of the registration statement shall be deemed filed pursuant to the requirements of such Regulations. All other soliciting material shall be filed in accordance with such Regulations.

2. If the proxy or information material sent to such security holders is not subject to Regulation 14A or 14C, all such material shall be filed as a part of the registration statement at the time the statement is filed or as an amendment thereto prior to the use of such material.

3. If the transaction pursuant to which the securities being registered on this Form are to be issued is subject to Section 13(e), 14(d) or 14(e) of the Securities Exchange Act of 1934, the provisions of those sections and the rules and regulations thereunder shall apply to the transaction regardless of the provisions of Form S–15.

E. *Availability of the Prospectus for Reoffers or Resales.* The Form S–15 prospectus may be used by affiliates of the issuer, or any other persons who may be deemed underwriters of such securities, for reoffers or resales of securities acquired pursuant to this registration statement, Provided, that: (1) The additional information called for by Item 8 of this form is included in the prospectus so used; (2) each of the persons named as a selling security holder in a prospectus used for reoffers or resales shall have an intent to make such offers and sales within not more than sixteen months following the effective date of the prospectus [if after the effective date a person acquires an intent to reoffer or resell and the issuer wishes to add such person to the list of selling security holders the issuer may do so by filing a post-effective amendment]; and (3) the information in a prospectus used for reoffers or resales shall be updated through an amended prospectus filed in accordance with Section 10(a)(3) of the Act.

F. *Availability and Operation of Form S–15 Prior to Implementation of Revised Annual Report Requirements.* On September 2, 1980, the Commission adopted certain amendments to Rule 14a–3 and Regulation S–K, effective for reports with respect to fiscal years ending after December 15, 1980. If all other conditions to the use of Form S–15 are met, the Form may be used prior to such time as those amendments are required to have been implemented by the issuer or, where appropriate, by the company being acquired (*See* Item 3(a)). In such event, the references in Item 3(b) and Item 11(a) of this Form to (1) supplementary financial information furnished in accordance with the provisions of [revised] Rule 14a–3(b); (2) market for common stock and related security holder matters furnished in accordance with [new] Item 9 of Regulation S–K; (3) selected financial data furnished in accordance with [new] Item 10 of Regulation S–K; and (4) management's discussion and analysis of financial condition and results of operations furnished in accordance with [new] Item 11 of Regulation S–K, should be deemed to refer instead to the summary of operations, management's discussion and analysis, and market and securities price data as required by Rule 14a–3 for reports with respect to fiscal years ending prior to December 15, 1980. In addition, the provisions of Item 3(b) and Item 11(a) with respect to financial statements required by Rule 14a–3 shall be deemed to be satisfied by financial statements meeting the requirements of Rule 14a–3 applicable at the time such annual report was prepared.

Part 1. Information Required in the Prospectus

Item 1. *Summary.* Immediately following the cover page of the propectus, set forth a summary containing the following:

(a) a brief description of the general nature of the business conducted by the issuer and by the company being acquired; (b) a brief description of the transaction pursuant to which the securities being registered are to offered; and (c) in comparative columnar form, comparative per share data adjusted to be presented on an equivalent share basis of the issuer and the company being acquired, for the following items: (i) book value per share as of the date of the most recent balance sheet presented in response to Item 3 or incorporated by reference in response to Item 11; (ii) cash dividends declared per share during the last full fiscal year for which financial statements are presented in response to Item 3 or incorporated by reference in response to Item 11; (iii) net earnings per share for the year ended as of the same date used for purposes of paragraph (i) of this Item, and for the year to date ended as of the end of the latest corresponding fiscal quarter which ended not more than forty-five days prior to the effective date of the registration statement; and (iv) market

value of securities as of the day preceding public announcement of the proposed transaction, or, if no such public announcement was made, as of the day preceding the day the agreement with respect to the transaction was entered into.

Item 2. *Terms of the Transaction.* (a) Give the name of the issuer of the securities to be registered, its complete mailing address, including the zip code, and the telephone number, including the area code, of its principal executive offices.

(b) Give the name of the company being acquired, its complete mailing address, including the zip code, and the telephone number, including the area code, of its principal executive offices.

(c) Outline briefly the material features of the proposed transaction, including a description of the securities to be issued pursuant thereto. State the reasons of the company being acquired for engaging in the transaction, the federal income tax consequences thereof to the security holders of the company being acquired, and any significant differences between the rights of those security holders and the rights of holders of the securities being offered.

Instruction. A brief summary of the principal terms of an acquisition agreement is all that is required. Copies of the acquisition agreement need not be included in the prospectus if an undertaking is included to provide without charge to each person to whom a prospectus is delivered, on the written request of such person, a copy of the agreement (excluding any confidential or proprietary exhibits or provisions).

(d) Briefly describe any restrictions on the issuer's present or future ability to pay dividends with respect to any class of securities.

Item 3. *Description of the Company Being Acquired.* (a) If the company being acquired has a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934 and has furnished an annual report to security holders pursuant to Rule 14a–3 (§ 240.14a–3) or Rule 14c–3 (§ 240.14c–3) for its latest fiscal year, then, at the issuer's option, portions of such annual report may be incorporated by reference and such annual report may be delivered in accordance with the provisions of Items 9, 10 and 11 of this Form.

(b) Otherwise, if the company being acquired does not have a class of securities rgistered pursuant to Section 12 of the Securities Exchange Act of 1934, or has not furnished an annual report to security holders pursuant to Rule 14a–3 (§ 240.14a–3) or Rule 14c–3 (§ 240.14c–3) for its latest fiscal year, or the issuer elects not to incorporate by reference from such annual report and to deliver it with the prospectus, then the following shall be set forth with respect to the acquired company:

(i) A brief description of the business of the company being acquired which indicates its general nature and scope;

(ii) Market for common stock of the company being acquired and related security holder matters as required by Item 9 of Regulation S–K;

(iii) Selected financial data as required by Item 10 of Regulation S–K;

(iv) Management's discussion and analysis of financial condition and results of operations as required by Item 11 of Regulation S–K;

(v) Financial statements and supplementary financial information as would have been required to be included in an annual report furnished to security holders pursuant to Rule 14a–3 (§ 240.14a–3) or Rule 14c–3 (§ 240.14c–3) had the company being acquired been required to prepare such a report: *Provided, however,* That the balance sheet for the year preceding the latest full fiscal year and the income statements for the two years preceding the latest full fiscal year need not be audited if they have not previously been audited; and

(vi) The quarterly financial and other information as would have been required had the company being acquired been required to file Part I of Form 10–Q (§ 249.308a) for the most recent quarter for which such a report would have been on file at the time the registration statement becomes effective or for a period ending as of a more recent date.

Instruction. The Commission may, upon the request of the issuer, permit the omission of any of the statements or other financial information required by paragraphs (iii), (v) and (vi) of this Item where such statements are not necessary for the exercise of prudent judgment in regard to the transaction pursuant to which the securities being registered are to be offered, or may permit the filing in substitution therefor of appropriate statements of comparable character.

Item 4. *Voting Information.* (a) If proxies, consents, or authorizations are to be solicited, include, where applicable, the information called for by the following items of Schedule 14A (§ 240.14a–101) of Regulation 14A under the Securities Exchange Act of 1934:

Item 1. Revocability of proxy;

Item 3. Persons making the solicitation;

Item 5. Voting securities and principal holders thereof; and

Item 22. Vote required for approval.

(b) If the transaction is not an exchange offer and proxies, consents, or authorizations are not to be solicited, include, where applicable, the information called for by Items 5 and 22 of Schedule 14A and the following items of Schedule 14C (§ 240.14c–101) of Regulation 14C under the Securities Exchange Act of 1934:

Item 2. Statement that proxies are not solicited; and

Item 3. Date, time and place of meeting.

(c) In addition to the information called for by paragraphs (a) and (b) above, in all cases include the following:

(i) *Dissenters' Rights of Appraisal.* Outline briefly appraisal or other similar rights of dissenters with respect to the proposed transaction and indicate any statutory procedure required to be followed by dissenting security holders in order to perfect such rights. Where such rights may be exercised only within a limited time after the date of adoption of a proposal, the filing of a charter amendment, or other similar act, state whether the person solicited will be notified of such date.

Instruction. Indicate whether or not a security holder's failure to vote against a proposal will constitute a waiver of his appraisal or other similar rights and whether or not a vote against a proposal will be deemed to satisfy any notice requirements under state law with respect to appraisal rights. If the state law is unclear, state what position will be taken in regard to these matters.

(ii) *Beneficial Ownership.* Provide the information required by Items 6(a) and 6(b) of Regulation S–K (§ 229.20) with respect to both the issuer of the securities being registered and the company being acquired. To the extent that this information is already provided pursuant to paragraph (a) of this Item, a statement to that effect will suffice.

(iii) *Executive Officers and Directors.* With respect to the issuer, provide the information required by Item 3 of Regulation S–K. With respect to the company being acquired, identify each of the executive officers and directors and indicate the principal occupation or employment of each such person and the name and principal business of any organization by which such person is so employed.

Item 5. *Interest of Certain Persons in the Transaction.* Describe briefly any material interest, direct or indirect, by security holdings or otherwise, of affiliates of the issuer and of the company being acquired, in the proposed transaction.

Instruction. This item shall not apply to any interest arising from the ownership of securities of the issuer where the security holder receives no extra or special benefit not shared on a pro rata basis by all other holders of the same class.

Item 6. *Additional Information With Respect to the Issuer.* (a) Provide financial and other information with respect to the issuer in the form required by Part I of Form 10–Q (§ 249.308a) as of the end of the most recent fiscal quarter for which a Form 10–Q has been filed or as of a more recent date by one of the following means:

(i) Including such information in the prospectus;

(ii) Delivering to each person to whom a prospectus is delivered a copy of the issuer's latest Form 10–Q; or

(iii) Delivering to each person to whom a prospectus is delivered a copy of the issuer's latest quarterly report which was delivered to its security holders and which included the required financial and other information.

Instruction. Form 10–Q(s) which are to accompany the prospectus should be filed and quarterly reports to security holders which are to accompany the prospectus should be delivered to the staff ten days prior to the expected effective date of the registration statement.

(b) Describe any and all material changes in the issuer's affairs which have occurred since the end of the latest fiscal year for which certified financial statements were included in the latest annual report to security holders. Financial information may be required in the prospectus if the financial statements in the annual report to security holders do not reflect the results of a significant business combination accounted for as a pooling of interests or as a purchase or a change in accounting principles where such change requires a substantial

retroactive restatement of financial statements.

(c) State that reports, proxy statements and other information filed by the issuer can be inspected and copied at the public reference facilities maintained by the Commission in Washington, D.C., and state the current address of such facility, and that copies of such material can be obtained from the Public Reference Section of the Commission, Washington, D.C. 20549 at prescribed rates.

(d) Name any national securities exchange on which the issuer's securities are listed, and state that reports, proxy statements and other information concerning the issuer can be inspected at such exchanges.

(e) Include an undertaking to provide without charge to each person to whom a prospectus is delivered, on the written request of such person, a copy of any and all of the information which has been incorporated by reference in the registration statement, other than exhibits to such information. Indicate the name, address and telephone number of the person to whom such a written request is to be directed.

Item 7. *Additional Information With Respect to the Company Being Acquired.* (a) If the Company being acquired has a class of securities registered under Section 12 of the Securities Exchange Act of 1934, has furnished an annual report to security holders pursuant to Rule 14a–3 or Rule 14c–3 for its latest fiscal year, and such annual report is incorporated by reference into and delivered with the prospectus pursuant to the option provided by Item 3(a), provide financial and other information with respect to the company being acquired in the form required by Part I of Form 10–Q as of the end of the most recent of the first three fiscal quarters which ended more than forty-five days prior to the effective date of this registration statement or as of a more recent date by one of the following means:

(i) Including such information in the prospectus;

(ii) Delivering to each person to whom a prospectus is delivered a copy of the latest Form 10–Q filed by the company being acquired; or

(iii) Delivering to each person to whom a prospectus is delivered a copy of the latest quarterly report which was delivered to the security holders of the company being acquired and which included the required financial and other information.

Instruction. Form 10–Q(s) which are to accompany the prospectus should be filed and quarterly reports to security holders which are to accompany the prospectus should be delivered to the staff ten days prior to the expected effective date of the registration statement.

(b) Describe any and all material changes in the affairs of the company being acquired which have occurred since the end of the latest fiscal year for which certified financial statements have been included either:

(i) In the annual report to security holders delivered pursuant to Item 10 of this form; or

(ii) In the prospectus as a result of the provisions of paragraph (c)(v) of Item 3 of this Form.

Financial information may be required in the prospectus if such financial statements do not reflect the results of a significant business combination accounted for as a pooling of interests or as a purchase or a change in accounting principles where such change requires a substantial retroactive restatement of financial statements.

(c) Describe any changes in control of the company being acquired which have occurred within thirty-six months prior to the filing date of the registration statement.

(d) If the company being acquired has a class of securities registered under Section 12 of the Securities Exchange Act of 1934 or is required to file reports under Section 15(d) of that Act:

(i) State that reports and other information filed by the company being acquired can be inspected and copied at the public reference facilities maintained by the Commission in Washington, D.C., and state the current address of such facility, and that copies of such material can be obtained from the Public Reference Section of the Commission, Washington, D.C. 20549 at prescribed rates;

(ii) Name any national securities exchange on which the securities of the company being acquired are listed, and state that reports, proxy statements and other information concerning the company being acquired can be inspected at such exchange; and

(iii) Include an undertaking to provide without charge to each person to whom a prospectus is delivered, on the written request of such person, a copy of any and all of the information which has been incorporated by reference in the registration statement, other than exhibits to such information. Indicate the name, address and telephone number of the person to whom such a written request is to be directed.

Item 8. *Additional Information Required for Reoffering by Persons and Parties Deemed to be Underwriters.* If any of the securities are to be reoffered to the public by any person or party who is deemed to be an underwriter thereof the prospectus shall, at the time of such offering, include the following additional information which would then be required to be included in the prospectus by the appropriate registration form, other than Form S–15, to the extent that such information is not already included in the prospectus:

(a) Information in regard to the persons and parties on whose behalf the securities are to be offered and the underwriting and distribution of such securities;

(b) Information with respect to the consummation of the transaction pursuant to which the securities were acquired and any material developments in the business or affairs of the issuer subsequent to the transaction; and

(c) Any other information necessary to make the prospectus current, including financial statements of the issuer and any other party to the transaction.

Item 9. *Information Delivered and Incorporated by Reference.* (a) A statement shall be made indicating that the prospectus is accompanied by the following documents:

(i) The issuer's latest annual report to security holders; and

(ii) If the company being acquired has a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934, has furnished its annual report for its latest fiscal year to security holders pursuant to and meeting the requirements of Rule 14a–3 (§ 240.14a–3) or Rule 14c–3 (§ 240.14c–3), and the issuer has elected pursuant to the option provided by Item 3(a) to incorporate by reference from such annual report and deliver it with the prospectus, such annual report.

(b) A statement shall be made that certain information has been incorporated by reference, including but not limited to specified portions of the document(s) which accompany the prospectus. The issuer may also state, if it so chooses, that specifically described portions of those documents are not incorporated by reference and are not a part of the registration statement. In such case, the description of portions which are incorporated by reference or which are excluded shall be made with clarity and in reasonable detail. The detailed description of all material incorporated by reference may, at the issuer's option, either be included in the prospectus or in Part II of the registration statement in response to Item 11 or in both places.

Part II. Information Not Required in Prospectus; Undertakings

Item 10. *Undertaking To Transmit Certain Material.* The registration statement shall contain an undertaking substantially as follows:

"The undersigned issuer hereby undertakes to deliver or cause to be delivered with the prospectus to each person to whom the prospectus is sent or given by the issuer or by the acquired company:

(i) The issuer's latest annual report to security holders; and

(ii) The latest annual report to security holders of the company being acquired furnished pursuant to and meeting the requirements of Rule 14a–3 or Rule 14c–3."

However, if the issuer either does not have available or does not elect the option provided by Item 3(a) to incorporate by reference and deliver the annual report to security holders of the company being acquired, then paragraph (ii) of this undertaking may be omitted.

Item 11. *Incorporation of Certain Information by Reference.* (a) The following information contained in the annual report(s) to security holders delivered with the

prospectus pursuant to Item 10 shall be specifically incorporated by reference into the registration statement by means of a statement to that effect in Part II filed with the Commission (*see* Item 9(b)):

(i) Description of business furnished in accordance with the provisions of Rule 14a–3(b)(5);

(ii) Certified financial statements furnished in accordance with the provisions of Rule 14a–3(b);

(iii) Supplementary financial information furnished in accordance with the provisions of Rule 14a–3(b)(3);

(iv) Information relating to industry segments, classes of similar products or services, foreign and domestic operations and export sales furnished in accordance with the provisions of paragraphs (b), (c)(1)(i) and (d) of Item 1 of Regulation S–K (§ 229.20);

(v) Market for common stock and related security holder matters furnished in accordance with Item 9 of Regulation S–K;

(vi) Selected financial data furnished in accordance with Item 10 of Regulation S–K; and

(vii) Management's discussion and analysis of financial condition and results of operations furnished in accordance with Item 11 of Regulation S–K.

(b) The following documents shall be specifically incorporated by reference into the registration statement, by means of a statement to that effect in Part II filed with the Commission (*see* Item 9(b)):

(i) Any reports filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 by the issuer on or after the end of the issuer's latest fiscal year reported on in the annual report to security holders delivered with the prospectus pursuant to Item 10 and prior to the date the vote or consent solicited pursuant to the registration statement is final under applicable State law or, if no such vote or consent is solicited, the date of the transaction described in the registration statement is fully consummated; and

(ii) Any reports filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 by the company being acquired on or after the end of such company's latest fiscal year as reported on in the annual report to security holders delivered with the prospectus pursuant to Item 10 or as reported on in the prospectus pursuant to Item 3 and prior to the date the vote or consent solicited pursuant to the registration statement is final under applicable State law or, if no such vote or consent is solicited, the date the transaction in the registration statement is fully consummated.

Item 12. *Undertaking To File Prospectuses as Amendments.* The registration statement shall contain an undertaking substantially as follows:

"The undersigned issuer hereby undertakes as follows:

(a) That prior to any public reoffering of the securities registered hereunder through the use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain, or will be amended to contain, the information called for by Item 8 with respect to the securities to be so offered, in addition to the information called for by the other Items of Form S–15;

"(b) That every prospectus which is filed pursuant to paragraph (a) above, or which purports to meet the requirements of Section 10(a)(3) of the Act, will be filed as a part of an amendment to the registration statement and will not be used until such amendment has become effective, and that for the purpose of determining liabilities under the Act, the effective date of such amendment shall be deemed the effective date of the registration statement with respect to securities sold after such amendment has become effective;

"(c) That all such new registration statements will comply with the applicable forms, rules and regulations of the Commission in effect at the time such post-effective amendments are filed; and

"(d) That the issuer will remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering."

Item 13. *Interest of Experts Named in Registration Statement.* If any expert named in the registration statement as having prepared or certified any part thereof was employed for such a purpose on a contingent basis or, at the time of such preparation or certification or at any time thereafter, had a substantial interest in the issuer or any of its parents or subsidiaries or was connected with the registrant or any of its subsidiaries as a promoter, underwriter, voting trustee, director, officer or employee, furnish a brief statement of the nature of such contingent basis, interest or connection.

Item 14. *Exhibits.* Subject to the rules regarding incorporation by reference, the exhibits as required by Item 7 of Regulation S–K (17 CFR 229.20) shall be filed as a part of the registration statement. List all exhibits so filed and appropriately letter or number each exhibit for convenient reference. Exhibits incorporated by reference may bear the designation given in the previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits.

Signatures. Pursuant to the requirements of the Securities Act of 1933, the issuer has duly caused this registration statement to be signed on its behalf of the undersigned, thereunto duly authorized, in the City of ———, State of ———, on ———, 19——.

(Issuer) ———

By (Signature and Title) ———

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) ———

(Title) ———

(Date) ———

Instructions

1. The registration statement shall be signed by the issuer, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer and by at least the majority of the board of directors or persons performing similar functions. .

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement.

PART 201—RULES OF PRACTICE

2. By amending § 201.24 to read as follows:

§ 201.24 Incorporation by reference.

Where rules, regulations, or instructions to forms of the Commission permit incorporation by reference, a document may be so incorporated by reference to the specific document and, where the document being incorporated by reference has been filed with the Commission, to the prior filing in which such document was physically filed. Reference may not be made to any document which incorporates another document by reference if the pertinent portion of the document containing the information or financial statements to be incorporated by reference includes an incorporation by reference to another document. No document on file with the Commission for more than five years may be incorporated by reference except—

(a) Documents contained in registration statements which may be incorporated by reference as long as the registrant has a reporting requirement with the Commission;

(b) Documents that the registrant specifically identifies by physical location and by SEC file number reference, provided such materials have not been disposed of by the Commission pursuant to its Records Control Schedule (17 CFR 200.80f).

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S–K

3. By amending Table I of Item 7 (added at 45 FR 58825, Sept. 5, 1980) of § 229.20 to read as follows:

Table I.—*Securities Act of 1933—Frequently Used Forms*

	S-1	S-2	S-7	S-8	S-11	S-14	S-15	S-16
(1) Underwriting agreement	X	X	X	.....	X	X	.....	X
(2) Plan of acquisition, reorganization arrangement, liquidation or succession.	X	.....	X	.....	X	X	X	[1]X
(3) Articles of incorporation and by-laws.	X	X	.....	.....	X	X	.....	.....
(4) Instruments defining the rights of security holders, including indentures.	X	X	X	X	X	X	X	X
(5) Opinion re legality	X	X	X	X	X	X	X	X
(6) Opinion re discount on capital shares.	X	X	X	.....	X	X	.....	.....
(7) Opinion re liquidation preference	X	X	X	.....	X	X	.....	.....
(8) Opinion re tax matters	X	X	X	X	X	X	X	X
(9) Voting trust agreement	X	X	.....	.....	X	X	.....	.....
(10) Material contracts	X	X	X	.....	X	X	X	.....
(11) Statement re computation of per share earnings.	X	.....	X	.....	X	X	.....	.....
(12) Statements re computation of ratios[2].	X	.....	X	.....	X	X	.....	.....
(13) Annual report to security holders	.....	.....	.....	X	.....	.....	.....	.....
(14) Material foreign patents	X	X	.....	.....	.....	X	.....	.....
(15) Instruments defining the rights of participating employees.	[3]X	.....	.....	X	.....	.....	.....	.....
(16) Letter re unaudited financial information.	X	X	X	X	X	X	X	X

[1] Such plans need not be filed for secondary offerings on this form.
[2] Such statements are necessary only when such ratios are furnished.
[3] This exhibit need only be filed for the registration of securities offered pursuant to an employee benefit plan of the registrant.

* * * * *

§ 229.20 Information required in document.

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Item 7. Exhibits.

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

4. By amending paragraph (b) of § 230.411 to read as follows:

§ 230.411 Incorporation of certain information by reference.

* * * * *

(b) Any financial statement or part thereof filed with the Commission pursuant to any Act administered by the Commission, or any financial statement or part thereof contained in an annual report to security holders prepared in compliance with Rule 14a–3 (§ 240.14a–3) or Rule 14c–3 (§ 240.14c–3), and furnished to security holders and mailed to the Commission in compliance with those rules, may be incorporated by reference in any registration statement if it substantially conforms to the requirements of the appropriate form and is not required to be included in the prospectus. However, a financial schedule incorporated by reference to an annual report filed with the Commission pursuant to any Act administered by it need not be certified, if such schedule was not required to be certified in connection with the filing of the annual report, any requirement of any registration form to the contrary notwithstanding.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. By amending paragraph (a) of § 240.14a–3 to read as follows:

§ 240.14a–3 Information to be furnished to security holders.

(a) No solicitation subject to this regulation shall be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information specified in Schedule 14A (§ 240.14a–101) or with a written proxy statement included in a registration statement filed under the Securities Act of 1933 on Form S–15 (§ 239.29) and containing the information specified in such Form.

* * * * *

6. By amending paragraph (i) of § 240.14a–6 to read as follows:

§ 240.14a–6 Material required to be filed.

* * * * *

(i) Notwithstanding the foregoing provisions of this section, any proxy statement, form of proxy or other soliciting material included in a registration statement filed under the Securities Act of 1933 on Form S–14 (§ 239.23 of this chapter) or Form S–15 (§ 239.29 of this chapter) shall be deemed filed both for the purposes of that Act and for the purposes of this section, but separate copies of such material need not be furnished pursuant to this section nor shall any fee be required under paragraph (i) of this section. However, any additional soliciting material used after the effective date of the registration statement on Form S–14 or Form S–15 shall be filed in accordance with this section but separate copies of such material need not be filed as an amendment of such registration statement.

* * * * *

7. By revising the introductory text of paragraph (a) and paragraph (a)(2) of § 240.14a–12 to read as follows:

§ 240.14a–12 Solicitation Prior to Furnishing Required Proxy Statement.

(a) Notwithstanding the provisions of Rule 14a–3(a) (§ 240.14a–3(a)), a solicitation (other than one subject to Rule 14a–11 (§ 240.14a–11)) may be made prior to furnishing security holders a written proxy statement meeting the requirements of Rule 14a–3(a) if—

* * * * *

(2) No form of proxy is furnished to security holders prior to the time the written proxy statement required by Rule 14a–3(a) (§ 240.14a–3(a)) is furnished to security holders: *Provided, however,* That this subparagraph (2) shall not apply where a proxy statement then meeting the requirements of Rule 14a–3(a) has been furnished to security holders by or on behalf of the person making the solicitation.

* * * * *

8. By amending paragraph (a) of § 240.14c–2 to read as follows:

§ 240.14c–2 Distribution of information statement.

(a) In connection with every annual or other meeting of the holders of a class of securities registered pursuant to section 12 of the Act, including the taking of corporate action with the written authorization or consent of the holders of a class of securities so registered, the issuer of such securities shall transmit a written information statement containing the information specified in Schedule 14C (§ 240.14c–101) or a written information statement included in a registration statement filed under the Securities Act of 1933 on Form S–15 (§ 239.29) and containing the information specified in such form, to every such security holder who is entitled to vote or give an authorization or consent in regard to any matter to be acted upon and from whom a proxy, authorization or consent is not solicited

on behalf of the management of the issuer pursuant to section 14(a) of the Act: *Provided, however,* That in the case of a class of securities in unregistered or bearer form, such statements need be transmitted only to those security holders whose names are known to the issuer.

* * * * *

9. By amending paragraph (e) of § 240.14c–5 to read as follows:

§ 240.14c–5 Filing of information statement.

* * * * *

(e) Notwithstanding the foregoing provisions of this section, any information statement or other material included in a registration statement filed under the Securities Act of 1933 on Form S–14 (§ 239.23 of this chapter) or Form S–15 (§ 239.39 of this chapter) shall be deemed filed both for the purposes of that Act and for the purposes of this section, but separate copies of such material need not be furnished pursuant to this section, nor shall any fee be required under paragraph (a) of this section. However, any additional material used after the effective date of the registration statement on Form S–14 or Form S–15 shall be filed in accordance with this section but separate copies of such material need not be filed as an amendment of such registration statement.

(Secs. 6, 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; 15 U.S.C. 77f, 77g, 77j, 77s(a); secs. 14(a), 23(a), 48 Stat. 985, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 5, 78 Stat. 569, 570; sec. 18, 89 Stat. 155; 15 U.S.C. 78n(a), 78w(a); secs. 12(e), 20(a), 49 Stat. 823, 833; 15 U.S.C. 79*l*, 79t; secs. 20(a), 38(a), 54 Stat. 822, 841; 15 U.S.C. 80a–20(a), 80a–37(a))

Statutory Authority and Findings

The Commission hereby adopts Form S–15 and the foregoing amendments to 17 CFR Parts 201, 229, 230, and 240 pursuant to the Securities Act of 1933, particularly Sections 6, 7, 10 and 19(a) thereof, and pursuant to Sections 14(a) and 23(a) of the Securities Exchange Act of 1934, Sections 12(e) and 20(a) of the Public Utility Holding Company Act of 1935, and Sections 20(a) and 38(a) of the Investment Company Act of 1940.

As required by Section 23(a) of the Exchange Act, the Commission has specifically considered the impact that the new Form and related rule amendments would have on competition and has concluded that they would impose no significant burden on competition not necessary or appropriate in furtherance of the purposes of that Act.

Pursuant to Section 553(d) of the Administrative Procedure Act of 1949 (5 U.S.C. 553), the Commission finds for good cause that the new Form and related Rule amendments may be used and relied upon prior to their effective date by any persons desiring to do so, provided that they comply with all applicable provisions of the Form.

By the Commission.

George A. Fitzsimmons,

Secretary.

September 2, 1980.

[FR Doc. 80–27814 Filed 9–19–80; 10:30 am]

BILLING CODE 8010–01–M

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17 CFR Parts 210, 229, 240, and 249

[Release Nos. 33–6233; 34–17116; 35–21699; IC–11325; AS–280]

General Revision of Regulation S–X

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting a general revision of Articles 3 and 5 and the related sections of Article 12 of Regulation S–X ("S–X"), the regulation which prescribes the form and content of and requirements for financial statements. The changes in the content of S–X (i) eliminate rules which are presently duplicative of generally accepted accounting principles ("GAAP"), (ii) effect changes to recognize predominant current practice and changes in circumstances, (iii) clarify and modify requirements which are presently subject to differing interpretations, and (iv) expand certain requirements to improve financial reporting. These changes have been structured in a manner to facilitate the integration of the Securities Act of 1933 and the Securities Exchange Act of 1934 by attaining uniformity between financial statements included in annual reports to shareholders and those prepared in accordance with S–X.

EFFECTIVE DATE: Effective for companies with fiscal years ended after December 15, 1980. However, upon publication in the **Federal Register**, earlier implementation is encouraged.

FOR FURTHER INFORMATION CONTACT: Arthur J. Schmeiser, Office of the Chief Accountant, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202–272–2133).

SUPPLEMENTARY INFORMATION: In Securities Act Release No. 6178 issued January 15, 1980, the Commission proposed for comment revisions to Articles 3 and 5 and the related sections of Article 12 of Regulation S–X. The purposes of the proposal were to:

(i) Eliminate rules which are presently duplicative of generally accepted accounting principles,

(ii) Effect changes to recognize predominant current practice and changes in circumstances,

(iii) Clarify and modify requirements which are presently subject to differing interpretations, and

(iv) Expand certain requirements to improve financial reporting.

These proposed changes were structured in a manner to facilitate the integration of the Securities Act of 1933 and the Securities Exchange Act of 1934 by attaining uniformity between financial statements included in annual reports to shareholders and those prepared in accordance with S–X.

More than 300 letters of comment were received on the proposal. After giving these comments careful consideration, the Commission has determined to adopt the amendments with some revisions which are responsive to the comments. Generally, commentators were in accord with the revisions which related to the first three objectives enumerated above and those revisions have been adopted substantially as proposed. On the other hand, many commentators opposed the last objective, expansion of certain requirements to improve financial reporting, and the proposal to conform the financial statements included in annual reports to shareholders to those prepared in accordance with S–X. Nevertheless, the Commission has determined to adopt the rule which provides for uniformity between financial statements included in annual reports to shareholders and those prepared in accordance with S–X. The proposed expanded disclsoure of the components of income tax expense has been withdrawn and the present disclosure requirements have been retained substantially; however, a requirement to disclose domestic and foreign income before income tax expense has been adopted. The present form of the property, plant and equipment schedules has been retained. The proposed property, plant and equipment schedules are being considered further and the issuance of a separate revised proposal is being evaluated. Additionally, certain commentators addressed rules which were proposed to be unchanged from previous S–X requirements and as a result further revisions have been adopted.

Background

General

In 1940, the Securities and Exchange Commission announced the adoption of Accounting Series Release ("ASR") No. 12, "Adoption of Regulation S–X." S–X codified the existing instructions as to the form and content of financial statements included as a part of each of the registration and reporting forms. The regulation did not prescribe accounting methods, but rather stated requirements which were intended to elicit informative disclosures. In 1940, there was little available authoritative accounting literature. Indeed, the predecessor of the American Institute of Certified Public Accountants ("AICPA") only two years earlier had instituted a research program resulting in the publication of accounting principles in the form of Accounting Research Bulletins ("ARBs"). This was the first attempt by the accounting profession to formally promulgate standards. Consequently, the Commission considered it beneficial that S–X included condensed requirements contained in one authoritative source.

Private Sector Initiatives

Since the development of S–X, however, the private sector has established and improved accounting and reporting standards through various organized bodies—the Accounting Principles Board ("APB"), other units of the AICPA and, most recently, the Financial Accounting Standards Board ("FASB"). The Commission indicated support for the FASB in ASR No. 150, which stated that financial statements conforming to standards set by the FASB will be presumed to have substantial authoritative support. Additionally, the Commission has indicated in its reports to Congress on its oversight of the accounting profession that it continues to believe that the initiative for establishing and improving accounting standards should remain in the private sector, subject to Commission oversight.

Need for Revision

Similarly, the Advisory Committee on Corporate Disclosure [1] supported private sector standard setting in its report to the Commission, issued in November 1977, in which it recommended among other things, that:

> A continuing goal of the Commission should be the elimination of rules of general applicability which cause differences between financial statements prepared in accordance with Regulation S–X and those prepared in accordance with GAAP. When the Commission requires an extension of disclosures beyond those required by GAAP because of an emerging problem, the reasons for the extension and the underlying accounting issues involved should be stated. The Commission should then ask the FASB to consider the issue * * * the Commission should undertake the following:
>
> 1. Eliminate all financial statement disclosures required by Regulation S–X which duplicate those required in financial statements prepared in accordance with codified GAAP.
>
> 2. Critically review all disclosures of general applicability which are supplementary to those required by GAAP with the objective of eliminating disclosures which may not be necessary to users in making investment decisions.

In recent years, the Commission has sought to integrate the registration and reporting requirements under the Securities Act of 1933 and Securities Exchange Act of 1934. The Commission believes integration of the requirements of these two Acts benefits registrants by offering a more coherent reporting structure. In this connection, the Commission has recently undertaken the task of re-examining the present reporting and disclosure system focusing principally on the form, content and use of Form 10–K. This re-examination process resulted in a variety of separate but related projects of which this general revision of S–X is a part.[2]

The most recent comprehensive revision of S–X was in 1972, which was prior to the issuance by the APB of its last seven opinions and the establishment of the FASB. During the ensuing eight year period, the authoritative accounting literature has expanded dramatically and some of the requirements of S–X are now outdated. Accordingly, this revision was undertaken to respond to that situation.

Role of the FASB

The Commission frequently and unequivocally has voiced its support of the FASB as the leader in the establishment and improvement of accounting principles. A minority of the commentators have stated that certain components of the proposed amendments to S–X effectively may be pre-empting the activities of the FASB, especially its project to develop a conceptual framework for financial accounting and reporting. Indeed, one of the FASB's concerns about the proposal to require registrants to include financial statements prepared in accordance with S–X in their annual reports to shareholders is:

> Possible conflicts with the FASB's conceptual framework projects on reporting earnings, funds flows and liquidity, and financial statements and other means of financial reporting.

Other commentators objected that the proposal regarding the content of financial information in the annual report to shareholders contradicted ASR No. 150 and would undermine the authority of the FASB.

The Commission does not believe that any decision to require particular disclosures or, less likely, a decision to require a particular method of accounting through rulemaking in S–X, conflicts with the basic policy of relying on the FASB for leadership in establishing financial accounting and reporting standards. Furthermore, it believes that the remaining requirements of S–X address those areas where GAAP standards are not explicit and there is a need for an authoritative source for such requirements. While there is, of course, always the possibility that the Commission may conclude it cannot accept an FASB standard in a particular area, such events have been rare. The Commission intends to continue its present policy of carefully re-evaluating its rules as the FASB effectuates changes in financial accounting and reporting standards, and will eliminate those rules which become unnecessary. For example, as standards are issued by the FASB regarding "Funds Flows and Liquidity," "Reporting Earnings" and other phases of the conceptual framework project, the Commission expects it will be able to defer to the requirements of the private sector. The Commission believes that the action which it currently is taking is in harmony with its statement of policy pronounced in ASR No. 150.

Uniformity

The financial statements filed with the Commission frequently have been somewhat different from those included in annual reports to shareholders because of additional requirements of S–X. As mentioned previously, one of the purpose of the revisions to S–X is to facilitate the integration of the Securities Act of 1933 and the Securities Exchange Act of 1934 by attaining uniformity

[1] An *ad hoc* committee established by the Securities and Exchange Commission for the purpose of assessing the adequacy of the corporate disclosure system.

[2] Three other releases issued today adopt changes relating to: (1) Certain amendments to Form 10–K, the annual report form required to be filed by most publicly-owned companies, and a number of related rule, form and guide changes; (2) a new simplified form for the registration of securities issued in certain merger and reorganization transactions; and (3) uniform financial statement instructions for certain forms and reports required to be filed pursuant to the Securities Act and the Exchange Act; Securities Act Release Nos. 33–6231, 33–6232 and 33–6234, respectively.

between financial statements included in annual reports to shareholders and those prepared in accordance with S–X. Therefore, the Commission has re-examined Articles 3, 5 and 12 of S–X to determine which financial statement requirements should be required in annual reports to shareholders because of their significance and relevance.[3]

The Commission believes that annual reports to shareholders should not be overburdened with information which, although relevant to meaningful analysis, is of little interest to the majority of users. Therefore, it has relocated certain financial disclosures mandated in the financial statements by its previous requirements to the supplemental schedules required by Article 12.

The rules which are being adopted today have been the focus of serious consideration by the Commission and its staff. The Commission has considered the comments of the respondents and appreciates their concerns regarding its rules which affect the content of the annual report to shareholders. Clearly, the need to provide registrants with adequate flexibility in order to maintain the annual report to shareholders, and financial statements included therein, as readable and comprehensible documents has been one of the Commission's primary concerns. As a result, in January 1980 it proposed numerous changes to its rules, many of which are being adopted presently. As a consequence of the comment process, the Commission has re-evaluated the proposed rules and is adopting further revisions which are less restrictive than those proposed.

These revisions are discussed throughout this release and focus on the need for registrant flexibility, balanced with the need for uniformity in an integrated system. Overshadowing both these issues is the pervasive concern that registrants disseminate the financial information which is necessary for a fair presentation of the registrant's financial condition and results of operations.

As part of this re-evaluation, the requirement for financial statement note references has been removed and greater flexibility has been provided for determining items to be presented on the face of the financial statements. The Commission has decided not to adopt certain proposals such as the requirements to disclose earnings applicable to common stock and certain information about income tax expense; it has relocated the note disclosures addressing short-term borrowings to the financial statement schedules; and the disclosure of disagreements with predecessor accountants to the supplementary financial information; and it has decided not to relocate the supplementary income statement schedule information to the notes. Additionally, certain rules which were interpretative of GAAP have been removed since present practice is considered acceptable.

[3] Registrants which are subject to Articles 6, 7, 7A and 9 of S–X may deviate from strict compliance with S–X in their annual reports to shareholders (as permitted by the proxy rules) until those Articles have been revised. That revision should occur during the ensuing twelve months.

Article 4

Article 4 now contains the rules of general application to be followed by all registrants in preparing financial statements in accordance with S–X which were included previously in Article 3. The proposed release envisioned a substantial reduction of the content of this Article and discussed the rationale for such action. Commentators substantially agreed with the changes which resulted in complete or partial elimination of certain rules and primarily focused their comments on those rules which were proposed to be retained or established. Consequently, this discussion will not include those rules which were proposed to be deleted, in whole or in part, the disposition of which is as proposed. The following is a discussion of the rules which were proposed to be retained, along with a discussion of the comments received and final rules being adopted.

* * * * *

Form, order, and terminology. This rule describes certain mechanics which registrants should follow when preparing financial statements in accordance with S–X. One of the items proposed to remain in this rule presented specific requirements for the display of negative amounts in financial statements. Commentators have indicated that present practice renders this segment of the rule unnecessary, and since the Commission is requiring annual reports to shareholders, required by Rule 14a–3 of the Commission's proxy rules, to conform with S–X, this rule may conflict with the display techniques utilized in these annual reports. Accordingly, this segment of the rule is modified to require that negative amounts be presented in a manner which clearly distinguishes the negative attribute.

Items not material. This rule permits registrants to exclude the separate presentation of items not material which otherwise would be required to be shown. The proposed rule contained a reference to ASR No. 41 which has been deleted. The adopted rule instead paraphrases the essence of ASR No. 41 which permits insignificant amounts in financial statements to be combined. No negative comments were received regarding this rule and therefore it is adopted as proposed, with the modification indicated above.

Inapplicable captions and omission of unrequired or inapplicable financial statements. This rule explicitly permits the exclusion of captions and financial statements because the related information either does not exist or is not applicable. It further requires registrants to indicate the reasons why any otherwise required financial statements have been omitted. The rule is adopted as proposed.

Omission of substantially identical notes. This rule, which is adopted as proposed, permits the single presentation of substantially the same information which is required with respect to two or more financial statements relating to the same or affiliated persons, provided that a clear and specific reference is made in each of the other statements with respect to which the note is required.

Valuation and qualifying accounts. This proposed rule would have required that valuation and qualifying accounts be shown either separately in financial statements as deductions from the specific assets to which they apply or parenthetically on the face of the statements. Commentators recommended that registrants have the option of presenting this information in the notes to the financial statements. They indicated this flexibility would enhance the readability of the financial statements and that, in many cases, note disclosure results in a more meaningful and understandable financial presentation. The Commission has concluded that these comments have substantial validity; and, accordingly, it has deleted this general requirement. However, rules as to presentation of certain valuation and qualifying accounts are provided in Article 5.

Basis of determining amounts—book value. The proposed rule would have provided guidance to registrants when an instruction requires a statement as to "the basis of determining the amount." Further, it prohibited use of the term "book value" except in situations where the term explicitly was indicated as acceptable. Commentators have indicated that this rule is duplicative of the requirements of APB Opinion No. 22, "Disclosure of Accounting Policies." Therefore, recognizing that GAAP requires this disclosure, the Commission has determined to delete this rule.

Current assets and current liabilities. This rule requires that generally recognized trade practice be followed if a company's normal operating cycle is longer than one year. This pertains to the inclusion of items in current assets or current liabilities and requires an explanation of the circumstances and, if practicable, an estimate of the amount not realizable or payable within one year, and the amounts maturing each year along with the interest rates or range of interest rates. This rule is adopted as proposed, except that the reference to ASR No. 102 is deleted.

Reacquired evidence of indebtedness. This rule requires that reacquired evidences of indebtedness be deducted from the appropriate liability caption, except for certain situations where the reacquired evidence of indebtedness is held for pension and other special funds not related to the particular issues and then may be shown as an asset of the fund. However, if shown as an asset, the amount of such evidences of indebtedness, the cost thereof, the stated amount, and purpose for which it was reacquired must be stated. This rule is adopted as proposed.

Reacquired shares. The proposed rule, which was unchanged from previous S–X requirements, would have required that reacquired shares not retired be shown separately as a deduction from the applicable account. Commentators noted that ARB No. 43 addresses this issue and permits reacquired shares to be shown as an asset when the investment is temporary and the shares are held for special purposes not related to the particular issue. The Commission recognizes the treatment prescribed by ARB No. 43 and accordingly has determined to delete this rule.

Discount on shares. This rule, which is adopted as proposed, requires that discounts on shares be shown separately as a deduction from the applicable account(s) as circumstances require.

General notes to financial statements. This section of Article 4 specifies the required general notes to the financial statements and requires disclosure of certain applicable information which is not explicitly required by GAAP. It requires presentation of the information either on the face of the appropriate financial statements or in appropriately captioned notes. The proposed rule would have required appropriate cross-references to the applicable notes on the face of the statements. Commentators indicated that registrants should be given flexibility in this matter, because in certain instances cross-references may impair readability or clutter the financial statements. Additionally, certain methods of presentation are not conducive to cross-referencing. Registrants stated their belief that a general statement referring the reader to the notes frequently is adequate. The Commission believes note references can be valuable to users of financial statements if properly utilized by preparers but it does not desire to impede preparer efforts to develop more effective means of communicating financial information. Accordingly, this rule proposal has been withdrawn; however, cross-references to the applicable notes should appear on the face of the financial statements when appropriate for the effective presentation of financial information to the user of the financial statements.

The following is a discussion of the proposed subsections of *General notes to financial statements:*

Principles of consolidation or combination. This rule, which received no negative comments, refers registrants to revised Article 3 of S–X which contains the requirements for consolidated and combined financial statements.

Assets subject to lien. Two commentators indicated that this rule, which requires the presentation of certain information concerning assets mortgaged, pledged or otherwise subject to lien, is duplicative of Statement of Financial Accounting Standards ("SFAS") No. 5, "Accounting for Contingencies." The Commission believes that SFAS No. 5 does not provide explicit requirements in this regard and is adopting this rule as proposed.

Defaults. This rule requires disclosure of the facts and amounts concerning any default in principal, interest, sinking fund or redemption provisions with respect to any issues of securities or credit agreements. Previously, portions of this rule emphasized the need to classify as a current liability accelerated debt payments resulting from default. These were proposed for deletion since GAAP is considered to provide adequate guidance for the classification of liabilities as current or long-term. Most comments were favorable, and as a result this rule is adopted as proposed.

Preferred shares. This rule requires that the amount of aggregate preferences on involuntary liquidation, if other than par or stated value, be shown parenthetically in the appropriate section of the balance sheet. Commentators expressed conflicting interpretations of GAAP with regard to this issue. Some interpreted GAAP as requiring balance sheet presentation when this preference in liquidation may be of significance to the user, while others stated that presentation should be either on the balance sheet or in the notes to the financial statements. The Commission believes practice should be consistent and for this reason the rule is adopted as proposed.

Restrictions which limit the availability of retained earnings or net income for dividend purposes. This rule was proposed to be expanded to require disclosure of restrictions on the payment of intra-company dividends as well as restrictions on the parent company's payment of dividends to its shareholders. A number of commentators recommended that the rule only require disclosure of the most restrictive of any restrictions on the payment of dividends to shareholders.

The Commission proposed expansion of this rule because of its belief that there should be disclosure of information about the ability of the consolidated entity to transfer funds among its component corporations. The presentation of consolidated financial statements and use of the equity method of accounting frequently leads users to believe that there is a free flow of funds among the various corporations which are combined in the consolidated entity or whose investment are recorded at equity, when in fact the viability of certain components, and perhaps the entire entity, may be threatened because of restrictions on the intra-company flow of funds.

In formulating these disclosure requirements, the Commission has noted that previous Rule § 210.5–02.41 required registrants to disclose the amount included in retained earnings of the issuer which represents undistributed earnings of unconsolidated subsidiaries and 50 or less owned persons. Since that requirement embraces issues which are related to the availability of retained earnings for dividend purposes it is being moved to this rule. Therefore, this rule has been altered to require disclosure of the most significant restrictions which limit the payment of dividends to shareholders and the payment of dividends by subsidiaries to the issuer; and in addition, the amount of undistributed earnings of unconsolidated subsidiaries and 50 percent or less owned persons. These restrictions may result from contractual agreements or from legal prohibitions.

Significant changes in bonds, mortgages and similar debt. This rule requires information about events occurring subsequent to the latest balance sheet being filed and is adopted as proposed.

Income tax expense. The proposed rule regarding income tax expense would have required registrants to

reconcile pretax income and income tax expense for both their Federal and foreign components, as reported in their financial statements, to Federal (foreign) taxable income and related income taxes anticipated to be reported on registrants' Federal (foreign) income tax returns. A summary of the actual tax computation showing amounts taxed at various rates, statutory, capital gains, etc., and the effects of offsetting credits, also would have been required.

A substantial majority of the commentators addressed this particular rule proposal and, of that group, all but a few totally opposed the rule. Commonly expressed reasons for such opposition were the opinions that (1) the present rule adopted by ASR No. 149, "Notice of Adoption of Amendment to Regulation S–X for Improved Disclosure of Income Tax Expense," is adequate, (2) there is no real benefit to the majority of users by providing this information, (3) many of the tax circumstances are too complex to be properly presented and understood in the proposed format, (4) companies' tax returns usually are not prepared for many months after financial statements are published, and (5) the amount of information would tend to overburden the financial statements. Commentators who supported the proposed rules indicated an overwhelming interest in the proposed disclosure concerning foreign income and related taxes.

The Commission believes that these objections substantially are valid. Accordingly, it is adopting final rules based primarily on the disclosure requirements adopted by ASR No. 149. These requirements call for disclosure of the components of income tax expense, the reasons for and tax effects of timing differences between book and tax reporting resulting in deferred income taxes, and a reconciliation between the effective income tax rate indicated by the income statement and the statutory Federal income tax rate. These rules are being retained with one significant addition—a requirement for separate disclosure of domestic and foreign pretax income.

In ASR No. 149, the Commission stated its belief that the detailed tax disclosure would be primarily of interest to professional analysts who have the obligation to develop an in-depth understanding of corporate results but might not be necessary in financial disclosure designed for the average investor. Since the adoption of those rules, however, the Commission has seen substantial voluntary inclusion by registrants of this tax information in their annual reports to shareholders. Furthermore, as previously mentioned, numerous commentators supported the disclosure requirements instituted by ASR No. 149. Therefore, the Commission has determined to require disclosure of this information in annual reports to shareholders.

In the rule proposal, the Commission specifically invited commentators to address whether the Commission should retain the requirement concerning disclosure about future cash outlays for income taxes that are anticipated to substantially exceed income tax expense. Most registrants suggested that the rule be deleted, notwithstanding the importance of the disclosure it requires, because it is difficult to predict. The Commission understands that it is difficult to accurately predict this information; however, it believes that in situations where future cash outlays are anticipated to substantially exceed income tax expense, disclosure should be made. Since this disclosure may be more useful in relation to the liquidity section of the revised Management's Discussion and Analysis,[4] the Commission has determined to delete this portion of the income tax rule. It should be pointed out that although this disclosure has not been explicitly required in the Management's Discussion and Analysis, when applicable, this is the type of information which should be provided.

Warrants and rights outstanding. This rule requires disclosure of certain pertinent information with respect to warrants and rights outstanding at the date of the related balance sheet. Similar disclosure is required by paragraph 19 of APB No. 15, "Earnings per Share." However, APB No. 15 requires disclosure for "the various securities outstanding" and is not as explicit as this rule with regard to warrants and rights. Only one commentator objected to this rule and the Commission has determined to adopt the rule as proposed.

Leased assets and lease commitments. The purpose of this rule is twofold. First, the Commission believes that, except for cases where a problem (as defined in the rules) exists, the provisions of SFAS No. 13, "Accounting for Leases," should be fully effective for public companies, whereas, SFAS No. 13 does not require full application until fiscal years beginning after December 31, 1980. When SFAS No. 13 is fully effective the Commission will rescind this segment of the rule. Second, the rule requires certain "as if" disclosures by rate-regulated enterprises which are not within the scope of SFAS No. 13, a requirement which several commentators suggested should be deleted. The Commission is aware of the FASB project and related discussion memorandum, "Effect of Rate Regulation on Accounting for Regulated Enterprises." It is expected that the issue of accounting for leases and lease commitments will be given due consideration in the FASB's project. The Commission expects to retain the disclosure requirements related to rate-regulated enterprises until the FASB project is completed, at which time this segment of the rule will be re-evaluated.

Interest Cost. This rule requires disclosure of the amount of interest cost incurred and the respective amount expensed or capitalized for each period for which an income statement is presented. In ASR No. 272, "Rescission of Moratorium on Capitalization of Interest Costs," the Commission required these disclosures because SFAS No. 34, "Capitalization of Interest Cost," only requires prospective compliance for fiscal years beginning after December 15, 1979. The Commission will rescind this rule when the transition period has lapsed.

Disagreements on accounting and financial disclosure matters. This rule, which was proposed to be unchanged from the previous S–X requirements, requires disclosure about disagreements between registrants and their predecessor accountant involving certain accounting and financial disclosure matters. Several commentators argued that the resultant disclosure is not of financial significance and therefore, at a minimum, should not be included in the notes to the financial statements. The Commission continues to believe, as it has stated previously in Accounting Series Release Nos. 165 and 194, that:

> This disclosure is * * * necessary to put readers of financial statements on notice that such a disagreement existed which could have significantly affected the statements.

However, the Commission has concluded that the disclosure of disagreements between registrants and their predecessor accountants can be made outside of the financial statements. Accordingly, this rule has been relocated to Item 12 of Regulation S–K, "Supplementary Financial Information." *Material related party transactions which affect the financial statements.* The first component of this rule was taken from Statement of Auditing Standards No. 6 ("SAS No. 6"), "Related Party Transactions," which provides guidance on procedures that should be considered by the Auditor when he is

[4] Securities Act Release No. 33–6231 (September 2, 1980).

performing an examination of financial statements in accordance with generally accepted auditing standards to identify related party transactions and to satisfy himself as to the substance of and accounting for such transactions including financial statement disclosure.

Since GAAP does not include any general accounting or reporting guidelines for these types of transactions, the Commission believes it is beneficial to integrate the disclosure requirements of SAS No. 6 into S–X. Further, SAS No. 6 applies to audited financial statements only and not unaudited financial statements, which are frequently included in filings with the Commission. This part of the rule requires disclosure of transactions with, investments in, and balances due to or from related parties which are material to the financial statements, individually or in the aggregate.

If comprehensive requirements for related party issues are developed by the FASB in the future as part of GAAP, as a result of the work now being performed by a task force authorized by the AICPA to investigate the issues dealing with related parties, the Commission will re-examine the need for it to have specific rules with regard to related party transactions. Until then, the Commission believes the rule is appropriate notwithstanding its partial or total opposition by approximately fifteen percent of the commentators who stated that the rule was unnecessary primarily because related party transactions are addressed in the auditing literature.

The second component of the rule applies to separate financial statements of the registrant, certain investees, or subsidiaries. It requires disclosure in the separate statements of amounts in the related consolidated financial statements which are eliminated and those not eliminated. Also, any intercompany profits or losses resulting from transactions with related parties and not eliminated and the effects thereof must be disclosed. These provisions are necessary because the first component of this rule does not explicitly cover this area.

The third segment of the rule received several specific comments in opposition to its adoption. It requires disclosure on the face of the balance sheet, income statement, or statement of changes in financial position of any material related party receivable or payable; revenue, expense, gain or loss; or cash flows, respectively. Commentators were opposed to the requirement to exhibit significant related party items on the face of the statements. However, this rule has been adopted since the Commission believes that the information is meaningful to users of financial statements.

The fourth segment of the rule was proposed to provide guidance regarding the classification of current amounts due from related parties. Although commentators did not object to this component of the rule, the Commission has revised it in order to clarify that in classifying all amounts due to and due from related parties consideration should be given to the intent and financial position of the related parties in determining whether such amounts should be classified as current or long-term.

Supplementary income statement information. The information proposed to be required by this rule was previously required by Rules 5–04 and 12–16; however, the information, whether presented in a note or a schedule, was required to be presented in the prospectus for purposes of a Securities Act offering. The proposal to require disclosure of this information in the notes to the financial statements reflected the Commission's belief that this information about certain income statement items is relevant to substantially all users of financial statements. Approximately ten percent of the commentators indicated the contrary belief and suggested that the information continue to be presented in a schedule. Since the FASB project, "Reporting Earnings," is expected to address the issues underlying the need for this type of information, and since material changes in the components of expense items are required to be discussed in the revised Management's Discussion and Analysis, the Commission has determined it can permit this information to be furnished in a schedule.

Article 5

Article 5 prescribes the form and content of financial statements (balance sheets and income statements) and identifies the necessary schedules for commercial and industrial companies. This article, similar to the other articles designed for use by specific types of registrants, was adopted to provide guidance to commercial and industrial registrants when preparing financial statements pursuant to the Commission's rules. Alterations and modifications have been adopted on a "need to" basis and the format and components are intended to follow generally accepted practice. Although GAAP provides some guidance with respect to form and content of financial statements, the Commission believes it is appropriate to continue to assist preparers of financial statements by providing this skeletal outline and narrative guidance based on generally accepted practice. The underlying intent of the article is to obtain financial statements presented in a coherent, comprehensive and consistent manner which thereby effectively communicate information to users. The Commission realizes that financial statement information can be displayed in a variety of somewhat similar and diverse forms and has retained Rule 4–01 to permit certain other presentations used by some industries. Nevertheless, it believes that a certain level of consistency is necessary to foster user comprehension. The adopted rules provide an overall structure but permit greater flexibility than did the prior S–X rules.

Additionally, the Commission is aware of the various activities of the FASB which might result in revised accounting principles and significant alteration of the form and content of financial statements. The Commission supports these endeavors and stands ready to re-evaluate this matter and alter S–X as acceptable alternatives are developed.

* * * * *

The individual rules in Article 5 are numerous and most have been adopted as proposed. The following discusses those items which were of particular interest to commentators and those items which have been adopted in a different form than that which was proposed.

Balance sheets. This rule indicates the persons to whom this article applies and requires compliance with its provisions. The reference to ASR No. 41 has been deleted.

Certain commentators indicated that this part of the article should provide guidance as to the application of the various required line items. The Commission concurs and, accordingly, has expanded this section. The rule states that the various indicated line items should be presented on the face of the balance sheet. Revised rule 4–02 refers to the fact that insignificant amounts may be combined. Additionally, certain items may be combined on the face of the statement as long as there is separate disclosure in the notes. This treatment is governed by explicit provisions included in the various rules of Article 5.

Numerous commentators suggested that the proposed rules be altered to provide registrants with a greater degree of flexibility to determine whether certain information should be disclosed

on the face of the balance sheet or in the accompanying notes.

The Commission has concluded that those comments have substantial validity and therefore has revised the instructions to require separate disclosure of the following items *either* on the face of the balance sheet or in an appropriately captioned note:

—Notes receivable when in the aggregate they exceed 10% of the total of accounts and notes receivable.

—Allowances for doubtful accounts and notes receivable.

—The individual components of other current assets which exceed five percent of total current assets.

—Accumulated depreciation, depletion, and amortization of property, plant and equipment.

—Accumulated depreciation and amortization of intangible assets.

—The individual components of other assets which exceed five percent of total assets.

—Amounts payable to (1) banks for borrowing; (2) factors or other financial institutions for borrowings; and (3) holders of commercial paper.

—The individual components of other current liabilities which exceed five percent of total current liabilities.

—The individual components of other liabilities which exceed five percent of total liabilities.

Inventories. This rule requires certain disclosures with respect to the components of inventory and other specific disclosures when certain unique situations exist.

Several commentators recommended deletion or clarification of the segment of this rule which requires certain disclosures if "cost" is used to determine any portion of the inventory amounts. This particular rule was adopted by ASR No. 164, "Notice of Adoption of Amendments to Regulation S–X to Provide for Improved Disclosures Related to Defense and Other Long-Term Contract Activities." The rule was intended to require disclosure of unique components of inventory, i.e., retained costs representing the excess of manufacturing and production costs over the amounts charged to cost of sales for delivered or in-process units, initial tooling and other deferred start-up costs, or general and administrative costs. In general, the Commission believes that the accounting treatment of such costs is sufficiently unique to warrant disclosure of their existence. The adopted rule contains examples of costs, such as those above, to provide guidance to registrants.

Accounts and notes payable. In addition to defining the components of this caption, this rule previously required disclosure of certain information regarding short-term borrowings and unused lines of credit. These requirements were established by ASR No. 148, "Notice of Adoption of Amendments to Regulation S–X and Related Interpretations and Guidelines Regarding Disclosure of Compensating Balances and Short-Term Borrowing Arrangements." Several commentators noted that the detail of information required, including weighted average interest rates; average aggregate short-term borrowings outstanding during the period; maximum amount of aggregate short-term borrowings outstanding at any month end; and lines of credit may not be of interest to the majority of users of financial statements. Certain commentators stated that the revised Management's Discussion and Analysis might elicit a more effective presentation of the required information.

The Commission has concluded that these comments have substantial validity and it is adopting rules which correspond to the comments. With respect to the requirement to disclose information about the amounts of short-term borrowings outstanding and related interest rates, the Commission has adopted a schedule in § 210.12–10, "Short-term borrowings." The schedule is required by § 210.5–04, Schedule IX, to provide information about current amounts payable to banks for borrowings; factors and financial institutions for borrowings; and holders of commercial paper. The information required for each of these categories includes the balance outstanding at the end of the period and related weighted average interest rate, the maximum amount outstanding at any month end during the period, and the average amount outstanding during the period and related weighted average interest rate. The Commission has concluded that information concerning unused lines of credit is meaningful to the majority of users of financial statements and should remain as a financial statement requirement.

With regard to inclusion of the information concerning short-term borrowings, the information may be presented in Management's Discussion and Analysis if it results in a more meaningful presentation of the information being provided. If that procedure is followed, the schedule may be omitted if appropriate cross-references are made.

Income statements. This rule indicates that applicable registrants are to comply with the provisions of this rule except as otherwise permitted by the Commission. The reference to ASR No. 41 has been deleted.

Net sales and gross revenue. In addition to detailing the display format for sales and revenues, this rule specifies that if the total reported sales or revenues include consumer excise tax in an amount equal to 1% or more, the amount of excise tax shall be shown parenthetically or otherwise on the face of the income statement. Several commentators urged that the rule be eliminated or the percentage requirement increased.

The Commission proposed to lower the percentage test from 10% to 1% because consumer excise tax amounts which are less than 10% of sales and revenue frequently are significant to the reported tax amount which includes the corresponding excise tax expense. The Commission continues to believe that this information should be disclosed because of its unique nature. It is neither a component of costs nor expenses although it frequently is aggregated with such items.

Earnings applicable to common stock. The proposed rule would have required registrants to present on the face of the income statement earnings which apply to common stock, if applicable. The previous requirement to disclose this amount was contained in the "Summary of Operations" items of the various Securities Act and Securities Exchange Act forms; however, this summary has been deleted in a concurrent release.[5] Several commentators opposed the adoption of this rule because the information is not meaningful and suggested that the issue be considered by the FASB. The Commission has concluded that these comments are substantially valid with regard to many registrants and although it believes disclosure of earnings applicable to common stock is of value in certain situations, it has decided not to mandate presentation of the amount in all financial statements.

Property, plant and equipment. The proposed rule would have required substantial revision of the form and content of the property, plant and equipment schedules. The following information about property, plant and equipment would have been required:

(1) Assets classified by depreciation, depletion or amortization method and thereunder by major classification.

(2) Fully depreciated, depleted or amortized assets which are still in use.

(3) By classification, the rate used in computing depreciation, depletion or amortization, and, if more than one rate

[5] Securities Act Release No. 33–6231 (September 2, 1980).

is used, the range and weighted average rate.

(4) Any asset or group of homogeneous assets (such as computers, equipment used in a specific manufacturing process, warehouses, and office buildings) which comprises 25 percent or more of a major class of property, plant and equipment and the depreciation, depletion or amortization rate. This requirement, however, would not have applied if the asset or group or homogeneous assets constituted less than five percent of total assets.

Numerous comments were received in response to the exposure of this rule. Most commentators opposed the disclosure on the grounds that it would be costly to produce and would provide details in excess of the present requirements which would be of little value to the majority of users. The Commission believes that certain of the comments have substantial validity, and therefore it has decided to reconsider the proposed rule and anticipates that it will re-expose in the near future a rule addressing this issue. Accordingly, the property, plant and equipment schedules will remain unchanged, except for a requirement to disclose depreciation methods and, if practicable, rates used to compute annual charges to the income statement. These requirements were previously included in the Rules of General Application and, accordingly, their inclusion in Article 5 is not an expansion of required disclosure.

Other Amendments

Changes to other articles. There are numerous cross-references in the other Articles of S–X to rules in Articles 3, 5 and 12 which have been deleted, revised or renumbered in this release. Accordingly, appropriate changes have been made to those articles in this release.

Selected quarterly financial data. This rule was proposed to be unchanged; however, it was proposed to be moved from S–X to Regulation S–K in recognition of the fact that the information is not required to be audited. This change has been adopted as proposed. The proposal noted that Rule 2–02(e) of S–X required a certain level of auditor involvement with this unaudited information. Coincident with the movement of the requirement for selected quarterly financial data to Regulation S–K, the substance of Rule 2–02(e) has been transferred to Regulation S–K. The Auditing Standards Board of the AICPA has stated that they will consider amendment of the applicable auditing standards in recognition of this change.

Financial accounting and reporting for oil and gas producing activities. A subparagraph is being added to § 210.4–10(k)(5), "Disclosure of estimated quantities of proved oil and gas reserves," which deals with the situation where foreign governments restrict disclosures about estimated reserves in that country. This instruction is the same as the one already contained in Item 2(b)(1), instruction (c) of Regulation S–K; however, since a requirement to disclose reserve quantities is also contained in S–X, this instruction should have been included therein. This revision was not proposed in the original proposed rule changes; however, adoption is considered appropriate since no new requirement is being adopted, but rather the Regulations S–K and S–X provisions are being conformed.

Foreign issuers. As part of this revision of S–X, a rule has been added to Article 4–01 which provides that financial statements of foreign private issuers filed with the Commission, on any form other than Form 20–F, may be prepared according to foreign accounting principles, if a reconciliation to United States GAAP and the provisions of S–X are also filed as part of the financial statements. This rule is not an amendment but is formalization of a policy which the Commission follows presently.

Reference Table of Rule Changes

The table which follows is presented to enable the reader to trace each of the previous rules to its amended rule number or to identify which previous rules have been deleted. Very brief indications of the changes are also provided. The discussion in the previous section of this release provides the detailed explanation of the more significant rule changes and those where the adopted rule differes from the proposed rule. The table is intended only as a guide, the new rules and the discussion of changes should also be read in conjunction with this table.

Previous rule	New rule
Article 3:	
210.3–01(a)	210.4–01(a) The first paragraph contains minor wording revisions in the first sentence and the second sentence was moved from previous rule 210.3–06. A second and third paragraph were added covering GAAP requirements and foreign issuers, respectively.
210.3–01(b)	210.4–01(b) First sentence revised. Second sentence deleted.
210.3.01(c)	210.4–01(c) Rule revised to allow different methods of display for negative amounts.
210.3–02	210.4–02 Minor wording changes.
210.–03	210.4–03 Minor wording revising in paragraph (a). Paragraph (c) also revised.
210.3–04	210.4–04 No change.
210.3–05	Deleted.
210.3–06	First sentence moved to 210.4–01(a). Second sentence deleted.
210.3–07	Deleted.
210.3–08	Deleted.
210.3–09	Deleted.
210.3.10	Deleted.
210.3–11	210.4–05 Revised and combined with previous rule 210.3–12.
210.3–12	Combined with previous rule 210.3–11.
210.3–13	210.4–06 Minor revisions to rule.
210.3–14	Deleted.
210.3–15	210.4–07 Minor revisions to recognize changes made in ASR No. 268.
210.3–16	210.4–08 The requirement to present note refernces on the face of the financial statements has been deleted.
210.3–16(a)	210.4–08(a) No change.
210.3–16(b)	Deleted.
210.3–16(c)	210.4–08(b) No change.
210.3–16(d)	Deleted.
210.3–16(e)	210.4–08(c) Second and third sentences deleted.
210.3–16(f)	210.4–08(d) Subparagraphs (1), (2), (3)(i), and (3)(ii) deleted. Minor revisions to remainder of rule.
210.3–16(g)	Deleted.
210.3–16(h)	210.4–08(e) Present requirements of the rule are clarified and subparagraph (b) of previous rule 210.5–02.41 added.
210.3–16(i)	Deleted.
210.3–16(j)	Deleted.
210.3–16(k)	210.4–08(f) No change.
210.3–16(l)	Deleted.
210.3–16(m)	Dleted.
210.3–16(n)	Deleted.
210.3–16(o)	210.4–08(g) Portions of the rule which duplicate GAAP were deleted and a requirement added for separate disclosure of domestic and foreign income (loss) before taxes.
210.3–16(p)	210.4–08(h) No change.
210.3–16(q)	210.4–08(i) Most of the rule is deleted but the references to SFAS No. 13, "Accounting for Leases," continue the previous requirements.
210.3–16(r)	210.4–08(j) No change from the rule adopted in Accounting Series Release No. 272.
210.3–16(s)	Moved to Item 12 of Regulation S-K.
210.3–16(t)	Moved to Item 12 of Regulation S-K.
210.3–17	210.4–09 No change but see Accounting Series Release No. 271.
210.3–18	210.4–10 Subparagraph (vii) added to 4–10(k)(5).
210.5–01	210.5–01 No change.
210.5–02	210.5–02 Revisions to the introductory paragraph.
210.5–02.1	210.5–02.1 Minor revisions to the rule to focus on withdrawal or usage restrictions.
210.5–02.2	210.5–02.2 Revised to recognize current GAAP requirements.
210.5–02.3	210.5–02.3 Subparagraphs (a) revised; (b) deleted; (c) deleted; (d) revised; and (e) through (g) combined.
210.5–02.4	210.5–02.4 Location of disclosure is optional.
210.5–02.5	210.5–02.5 Caption only retained.
210.5–02.6	210.5–02.6 A portion of the first and second paragraphs of subparagraph (b) is revised.
210.5–02.7	210.5–02.8 Last sentence deleted and location of disclosure is optional.

Previous rule	New rule
210.5-02.8	210.5-02.7 Reference deleted.
210.5-02.9	210.5-02.9 No change.
210.5-02.10	210.5-02.10 Caption only retained (after being revised to refer to related parties) with a reference to rule 210.4-08(k) added.
210.5-02.11	210.5-02.11 Caption only retained (after being revised with a reference to rule 210.4-08(k) added.
210.5-02.12	210.5-02.12 Revised to recognize current GAAP requirements and to combine the requirements of previous rule 210.5-02.13.
210.5-02.13	Deleted. Requirement combined with 210.5-02.12.
210.5-02.14	210.5-02.13 Subparagraph (a) revised; subparagraph (b) revised to delete part of next to last sentence and all of last sentence.
210.5-02.15	210.5-02.14 Location of disclosure is optional.
210.5-02.16	210.5-02.15 Previous requirement revised and expanded.
210.5-02.17	210.5-02.16 Location of disclosure is optional.
210.5-02.18	210.5-02.17 Previous requirement revised and expanded and location of disclosure is optional.
210.5-02.19	Deleted.
210.5-02.20	Deleted.
210.5-02.21	Deleted.
210.5-02.22	Deleted.
210.5-02.23	Deleted.
210.5-02.24	210.5-02.18 No change.
210.5-02.25	210.5-02.19 Minor revisions to subparagraph (a). The requirements of subparagraph (b) have been transferred to a schedule (§ 210.12-10). No change in subparagraph (c).
210.5-02.26	Deleted. Requirement combined with previous rule 210.5-02.27.
210.5-02.27	210.5-02.20 Revised to also include the requirements of previous rule 210.5-02.26.
210.5-02.28	210.5-02.21 No change.
210.5-02.29	210.5-02.22 Minor revisions in subparagraph (a); no change in subparagraph (b).
210.5-02.30	Deleted.
210.5-02.31	210.5-02.23 Caption only retained with a reference to rule 210.4-08(k) being added.
210.5-02.32	Deleted.
210.5-02.33	210.5-02.24 Location of disclosure is optional.
210.5-02.34	210.5-02.25 No change.
210.5-02.35	210.5-02.26 Last sentence deleted.
210.5-02.36	Deleted.
210.5-02.37	210.5-02.27 Minor revisions.
210.5-02.38	210.5-02.28 No change.
210.5-02.39	210.5-02.29 Location of certain disclosure is optional.
210.5-02.40	210.5-02.30 Location of certain disclosure is optional.
210.5-02.41	210.5-02.31 Revised to permit the combination of certain items; subparagraph (b) to 210.4-08(e).
210.5-02.42	210.5-02.32 Minor wordings changes.
210.5-03	210.5-03 Minor revisions made to introductory paragraph; subparagraphs (a) and (b) deleted; minor revisions made to subparagraph (c).
210.5-03.1A	210.5-03.1 Minor revisions made and combined with previous rules 210.5-03.1B and .1C.
210.5-03.2A	210.5-03.2 Minor revisions made and combined with previous rules 210.5-03.2B and .2C.
210.5-03.3A	210.Deleted.
210.5-03.1B	210.5-03.1 See 210.5-03.1A above.
210.5-03.2B	210.5-03.2 See 21.5-03.2A above.
210.5-03.1C	210.5-03.1 See 210.5-03.1A above.
210.5-03.2C	210.5-03.2 See 210.5-03.2A above.
210.5-03.3	210.5-03.3 No change except for reference to preceding rules.
210.5-03.4	210.5-03.4 Caption only retained.
210.5-03.5	210.5-03.5 No change.
210.5-03.6	210.5-03.6 No change.
210.5-03.7	210.5-03.7 Revised and combined with previous Rules 210.5-03.8, .9, and .10.
210.5-03.8	See 210.5-03.7 above.
210.5-03.9	See 210.5-03.7 above.
210.5-03.10	See 210.5-03.7 above.
210.5-03.11	210.5-03.8 Caption only retained.
210.5-03.12	210.5-03.9 Revised and combined with previous rule 210.5-03.13
210.5-03.13	210.5-03.9 Revised and combined with previous rule 210.5-03.12.
210.5-03.14	210.5-03.10 No change.
210.5-03.15	210.5-03.11 No change.
210.5-03.16	210.5-03.12 No change.
210.5-03.17	210.5-03.13 First sentence deleted and minor revisions to remainder of rule.
210.5-03.18	210.5-03.16 Caption expanded.
210.5-03.19	210.5.03.17 Caption only retained.
210.5-03.20	210.5-03.18 Caption only retained.
210.5-03.21	210.5-03.19 No change.
210.5-03.22	210.5-03.20 Caption only retained.
210.5-04	210.5-04. The changes made to this rule are as a result of the revisions made in Article 12 (see below) and a renumbering of schedules.
Article 12:	
210.12-01	210.12-01 No change.
210.12-02	210.12-02 Revised heading.
210.12-03	210.12-03 Revised and expanded to include related parties.
210.12-04	210.12-04 Expanded to include related parties.
210.12-05	210.12-05 Format of schedule changed and combined with previous rule 210.12-11.
210.12-06	210.12-06 Footnote added to include the requirements of previous rule 210.3-16(m)(1).
210.12-07	210.12-07 No change.
210.12-08	Deleted.
210.12-09	Deleted.
210.12-10	Deleted.
210.12-11	Combined with 210.12-05 above.
210.12-12	210.12-06 No change.
210.12-13	210.12-09 Rivised title.
210.12-14	Deleted.
210.12-15	Deleted.
210.12-16	210.12-11 Partial elimination of disclosures.
210.12-17	Previously revoked.
210.12-18	Previously revoked.
210.12-19	210.12-12 No change.
210.12-20	Previously revoked.
210.12-21	210.12-13 No change.
210.12-22	210.12-14 No change.
210.12-23	Previously revoked.
210.12-24	Previously revoked.
210.12-25	Previously revoked.
210.12-26	Previously revoked.
210.12-27	210.12-15 No change.
210.12-28	Previously revoked.
210.12-29	210.12-16 No change.
210.12-30	Previously revoked.
210.12-31	210.12-17 No change.
210.12-31a	210.12-18 No change.
210.12-32	Previously revoked.
210.12-33	210.12-19 No change.
210.12-34	210.12-20 No change.
210.12-35	210.12-21 No change.
210.12-36	210.12-22 No change.
210.12-37	210.12-23 No change.
210.12-38	210.12-24 No change.
210.12-39	210.12-25 No change.
210.12-40	210.12-26 No change.
210.12-41	210.12-27 No change.
210.12-42	210.12-28 No change.
210.12-43	210.12-29 No change.

Commission Action

The Commission hereby amends 17 CFR Chapter II as follows:

PART 210—FORM AND CONTENT OF FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. By adding a new paragraph (t) to § 210.1-02 and by redesignating the former paragraphs (t) through (y) as (u) through (z).

§ 210.1-02 Definitions of terms used in Regulation S-X (17 CFR Part 210).

* * * * *

(t) *Related parties.* The term "related parties" means the registrant; its affiliates; principal owners, management, and members of their immediate families; entities for which investments are accounted for by the equity method; and any other party with which the reporting entity may deal when one party has the ability to significantly influence the management or operating policies of the other, to the extent that one of the transacting parties might be prevented from fully pursuing its own separate interests. Related parties also exist when another entity has the ability to significantly influence the management or operating policies of the transacting parties or when another entity has an ownership interest in one of the transacting parties and the ability to significantly influence the other, to the extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests. For purposes of this definition, the terms (1) "principal owner" means the owner(s) of record or known beneficial owner(s) of more than 10% of the voting interests of the reporting entity, and (2) "Management" means any person(s) having responsibility for achieving the objectives of the organization and the concomitant authority to establish the policies and to make the decisions by which such objectives are to be pursued.

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2. By deleting § 210.2-02(e).

§ 210.2-02 Accountants' reports.

* * * * *

(e) [Deleted].

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§§ 210.3-05—210.3-10, 210.3-12 and 210.3-14 [Removed]; §§ 210.4-01—210.4-08 [Redesignated as §§ 210.3A-01—210.3A-08]; §§ 210.3-01—210.3-04 [Redesignated as §§ 210.4-01—210.4-04]; § 210.3-11 [Redesignated as § 210.4-05]; § 210.3-13 [Redesignated as § 210.4-06]; §§ 210.3-15—210.3-18 [Redesignated §§ 210.4-07—210.4-10]; Redesignated §§ 210.4-01—210.4-08 [Revised]; § 210.4-10 [Amended]

3. (a) Sections 210.3-05 through 210.3-10, 210.3-12 and 210.3-14 are removed; (b) §§ 210.4-01 through 210.4-08 are redesignated as §§ 210.3A-01 through 210.3A-08 in concurrent Release No. 33-6234; (c) §§ 210.3-01 through 210.3-04 are redesignated as §§ 210.4-01 through 210.4-04; (d) § 210.3-11 is redesignated § 210.4-05; (e) § 210.3-13 is redesignated § 210.4-06 and §§ 210.3-15 through 210.3-18 are redesignated §§ 210.4-07 through 210.4-10; (f) redesignated §§ 210.4-01 through 210.4-08 are revised and a new paragraph (k)(5)(vii) is added to § 210.4-10 as follows:

Rules of General Application

§ 210.4-01 Form, order, and terminology.

(a) Financial statements should be filed in such form and order, and should use such generally accepted terminology, as will best indicate their significance and character in the light of the provisions applicable thereto. The information required with respect to any statement shall be furnished as a minimum requirement to which shall be added such further material information as is necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

(1) Financial statements filed with the Commission which are not prepared in accordance with generally accepted accounting principles will be presumed to be misleading or inaccurate, despite footnote or other disclosures, unless the Commission has otherwise provided. This article and other articles of Regulation S-X provide clarification of certain disclosures which must be included in any event, in financial statements filed with the Commission.

(2) Financial statements of foreign private issuers filed with the Commission, on any form other than Form 20-F, may be prepared according to foreign accounting principles: *Provided,* That a reconciliation to United States generally accepted accounting principles and the provisions of Regulation S-X is also filed as part of the financial statements.

(b) All money amounts required to be shown in financial statements may be expressed in whole dollars or multiples thereof, as appropriate: *Provided,* That, when stated in other than whole dollars, an indication to that effect is inserted immediately beneath the caption of the statement or schedule, at the top of the money columns, or at an appropriate point in narrative material.

(c) Negative amounts (red figures) shall be shown in a manner which clearly distinguishes the negative attribute. When determining methods of display, consideration should be given to the limitations of reproduction and microfilming processes.

§ 210.4-02 Items not material.

If the amount which would otherwise be required to be shown with respect to any item is not material, it need not be separately set forth. The combination of insignificant amounts is permitted.

§ 210.4-03 Inapplicable captions and omission of unrequired or inapplicable financial statements.

(a) No caption should be shown in any financial statement as to which the items and conditions are not present.

(b) Financial statements not required or inapplicable because the required matter is not present need not be filed.

(c) The reasons for the omission of any required financial statements shall be indicated.

§ 210.4-04 Omission of substantially identical notes.

If a note covering substantially the same subject matter is required with respect to two or more financial statements relating to the same or affiliated persons, for which separate sets of notes are presented, the required information may be shown in a note to only one of such statements: *Provided,* That a clear and specific reference thereto is made in each of the other statements with respect to which the note is required.

§ 210.4-05 Current assets and current liabilities.

If a company's normal operating cycle is longer than one year, generally recognized trade practices should be followed with respect to the inclusion or exclusion of items in current assets or current liabilities. An appropriate explanation of the circumstances should be made and, if practicable, an estimate given of the amount not realizable or payable within one year. The amounts maturing in each year (if practicable) along with the interest rates or range of rates also shall be disclosed.

§ 210.04-06 Reacquired evidences of indebtedness.

Reacquired evidences of indebtedness shall be deducted from the appropriate liability caption. However, reacquired evidences of indebtedness held for pension and other special funds not related to the particular issues may be shown as assets: *Provided,* That there be stated the amount of such evidences of indebtedness, the cost thereof, the amount at which stated, and the purpose for which acquired.

§ 210.4-07 Discount on shares.

Discount on shares, or any unamortized balance thereof, shall be shown separately as a deduction from the applicable account(s) as circumstances require.

§ 210.4-08 General notes to financial statements.

If applicable to the person for which the financial statements are filed, the following shall be set forth on the face of the appropriate statement or in appropriately captioned notes. The information shall be provided for each statement required to be filed, except that the information required by items (b), (c), (d), (e), (f), and (h) shall be provided as of the most recent audited balance sheet being filed and for item (i) as specified therein. When specific statements are presented separately, the pertinent notes shall accompany such statements unless cross-referencing is appropriate.

(a) *Principles of consolidation or combination.* With regard to consolidated or combined financial statements, refer to §§ 210.3A-01 to 3A-08 for requirements for supplemental information in notes to the financial statements.

(b) *Assets subject to lien.* Assets mortgaged, pledged, or otherwise subject to lien, and the approximate amounts thereof, shall be designated and the obligations collateralized briefly identified.

(c) *Defaults.* The facts and amounts concerning any default in principal, interest, sinking fund, or redemption provisions with respect to any issue of securities or credit agreements, or any breach of covenant of a related indenture or agreement, which default or breach existed at the date of the most recent balance sheet being filed and which has not been subsequently cured, shall be stated in the notes to the financial statements. If a default or breach exists but acceleration of the obligation has been waived for a stated period of time beyond the date of the most recent balance sheet being filed,

state the amount of the obligation and the period of the waiver.

(d) *Preferred shares.* (1) Aggregate preferences on involuntary liquidation, if other than par or stated value, shall be shown parenthetically in the equity section of the balance sheet.

(2) Disclosure shall be made of any restriction upon retained earnings that arises from the fact that upon involuntary liquidation the aggregate preferences of the preferred shares exceeds the par or stated value of such shares.

(e) *Restrictions which limit the availability of retained earnings or net income for dividend purposes.* (1) Describe the most significant restrictions, other than as reported in paragraph (d) of this section, on the payment of dividends by the issuer, indicating briefly their sources, their pertinent provisions, and, where appropriate and determinable, the amount of retained earnings or net income (i) so restricted, or (ii) free of such restrictions.

(2) Describe the most significant restrictions on the payment of dividends by consolidated subsidiaries to the issuer, indicating briefly their sources, their pertinent provisions, and, where determinable, the amount of retained earnings or net income (i) so restricted or (ii) free of such restrictions.

(3) Disclose separately the amount of retained earnings of the issuer which represents undistributed earnings of unconsolidated subsidiaries and 50 percent or less owned persons. With respect to the undistributed earnings of unconsolidated subsidiaries, describe the most significant restrictions on the payment of dividends by the unconsolidated subsidiaries to the issuer, indicating briefly their sources, their pertinent provisions, and, where determinable the amount (i) so restricted or (ii) free of such restrictions.

(f) *Significant changes in bonds, mortgages and similar debt.* Any significant changes in the authorized or issued amounts of bonds, mortgages and similar debt since the date of the latest balance sheet being filed for a particular person or group shall be stated.

(g) *Income tax expense.* (1) Disclosure shall be made in the income statement or a note thereto, of (i) the components of income (loss) before income tax expense (benefit) as either domestic or foreign; (ii) the components of income tax expense, including (A) taxes currently payable and (B) the net tax effects, as applicable, of timing differences (indicate separately the amount of the estimated tax effect of each of the various types of timing differences, such as depreciation, warranty costs, etc., where the amount of each such tax effect exceeds five percent of the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rate; other differences may be combined.)

Note.—Amounts applicable to United States Federal income taxes, to foreign income taxes and the other income taxes shall be stated separately for each major component. Amounts applicable to foreign income (loss) and amounts applicable to foreign or other income taxes which are less than five percent of the total of income before taxes or the component of tax expense, respectively, need not be separately disclosed. For purposes of this rule, foreign income (loss) is defined as income (loss) generated from a registrant's foreign operations, i.e., operations that are *located outside* of the registrant's home country.

(2) Provide a reconciliation between the amount of reported total income tax expense (benefit) and the amount computed by multiplying the income (loss) before tax by the applicable statutory Federal income tax rate, showing the estimated dollar amount of each of the underlying causes for the difference. If no individual reconciling item amounts to more than five percent of the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rate, and the total difference to be reconciled is less than five percent of such computed amount, no reconciliation need be provided unless it would be significant in appraising the trend of earnings. Reconciling items that are individually less than five percent of the computed amount may be aggregated in the reconciliation. The reconciliation may be presented in percentages rather than in dollar amounts. Where the reporting person is a foreign entity, the income tax rate in that person's country of domicile should normally be used in making the above computation, but different rates should not be used for subsidiaries or other segments of a reporting entity. When the rate used by a reporting person is other than the United States Federal corporate income tax rate, the rate used and the basis for using such rate shall be disclosed.

(h) *Warrants or rights outstanding.* Information with respect to warrants or rights outstanding at the date of the related balance sheet shall be set forth as follows:

(1) Title of issue of securities called for by warrants or rights.

(2) Aggregate amount of securities called for by warrants or rights outstanding.

(3) Date from which warrants or rights are exercisable.

(4) Price at which warrant or right is exercisable.

(i) *Leased assets and lease commitments.* (1) Leased assets and lease commitments of regulated enterprises subject to the rate-making process.

(i) Paragraph (i)(1) of this section is applicable to all regulated enterprises subject to the rate-making process that do not record capital leases as assets with associated liabilities.

(ii) The following information shall be provided for capital leases covered by this rule:

(A) As of the date for each required balance sheet, the aggregate amounts of the assets and liabilities that would have been recorded in the accounts had all leases meeting the definition of a capital lease been recorded.

(B) For each period for which an income statement is required, the aggregate effect on expenses had all assets obtained through leases meeting the definition of a capital lease been recorded as assets with associated liabilities and any additional information management believes is necessary as to the rate-making process.

(2) Leased assets and lease commitments of enterprises which are not covered by paragraph (i)(1) of this section. The financial statement requirements in Statement of Financial Accounting Standards No. 13, "Accounting for Leases," shall be applied in financial statements filed for fiscal years ended after December 24, 1978 with regard to all leases except for companies where a problem, as defined exists. The problem and its potential impact should be disclosed in the footnotes to the financial statements. For purposes of this paragraph "problem" is defined as: That situation where capitalization of capital leases as defined in Statement of Financial Accounting Standards No. 13 would result in the violation or probable future violation expected to occur prior to fiscal years beginning after December 31, 1980 of a restrictive clause in an existing loan indenture or other agreement.

(j) *Interest cost.* Disclosure shall be provided for each period for which an income statement is presented of the amount of interest cost incurred and the respective amounts expensed or capitalized.

(k) *Material related party transactions which affect the financial statements.* (1) The financial statements filed shall disclose transactions with, investments in, and balances due to or from related parties that are material, individually or in the aggregate. This disclosure should include the following:

(i) The nature of the relationship(s).

(ii) A description of the transactions (summarized when appropriate) for the periods for which an income statement is presented, including amounts, if any, and such other information as is deemed necessary to an understanding of the effects on the financial statements.

(iii) The dollar volume of transactions and the effects of any change in the method of establishing terms from that used in the preceding period.

(iv) Amounts due to or from related parties and, if not otherwise apparent, the terms and manner of settlement.

(v) Amount of investments in related parties.

(2) In cases where separate financial statements are presented for the registrant, certain investees, or subsidiaries, separate disclosure shall be made in such statements of the amounts in the related consolidated financial statements which are (i) eliminated and (ii) not eliminated. Also, any intercompany profits or losses resulting from transactions with related parties and not eliminated and the effects thereof shall be disclosed.

(3) Disclosure should be made on the face of the balance sheet, income statement, or statement of changes in financial position for any material related party receivable or payable; revenue, expense, gain or loss; or cash flows, respectively. Relevant details regarding these amounts should be provided in the notes.

(4) With respect to the classification of current amounts due from or to related parties, consideration should be given to the intent and the financial position of such related parties in determining whether such amounts should be classified as current or long-term.

§ 210.4-10 Financial accounting and reporting for oil and gas producing activities pursuant to the Federal securities laws and the Energy Policy and Conservation Act of 1975.

* * * * *

(k) * * *

(5) * * *

(vii) If any foreign government restricts the disclosure of estimated reserves for properties under its governmental authority, or amounts under long-term supply, purchase, or similar agreements, or if the foreign government requires the disclosure of reserves other than proved, the registrant should identify the country, cite the law or regulation which restricts or requires such disclosure, and indicate that the reported reserve estimates or amounts do not include figures for the named country or that reserve estimates include reserves other than proved.

* * * * *

4. By revising §§ 210.5-10 to 210.5-04 (Article 5) to read as follows:

Commercial and Industrial Companies

§ 210.5-01 Application of §§ 210.5-01 to 210.5-04.

(a) Sections 210.501 to 210.5-04 shall be applicable to financial statements filed for all persons except—

(1) Management investment companies (see §§ 210.6-01 to 210.6-10).

(2) Unit investment trusts (see §§ 210.6-10a to 210.6-13).

(3) Face amount certificate investment companies (see §§ 210.6-20 to 210.6-24).

(4) Employee stock purchase, savings and similar plans (see §§ 210.6-30 to 210.6-34).

(5) Insurance companies other than title insurance companies (see §§ 210.7-01 to 210.7-06 and §§ 210.7A-01 to 210.7A-06).

(6) Committees issuing certificates of deposit (see §§ 210.8-01 to 210.8-03).

(7) Bank holding companies and banks (see §§ 210.9-01 to 210.9-05).

(8) Brokers and dealers when filing Forms X-17A-5 and X-17A-10 (§ 249.617) (see §§ 240.17a-5 and 240.17a-10 under the Securities Exchange Act of 1934).

(b) Companies in the development stage.

Section 210.5A-2 prescribes additional information to be included in financial statements filed by companies in the development stage.

§ 210.5-02 Balance sheets.

The purpose of this rule is to indicate the various line items and certain additional disclosures which, if applicable, and except as otherwise permitted by the Commission, should appear on the face of the balance sheets or related notes filed for the persons to whom this article pertains (see § 210.4-01(a)).

Assets and Other Debits

Current Assets, when appropriate

[See § 210.4-05]

1. *Cash and cash items.* Separate disclosure shall be made of the cash and cash items which are restricted as to withdrawal or usage. The provisions of any restrictions shall be described in a note to the financial statements. Restrictions may include legally restricted deposits held as compensating balances against short-term borrowing arrangements, contracts entered into with others, or company statements of intention with regard to particular deposits; however, time deposits and short-term certificates of deposit are not generally included in legally restricted deposits. In cases where compensating balance arrangements exist but are not agreements which legally restrict the use of cash amounts shown on the balance sheet, describe in the notes to the financial statements these arrangements and the amount involved, if determinable, for the most recent audited balance sheet required and for any subsequent unaudited balance sheet required in the notes to the financial statements. Compensating balances that are maintained under an agreement to assure future credit availability shall be disclosed in the notes to the financial statements along with the amount and terms of such agreement.

2. *Marketable securities.* The accounting and disclosure requirements for current marketable equity securities are specified by generally accepted accounting principles. With respect to all other current marketable securities, state, parenthetically or otherwise, the basis of determining the aggregate amount shown in the balance sheet, along with the alternatives of the aggregate cost or the aggregate market value at the balance sheet date.

3. *Accounts and notes receivable.* (a) State separately amounts receivable from (1) customers (trade); (2) related parties (see § 210.4-08(k)); (3) underwriters, promoters, and employees (other than related parties) which arose in other than the oridinary course of business; and (4) others.

(b) If the aggregate amount of notes receivable exceeds 10 percent of the aggregate amount of receivables, the above information shall be set forth separately, in the balance sheet or in a note thereto, for accounts receivable and notes receivable.

(c) If receivables include amounts due under long-term contracts (see § 210.5-02.6(d)), state separately in the balance sheet or in a note to the financial statements the following amounts:

(1) Balances billed but not paid by customers under retainage provisions in contracts.

(2) Amounts representing the recognized sales value of performance and such amounts that had not been billed and were not billable to customers at the date of the balance sheet. Include a general description of the prerequisites for billing.

(3) Billed or unbilled amounts representing claims or other similar items subject to uncertainty concerning their determination or ultimate realization. Include a description of the nature and status of the principal items comprising such amount.

(4) With respect to (1) through (3) above, also state the amounts included in each item which are expected to be collected after one year. Also state, by year, if practicable, when the amounts of retainage (see (1) above) are expected to be collected.

4. *Allowances for doubtful accounts and notes receivable.* The amount is to be set forth separately in the balance sheet or in a note thereto.

5. *Unearned income.*

6. *Inventories.* (a) State separately in the balance sheet or in a note thereto, if practicable, the major classes of inventory such as: (1) Finished goods; (2) inventoried costs relating to long-term contracts or programs (see (d) below and § 210.4-05); (3)

work in process (see § 210.4–05); (4) raw materials; and (5) supplies.

(b) The basis of determining the amounts shall be stated.

If "cost" is used to determine any portion of the inventory amounts, the description of this method shall include the nature of the cost elements included in inventory. Elements of "cost" include, among other items, retained costs representing the excess of manufacturing or production costs over the amounts charged to cost of sales or delivered or in-process units, initial tooling or other deferred startup costs, or general and administrative costs.

The method by which amounts are removed from inventory (e.g., "average cost," "first-in, first-out," "last-in, first-out," "estimated average cost per unit") shall be described. If the estimated average cost per unit is used as a basis to determine amounts removed from inventory under a total program or similar basis of accounting, the principal assumptions (including, where meaningful, the aggregate number of units expected to be delivered under the program, the number of units delivered to date and the number of units on order) shall be disclosed.

If any general and administrative costs are charged to inventory, state in a note to the financial statements the aggregate amount of the general and administrative costs incurred in each period and the actual or estimated amount remaining in inventory at the date of each balance sheet.

(c) If the LIFO inventory method is used, the excess of replacement or current cost over stated LIFO value shall, if material, be stated parenthetically or in a note to the financial statements.

(d) For purposes of §§ 210.5–02.3 and 210.5–02.6, long-term contracts or programs include (1) all contracts or programs for which gross profits are recognized on a percentage-of-completion method of accounting or any variant thereof (e.g., delivered unit, cost to cost, physical completion), and (2) any contracts or programs accounted for on a completed contract basis of accounting where, in either case, the contracts or programs have associated with them material amounts of inventories or unbilled receivables and where such contracts or programs have been or are expected to be performed over a period of more than twelve months. Contracts or programs of shorter duration may also be included, if deemed appropriate.

For all long-term contracts or programs, the following information, if applicable, shall be stated in a note to the financial statements:

(i) The aggregate amount of manufacturing or production costs and any related deferred costs (e.g., initial tooling costs) which exceeds the aggregate estimated cost of all in-process and delivered units on the basis of the estimated average cost of all units expected to be produced under long-term contracts and programs not yet complete, as well as that portion of such amount which would not be absorbed in cost of sales based on existing firm orders at the latest balance sheet date. In addition, if practicable, disclose the amount of deferred costs by type of cost (e.g., initial tooling, deferred production, etc.).

(ii) The aggregate amount representing claims or other similar items subject to uncertainty concerning their determination or ultimate realization, and include a description of the nature and status of the principal items comprising such aggregate amount.

(iii) The amount of progress payments netted against inventory at the date of the balance sheet.

7. *Prepaid expenses.*

8. *Other current assets.* State separately, in the balance sheet or in a note thereto, any amounts in excess of five percent of total current assets.

9. *Total current assets, when appropriate.*

10. *Securities of related parties.* (See § 210.4–08(k).)

11. *Indebtedness of related parties—not current.* (See § 210.4–08(k).)

12. *Other investments.* The accounting and disclosure requirements for non-current marketable equity securities are specified by generally accepted accounting principles. With respect to other security investments and any other investment, state, parenthetically or otherwise, the basis of determining the aggregate amounts shown in the balance sheet, along with the alternate of the aggregate cost or aggregate market value at the balance sheet date.

13. *Property, plant and equipment.*

(a) State the basis of determining the amounts.

(b) Tangible and intangible utility plant of a public utility company shall be segregated so as to show separately the original cost, plant acquisition adjustments, and plant adjustments, as required by the system of accounts prescribed by the applicable regulatory authorities. This rule shall not be applicable in respect to companies which are not required to make such a classification.

14. *Accumulated depreciation, depletion, and amortization of property, plant and equipment.* The amount is to be set forth separately in the balance sheet or in a note thereto.

15. *Intangible assets.* State separately each class of such assets which is in excess of five percent of the total assets, along with the basis of determining the respective amounts. Any significant addition or deletion shall be explained in a note.

16. *Accumulated depreciation and amortization of intangible assets.* The amount is to be set forth separately in the balance sheet or in a note thereto.

17. *Other assets.* State separately, in the balance sheet or in a note thereto, any other item not properly classed in one of the preceding asset captions which is in excess of five percent to total assets. Any significant addition or deletion should be explained in a note. With respect to any significant deferred charge, state the policy for deferral and amortization.

18. *Total assets and, when appropriate, other debits.*

Liabilities and Stockholders' Equity

Current Liabilities, When Appropriate (See § 210.4–05)

19. *Accounts and notes payable.* (a) State separately amounts payable to (1) banks for borrowings; (2) factors or other financial institutions for borrowings; (3) holders of commercial paper; (4) trade creditors; (5) related parties (see § 210.4–08(k)); (6) underwriters, promoters, and employees (other than related parties); and (7) others. Amounts applicable to (1), (2) and (3) may be stated separately in the balance sheet or in a note thereto.

(b) The amount and terms (including commitment fees and the conditions under which lines may be withdrawn) of unused lines of credit for short-term financing shall be disclosed, if significant, in the notes to the financial statements. The amount of these lines of credit which support a commercial paper borrowing arrangement or similar arrangements shall be separately identified.

20. *Other current liabilities.* State separately, in the balance sheet or in a note thereto, any item in excess of 5 percent of total current liabilities. Such items may include, but are not limited to, accrued payrolls, accrued interest, taxes, indicating the current portion of deferred income taxes, and the current portion of long-term debt. Remaining items may be shown in one amount.

21. *Total current liabilities, when appropriate.*

Long-Term Debt

22. *Bonds, mortgages and other long-term debt, including capitalized leases.* (a) State separately, in the balance sheet or in a note thereto, each issue or type of obligation and such information as will indicate (see § 210.4–06): (1) the general character of each type of debt including the rate of interest; (2) the date of maturity, or, if maturing serially, a brief indication of the serial maturities, such as "maturing serially from 1980 to 1990"; (3) if the payment of principal or interest is contingent, an appropriate indication of such contingency; (4) a brief indication of priority; (5) if convertible, the basis; and (6) the combined aggregate amount of maturities and sinking fund requirements for all issues, each year for the five years following the date of the balance sheet. For amounts owed to related parties, see § 210.4–08(k).

(b) The amount and terms (including commitment fees and the conditions under which commitments may be withdrawn) of unused commitments for long-term financing arrangements that would be disclosed under this rule if used shall be disclosed in the notes to the financial statements if significant.

23. *Indebtedness to related parties—noncurrent.* Include under this caption indebtedness to related parties as required under § 210.4–08(k).

24. *Other liabilities.* State separately, in the balance sheet or in a note thereto, any item not properly classified in one of the preceding liability captions which is in excess of 5 percent of total liabilities.

25. *Commitments and contingent liabilities.*

26. *Deferred credits.* State separately in the balance sheet amounts for (a) deferred income taxes, (b) deferred tax credits, and (c) material items of deferred income.

Minority Interests

27. *Minority interests in consolidated subsidiaries.* State separately in a note the

amounts represented by preferred stock and the applicable dividend requirements if the preferred stock is material in relation to the consolidated stockholders' equity.

Redeemable Preferred Stocks

28. *Preferred stocks subject to mandatory redemption requirements or whose redemption is outside the control of the issuer.* (a) Include under this caption amounts applicable to any class of stock which has any of the following characteristics: (1) it is redeemable at a fixed or determinable price on a fixed or determinable date or dates, whether by operation of a sinking fund or otherwise; (2) it is redeemable at the option of the holder; or (3) it has conditions for redemption which are not solely within the control of the issuer, such as stocks which must be redeemed out of future earnings. Amounts attributable to preferred stock which is not redeemable or is redeemable solely at the option of the issuer shall be included under § 210.5–02.29 unless it meets one or more of the above criteria.

(b) State on the face of the balance sheet the title of each issue, the carrying amount, and redemption amount. (If there is more than one issue, these amounts may be aggregated on the face of the balance sheet and details concerning each issue may be presented in the note required by paragraph (c) below.) Show also the dollar amount of any shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom. If the carrying value is different from the redemption amount, describe the accounting treatment for such difference in the note required by paragraph (c) below. Also state in this note or on the face of the balance sheet, for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate (See § 210.4–07).

(c) State in a separate note captioned "Redeemable Preferred Stocks" (1) a general description of each issue, including its redemption features (e.g. sinking fund, at option of holders, out of future earnings) and the rights, if any, of holders in the event of default, including the effect, if any, on junior securities in the event a required dividend, sinking fund, or other redemption payment(s) is not made; (2) the combined aggregate amount of redemption requirements for all issues each year for the five years following the date of the latest balance sheet; and (3) the changes in each issue for each period for which an income statement is required to be filed. (See also § 210.4–08(d).)

(d) Securities reported under this caption are not to be included under a general heading "stockholders' equity" or combined in a total with items described in captions 29, 30 or 31 which follow.

Non-Redeemable Preferred Stocks

29. *Preferred stocks which are not redeemable or are redeemable solely at the option of the issuer.* State on the face of the balance sheet, or if more than one issue is outstanding state in a note, the title of each issue and the dollar amount thereof. Show also the dollar amount of any shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom. State on the face of the balance sheet or in a note, for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate (see § 210.4–07). Show in a note or separate statement the changes in each class of preferred shares reported under this caption for each period for which an income statement is required to be filed. (See also § 210.4–08(d).)

Common Stocks

30. *Common stocks.* For each class of common shares state, on the face of the balance sheet, the number of shares issued or outstanding, as appropriate (see § 210.4–07), and the dollar amount thereof. If convertible, this fact should be indicated on the face of the balance sheet. For each class of common shares state, on the face of the balance sheet or in a note, the title of the issue, the number of shares authorized, and, if convertible, the basis of conversion (see also § 210.4–08(d)). Show also the dollar amount of any common shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom. Show in a note or statement the changes in each class of common shares for each period for which an income statement is required to be filed.

Other Stockholders' Equity

31. *Other stockholders' equity.* (a) Separate captions shall be shown for (1) additional paid-in capital, (2) other additional capital and (3) retained earnings (i) appropriated and (ii) unappropriated. (See § 210.4–06(e).) Additional paid-in capital and other additional capital may be combined with the stock caption to which it applies, if appropriate.

(b) For a period of at least 10 years subsequent to the effective date of a quasi-reorganization, any description of retained earnings shall indicate the point in time from which the new retained earnings dates and for a period of at least three years shall indicate, on the face of the balance sheet, the total amount of the deficit eliminated.

(c) A summary of each account under this caption setting forth the information prescribed in Rule 11–02 (§ 210.11–02) shall be given in a note or separate statement, for each period for which an income statement is required to be filed.

32. *Total liabilities and stockholders' equity.*

§ 210.5–03 Income statements.

(a) The purpose of this rule is to indicate the various line items which, if applicable, and except as otherwise permitted by the Commission, should appear on the face of the income statements filed for the persons to whom this article pertains (see § 210.4–01(a)).

(b) If income is derived from more than one of the subcaptions described under § 210.5–03.1, each class which is not more than 10 percent of the sum of the items may be combined with another class. If these items are combined, related costs and expenses as described under § 210.5–03.2 shall be combined in the same manner.

1. *Net sales and gross revenues.* State separately:

(a) net sales of tangible products (gross sales less discounts, returns and allowances), (b) operating revenues of public utilities or others; (c) income from rentals; (d) revenues from services; and (e) other revenues. Amounts earned from transactions with related parties shall be disclosed as required under § 210.4–08(k). A public utility company using a uniform system of accounts or a form for annual report prescribed by federal or state authorities, or a similar system or report, shall follow the the general segregation of operating revenues and operating expenses reported under § 210.5–03.2 prescribed by such system or report. If the total of sales and revenues reported under this caption includes excise taxes in an amount equal to 1 percent or more of such total, the amount of such excise taxes shall be shown on the face of the statement parenthetically or othewise.

2. *Costs and expenses applicable to sales and revenues.*

State separately the amount of (a) cost of tangible goods sold, (b) operating expenses of public utilities or others, (c) expenses applicable to rental income, (d) cost of services, and (e) expenses applicable to other revenues. Merchandising organizations, both wholesale and retail, may include occupancy and buying costs under caption 2(a). Amounts of costs and expenses incurred from transactions with related parties shall be disclosed as required under § 210.4–08(k).

3. *Other operating costs and expenses.* State separately any material amounts not included under caption 2 above.

4. *Selling, general and administrative expenses.*

5. *Provision for doubtful accounts and notes.*

6. *Other general expenses.* Include items not normally included in caption 4 above. State separately any material item.

7. *Non-operating income.* State separately amounts earned from (a) dividends, (b) interest on securities, (c) profits on securities (net of losses), and (d) miscellaneous other income. Amounts earned from transactions in securities of related parties shall be disclosed as required under § 210.4–08(k). Material amounts included under miscellaneous other income shall be separately stated, indicating clearly the nature of the transactions out of which the items arose.

8. *Interest and amortization of debt discount and expense.*

9. *Non-operating expenses.* State separately amounts of (a) losses on securities (net of profits) and (b) miscellaneous income deductions. Material amounts included under miscellaneous income deductions shall be separately stated, indicating clearly the nature of the transactions out of which the items arose.

10. *Income or loss before income tax expense and appropriate items below.*

11. *Income tax expense.* Include under this caption only taxes based on income (see § 210.4–08(g)).

12. *Minority interest in income of consolidated subsidiaries.*

13. *Equity in earnings of unconsolidated subsidiaries and 50 percent or less owned*

persons. State, parenthetically or in a note, the amount of dividends received from such persons. If justified by the circumstances, this item may be presented in a different position and a different manner (see § 210.4–01(a)).

14. *Income or loss from continuing operations.*

15. *Discontinued operations.*

16. *Income or loss before extraordinary items and cumulative effects of changes in accounting principles.*

17. *Extraordinary items, less applicable tax.*

18. *Cumulative effects of changes in accounting principles.*

19. *Net income or loss.*

20. *Earnings per share data.*

§ 210.5–04 What schedules are to be filed.

(a) Except as expressly provided otherwise in the applicable form—

(1) The schedules specified below in this seciton as Schedules I, VII, XI, XII, and XIII shall be filed as of the dates of the most recent audited balance sheet for each person or group.

(2) All other schedules specified below in this section as Schedules II, III, IV, V, VI, VIII, IX, and X shall be filed for each period for which an income statement is required to be filed for each person or group.

(b) When information is required in schedules for both the registrant and the registrant and its subsidiaries consolidated it may be presented in the form of a single schedule: *Provided,* That items pertaining to the registrant are separately shown and that such single schedule affords a properly summarized presentation of the facts. If the information required by any schedule (including the notes thereto) may be shown in the related financial statement or in a note thereto without making such statement unclear or confusing, that procedure may be followed and the schedule omitted.

(c) The schedules shall be examined by the independent accountant if the related financial statements are so examined.

Schedule I—Marketable securities—other investments.

The schedule prescribed by § 210.12–02 shall be filed—

(1) In support of caption 2 of a balance sheet, if the greater of the aggregate cost or the aggregate market value of marketable securities as of the balance sheet date constitutes 10 percent or more of total assets.

(2) In support of caption 12 of a balance sheet, if the greater of the aggregate cost or the aggregate market value of other investments as of the balance sheet date constitutes 10 percent or more of total assets.

(3) In support of captions 2 and 12 of a balance sheet, if the greater of the aggregate cost or aggregate market of other investments plus the greater of the aggregate cost or the aggregate market value of marketable securities as of the balance sheet date constitutes 15 percent or more of total assets.

(4) In support of captions 2 and 12 of a balance sheet, if the greater of the aggregate cost or aggregate market value of the securities as of the balance sheet date of any issuer reported under either caption 2 or caption 12 constitutes 2 percent or more of total assets.

Schedule II—Amounts receivable from related parties and underwriters, promoters, and employees other than related parties. The schedule prescribed by § 210.12–03 shall be filed with respect to each person among related parties and underwriters, promoters, and employees other than related parties, from whom an aggregate indebtedness of more than $100,000 or 1 percent of total assets, whichever is less, is owed, or at any time during the period for which related income statements are required to be filed was owed. This schedule shall not include information which is prescribed by § 210.12–05. For the purposes of this schedule, exclude in the determination of the amount of indebtedness all amounts receivable from such persons for purchases subject to usual trade terms, for ordinary travel and expense advances and for other such items arising in the ordinary course of business.

Schedule III—Investments in, equity in earnings of, and dividends received from related parties. The schedule prescribed by § 210.12–04 shall be filed in support of caption 10 of each balance sheet. This schedule may be omitted if (1) neither the sum of captions 10 and 11 in the related balance sheet nor the amount of caption 23 in such balance sheet exceeds 5 percent of total assets as shown by the related balance sheet at either the beginning or end of the period, or (2) there have been no material changes in the information required to be filed from that last previously reported.

Schedule IV—Indebtedness of and to related parties—not current. The schedule prescribed by § 210.12–05 shall be filed in support of captions 11 and 23 of each balance sheet; however, the required information may be presented separately on Schedule III. This schedule may be omitted if (1) neither the sums of captions 10 and 11 in the related balance sheet nor the amount of caption 23 in such balance sheet exceeds 5 percent of total assets as shown by the related balance sheet at either the beginning or end of the period, or (2) there have been no material changes in the information required to be filed from that last previously reported.

Schedule V—Property, plant and equipment. The schedule prescribed by § 210.12–06 shall be filed in support of caption 13 of each balance sheet, provided that this schedule may be omitted if the total shown by caption 13 does not exceed 5 percent of total assets as shown by the related balance sheet at both the beginning and end of the period and if neither the additions nor the deductions during the period exceeded 5 percent of total assets as shown by the related balance sheet at either the beginning or end of the period.

Schedule VI—Accumulated depreciation, depletion, and amortization of property, plant and equipment. The schedule prescribed by § 210.12–07 shall be filed in support of caption 14 of each balance sheet. This schedule may be omitted if Schedule V is omitted.

Schedule VII—Guarantees of securities of other issuers. The schedule prescribed by § 210.12–08 shall be filed with respect to any guarantees of securities of other issuers by the person for which the statement is filed.

Schedule VIII—Valuation and qualifying accounts. The schedule prescribed by § 210.12–09 shall be filed in support of valuation and qualifying accounts included in each balance sheet but not included in Schedule VI. (See § 210.4–02.)

Schedule IX—Short-term borrowings. The schedule prescribed by § 210.12–10 shall be filed in support of caption 19, amounts payable to banks for borrowings; factors and financial institutions for borrowings; and holders of commercial paper. The information required by this schedule may be presented in Management's Discussion and Analysis if it results in a more meaningful presentation of the information being provided.

Schedule X—Supplementary income statement information. The schedule prescribed by § 210.12–11 may be omitted for each income statement in which sales or operating revenues were not of significant amount. This schedule may also be omitted if the information required by column B and instructions 3 and 5 thereof is furnished in the income statement or in a note thereto.

Schedule XI—Real estate and accumulated depreciation. The schedule prescribed by § 210.12–28 shall be filed for real estate (and the related accumulated depreciation) held by persons a substantial portion of whose business is that of acquiring and holding for investment real estate or interests in real estate, or interests in other persons a substantial portion of whose business is that of acquiring and holding real estate or interests in real estate for investment. Real estate used in the business shall be excluded from the schedule.

Schedule XII—Mortgage loans on real estate. The schedule prescribed by § 210.12–29 shall be filed by persons specified under Schedule XI for investments in mortgage loans on real estate.

Schedule XIII—Other investments. If there are any other investments, under caption 12 of § 210.5–02 or elsewhere in a balance sheet, not required to be included in Schedule I or III, there shall be set forth in a separate schedule information concerning such investments corresponding to that prescribed by Schedule I. This schedule may be omitted if the total amount of such other investments does not exceed 5 percent of total assets as shown by such balance sheet.

5. By revising § 210.6–10 to read as follows:

§ 210.6–10 What schedules are to be filed.

(a) Except as otherwise expressly provided in the applicable form:

(1) The schedules specified below in this section as Schedules I and VII shall be filed as of the date of the most recent balance sheet filed for each person and for each group for which separate statements are filed. Such schedules shall be certified if the related balance sheet is certified.

(2) All other schedules specified below in this section shall be filed for

each period for which a statement of income and expense is filed. Such schedules shall be certified if the related statement of income and expense is certified.

(b) The information required in schedules for the registrant, for the consolidated subsidiaries and for the registrant and its subsidiaries consolidated may be presented in the form of a single schedule: *Provided,* That items pertaining to the registrant and to each consolidated subsidiary or group for which separate statements are required are separately shown and that such single schedule affords a properly summarized presentation of the facts.

(c) If the information required by any schedule (including the footnotes thereto) may be shown in the statements required by §§ 210.6–03 to 210.6–09 (Rules 6–03 to 6–09) without making such statements unclear or confusing, that procedure may be followed and the schedule omitted.

A. Investment Schedules

Schedule I—Investments in securities of unaffiliated issuers. The schedule prescribed by § 210.12–12 (Rule 12–12) shall be filed in support of caption 7 of each balance sheet (§ 210.6–03).

Schedule II—Investments, other than securities. The schedule prescribed by § 210.12–13 (Rule 12–13) shall be filed in support of caption 8 of each balance sheet (§ 210.6–03). This schedule may be omitted if the investments, other than securities, at both the beginning and end of the period amount to less than 1 percent of total assets or $50,000, whichever is less.

Schedule III—Investments in affiliates. The schedule prescribed by § 210.12–14 (Rule 12–14) shall be filed in support of caption 9 of each balance sheet (§ 210.6–03).

B. Miscellaneous Schedules

Schedule IV—Amounts due from directors and officers. The schedule prescribed by § 210.12–03 (Rule 12–03) shall be filed with respect to each person among the directors and officers from whom any amount was owed at any time during the period for which related statements of income and expense are filed.

Schedule V—Indebtedness to affiliates. The schedule prescribed by § 210.12–05 (Rule 12–05) shall be filed in support of caption 16(b). This schedule and schedule III may be combined if desired.

Schedule VI—Valuation and qualifying accounts. The schedule prescribed by § 210.12–09 (Rule 12–09) shall be filed in support of all reserves included in the balance sheet (§ 210.6–03).

Schedule VII—Guarantees of securities of other issuers. The schedule prescribed by § 210.12–08 shall be filed with respect to any guarantees of securities of other issuers by the person for which the statement is filed.

Schedule VIII—Short-term borrowings. The schedule prescribed by § 210.12–10 shall be filed in support of caption 12, amounts payable to banks for borrowings; factors and financial institutions for borrowings; and holders of commercial paper, of each balance sheet (§ 210.6–03).

6. By revising § 210.6–13 to read as follows:

§ 210.6–13 What schedules are to be filed.

(a) Schedule IV, specified below, shall be filed as of the date of the most recent statement of condition filed. The other schedules specified shall be filed for each period for which a statement of income and distributable funds is filed. All schedules shall be certified.

Schedule I—Investment in securities. The schedule prescribed by § 210.12–19 (Rule 12–19) shall be filed in support of caption 1 of each statement of condition and of captions 1 and 2 of each statement of income and distributable funds.

Schedule II—Trust shares. The schedule prescribed by § 210.12–20 (Rule 12–20) shall be filed in support of caption 8 of each statement of condition.

Schedule III—Gain or loss from transactions in trust property. A schedule shall be submitted showing for each investment set forth in Schedule I in which there were any sales or redemptions during the period: (a) The aggregate amount received from sale; (b) the aggregate cost of the investment sold; and (c) the realized gain or loss thereon.

Schedule IV—Allocation of trust assets to series of trust shares. If the trust assets are specifically allocated to different series of trust shares, and if such allocation is not shown in the statement of condition in columnar form or by the submission of separate statements for each series of trust shares, a schedule shall be submitted showing the amount of trust assets, indicated by each statement of condition filed, which is applicable to each series of trust shares.

Schedule V—Allocation of trust income and distributable funds to series of trust shares. If the trust income and distributable funds are specifically allocated to different series of trust shares and if such allocation is not shown in the statement of income and distributable funds in columnar form or by the submission of separate statements for each series of trust shares, a schedule shall be submitted showing the amount of income and distributable funds, indicated by each statement of income and distributable funds filed, which is applicable to each series of trust shares.

7. By revising § 210.6–24 to read as follows:

§ 210.6–24 What schedules are to be filed.

(a) Except as otherwise expressly provided in the applicable forms:

(1) The schedules specified in this section as schedules I, V, and X shall be filed as of the date of the most recent balance sheet filed for each person and for each group for which separate statements are filed. Such schedules shall be certified if the related balance sheet is certified.

(2) All other schedules specified in this section shall be filed for each period for which a profit and loss or income statement is filed, except as indicated for schedules III and IV. Such schedules shall be certified if the related profit and loss or income statement is certified.

(b) The information required in schedules for the registrant, for the consolidated subsidiaries and for the registrant and its subsidiaries consolidated may be presented in the form of a single schedule: *Provided,* That items pertaining to the registrant and to each consolidated subsidiary or group for which separate statements are required are separately shown and that such single schedule affords a properly summarized presentation of the facts.

(c) If the information required by any schedules (including the notes thereto) may be shown in the statements required by §§ 210.6–22 and 210.6–23 without making such statements unclear or confusing, that procedure may be followed and the schedule omitted.

A. Investment Schedules

Schedule I—Investment in securities of unaffiliated issuers. The schedule prescribed by § 210.12–21 shall be filed in support of captions 6(a) and 12 of each balance sheet. Separate schedules shall be furnished in support of each caption, if applicable.

Schedule II—Investments in and advances to affiliates and income thereon. The schedule prescribed by § 210.12–22 shall be filed in support of captions 10 and 13 of each balance sheet and caption 1(a) of each profit and loss or income statement. Separate schedules shall be furnished in support of each caption, if applicable.

Schedule III—Mortgage loans on real estate and interest earned on mortgages. The schedule prescribed by § 210.12–23 shall be filed in support of captions 6(b) and (c) and 12 of each balance sheet and caption 1(a)(i) of each profit and loss or income statement, except that only the information required by column G and note 8 of the schedule need be furnished in support of profit and loss or income statements for years for which related balance sheets are not required.

Schedule IV—Real estate owned and rental income. The schedule prescribed by § 210.12–24 shall be filed in support of captions 7 and 12 of each balance sheet and caption 1(a)(iv) of each profit and loss or income statement for rental income included therein, except that only the information required by columns H, I, and J, and item "Rent from properties sold during the period" and note 4 of the schedule need be furnished in support of profit and loss or income statements for years for which related balance sheets are not required.

B. Miscellaneous Schedules

Schedule V—Qualified assets on deposit. The schedule prescribed by § 210.12–27 shall be filed in support of note required by caption 11 of § 210.6–22 as to total amount of qualified assets on deposit.

Schedule VI—Amounts due from officers and directors. The schedule prescribed by § 210.12–03 shall be filed with respect to each person among the directors and officers from whom any amount was owed at any time during the period for which related profit and loss or income statements are filed. The schedule shall include also amounts due from employees. These amounts may be shown in an aggregate amount setting forth separately the amount due (1) from office employees and (2) sales employees, stating the total number of employees in each class. State if an exemption has been granted by the Commission with respect to amounts included in this schedule.

Schedule VII—Short-term borrowings. The schedule prescribed by § 210.12–10 shall be filed in support of caption 17(a), amounts payable to banks for borrowings; factors and financial institutions for borrowings; and holders of commercial paper, of each balance sheet.

Schedule VIII—Indebtedness to affiliates, not current. The schedule prescribed by § 210.12–05 shall be filed in support of caption 20 of each balance sheet. This schedule and schedule II may be combined if desired.

Schedule IX—Supplementary profit and loss information. The schedule prescribed by § 210.12–25 shall be filed in support of each profit and loss or income statement.

Schedule X—Guarantees of securities of other issuers. The schedule prescribed by § 210.12–08 shall be filed with respect to any guarantees of securities of other issuers by the person for which the statement is filed.

C. Reserve Schedules

Schedule XI—Certificate reserves. The schedule prescribed by § 210.12–26 shall be filed in support of caption 16 of each balance sheet.

Schedule XII—Valuation and qualifying accounts. The schedule prescribed by § 210.12–09 shall be filed in support of all other reserves included in the balance sheet.

8. By revising § 210.6–34 to read as follows:

§ 210.6–34 What schedules are to be filed.

(a) Schedules I and II, specified below, shall be filed as of the date of each statement of financial condition filed. Schedule III shall be filed for each period for which a statement of income and changes in plan equity is filed. All schedules shall be certified if the related statements are certified.

Schedule I—Investments. A schedule substantially in form prescribed by § 210.12–12 shall be filed in support of captions 1, 2 and 3 of each statement of financial condition unless substantially all of the information is given in the statement of financial condition by footnote or otherwise.

Schedule II—Allocation of plan assets and liabilities to investment program. If the plan provides for separate investment programs with separate funds, and if the allocation of assets and liabilities to the several funds is not shown in the statement of financial condition in columnar form or by the submission of separate statements for each fund, a schedule shall be submitted showing the allocation of each caption of each statement of financial condition filed to the applicable fund.

Schedule III—Allocation of plan income and changes in plan equity to investment programs. If the plan provides for separate investment programs with separate funds, and if the allocation of income and changes in plan equity to the several funds is not shown in the statement of income and changes in plan equity in columnar form or by the submission of separate statements for each fund, a schedule shall be submitted showing the allocation of each caption of each statement of income and changes in plan equity filed to the applicable fund.

9. By revising § 210.7–06 to read as follows:

§ 210.7–06 What schedules are to be filed.

(a) Except as expressly provided otherwise in the applicable form—

(1) The schedules specified below in this rule as Schedules I and VII shall be filed as of the dates of the most recent audited balance sheet for each person or group.

(2) All other schedules specified below in this rule as Schedules II, III, IV, V, and VI shall be filed for each period for which an income statement is required to be filed for each person or group.

(b) When information is required in schedules for both the registrant and its consolidated subsidiaries it may be presented in the form of a single schedule: *Provided,* That items pertaining to the registrant are separately shown and that such single schedule affords a properly summarized presentation of the facts. If the information required by any schedule (including the notes thereto) may be shown in the related financial statement or in a note thereto without making such statement unclear or confusing, that procedure may be followed and the schedule omitted.

(c) The schedules shall support the financial statements prepared in accordance with generally accepted accounted principles except for statements prepared in accordance with § 210.7–02(d).

(d) The schedules shall be examined by the independent accountant if the related financial statements are so examined.

Schedule I—Summary of investments, other than investments in affiliates. The schedule prescribed by § 210.12–15 shall be filed in support of caption 1 of each balance sheet.

Schedule II—Investments in, equity in earnings of, and dividends received from the related parties. The schedule prescribed by § 210.12–04 shall be filed, for each period for which an income statement is required to be filed, in support of caption 3(a) of each balance sheet. This schedule may be omitted if neither the sum of captions 3(a) and 3(b) in the related balance sheet nor the amount of caption 15 in such balance sheet exceeds 5 percent of total assets as shown by the related balance sheet at either the beginning or end of the period.

Schedule III—Indebtedness of and to related parties, not current. The schedule prescribed by § 210.12–05 shall be filed, for each period for which an income statement is required to be filed, in support of captions 3(b) and 15 of each balance sheet; however, the required information may be presented separately on Schedule II. This schedule may be omitted if neither the sums of captions 3(a) and 3(b) in the related balance sheet nor the amount of caption 15 in such balance sheet exceeds 5 percent of total assets as shown by the related balance sheet at either the beginning or end of the period.

Schedule IV—Amounts receivable from related parties, and underwriters, promoters, and employees other than related parties. The schedule prescribed by § 210.12–03 shall be filed, for each period for which an income statement is required to be filed, with respect to each person among related parties and underwriters, promoters, and employees other than related parties, from whom an aggregate indebtedness of more than $20,000 or 1 percent of total assets, whichever is less, is owed, or at any time during the period for which related income statements are required to be filed was owed. This schedule shall not include information which is prescribed by § 210.12–05. For purposes of this schedule exclude in the determination of the amount of indebtedness all amounts receivable from such persons for purchases subject to usual trade terms, for ordinary travel and expense advances, and for other such items arising in the ordinary course of business.

Schedule V—Valuation and qualifying accounts. The schedule prescribed by § 210.12–09 shall be filed for each period for which an income statement is required to be filed, in support of valuation and qualifying accounts included in each balance sheet (see § 210.4–02).

Schedule VI—Premiums, losses and claims and policy acquisition costs. The schedule prescribed by § 210.12–16 shall be filed, for each period for which an income statement is required to be filed, in support of captions 8 and 12 of each balance sheet and captions 1(a), 1(c), 4(a), 4(b) and 5 of each income statement.

Schedule VII—Guarantees of securities of other issuers. The schedule prescribed by § 210.12–08 shall be filed with respect to any guarantees of securities of other issuers by the person for which the statement is being filed.

10. By revising § 210.7A–06 to read as follows:

§ 210.7A–06 What schedules are to be filed.

(a) Except as expressly provided otherwise in the applicable form—

(1) The schedules specified below in this rule as Schedules I, VII, and VIII shall be filed as of the date of the most

recent audited balance sheet being filed for each person or group.

(2) All other schedules specified below in this rule as Schedules II, III, IV, V, and VI shall be filed for each period for which an income statement is required to be filed for each person or group.

(b) When information is required in schedules for both the registrant and the registrant and its consolidated subsidiaries it may be presented in the form of a single schedule: *Provided,* That items pertaining to the registrant are separately shown and that such single schedule affords a properly summarized presentation of the facts. If the information required by any schedule (including the notes thereto) may be shown in the related financial statement or in a note thereto without making such statement unclear or confusing, that procedure may be followed and the schedule omitted.

(c) The schedules shall support the financial statements prepared in accordance with generally accepted accounting principles except for statements prepared in accordance with § 210.7A–02(d).

(d) The schedules shall be examined by the independent accountant if the related financial statements are so examined.

Schedule I—Summary of investments, other than investments in affiliates. The schedule prescribed by § 210.12–15 shall be filed in support of caption 1 of each balance sheet.

Schedule II—Investments in equity in earnings of, and dividends received from related parties. The schedule prescribed by § 210.12–04 shall be filed in support of caption 3(a) of each balance sheet. This schedule may be omitted if neither the sum of captions 3(a) and 3(b) in the related balance sheet nor the amount of caption 15 in such balance sheet exceeds 5 percent of total assets as shown by the related balance sheet at either the beginning or end of the period.

Schedule III—Indebtedness of and to related parties—not current. The schedule prescribed by § 210.12–05 shall be filed in support of captions 3(b) and 15 of each balance sheet; however, the required information may be presented separately on Schedule II. This schedule may be omitted if neither the sums of captions 3(a) and 3(b) in the related balance sheet nor the amount of caption 15 in such balance sheet exceeds 5 percent of total assets as shown by the related balance sheet at either the beginning or end of the period.

Schedule IV—Deferred policy acquisition costs. The schedule prescribed by § 210.12–18 shall be filed in support of caption 6 of each balance sheet provided that this schedule may be omitted if the total shown by caption 6 does not exceed five percent of total assets as shown by the related balance sheet at both the beginning and end of the period and if neither the additions nor the deductions during the period exceeded five percent of total assets as shown by the related balance sheet at either the beginning or end of the period.

Schedule V—Amounts receivable from related parties and underwriters, promoters, and employees other than related parties. The schedule prescribed by § 210.12–03 shall be filed with respect to each person among related parties and underwriters, promoters, and employees other than related parties, from whom an aggregate indebtedness of more than $20,000 or 1 percent of total assets, whichever is less, is owed, or at any time during the period for which related income statements are required to be filed was owed. This schedule shall not include information which is prescribed by § 210.12–05. For the purposes of this schedule exclude in the determination of the amount of indebtedness all amounts receivable from such persons for purchases subject to usual trade terms, for ordinary travel and expense advances, and for other such items arising in the ordinary course of business.

Schedule VI—Valuation and qualifying accounts. The schedule prescribed by § 210.12–09 shall be filed in support of valuation and qualifying accounts included in each balance sheet (see § 210.4–02).

Schedule VII—Future policy benefits and insurance in force. The schedule prescribed by § 210.12–17 shall be filed in support of caption 11 of each balance sheet. The schedule prescribed by § 210.12–16 shall be used insofar as it may more appropriately support the liability for future policy benefits of accident and health insurance at caption 11(b) which are based on unearned premiums.

Schedule VIII—Guarantees or securities of other issuers. The schedules prescribed by § 210.12–08 shall be filed with respect to any guarantees of securities of other issuers by the person for which the statement is being filed.

11. By revising paragraphs (b) (1) and (2) of § 210.9–01 to read as follows:

§ 210.9–01 Application of §§ 210.9–01 to 210.9–05.

* * * * *

(b) * * *

(1) On the balance sheet, (i) current assets and current liabilities need not be separately classified from other assets and liabilities respectively, and (ii) in lieu of amounts of investments in, equity in earnings of, dividends received from, indebtedness of and to related parties to be reported at §§ 210.5–02.10, .11, and .23 and on Schedules III and IV, there shall be substituted amounts of securities and indebtedness of and to affiliates and entities for which investments are accounted for by the equity method. The references to related parties in §§ 210.5–02.3 and .19 and in Schedule II shall be limited to affiliates and entities for which investments are accounted for by the equity method. Securities and indebtedness of and to banks shall be shown separately from amounts for other persons; and

(2) On the income statement dividends received from unconsolidated subidiaries and 50 percent or less owned persons shall be shown as the first item on the statement, and the amount to be reported at § 210.5–03.13 shall be the equity in undistributed earnings of unconsolidated subsidiaries and 50 percent or less owned persons. Dividends and equity in undistributed earnings related to banks shall be shown separately from amounts for other persons. Disclosures related to transactions with related parties required under §§ 210.5–03.1, .2, and .7 shall be limited to unconsolidated subsidiaries and 50 percent or less owned persons.

* * * * *

12. By removing from § 210.9–02.17 paragraph (a) and the designation of the second paragraph as (b).

13. By revising § 210.9–05 to read as follows:

§ 210.9–05 What schedules are to be filed.

(a) Except as expressly provided otherwise in the applicable form—

(1) Schedule III, specified below, shall be filed as of the dates of the most recent audited balance sheet for each person or group.

(2) The other schedules specified below in the rule as schedules I and II shall be filed for each period for which an income statement is required to be filed for each person or group.

(b) If the information required by any schedule (including the notes thereto) may be shown in the related financial statement or in a note thereto without making such statement unclear or confusing, that procedure may be followed and the schedule omitted.

(c) The schedules shall be examined by the independent accountant if the related financial statements are so examined.

(d) The schedules prescribed by §§ 210.12–04 and 210.12–05 shall be filed in support of subcaptions 9(c) and 14(b) of each balance sheet and shall be designated schedules IV and V, respectively. These schedules shall be filed for each period for which an income statement is required to be filed. These schedules may be omitted if (1) neither the amount required to be reported in a note under subcaption 9(c) in the related balance sheet nor the amount required to be reported in a note under subcaption 14(b) in such balance sheet exceeds 5 percent of stockholders' equity as shown by the related balance sheet at either the beginning or end of the period, or (2) there have been no material changes in the information

required to be filed from that last previously reported.

Schedule I—Amounts receivable from certain persons. The schedule prescribed by § 210.12–03 shall be filed with respect to indebtedness of more than $500,000 or 2.5 percent of stockholders' equity, whichever is less, which is owed or, at any time during the period for which related income statements are required to be filed, was owed by each person (including those referred to below) related to the reporting person or any of its principal subsidiaries as director, executive officer,[3] or principal holder of equity securities. Indebtedness to be reported for a director, officer or principal holder of equity securities shall include the aggregate of indebtedness owed by such person and indebtedness owed by any of the following which are related to such person: (1) Any corporation, venture or organization of which any of the foregoing persons is a general partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities, (2) any trust or other estate in which any of the foregoing persons has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity and (3) any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same home as such person. Indebtedness to be reported shall include amounts owed to the parent company or any consolidated subsidiary. Notwithstanding the foregoing and the requirement of Column A of § 210.12–03, indebtedness incurred in the ordinary course of business by directors (and related persons specified above) who are neither executive officers nor principal holders of equity securities may be stated in the aggregate in Columns B, C, D and E of § 210.12–03 and need not be reported on an individual basis. The number of directors whose indebtedness is included in the aggregate amount shall be stated in Column A. It shall not be necessary to include in the individual or aggregate indebtedness reported those amounts related to installment loans as defined in § 210.9–02.5(c)(3) made in the ordinary course of business. For the purpose of this schedule, loans or indebtedness made or incurred in the ordinary course of business shall be those which (i) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions with other persons, and (ii) did not involve more than normal risk of collectibility or present other unfavorable features.

Schedule II—Valuation and qualifying accounts. The schedule prescribed by § 210.12–09 shall be filed in support of valuation and qualifying accounts included in each balance sheet excluding the allowances for loan losses and real estate losses.

Schedule III—Guarantees of securities of other issuers. The schedule prescribed by § 210.12–08 shall be filed with respect to any guarantees of securities of other issuers by the person for which the statement is being filed.

14. By deleting present §§ 210.12–08, 09, 11, 14, 15, 17, 18, 20, 23, 24, 25, 26, 28, 30, and 32; and by revising, amending, and redesignating the remaining rules as follows:

15. Section 210.12–01 is revised to read as follows:

Form and Content of Schedules

General

§ 210.12–01 Application of §§ 210.12–01 to 210.12–27.

These sections prescribe the form and content of the schedules required by §§ 210.5–04, 210.6–10, 210.6–13, 210.6–24, 210.6–34, 210.7–06, 210.7A–06 and 210.9–05. The heading of § 210.12–02 is revised to read as follows:

§ 210.12–02 Marketable securities—other investments.

16. No change from present schedule format.

17. The heading of § 210.12–03 is revised to read as follows:

§ 210.12–03 Amounts receivable from related parties and underwriters, promoters, and employees other than related parties.

17a. No change from present schedule format of § 210.12–03.

18. § 210.12–04 is revised to read as follows:

§ 210.12–04 Investments in, equity in earnings of, and dividends received from related parties.

Col. A	Col. B		Col. C		Col. D		Col. E		Col. F
	Balance at beginning of period		Additions		Deductions		Balance at end of period		
	(1)	(2)	(1)	(2)	(1)	(2)	(1)	(2)	
Name of issuer and description of investment[1]	Number of shares or units.[2] Principal amount of bonds and notes	Amount in dollars	Equity taken up in earnings (losses) of related parties for the period[3]	Other[4]	Distribution of earnings by persons in which earnings (losses) were taken up[5]	Other[6]	Number of shares or units.[2] Principal amount of bonds and notes	Amount in dollars[7]	Dividends received during the period from investments not accounted for by the equity method[5]

[1] (a) Group separately securities of (1) subsidiaries consolidated, (2) subsidiaries not consolidated, and (3) other related parties, the investments in which are accounted for by the equity method, showing shares and bonds separately in each case. Investments in individual related parties which, when considered with related advances, exceed 2 percent of total assets shall be stated separately. Dividends from (1) marketable securities and (2) other security investments shall also be included and may be shown in separate aggregate amounts.

(b) Those foreign investments, the enumeration of which would be detrimental to the registrant, may be grouped.

[2] Disclose, in the column or in a note hereto, the percentage of ownership interest represented by the shares or units, if material.

[3] The total of column C(1) shall be reconciled with the amount of the related income statement caption.

[4] Briefly describe each item in column C(2); if the cost thereof represents other than a cash expenditure, explain. If acquired from a related party (and not an original issue of that related party) at other than cost to the related party, show such cost, provided the acquisition by the related party was 2 years prior to the acquisition by the person for which the statement is filed.

[5] As to any dividends other than cash, state the basis on which they have been taken up in the accounts, and the justification for such action. If any such dividends received from related parties have been credited in the accounts in an amount differing from that charged to retained earnings by the disbursing company, state the amount of such difference and explain.

[6] Briefly describe each item in column D(2) and state; (a) Cost of items sold and how determined; (b) amount received (if other than cash, explain); and (c) disposition of resulting profit or loss.

[7] The total (or a sub-total) of column E(2) shall be reconciled with the amount reported under caption 10 of the related balance sheet.

[3] See footnote 1 for definition of "principal subsidiaries," "executive officer" and "relative."

19. Section 210.12–05 is revised to read as follows:

§ 210.12–05 Indebtedness of and to related parties—not current.

Col. A	Col. B	Col. C	Col. D	Col. E	Col. F	Col. G	Col. H	Col. I
		Indebtedness of—				Indebtedness to—		
Name of person[1]	Balance at beginning	Additions[2]	Deductions[2]	Balance at end	Balance at beginning	Additions[2]	Deductions[2]	Balance at end

[1] The persons named shall be grouped as in the related schedule required for investments in related parties. The information called for shall be shown separately for any persons whose investments were shown separately in such related schedule.

[2] For each person named in column A, explain in a note the nature and purpose of any increase during the period that is in excess of 10 percent of the related balance at either the beginning or end of the period.

[3] If deduction was other than a receipt or disbursement of cash, explain.

§ 210.12–06 Property, plant and equipment.[1] [7]

20. No change from present schedule format. However, footnote designation 7 is added to the heading and note 7 is added as follows:

[7] Disclosure shall be made of the methods and, if practicable, the rates used in computing the annual provision for depreciation, depletion, obsolescence, and amortization of physical properties and capitalized leases.

[1] Indicate in a note the general terms (as well as formal provisions for the extension of maturity) of each category of aggregate short-term borrowings.

§ 210.12–07 Accumulated depreciation, depletion and amortization of property, plant and equipment.[1]

21. No change.

§ 210.12–08 Guarantees of securities of other issuers.[1]

22. Section 210.12–12 is redesignated § 210.12–08.

§ 210.12–09 Valuation and qualifying accounts.

23. § 210.12–13 is redesignated § 210.12–09.

24. Section 210.12–10 is revised to read as follows:

§ 210.12–10 Short-term borrowings.[1]

Col. A	Col. B	Col. C	Col. D	Col. E	Col. F
Category of aggregate short-term borrowings[1]	Balance at end of period	Weighted average interest rate	Maximum amount outstanding during the period[2]	Average amount outstanding during the period[3]	Weighted average interest rate during the period[3]

[1] The categories of short-term borrowings are amounts payable to banks for borrowings; factors or other financial institutions for borrowings; and holders of commercial paper.

[2] Indicate the maximum amount outstanding at any month end (or similar time period) during the period.

[3] Indicate the means used to compute such average.

25. Section 210.12–16 is redesignated §210.12–11 and the redesignated section is revised to read as follows:

§ 210.12–11 Supplementary income statement information.

Col. A[1]	Col. B[2]
Item	Charged to costs and expenses
1. Maintenance and repairs	
2. Depreciation and amortization of intangible assets, preoperating costs and similar deferral[3]	
3. Taxes, other than payroll and income taxes[4]	
4. Royalties	
5. Advertising costs[5]	

[1] State, for each of the items noted in column A which exceeds 1 percent of total sales and revenues as reported in the related income statement, the amount called for in column B.

[2] Totals may be stated in column B without further designation of the accounts to which charged.

[3] State separately each category of cost amortized.

[4] State separately each category of tax which exceeds 1 percent of total sales and revenues.

[5] This item shall include all costs related to advertising the company's name, products or services in newspapers, periodicals or other advertising media.

For Management Investment Companies

§ 210.12–12 Investments in securities of unaffiliated issuers.

26. Section 210.12–19 is redesignated § 210.12–12.

§ 210.12–13 Investments; other than securities.

27. Section 210.12–21 is redesignated § 210.12–13.

§ 210.12–14 Investments in affiliates.

28. Section 210.12–22 is redesignated § 210.12–14.

§ 210.12–15 Summary of investments—other than investments in affiliates.

29. Section 210.12–27 is redesignated § 210.12–15.

§ 210.12–16 Premiums, losses and claims, and policy acquisition costs.

30. Section 210.12–29 is redesignated § 210.12–16.

§ 210.12–17 Future policy benefits and insurance in force.

31. Section 210.12–31 is redesignated § 210.12–17.

§ 210.12–18 Deferred policy acquisition costs.

32. Section 210.12–31a is redesignated § 210.12–18.

For Unit Investment Trusts, and for Those Unincorporated Management Investment Companies Which Are Issuers of Periodic Payment Plan Certificates

§ 210.12–19 Investments in securities.

33. Section 210.12–33 is redesignated § 210.12–19.

§ 210.12–20 Trust shares.

34. Section 210.12–34 is redesignated § 210.12–20.

For Face-Amount Certificate Investment Companies

§ 210.12–21 Investments in securities of unaffiliated issuers.

35. Section 210.12–35 is redesignated § 210.12–21.

§ 210.12–22 Investments in and advances to affiliates and income thereon.

36. Section 210.12–36 is redesignated §210.12–22.

§ 210.12–23 Mortgage loans on real estate and interest earned on mortgages.

37. Section 210.12–37 is redesignated §210.12–23.

§ 210.12–24 Real estate owned and rental income.

38. Section 210.12–38 is redesignated §210.12–24.

§ 210.12-25 Supplementary profit and loss information.

39. Section 210.12-39 is redesignated §210.12-25

§ 210.12-26 Certificate reserves.

40. Section 210.12-40 is redesignated §210.12-26.

§ 210.12-27 Qualified assets on deposit.

41. Section 210.12-41 is redesignated §210.12-27.

For Certain Real Estate Companies

§ 210.12-28 Real estate and accumulated depreciation.

42. Section 210.12-42 is redesignated § 210.12-28.

§ 210.12-29 Mortgage loans on real estate.

43. Section 210.12-43 is redesignated §210.12-29.

44. The following table serves to revise certain cross-references within §§ 210.1-01 to 210.12-29 (Regulation S-X). The first column identifies the location of the reference, the second column indicates the old reference which is deleted, and the third column indicates the new reference which is to be presented in the place of the old reference.

Location of reference	Old reference	New reference
§ 210.1-01(c)	§ 210.3-18	§ 210.4-10.
§ 210.2-02(e)	§ 210.3-16(t)	Item 12 of Regulation S-K (§ 229.20).
§ 210.6-02 (introductory text)	§§ 210.1-01 to 210.4-14 (Articles 1, 2, 3, and 4).	§§ 210.1-01 to 210.4-10 (Articles 1, 2, 3, and 4).
§ 210.6-02(c)(1)	§§ 210.4-01 to 210.4-14 (Article 4)	§§ 210.3A-01 to 210.3A-14 (Article 3A).
§ 210.6-02(k)	§ 210.3-02 (Rule 3-02)	§ 210.4-02.
§ 210.6-03-12	§ 210.5-02.25 (b) and (c)	§ 210.5-02.19(b).
§ 210.6-21 (introductory text)	§§ 210.1-01 to 210.4-14	§§ 210.1-01 to 210.4-10.
§ 210.6-21(c)(1)	§§ 210.4-01 to 210.4-14	§§ 210.3A-01 to 210.3A-14.
§ 210.6-21(h)	§ 210.3-02 and 210.3-03(a)	§§ 210.4-02 and 210.4-03(a).
§ 210.6-22-17(a)(ii)	§ 210.5-02.25 (b) and (c)	§ 210.5-02.19(b).
§ 210.6-31 (introductory text)	§§ 210.1-01 to 210.4-14	§§ 210.1-01 to 210.4-10.
§ 210.7-02(a)	§§ 210.1-01-210.1-02, 210.2-01-210.2-05, 210.3-01-210.3-16, and 210.4-01-210.4-08.	§§ 210.1-01-210.1-02, 210.2-01-210.2-05, 210.3A-01-210.3A-08, and 210.4-01-210.4-08.
§ 210.7-03(a)-14	§ 210.5-02.29	§ 210.5-02.22.
§ 210.7-03(a)-18	See §§ 210.3-16(i) and 210.7-05.4	See § 210.7-05.4.
§ 210.7-03(a)-19	§ 210.5-02.38	§ 210.5-02.28.
§ 210.7-03(a)-20	§ 210.5-02.39	§ 210.5-02.29.
§ 210.7-03(a)-21	[See §§ 210.3-14 and 210.3-15]	[See § 210.4.07].
	[See also § 210.3-16(f)(3)]	[See also § 210.4-08(d)].
§ 210.7-04-9	[See § 210.3-16(o)]	[See § 210.4-08(g)].
§ 210.7-05-1	(See also § 210.3-08)	Deleted.
§ 210.7-05-2	§ 210.3-16(h)	§ 210.4-08(e).
§ 210.7a-02(a)	§§ 210.1-01-1-02, 210.2-01-2-05, 210.3-01-3-16, and 210.4-01-4-09.	§§ 210.1-01-1-02, 210.2-01-2-05, 210.3A-01-3A-08, and 210.4-01-4-08.
§ 210.7A-03(a)-14	§ 210.5-02-29	§ 210.5-02.22.
§ 210.7A-03(a)-20	§§ 210.3-16(i) and 210.7a-05-6	§ 210.7a-05.6.
§ 210.7A-03(a)-21	§ 210.5-02.38	§ 210.5-02.28.
§ 210.7A-03(a)-22	§ 210.5-02.39	§ 210.5-02.29.
§ 210.7A-03(a)-23	[See § 210.3-14 and § 210.3-15]	[See § 210.4-07].
	[See also § 210.3-16(f)(3)]	[See also § 210.4-08(d)].
§ 210.7A-04-10	[See § 210.3-16(o)]	[See § 210.4-08(g)].
§ 210.7A-05-1	(See also § 210.3-08)	Deleted.
§ 210.7A-05-2	§ 210.3-16(h)	§ 210.4-08(e).
§ 210.7A-05-3	§ 210.3-16(o)	§ 210.4-08(g).
§ 210.9-01(c)	§§ 210.1-01-210.1-02, 210.2-01-210.2-05, 210.3-01-210.3-17, and 210.4-01-210.4-08.	§§ 210.1-01-210.1-02, 210.2-01-210.2-05, 210.3A-01-210.3A-08, and 210.4-01-210.4-09.
§ 210.9-02	(See paragraph (a) of § 210.3-01)	(See paragraph (a) of § 210.4-01).
§ 210.9-02-14(a)(3)	(See § 210.5-02.31)	(See § 210.5-02.23).
§ 210.9-02-14(b)	(See § 210.5-02.31)	(See § 210.5-02.23).
§ 210.9-02-15(b)	§ 210.5-02.29	§ 210.5-02.22.
	(See also § 210.5-02.30)	Deleted.
§ 210.9-02-19	§ 210.5-02.38	§ 210.5-02.28.
§ 210.9-02-20	§ 210.5-02.39	§ 210.5-02.29.
§ 210.9-02-21	§ 210.5-02.40	§ 210.5-02.30.
§ 210.9-02-22	§ 210.5-02.41	§ 210.5-02.31.
§ 210.9-03	(See paragraph (a) of § 210.3-01)	(See § 210.4-01(a)).
§ 210.9-03-17	(See § 210.3-16(o))	(See § 210.4-08(g)).
§ 210.11-01	§ 210.5-02.41	§ 210.5-02.31
§ 210.11-02	(See § 210.5-03(a))	Deleted.
§ 210.11A-02(a)	(See § 210.3-01)	(See § 210.4-01).

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S-K

45. Section 229.20 is amended by adding new Item 12 to read as follows (Items 9-11 are added in concurrent release No. 33-6231):

§ 229.20 Information required in document.

* * * * *

Item 12. Supplementary financial information. (a) *Selected quarterly financial data.*

(1) Exemption. This rule shall not apply to any registrant that does not meet both of the two following tests:

(i) First test. The registrant: (A) Has securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 (other than mutual life insurance companies); or

(B) Is an insurance company that is subject to the reporting requirements of section 15(d) of that Act and has securities which also meet the tests set forth in paragraphs (a)(1)(i) (C)(*1*) and (C)(*2*) of this section; or

(C) Has securities registered pursuant to section 12(g) of that Act which also

(*1*) Are quoted on the National Association of Securities Dealers Automated Quotation System, and

(*2*) Meet the following criteria:

(*i*) Three or more dealers stand willing to, and do in fact, make a market in such stock, including making regularly published bona fide bids and offers for such stock for their own accounts; or the stock is registered on a securities exchange that is exempted by the Commission from registration as a national securities exchange pursuant to section 5 of the Securities Exchange Act of 1934.

(*a*) For purposes of this subsection, the insertion of quotations into the National Association of Securities Dealers Automated Quotation System by three or more dealers on at least 10 business days during the six month period immediately preceding the fiscal year for which the financial statements are required shall satisfy the requirement that three dealers be making a market.

(*ii*) There continue to be 800 or more holders of record, as defined in Rule 12g5–1(§ 240.12g5–1) under the Exchange Act, of the stock who are not officers, directors, or beneficial owners of 10 percent or more of the stock.

(*iii*) The issuer continues to be a U.S. corporation.

(*iv*) There are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock.

(*v*) In addition, the issuer shall meet two of the three following requirements:

(*a*) The shares described in paragraph (1)(i)(C)(*2*)(*iv*) continue to have a market value of at least $2.5 million.

(*b*) The minimum representative bid price of such stock is at least $5 per share.

(*c*) The issuer continues to have at least $2.5 million of capital, surplus, and undivided profits.

Instructions. 1. The computation required by (*v*)(*a*) and (*v*)(*b*) shall be based on the average of the closing representative bid prices as reported by NASDAQ for the 20 business days immediately preceding the fiscal year for which the financial statements are required.

2. The computation required by (*v*)(*c*) shall be as at the last business day of the fiscal year immediately preceding the fiscal year for which the financial statements are required.

(ii) Second test. The registrant and its consolidated subsidiaries (A) have had a net income after taxes but before extraordinary items and the cumulative effect of a change in accounting of at least $250,000 for each of the last three fiscal years; or (B) had total assets of at least $200,000,000 for the last fiscal year-end.

(2) Disclosure shall be made of net sales, gross profit (net sales less costs and expenses associated directly with or allocated to products sold or services rendered), income before extraordinary items and cumulative effect of a change in accounting, per share data based upon such income, and net income for each full quarter within the two most recent fiscal years and any subsequent interim period for which income statements are presented.

(3) When the data supplied in paragraph (2) of this section vary from the amounts previously reported on the Form 10–Q (17 CFR 249.308a) filed for any quarter, such as would be the case when a pooling of interests occurs or where an error is corrected, reconcile the amounts given with those previously reported describing the reason for the difference.

(4) Describe the effect of any disposals of segments of a business, and extraordinary, unusual or infrequently occurring items recognized in each full quarter within the two most recent fiscal years and any subsequent interim period for which income statements are presented, as well as the aggregate effect and the nature of year-end or other adjustments which are material to the results of that quarter.

(5) Paragraphs (1) through (4) of this rule shall not apply to a foreign private issuer not required to report quarterly financial information on Form 10–Q; *Provided, however,* That a foreign registrant which reports or is required to report interim financial information on Form 6–K shall disclose such data in the manner provided in paragraphs (1) through (4) with respect to the financial information reported on Form 6–K.

(6) If the financial statements to which this information relates have been reported on by an accountant, appropriate professional standards and procedures, as enumerated in the Statements of Auditing Standards issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, shall be followed by the reporting accountant with regard to the data required by this rule.

(b) *Disagreements on accounting and financial disclosure matters.* If, (1) within the twenty-four months prior to the date of the most recent financial statements, a Form 8–K has been filed reporting a change of accountants, (2) included in the Form 8–K there was a reported disagreement on any matter of accounting principles or practices or financial statement disclosure, (3) during the fiscal year in which the change of accountants took place or during the subsequent fiscal year there have been any transactions or events similar to those which involved the reported disagreement, and (4) such transactions or events were material and were accounted for or disclosed in a manner different from that which the former accountants apparently would have concluded was required, state the existence and nature of the disagreement and also state the effect on the financial statements if the method had been followed which the former accountants apparently would have concluded was required. These disclosures need not be made if the method asserted by the former accountants ceases to be generally accepted because of authoritative standards or interpretations subsequently issued.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

46. Part 240 is amended by revising paragraph (b)(3) of § 240.14a–3 to read as follows:

§ 240.14a–3 Information to be furnished to security holders.

* * * * *

(b) * * *

(3) The report shall contain the supplementary financial information specified by Item 12 of Regulation S–K (17 CFR 229.20).

* * * * *

47. Part 240 is further amended by revising paragraph (a)(3) of § 240.14c–3 to read as follows:

§ 240.14c–3 Annual report to be furnished security holders.

(a) * * *

(3) The report shall contain the supplementary financial information specified by Item 12 of Regulation S–K (17 CFR 229.20).

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

§ 249.308a [Amended]

48. The following table serves to revise certain cross-references in § 249.308a. The first column identifies the location of the reference, the second column indicates the old reference which is deleted, and the third column indicates the new reference which is to be presented in the place of the old reference.

Location of reference	Old reference	New reference
§ 249.308a Part I *Instruction 4*(a)(1)	Rule 3–02	Rule 4–02.
§ 249.308a Part I *Instruction 4*(a)(2)	Rule 3–02	Rule 4–02.
§ 249.308a Part I *Instruction 4*(a)(3)	Rules 3–08 and 3–16	Rule 4–08.

These amendments are adopted pursuant to authority in Sections 6, 7, 8, 10, and 19(a) (15 U.S.C. 77f, 77g, 77h, 77j, 77s) of the Securities Act of 1933; Sections 12, 13, 15(d), and 23(a) (15 U.S.C. 78*l*, 78m, 78o(d), 78w) of the Securities Exchange Act of 1934; Sections 5(b), 14, and 20(a) (15 U.S.C. 79e, 79n, 79t) of the Public Utility

Holding Company Act of 1935; Sections 8, 30, 31(c) and 38(a) (15 U.S.C. 80a–8, 80a–29, 80a–30(c), 80a–37(a)) of the Investment Company Act of 1940.

Pursuant to Section 23(a)(2) of the Securities Exchange Act, the Commission has considered the impact of these amendments on competition and is not aware at this time of any burden that they would impose on competition.

By the Commission.

George A. Fitzsimmons,

Secretary.

September 2, 1980.

[FR Doc. 80–27816 Filed 9–19–80; 10:30 am]

BILLING CODE 8010–01–M

17 CFR Parts 210, 231, 239, 240 and 249

[Releases Nos. 33–6234, 34–17117, 35–21700; IC–11326, AS–281]

Uniform Instructions as to Financial Statements—Regulation S–X

AGENCY: Securities and Exchange Commission.

ACTION: Amendment of rules.

SUMMARY: The Commission announces the adoption of amendments to rules establishing uniform instructions governing the periods to be covered by financial statements included in (1) most registration and reporting forms filed with the Commission under the Securities Act of 1933 and Securities Exchange Act of 1934, and (2) annual reports to security holders furnished pursuant to the proxy rules. The amendments specify the periods to be covered by audited financial statements as well as the periods for which unaudited interim financial information is required when securities are being registered. In addition, requirements as to the form and content of interim financial information included in registration statements have been adopted which parallel current requirements of quarterly reports filed on Form 10–Q. The amendments remove substantially all present instructions as to financial statements from the various registration and reporting forms and establish a centralized set of revised instructions in Regulation S–X. The amendments adopted are intended to simplify the registration and reporting requirements under the Federal securities laws and further the ability of registrants to integrate reporting under the 1933 and 1934 Acts.

EFFECTIVE DATE: Effective for companies with fiscal years ended after December 15, 1980. However, upon publication in the **Federal Register**, earlier implementation is encouraged.

FOR FURTHER INFORMATION CONTACT: Lawrence C. Best, Office of the Chief Accountant, Securities and Exchange Commission, Washington, D.C. 20549 (202–272–2130).

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting amendments to rules establishing uniform instructions as to the periods to be covered by financial statements included in most registration and reporting forms filed with the Commission under the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act of 1934 ("Exchange Act," together the "securities acts") and in annual reports to security holders furnished pursuant to the proxy rules. Further, amendments are being adopted which modify requirements as to the form and content of interim financial information included in registration statements, conforming for most registrants previous requirements under the Securities Act with current requirements for quarterly data under the Exchange Act. The amendments remove substantially all present instructions as to financial statements from the various registration and reporting forms and establish a centralized set of revised instructions in Regulation S–X.

Adoption of the amendments contained in this release result in amendments to Forms S–1 (17 CFR 239.11), S–2 (17 CFR 239.12), S–3 (17 CFR 239.13), S–7 (17 CFR 239.26), S–11 (17 CFR 239.18), 10 (17 CFR 249.210), 10–K (17 CFR 249.310), 11–K (17 CFR 249.311), Rule 14a–3 (17 CFR 240.14a–3), Schedule 14a (17 CFR 240.14a–1 *et seq.*) Rule 14c–3 (17 CFR 240.14c–3), Regulation S–X (17 CFR 210) and Guide 23 (17 CFR 231.4936) under the Securities Act of 1933 or the Securities Exchange Act of 1934.

Background

On January 15, 1980, the Securities and Exchange Commission, in four separate but related releases, introduced a plan to redesign the registration and reporting system under the securities acts.[1] The plan proposed substantial changes to the disclosure system and incorporated revisions designed to improve overall disclosure, simplify existing rules, and reduce the registration and reporting burdens for most registrants. The underlying theme of the plan was the accomplishment of a coordinated disclosure system encompassing integrated reporting under the Securities Act and the Exchange Act.

The plan envisioned, among other things, the use of what may be referred to as a "uniform financial disclosure package" as the central disclosure mechanism in the integrated disclosure system. This uniform package containing certain minimum disclosures was to appear in the annual report to security holders and be incorporated by reference into the Form 10–K as well as certain Securities Act filings. It was to contain items of disclosure the Commission believed warranted maximum public exposure.

In developing this plan for an integrated disclosure system, the Commission placed a high priority on determining what it believed to be the minimum content necessary for an informed investment decision and undertook to reexamine its financial disclosure requirements in an effort to develop a uniform financial disclosure package. This reexamination involved revisiting requirements for primary audited financial statements, the summary of operations, and management's discussion and analysis of the summary of operations as well as the provisions of Regulation S–X.

The reassessment of these rules resulted in the Commission proposing a redesign of the basic financial disclosure model included in most filings and in annual reports to security holders. Under the proposal, the summary of operations would be eliminated and management's discussion and analysis would be refocused on the primary audited financial statements. In addition, management's discussion and analysis would be expanded to encompass an explanation of factors affecting financial condition and changes in financial condition as well as the results of operations. The primary financial statements, prepared in accordance with Regulation S–X, would include balance sheets as of the end of the two most recent fiscal years and statements of income and changes in financial position for the three most recent fiscal years. Also, the financial disclosure package would include selected financial data and certain market data relating to common shares outstanding.

Final rules evolving from these proposals and the related public comment process are being adopted today in this release and three other concurrent releases. Amendments constituting a major restructuring of Form 10–K and a discussion of the concept of integration adopted by the Commission are included in Securities Act Release No. 6231, September 2, 1980

[1] Securities Act Release Nos. 6176, 6177, 6178 and 6179.

(Amendments to Annual Report Form, Related Forms, Rules and Guides; Integration of Securities Acts Disclosure Systems). Amendments to Regulation S–X constituting a general revision of Articles 3, 5 and 12 aimed at facilitating integration are included in Securities Act Release No. 6233, September 2, 1980 (General Revision—Regulation S–X). Finally, the adoption of a new registration form, Form S–15, representing an experimental optional short form for registration of securities issued in certain business combinations, encompassing integrated disclosure concepts, is the subject of Securities Act Release No. 6232, September 2, 1980 (Business Combination Transactions—New Short Form for Registration and Related Rule Amendments).

The principal focus of this release is the adoption of a uniform requirement for financial statements included in the uniform financial disclosure package referred to above and covered in the amendments adopted in the concurrent release on revision of Form 10–K. In addition, this release establishes certain uniform instructions as to the age, form and content of interim financial information included in registration statements.

All four releases referred to above are related and were developed with the intention of achieving mutual goals and objectives. Consequently, this release should be read in conjunction with the three other concurrent releases in order to fully understand the registration and reporting format adopted by the Commission.

Uniform Requirement for Financial Statements

As registration and reporting requirements have evolved, differences have been created in the rules covering the periods for which financial disclosures are required. These differences have resulted to some extent from a piecemeal approach, covering many years, in developing the disclosure system. Also, these differences have resulted from continuous attempts to tailor disclosure requirements to the particular circumstances surrounding the use of each of the respective forms. Such differences in requirements have contributed to the complexity of the disclosure rules and frequently have been a source of confusion to those attempting to understand filing requirements.

Under present rules, the periods for which financial statements are required to be filed with the Commission vary depending on the particular registration or reporting form being filed. A registrant, for example, filing a registration statement on Form S–1 under the Securities Act is required to include statements of income and changes in financial position for three years and a balance sheet as of a recent date. A registrant filing a registration statement under the same Act on Form S–7 is required to provide statements of income and changes in financial position for five years and a balance sheet as of a recent date. For registration of securities using Form S–8, a registrant is required to provide the financial statements required to be included in Form 10–K (under the 1934 Act) or in the annual report to security holders consisting of statements of income and changes in financial position for two years plus balance sheets as of the end of the most recent two fiscal years.

The Commission, in connection with its reassessment of the reporting and disclosure requirements, has questioned the necessity for these differences among forms. Common to all investment decisions involving securities is the need for sufficient information to assess the financial health of the underlying issuer. Whether a potential investor is considering investing in a security traded on the open market or in one being registered for the first time, his method of analysis and evaluation is most likely very similar and his basic informational needs the same.

It is difficult, therefore, to draw meaningful distinctions among the various registration and reporting forms to support the need for the financial statements to encompass differing periods of time. Although the nature of securities and the purpose of registration may differ in many respects and thus require certain disclosures tailored to the specific circumstances of the filing, the Commission believes that such varying circumstances do not warrant a variation among forms as to the periods to which primary financial statements relate.

Accordingly, the Commission in conjunction with the adoption of a uniform financial disclosure package, discussed in greater detail in the concurrent release on revision of Form 10–K, is adopting uniform instructions as to periods to be covered by financial statements. These instructions require registrants to, among other things, provide audited statements of income and changes in financial position for three fiscal years and audited balance sheets as of the end of two fiscal years in most disclosure documents prepared under the securities acts. The Commission believes that the adoption of this uniform requirement will improve overall disclosure and simplify existing rules.

The proposal of uniform instructions as to financial statement periods generated response from a significant number of commentators, most of whom were preparers of financial statements. The commentators generally offered support for the Commission's stated goals and agreed that a uniform requirement should prove to simplify rules and facilitate the move toward integrated reporting. However, the views of commentators varied as to the appropriate periods to be encompassed by such a uniform requirement.

Commentators supportive of the amendments as proposed concurred with the Commission's view that three-year statements of income are necessary to an understanding of changes in results of operations for two years and that selected financial data for five years, in lieu of the more detailed summary of operations, should be sufficient for an assessment of trends. These commentators further indicated that any incremental costs associated with the additional year's statements of income and changes in financial position would not be significant. In addition, support for the amendments was expressed by other commentators who viewed the amendments as striking an appropriate balance within the framework of an integrated reporting system.

Opposition to the amendments as proposed was based on various concerns regarding the addition of a third year's statements of income and changes in financial position in Form 10–K and in annual reports to shareholders. In the view of opposing commentators, the addition of a third year would jeopardize the readability of disclosure documents, especially the annual report to shareholders, by adding to the prolixity of disclosures already provided. They argued that the benefits accruing from the additional year would be marginal and that the proposed selected financial data would provide sufficient disclosure regarding earlier years.

In addition, opposition to the proposal was voiced by commentators arguing that a user, seeking information for the additional year, could refer to previously filed documents for such data. These same commentators suggested that the additional costs and burdens associated with providing the third year's financial statements would be substantial.

In response to concerns regarding the decreased readability of the financial statements and the increased cost of their preparation, the Commission

attempted to project the incremental disclosure involved in requiring the additional year's statements of income and changes in financial position. From this, the Commission observed that the major portion of footnote disclosure in financial statements is balance sheet oriented, and that few, if any, of the notes relate directly to the statement of changes in financial position. Also, where footnote disclosure relates to the income statement, the addition of one year often will require only the inclusion of an additional dollar amount to a note already prepared for the latest two fiscal years.

Incremental disclosure imposed by the requirement for a third year will principally involve only the addition of one column to both the statements of income and changes in financial position and the addition of several lines to any statement of shareholder's equity presented. This degree of added disclosure in the view of the Commission should not have a negative impact on the readability of disclosure documents and should not, in most cases, result in any significant increases in preparatory costs.

In response to comments questioning the benefits accruing from the third year's information and suggesting that such data is already available in previously filed documents, the Commission has reviewed its stated objectives for developing a uniform financial disclosure package. A principal objective of the uniform package is to provide enough data to satisfy the needs of most users desiring to make an informed judgment as to the financial well-being of an underlying issuer. It has been designed with the intention of providing users with easy access to sufficient data for an informed decision while refraining from requiring data in excess of the amount necessary to satisfy most users or data for which the costs of preparation cannot be justified by the benefits.

The decision to require statements of income and changes in financial position for three years is premised on the view that investors should be provided sufficient detail to analyze and understand a company's results of operations for at least the most recent two fiscal years. Since information for the immediately preceding year is needed to understand changes in operations for one year, comparative information for three years is necessary for an understanding of changes in operations for two years.

The view that three years' income statements are necessary to provide an understanding of the results of operations for two fiscal years is not unique to these amendments. Since 1974 the Commission has required registrants in their annual reports to shareholders to provide management's discussion and analysis of its results of operations for the three most recent fiscal years. With the elimination of the detailed summary of operations, discussed in the concurrent release on revision of Form 10–K, the three-year requirement for financial statements retains the disclosures previously focused on by management's discussion and analysis and provides a more effective disclosure package.

One of the Commission's principal intentions in developing the uniform financial disclosure package was to refocus the concentration of users to the financial statements as a whole. In the past, the results of operations was given greater emphasis than financial condition by separate display in a detailed summary of operations, which, in turn, was the exclusive focus of management's discussion and analysis. The Commission believes that, by eliminating the summary of operations, requiring the financial statements to cover results of operations for three years, and by refocusing management's discussion and analysis on the financial statements, users will concentrate more on the financial statements as a whole and be provided a more effective presentation.

Interim Financial Information—Age, Form and Content

In addition to adopting a uniform requirement for periods to be covered by audited financial statements, substantial changes are being adopted relating to the age, form and content of unaudited interim financial information provided in registration statements. Under present requirements of the various forms, a "90-day" or "six-month" rule must be followed to determine the age of financial information required to be filed. The amendments adopted in this release revise and update these requirements to recognize quarterly reporting requirements under the Exchange Act and ensure that interim data provided in registration statements under the Securities Act is at least as current as the data already filed under the Exchange Act. As to form and content, changes are being adopted which will greatly reduce the burden on registrants required to file interim financial information. The amendments eliminate the requirement to provide complete financial statements and schedules for interim periods and allow interim data to be presented in condensed financial statements in the same degree of detail as is required under Form 10–Q.

Age of Financial Statements

In general, the amendments adopted today regarding the inclusion of interim financial information in registration statements parallel existing requirements for interim financial data under Form 10–Q. The new rules do not require registrants to provide in registration statements interim financial data any more current than interim data required for most registrants in quarterly reports on Form 10–Q. A discussion of the new rules, which specify the interim data to be included both as of the date of filing and as of the expected effective date of the filing, or proposed mailing date in the case of a proxy statement, and a description of the exceptions to the general rule are set forth below.

Filings Within 90 Days of Year-End

The uniform financial statement requirement adopted in this release requires audited balance sheets as of the end of the two most recent fiscal years and audited statements of income and changes in financial position for each of the most recent three fiscal years. Exceptions to this rule occur under the amendments adopted when filings, other than on Form 10–K or Form 10, are made within 45 days after the end of the registrant's fiscal year and audited financial statements for the most recent fiscal year are not yet available. In these circumstances, the rules provide that the audited balance sheets may be as of the end of the two preceding fiscal years and audited statements of income and changes in financial position may be presented for each of the three fiscal years preceding the most recent audited balance sheet presented. Under these circumstances, however, an additional balance sheet (which may be unaudited) will be required as of an interim date at least as current as the end of the registrant's third fiscal quarter of the most recently completed fiscal year and unaudited statements of income and changes in financial position will be required, on a comparative basis, for the interim period between the date of the most recent audited balance sheet presented and the date of the most recent interim balance sheet being filed.

This same provision for filing interim financial data will be applicable to filings, other than on Form 10–K or Form 10, made after 45 days but within 90 days of the end of the registrant's fiscal year provided the registrant meets certain prescribed conditions.

To this extent, the rules adopted parallel interim reporting requirements

under the 1934 Act. A potential investor of securities already registered and traded in the open maket, for instance, wishing to make an investment decision on March 1, may only have available to him for a calendar year company the audited financial statements for the two years preceding the fiscal year most recently completed and unaudited interim data on a condensed basis through the end of the third fiscal quarter of the most recent fiscal year (as filed on Form 10–Q). Under the rules adopted, this same level disclosure will be available to the inventor considering an investment in shares being registered on March 1.

However, where a company files a registration statement or plans to become effective with a registration after 45 days but within 90 days of the end of its fiscal year (i.e., February 16 to March 31 for calendar year companies) and does not meet the conditions prescribed by the rules described below, the Commission will require that audited financial statements for the most recently completed fiscal year be included in the registration statement. To avoid the possibility of having to accelerate the preparation and audit of the financial statements for the most recently completed fiscal year, a company filing in the "45 day window" specified above must:

(1) Be a registrant who files annual, quarterly and other reports pursuant to section 13 or 15(d) of the Exchange Act; (2) have filed all reports due; (3) reasonably and in good faith expect income, after taxes but before extraordinary items and cumulative effect of a change in accounting principle, for the most recent fiscal year for which audited financial statements are not yet available; and (4) for at least one of the two immediately preceding fiscal years for which audited financial statements are available, have reported income, after taxes but before extraordinaryu items and cumulative effect of a change in accounting principle.

In adopting the requirement for certain registrants to provide audited financial statements for the most recent fiscal year when within the "45 day window," the Commission recognizes that for some short period of time these companies may be prevented from going to the market. However, the Commission has concluded that, when a company is either a new registrant or is a registrant with unprofitable operations and is attempting to raise capital in the marketplace during the 45 days before audited financial statements for the most recent fiscal year would otherwise be required, it is reasonable to delay registration until such financial statements become available. The Commission believes that companies which do not meet the conditions described above will be cognizant of applicable registration requirements and will plan to accelerate the preparation and audit of their financial statements when planning to file or become effective in this 45 day period.

The Commission believes that this exception in the rules is in the best interest of the investing public and will not create any burden on the large majority of registrants. Also, it should be understood that, as in the past, the Commission will offer waivers to the rules where unusual circumstances dictate the need for them.

Filings After 134 Days of Year-End

The amendments also provide for interim financial information in registration statements filed after 134 days subsequent to the end of a registrant's fiscal year—the period after audited financial statements for the most recently completed fiscal year are already required to be filed by most registrants on Form 10–K and on or after the date most registrants are required to have filed interim financial statements for the first fiscal quarter. When a registration statement is filed during this period an additional balance sheet is required as of an interim date within 135 days of the date of filing but as of a date at least as current as the date of the most recent quarterly data filed with the Commission on Form 10–Q. Also, statements of income and changes in financial position are required, on a comparative basis, for the interim period between the date of the most recent audited balance sheet and the date of the most recent interim balance sheet being filed. Here again, the rules adopted parallel the requirements for interim information under the 1934 Act but also provide some flexibility for those registrants who may not be required to file quarterly data on Form 10–Q.[2]

These new rules for interim financial data in registration statements are being adopted primarily to update the rules to recognize quarterly reporting requirements under the Exchange Act. The previous six-month rule under Forms S–1, S–7 and S–11 was never updated in recognition of requirements to file interim data on Form 10–Q. Applicable to registrants meeting certain conditions, the six-month rule was originally adopted with Form S–1 prior to the inception of quarterly reporting requirements and was subsequently incorporated into Form S–7 and S–11 without modification.

Currently, reporting companies are required to file unaudited interim financial information on Form 10–Q within 45 days of the end of each of the first three quarters of their fiscal year. Under present registration requirements, a filing could conceivably be filed under the Securities Act with financial information less current than that already filed under the Exchange Act. Under the amendments adopted, financial statements included in a registration statement will be required to be at least as current as any financial statements filed under the Exchange Act. Although the amendments require more current information than would be required under the six-month rule, they do not require most reporting companies to provide information which is any more current than is now required under the Exchange Act.

Age at Effective Date of Filing

In addition to the adoption of the above rules applicable to financial statements as of the filing date of a registration statement, financial statement updating requirements are also being adopted which focus on the age of financial statements at the effective date of a registration statement or the proposed mailing date in the case of a proxy statement. Here again, the rules adopted, except for certain registration statements which are expected to become effective during the "45 day window" referred to in the previous discussion, correspond with the requirements for quarterly data under the 1934 Act on Form 10–Q.

Where financial statements in a filing are as of a date 135 days or more prior to the date the filing is expected to become effective or proposed mailing date in the case of a proxy statement, the rules require the financial statements to be updated with a balance sheet as of an interim date within 135 days and with statements of income and changes in financial position, on a comparative basis, for the interim period between the end of the most recent fiscal year and the date of the interim balance sheet provided.

[2] For instance, a calendar year company not subject to quarterly reporting requirements under the Exchange Act and therefore not required to file a Form 10–Q may, in a filing on May 30, include interim financial statements as of, say, the end of January or February as opposed to the end of the first fiscal quarter (March 31). For some companies not accustomed to reporting as of an interim date, a requirement for data as of the end of the most recent fiscal quarter imposes a significant burden in preparing a registration statement. Under the amendments adopted, data less current than as of the end of the most recent fiscal quarter will be acceptable as long as it is within the prescribed 135 day period prior to the date of filing.

Two exceptions to this rule have been provided. First, where the registrant meets the four conditions described in the previous section and the anticipated effective date or proposed mailing date in the case of a proxy statement falls after 45 days but within 90 days of the end of the fiscal year, the filing need not be updated with financial statements more current than as of the end of the third fiscal quarter of the most recently completed fiscal year provided audited financial statements for such fiscal year are not available. Second, where the registrant does not meet the prescribed conditions referred to above and the anticipated effective date or proposed mailing date falls after 45 days but within 90 days of the end of the fiscal year, the filing will be required to include the audited financial statements for the most recent fiscal year. Both of these exceptions are consistent with the rules adopted governing financial statements as of the date of filing and have been included for the same reasons described in the previous sections.

In addition, the updating rules include a general provision that, if a filing is made near the end of a fiscal year and the audited financial statements for that fiscal year are not included in the original filing, the filing shall be updated with such audited financial statements if they become available prior to the anticipated effective date, or proposed mailing date in the case of a proxy statement.

As a consequence of adopting these rules for updating financial statements, the amendments in the release include the elimination of the previous "Guide 23" of "Guides for Preparation and Filing registration Statements." [3]

Views of Commentators

Commentators were generally supportive of the Commission's efforts to conform the requirements for interim data under the Securities Act with those under the Exchange Act.[4] However, many commentators felt that greater conformity could and should be adopted. For instance, under the rules as proposed registrants would have been required to include in filings made within 90 days of the most recent fiscal year-end unaudited balance sheets as of a date within 90 days prior to the date of filing if audited financial statements for the fiscal year were not available. Such interim balance sheets would have been accompanied by comparative statements of income and changes in financial position for the interim period between the date of the most recent audited balance sheet and the date of the interim balance sheet provided. Also, under the proposed rules all registrants filing registration statements after 90 days subsequent to the end of the most recent fiscal year could not have availed themselves of the proposed 135 day rule. Unless they could meet certain prescribed conditions a more stringent 90 day rule would have applied.

The Commission considered the views of commentators in reevaluating the rules as proposed and concluded that a higher level of conformity between the Securities Act and the Exchange Act is appropriate. As a consequence, the rules adopted have been revised (as discussed in the previous sections) from those proposed to conform the timing of interim data in registration statements with the timing imposed by quarterly reporting requirements of Form 10–Q under the Exchange Act. Under the rules as adopted, registrants filing registration statements will not be subject to requirements for interim data more stringent than requirements under Form 10–Q. In addition, the 135 day rule has been made applicable to all registrants filing registration statements after 90 days subsequent to the end of the most recent fiscal year.

Form and Content

Presently, the disclosure requirements as to the form and content of interim data under the Securities Act and the Exchange Act are significantly different. Interim or stub period information included in registration statements under the Securities Act is required to be presented in full compliance with Regulation S–X, including complete financial statements and schedules. Where separate financial statements for the parent company only, unconsolidated subsidiaries or any 50 percent or less owned persons are required for annual periods, complete financial statements and schedules for these entities are also required for interim periods. Under the Exchange Act the disclosure required for interim periods is significantly different as to both the degree of detail and the entities for which financial statements are provided. On a Form 10–Q, only condensed financial statements, without schedules, are required for the registrant and its subsidiaries consolidated. In most cases, parent company only financial statements are omitted and only summarized data is provided for significant unconsolidated subsidiaries and 50 percent or less owned persons.

As an additional step toward attaining consistency between the disclosures required under the Securities Act and those required under the Exchange Act, the Commission is adopting amendments which conform the requirements as to form and content of interim financial data under the Securities Act with existing requirements as to form and content under Form 10–Q under the Exchange Act. The rules as adopted eliminate the requirements to include, in registration statements, complete financial statements and schedules for interim periods. Further, the rules eliminate interim period requirements for separate financial statements for separate entities such as parent company only, unconsolidated subsidiaries or 50 percent or less owned persons. The form and content of financial statements for interim periods included in registration statements must only, as a minimum, comply with rules which conform with requirements for such data under Form 10–Q.

The amendments adopted are revised from those proposed to the extent that complete conformity with the form and content provisions under Form 10–Q has been adopted. The rules as adopted are consistent with the Commission's view that disclosure requirements under the Securities Act and those under the Exchange Act should not be materially different.

The election to remove the major differences, as to form and content of interim data, between requirements under the Securities Act and those under the Exchange Act, however, should not be construed as representing a determination by the Commission that separate financial statements of the entities referred to above may not be required for interim periods at some future point in time. As indicated in the release containing the proposed rules, the Commission is presently studying

[3] The Commission recognizes that many foreign private issuers will have difficulty complying with the provisions adopted in this release. As announced in the concurrent Release 33–6231, the Commission is considering the feasibility of developing an integrated disclosure system for foreign issuers and will consider the development of specific rules concerning the age and content of financial statements for foreign issuers in the context of that project. Until final rules are adopted, however, the staff will consider, as it has in the past, requests for waivers of certain of the requirements of Regulation S–X that may be inappropriate for foreign issuers. In particular, registrants should be aware that waiver requests regarding the age of financial statements in a firm commitment underwritten offering have in the past been granted if the registrant presented financial statements at least as current as six months prior to the effectiveness of the registration statement.

[4] Letters of comment were received from 160 commentators in response to the invitation to comment included in Securities Act Release No. 6179.

the significance and utility of the various separate financial statements currently required by most disclosure forms for annual periods. After the Commission completes its studies of the significance and utility of these separate statements, a determination will then be made as to whether such statements in a condensed form need be included where interim periods are presented (registration statements as well as Form 10–Q).

Instructions to Financial Statements Centralized in Regulation S–X

Instructions as to the financial statements to be provided in a filing and the periods to be covered are presently located in the various registration and reporting forms. The amendments adopted today remove substantially all these instructions from the various forms and position a centralized set of revised instructions in a new Article 3 of Regulation S–X. The Commission believes that the centralization of these instructions simplifies the rules and facilitates the establishment of a uniform requirement for periods to be covered by financial statements.

In relocating the instructions as to financial statements to Regulation S–X, it should be noted that no significant changes have been made other than those relating to the periods to be covered by financial statements and those regarding the form and content of interim data in registration statements. Certain minor changes, however, that should be noted are briefly described below.

Consistent with the adoption of a uniform requirement for registrants to provide statements of income for three fiscal years, a requirement that the disclosure of segment information in accordance with provisions of Statement of Financial Accounting Standards No. 14 for each year for which an audited income statement is presented has been adopted. This specific amendment to the rules is required because generally accepted accounting principles only require segment data when complete financial statements—including balance sheet—are presented. This requirement is also consistent with the number of years provided for by the revised Item 1 of Regulation S–K discussed in the release on revision of Form 10–K. The amendment adopted herein provides that to the extent that the segment information required to be included in the financial statements comply with the provisions of Item 1 of Regulation S–K, the disclosures may be combined by cross referencing to or from the financial statements.

The amendments also revise the present rules applicable to financial statements of development stage companies required to be filed on Form 10–K. Presently, when receipts and expenditures of a development stage company, each, do not exceed $5,000, the financial statements may be unaudited. The rules adopted would encompass financial statements of any inactive company and would raise the receipts and expenditures levels, each, to $100,000. This change broadens and updates the present rules.

Further, because Regulation S–X now encompasses requirements for financial statements, its title has been changed from "Form and Content of Financial Statements" to "Form and Content of and Requirements for Financial Statements."

Text of Amended Rules, Forms, and Guides

[Regulation S–X]

1. The Part heading for 17 CFR Part 210 is revised to read as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

2. Paragraph (a) of § 210.1–01 is amended to read as follows:

§ 210.1–01 Application of Regulation S–X (17 CFR Part 210).

(a) This part (together with the Accounting Series Releases (Part 211 of this chapter)) sets forth the form and content of and requirements for financial statements required to be filed as a part of:

(1) Registration statements under the Securities Act of 1933 (Part 239 of this chapter), except as otherwise specifically provided in the forms which are to be used for registration under this Act;

(2) Registration statements under section 12 (Subpart C of Part 249 of this chapter), annual or other reports under sections 13 and 15(d) (Subparts D and E of Part 249 of this Chapter), and proxy and information statements under section 14 of the Securities Exchange Act of 1934 except as otherwise specifically provided in the forms which are to be used for registration and reporting under these sections of this Act;

(3) Registration statements and annual reports filed under the Public Utility Holding Company Act of 1935 (Part 259 of this chapter) by public utility holding companies registered under such Act; and

(4) Registration statements and annual reports under the Investment Company Act of 1940 (Part 274 of this chapter]).

* * * * *

§§ 210.3A–01 through 210.3A–08 [Redesignated]

3. Sections 210.4–01 through 210.4–08 and the related heading "Consolidated and Combined Financial Statements" are redesignated as §§ 210.3A–01 through 210.3A–08. In addition, a new heading "General Instructions as to Financial Statements" with a three paragraph introduction and new § 210.3–01 through § 210.3–16 (old §§ 210.3–01 through 210.3–18 removed in concurrent release number 33–6233), are added as set forth below:

General Instructions as to Financial Statements

Note.—These instructions specify the balance sheets and statements of income and changes in financial position to be included in disclosure documents prepared in accordance with Regulation S–X. Other portions of Regulation S–X govern the examination, form and content of such financial statements, including the basis of consolidation and the schedules to be filed. The financial statements described below shall be audited unless otherwise indicated.

For filings under the Securities Act of 1933, attention is directed to § 230.411(b) regarding incorporation by reference to financial statements and to section 10(a)(3) of the Act regarding information required in the prospectus.

For filings under the Securities Exchange Act of 1934, attention is directed to § 240.12b–23 regarding incorporation by reference and § 240.12b–36 regarding use of financial statements filed under other acts.

§ 210.3–01 Consolidated balance sheets.

(a) There shall be filed, for the registrant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years.

(b) If the filing, other than a filing on Form 10–K or Form 10, is made within 45 days after the end of the registrant's fiscal year and audited financial statements for the most recent fiscal year are not available, the balance sheets may be as of the end of the two preceding fiscal years and the filing shall include and additional balance sheet as of an interim date at least as current as the end of the registrant's third fiscal quarter of the most recently completed fiscal year.

(c) The instruction in paragraph (b) is also applicable to filings, other than on Form 10–K or Form 10, made after 45

days but within 90 days of the end of the registrant's fiscal year: *Provided*, That the following conditions are met:

(1) The registrant files annual, quarterly and other reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 and all reports due have been filed;

(2) For the most recent fiscal year for which audited financial statements are not yet available the registrant reasonably and in good faith expects to report income, after taxes but before extraordinary items and cumulative effect of a change in accounting principle; and

(3) For at least one of the two fiscal years immediately preceding the most recent fiscal year the registrant reported income, after taxes by before extraordinary items and cumulative effect of a change in accounting principle.

(d) For filings made after 45 days but within 90 days of the end of the registrant's fiscal year where the conditions set forth in paragraph (c) of this section are not met, the filing must include the audited balance sheets required by paragraph (a) of this section.

(e) For filings made after 134 days subsequent to the end of the registrant's most recent fiscal year the filing shall also include a balance sheet as of an interim date within 135 days of the date of filing.

(f) Any interim balance sheet provided in accordance with the requirements of this section may be unaudited and need not be presented in greater detail than is required by instructions to Form 10–Q. Notwithstanding the requirements of this section, the most recent interim balance sheet included in a filing shall be at least as current as the most recent balance sheet filed with the Commission on Form 10–Q.

§ 210.3–02 Consolidated statements of income and changes in financial position.

(a) There shall be filed, for the registrant and its subsidiaries consolidated, audited statements of income and changes in financial position for each of the three fiscal years preceding the date of the most recent audited balance sheet being filed.

(b) In addition, for any interim period between the latest audited balance sheet and the date of the most recent interim balance sheet being filed, and for the corresponding period of the preceding fiscal year, statements of income and changes in financial position shall be provided. Such interim financial statements may be unaudited and need not be presented in greater detail than is required by instructions to Form 10–Q.

§ 210.3–03 Balance sheets of the registrant.

There shall be filed for the registrant and its predecessors audited balance sheets as of the same dates as the audited consolidated balance sheets required to be filed pursuant to § 210.3–01.

§ 210.3–04 Statements of income and changes in financial position of the registrant.

There shall be filed for the registrant and its predecessors audited statements of income and changes in financial position for each of the three fiscal years preceding the date of the most recent audited balance sheet being filed.

§ 210.3–05 Ommission of registrant's financial statements in certain cases.

(a) Notwithstanding §§ 210.3–03 and 3–04, the individual financial statements of the registrant may be omitted if:

(1) Consolidated financial statements of the registrant and one or more of its subsidiaries are being filed, and

(2) The conditions specified in either paragraphs (a)(2) (i) or (ii) of this section are met.

(i) The registrant is primarily an operating company and all subsidiaries included in the consolidated financial statements being filed, in the aggregate, do not have minority equity interests and/or indebtedness to any person other than the registrant or its consolidated subsidiaries in amounts which together exceed 5 percent of the total assets as shown by the most recent year end consolidated balance sheet. Indebtedness incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not, and indebtedness of subsidiaries which is collateralized by the registrant by guarantee, pledge, assignment or otherwise are to be excluded for the purpose of this determination.

(ii) The registrant's total assets, exclusive of investments in and advances to its consolidated subsidiaries, as would be shown by its most recent year-end balance sheet if it were filed, constitute 75 percent or more of the total assets as shown by the most recent year-end consolidated balance sheet; and the registrant's total sales and revenues, exclusive of interest and dividends received from or its equity in the income of the consolidated subsidiaries, as would be shown by its income statement for the most recent fiscal year if it were filed, constitute 75 percent or more of the total sales and revenues shown by the most recent annual consolidated income statement.

(b) The basis for the omission of registrant's financial statements shall be stated in the index of financial statements filed.

§ 210.3–06 Instructions to income statement requirements.

(a) The statements required shall be prepared in compliance with the applicable requirements of this Regulation.

(b) If the registrant is engaged primarily (1) in the generation, transmission or distribution of electricity, the manufacture, mixing, transmission or distribution of gas, the supplying or distribution of water, or the furnishing of telephone or telegraph service; or (2) in holding securities of companies engaged in such businesses, it may at its option include statements of income and changes in financial position (which may be unaudited) for the twelve-month period ending on the date of the most recent balance sheet being filed, in lieu of the statements of income and changes in financial position for the interim periods specified.

(c) If a period or periods reported on include operations of a business prior to the date of acquisition, or for other reasons differ from reports previously issued for any period, the statements shall be reconciled as to sales or revenues and net income in the statement or in a note thereto with the amounts previously reported: *Provided, however*, That such reconciliations need not be made (1) if they have been made in filings with the Commission in prior years or (2) the financial statements which are being retroactively adjusted have not previously been filed with the Commission or otherwise made public.

(d) In connection with any unaudited statement for an interim period a statement shall be made that all adjustments necessary to a fair statement of the results for such period have been included. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made; otherwise, there shall be furnished information describing in appropriate detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of the results shown.

(e) Disclosures regarding business segments required by generally accepted accounting principles (Statement of Financial Accounting Standards No. 14) shall be provided for each year for which an audited statement of income is presented. To the extent that the

segment information presented pursuant to this instruction complies with the provisions of Item 1 of Regulation S–K, the disclosures may be combined by cross referencing to or from the financial statements.

§ 210.3–07 Past successions to other businesses.

(a) If, during the period for which its income statements are required, the registrant has by purchase or pooling of interests succeeded to one or more businesses, the additions, eliminations and other changes effected in the succession shall be appropriately set forth in a note or supporting schedule to the balance sheets being filed, and, if a purchase has been effected during the most recent fiscal year or in a subsequent period, pro forma statements of income reflecting the combined operations of the entities shall be furnished in columnar form for the latest fiscal year and any comparable interim periods. In addition, if any purchased business or businesses, singly or in the aggregate, had major significance in relation to the registrant, audited income statements, separate or combined as appropriate, for such business or businesses shall be filed for such periods prior to the purchase as may be necessary when added to the time, if any, for which audited income statements after the purchase are filed to cover the equivalent of the period specified in § 210.3–02. The test of major significance shall be based on the tests used in the term "significant subsidiary" with substituted percentages (determined in comparison to the most recent annual consolidated financial statements of the registrant being filed) being utilized in relation to the period the businesses have been merged prior to the date of the registrant's most recent audited balance sheet as follows: (1) For one full year or less, no substitution; (2) more than one but less than two full years, 25 percent; and (3) two full years or more, 45 percent. If financial statements for an acquired business would not be required in the year of acquisition, they would not be required subsequently. (See Release No. 33–4950 with regard to audit requirements for such financial statement.)

(b) The instruction in paragraph (a) of this section shall not apply with respect to the registrant's succession to the business of any totally held subsidiary or to the succession of one or more businesses if such businesses, considered in the aggregate, would not meet the test of a significant subsidiary.

(c) Information required by this section is not required to be included in a filing on Form 10–K.

§ 210.3–08 Future successions to other businesses.

(a) If, after the date of the most recent balance sheet filed pursuant to § 210.3–01, the registrant by purchase or by pooling of interests has succeeded to or is about to succeed to one or more businesses or has acquired or is about to acquire an investment in a business the investment in which is required to be accounted for by the equity method, there shall be filed for such businesses financial statements, combined if appropriate, prepared in accordance with Regulation S–X. In addition, to reflect the succession to any businesses, there shall be filed in columnar form: (1) A balance sheet of the registrant (or the registrant and its subsidiaries consolidated, if appropriate, (2) the balance sheets of the constituent businesses, (3) the changes to be effected in the succession, and (4) the pro forma balance sheet of the registrant giving effect to the plan of succession. There shall also be filed in columnar form pro forma statements of income for the periods for which the results of operations of the acquired business would have been included in the registrant's income statement for a pooling of interests or would have been presented on a pro forma basis for a purchase had the succession occurred on the date of the latest balance sheet filed. By a note to the financial statements or otherwise, a brief explanation of the changes shall be given.

(b) The acquisition of securities shall be deemed to be the acquisition of a business if such securities give control of the business or combined with securities already held give such control. In addition, the acquisition of securities which will extend the registrant's control of a business shall be deemed the acquisition of the business if any of the securities being registered hereunder are to be offered in exchange for the securities to be acquired.

(c) No financial statements need be filed, however, for any business acquired or to be acquired or for any business in which an investment acquired or to be acquired is required to be accounted for by the equity method, from a totally held subsidiary. In addition, the statements of any one or more such businesses may be omitted if the businesses, considered in the aggregate would not meet the test of a significant subsidiary; *Provided*, That the statements of any business may not be omitted where any of the securities being registered are to be offered in exchange for securities representing such business or for assets of such business.

(d) Information required by this section is not required to be included in a filing on Form 10–K.

§ 210.3–09 Financial statements of subsidiaries not consolidated and 50 percent or less owned persons.

(a) Subject to § 210.3A–03 regarding group financial statements and paragraphs (b) and (c) of this section, there shall be filed for each majority-owned subsidiary not consolidated and each 50 percent or less owned person for which the investment is accounted for by the equity method by the registrant or a consolidated subsidiary of the registrant the financial statements which would be required if each such subsidiary or other person were a registrant and were required to file financial statements. Insofar as practicable, these financial statements shall be as of the same dates or for the same periods as those of the registrant.

(b) *Summarized financial information.* Notwithstanding paragraph (a) of this section, summarized information as to assets, liabilities and results of operations may be presented on an individual or group basis in notes to the financial statements for all subsidiaries not consolidated and 50 percent or less owned persons accounted for by the equity method, except such subsidiaries or 50 percent or less owned persons which are individually significant under the tests specified in paragraph (c) of this section.

(c) *Omission of financial statements required by paragraphs (a) and (b).* Notwithstanding paragraphs (a) and (b) of this section, there may be omitted all financial statements of any one or more unconsolidated subsidiaries or 50 percent or less owned persons accounted for by the equity method, if in the aggregate: (1) Neither the registrant's and its other subsidiaries' investments in and advances to, nor their proportionate share of the total assets (after intercompany eliminations) of, such subsidiaries and other persons exceed 10 percent of the total assets as shown by the most recent year-end consolidated balance sheet; (2) the total sales and revenues (after intercompany eliminations) of such subsidiaries or other persons, reduced to the percentages of equity interests held by the registrant and its subsidiaries in such subsidiaries and other persons, do not exceed 10 percent of the total sales and revenues as shown by the most recent annual consolidated income statement; and (3) the registrant's and

its other subsidiaries' equity in the income before income taxes and extraordinary items of the subsidiaries and other persons does not exceed 10 percent of such income of the registrant and consolidated subsidiaries for the most recent fiscal year: *Provided*, That, if such income of the registrant and its consolidated subsidiaries for the last fiscal year is at least 10 percent lower than the average of such income for the last five fiscal years, such average income may be substituted in the determination.

§ 210.3-10 Financial statements of affiliates whose securities collateralize an issue registered or being registered.

(a) For each affiliate of the registrant whose securities constitute a substantial portion of the collateral for any class of securities registered or being registered, there shall be filed the financial statements that would be required if the affiliate were a registrant and required to file financial statements. However, statements need not be filed pursuant to this instruction for any person whose statements are otherwise filed with the registration statement on an individual, consolidated or combined basis.

(b) For the purposes of this instruction, securities of a person shall be deemed to constitute a substantial portion of collateral if the aggregate principal amount, par value, or book value as shown by the books of the registrant, or market value, whichever is the greatest, of such securities equals 20 percent or more of the principal amount of the class secured thereby.

§ 210.3-11 Financial statements of an inactive registrant.

If a registrant is an inactive entity as defined below, the financial statements required by this regulation for purposes of reports pursuant to the Securities Exchange Act of 1934 may be unaudited. An inactive entity is one meeting all of the following conditions:

(a) Gross receipts from all sources for the fiscal year are not in excess of $100,000;

(b) The registrant has not purchased or sold any of its own stock, granted options therefor, or levied assessments upon outstanding stock;

(c) Expenditures for all purposes for the fiscal year are not in excess of $100,000;

(d) No material change in the business has occurred during the fiscal year, including any bankruptcy, reorganization, readjustment or succession or any material acquisition or disposition of plants, mines, mining equipment, mine rights or leases; and

(e) No exchange upon which the shares are listed, or governmental authority having jurisdiction, requires the furnishing to it or the publication of audited financial statements.

§ 210.3-12 Age of financial statements at effective date of registration statement or at mailing date of proxy statement.

(a) If the financial statements in a filing are as of a date 135 days or more prior to the date the filing is expected to become effective or proposed mailing date in the case of a proxy statement, the financial statements shall be updated, except as specified in the following paragraphs, with a balance sheet as of an interim date within 135 days and with statements of income and changes in financial position for the interim period between the end of the most recent fiscal year and the date of the interim balance sheet provided and for the corresponding period of the preceding fiscal year. Such interim financial statements may be unaudited and need not be presented in greater detail than is required by instructions to Form 10-Q. Notwithstanding the above requirements, the most recent interim financial statements shall be at least as current as the most recent financial statements filed with the Commission on Form 10-Q.

(b) Where the anticipated effective date of a filing, or in the case of a proxy statement the proposed mailing date, falls within the period after 45 days but within 90 days of the end of the fiscal year and the registrant meets the conditions prescribed under paragraph (c) of § 210.3-01, the filing need not include financial statements more current than as of the end of the third fiscal quarter of the most recently completed fiscal year provided the audited financial statements for such fiscal year are not available. A registrant not meeting the conditions prescribed under paragraph (c) of § 210.3-01 must include in the filing audited financial statements for the most recent fiscal year.

(c) Where a filing is made near the end of a fiscal year and audited financial statements for that fiscal year are not included in the filing, the filing shall be updated with such audited financial statements if they become available prior to the anticipated effective date, or proposed mailing date in the case of a proxy statement.

§ 210.3-13 Filing of other financial statements in certain cases.

The Commission may, upon the informal written request of the registrant, and where consistent with the protection of investors, permit the omission of one or more of the financial statements herein required or the filing in substitution therefor of appropriate statements of comparable character. The Commission may also by informal written notice require the filing of other financial statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

§ 210.3-14 Special instructions for real estate operations to be acquired.

(a) If, during the period for which income statements are required, the registrant has acquired one or more properties which in the aggregate are significant, or since the date of the latest balance sheet required has acquired or proposes to acquire one or more properties which in the aggregate are significant, the following shall be furnished with respect to such properties:

(1) Audited income statements, for the three most recent fiscal years, which shall exclude items not comparable to the proposed future operation of the property such as mortgage interest, leasehold rental, depreciation, corporate expenses and Federal and state income taxes. Earnings per unit shall not be given in these statements.

(2) If the property is to be operated by the registrant, there shall be furnished a statement showing the estimated taxable operating results of the registrant based on the most recent twelve month period including such adjustments as can be factually supported. If the property is to be acquired subject to a net lease the estimated taxable operating results shall be based on the rent to be paid for the first year of the lease. In either case, the estimated amount of cash to be made available by operations shall be shown. There shall be stated in an introductory paragraph the principal assumptions which have been made in preparing the statements of estimated taxable operating results and cash to be made available by operations.

(3) If appropriate under the circumstances, there shall be given in tabular form for a limited number of years the estimated cash distribution per unit showing the portion thereof reportable as taxable income and the portion representing a return of capital together with an explanation of annual variations, if any. If taxable net income per unit will become greater than the cash available for distribution per unit,

that fact and approximate year of occurrence shall be stated, if significant.

(b) Information required by this section is not required to be included in a filing on Form 10–K.

§ 210.3–15 Special provision as to real estate investment trusts.

(a) In lieu of the income statements required by § 210.5–03 there shall be filed statements of income and expense and statements of realized gain or loss on properties and investments which shall generally conform with the requirements of §§ 210.6–04 and 210.6–05. In place of the balance sheet caption prescribed by § 210.5–02.31(a)(3) there shall be shown separately: (1) The balance of undistributed net income and (2) accumulated net realized gain or loss on investments, and the statements of other stockholders' equity shall generally conform to the requirements of § 210.6–07.

(b) The trust's status as a "real estate investment trust" under applicable provisions of the Internal Revenue Code as amended shall be stated in a note referred to in the appropriate statements. Such note shall also indicate briefly the principal present assumptions on which the trust has relied in making or not making provisons for Federal income taxes.

(c) The tax status of distributions per unit shall be stated (e.g., ordinary income, capital gain, return of capital).

§ 210.3–16 Reorganization of registrant.

(a) If, during the period for which its income statements are required, the registrant has emerged from a reorganization in which substantial changes occurred in its asset, liability, capital shares, other stockholders' equity or reserve accounts, a brief explanation of such changes shall be set forth in a note or supporting schedule to the balance sheets filed.

(b) If the registrant is about to emerge from such a reorganization, there shall be filed, in addition to the balance sheets of there registrant otherwise required, a balance sheet giving effect to the plan of reorganization. These balance sheets shall be set forth in such form, preferably columnar, as will show in related manner the balance sheet of the registrant prior to the reorganization, the changes to be effected in the reorganization and the balance sheet of the registrant after giving effect to the plan of reorganization. By a footnote or otherwise a brief explanation of the changes shall be given.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

4. Section 239.11, Form S–1, is amended by deleting Instructions as to Financial Statements and revising Item 19 to read as follows:

§ 239.11 Form S–1, registration statement under the Securities Act of 1933.

* * * * *

Item 19. Financial Statements and Supplementary Data

Include in the prospectus the financial statements required by Regulation S–X and the supplementary financial information required by Item 12 of Regulation S–K. Although all schedules required by Regulation S–X are to be included in the registration statement, all such schedules other than those prepared in accordance with Rules 12–15, 12–28 and 12–29 of the Regulation may be omitted from the prospectus.

5. Section 239.12, Form S–2, is amended by revising Item 13 to read as follows:

§ 239.12 Form S–2, for shares of certain corporations in the development stage.

* * * * *

Item 13. Financial Statements and Supplementary Data

Include in the prospectus the financial statements required by Regulation S–X and the supplementary financial information required by Item 12 of Regulation S–K. Although all schedules required by Regulation S–X are to be included in the registration statement, all such schedules may be omitted from the prospectus.

6. Section 239.13, Form S–3, is amended by revising Item 12 to read as follows:

§ 239.13 Form S–3, for shares of mining corporations in the development stage.

* * * * *

Item 12. Financial Statements and Supplementary Data

Include in the prospectus the financial statements required by Regulation S–X and the supplementary financial information required by Item 12 of Regulation S–K. Although all schedules required by Regulation S–X are to be included in the registration statement, all such schedules may be omitted from the prospectus.

7. Section 239.18, Form S–11, is amended by deleting Instructions to Financial Statements and revising Item 24 to read as follows:

§ 239.18 Form S–11, for registration under the Securities Act of 1933 of securities of certain real estate companies.

* * * * *

Item 24. Financial Statements and Supplementary Data

Include in the prospectus the financial statements required by Regulation S–X and the supplementary financial information required by Item 12 of Regulation S–K. Although all schedules required by Regulation S–X are to be included in the registration statement, all such schedules other than those prepared in accordance with Rules 12–12, 12–28 and 12–29 of the Regulation may be omitted from the prospectus.

8. Section 239.26, Form S–7, is amended by revising Item 11 to read as follows:

§ 239.26 Form S–7, for registration under the Securities Act of 1933 of securities of certain issuers.

* * * * *

Item 11. Financial Statements and Supplementary Data

Include in the prospectus all financial statements required by Regulation S–X and the supplementary financial information required by Item 12 of Regulation S–K. All schedules may be omitted from the registration statement except those prepared in accordance with rules 12–15, 12–28 and 12–29 which shall be included in the prospectus.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

* * * * *

9. Section 249.210, Form 10, is amended by deleting Instructions to Financial Statements and adding a new Item 17 to read as follows:

§ 249.210 Form 10, general form for registration of securities pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934.

* * * * *

Item 17. Financial Statements and Supplementary Data

Include in the registration statement all financial statements required by Regulation S–X and the supplementary financial information required by Item 12 of Regulation S–K.

10. Section 249.311, Form 11–K, is amended by revising paragraph (b) of the "Instructions as to Financial Statements" to read as follows:

§ 249.311 Form 11–K, for annual reports of employee stock purchase, savings and similar plans pursuant to section 15(d) of the Securities Exchange Act of 1934.

* * * * *

(b) An audited statement of income and changes in plan equity for each of the latest three fiscal years of the plan (or such lesser period as the plan has been in existence).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

* * * * *

11. Section 240.14a–3 is amended by revising paragraphs (b)(1) and (b)(2) to read as set forth below. For revision to

paragraph (b)(3), see concurrent Securities Act Release No. 33–6233.

§ 240.14a–3 Information to be furnished to security holders.

* * * * *

(b) * * *

(1) The report shall include, for the registrant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years and audited statements of income and changes in financial position for each of the three most recent fiscal years prepared in accordance with Regulation S–X (Part 210 of this chapter), except that the provisions of Article 3, other than § 210.3–06(e), shall not apply and only substantial compliance with Articles 6, 7, 7A and 9 is required. Any financial statement schedules or exhibits or separate financial statements which may otherwise be required in filings with the Commission may be omitted. Investment companies registered under the Investment Company Act of 1940 need include financial statements only for the last fiscal year. If the financial statements of the registrant and its subsidiaries consolidated in the annual report filed or to be filed with the Commission are not required to be audited, the financial statements required by this paragraph may be unaudited.

Note.—Information required by § 210.4–10(k) (1) through (4) or Regulation S–X, applicable to oil and gas companies, is to be included as part of the financial statements included in the report. In addition, the oil and gas information required by § 210.4–10(k) (5) through (8) of Regulation S–X, which may be reported as supplemental information accompanying the financial statements, shall be included in the report.

(2) Financial statements and notes thereto shall be presented in roman type at least as large and as legible as 10-point modern type. If necessary for convenient presentation, the financial statements may be in roman type as large and as legible as 8-point modern type. All type shall be leaded at least 2 points.

* * * * *

12. Section 240.14a–101 is amended by revising Item 15 of Schedule 14A to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 15. Financial statements and supplementary data

If action is to be taken with respect to any matter specified in Item 12, 13 or 14 above, furnish the financial statements required by Regulations S–X and the supplementary financial information required by Item 12 of Regulation S–K. One copy of the definitive proxy statement filed with the Commission shall include a manually signed copy of the accountant's certificate.

The financial statements of an acquired company not subject to the reporting provisions of the Exchange Act required to be furnished pursuant to Regulation S–X shall be certified to the extent practicable. However, if the proxy statement is to be included in a filing on Form S–14 and if any of the securities are to be reoffered to the public by any person who is deemed to be an underwriter thereof, within the meaning of Rule 145(c), the financial statements of the acquired business must be certified for three years or must comply with the requirements of Securities Act Release No. 4950.

Notwithstanding the provisions of Regulation S–X, no schedules other than those prepared in accordance with Rules 12–15, 12–28 and 12–29 of that regulation need be furnished in the proxy statement.

Parent company only financial statements are not required to be furnished unless necessary to make the financial statements not misleading.

* * * * *

13. Section 240.14c–3 is amended by revising paragraphs (a)(1) and (a)(2) to read as set forth below. For revision to paragraph (a)(3), see concurrent Securities Act Release No. 33–6233.

§ 240.14c–3 Annual report to be furnished security holders.

(a) * * *

(1) The report shall include, for the registrant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years and audited statements of income and changes in financial position for each of the three most recent fiscal years prepared in accordance with Regulations S–X (Part 210 of this chapter), except that the provisions of Article 3, other than § 210.3–06(e), shall not apply and only substantial compliance with Articles 6, 7, 7A and 9 is required. Any financial statement schedules or exhibits or separate financial statements which may otherwise be required in filings with the Commission may be omitted. Investment companies registered under the Investment Company Act of 1940 need include financial statements only for the last fiscal year. If the financial statements of the registrant and its subsidiaries consolidated in the annual report filed or to be filed with the Commission are not required to be audited, the financial statements required by this paragraph may be unaudited.

Note.—Information required by § 210.4–10 (k)(1) through (4) of Regulation S–X, applicable to oil and gas companies, is to be included as part of the financial statements included in the report. In addition, the oil and gas information required by § 210.4–10 (k)(5) through (8) of Regulation S–X, which may be reported as supplemental information accompanying the financial statements, shall be included in the report.

(2) Financial statements and notes thereto shall be presented in roman type at least as large and as legible as 10-point modern type. If necessary for convenient presentation, the financial statements may be in roman type as large and as legible as 8-point modern type. All type shall be leaded at least 2 points.

* * * * *

PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

14. Guide 23, "Current Financial Statements and Related Data," of "Guides for Preparation and Filing of Registration Statements," Release No. 33–4936, is deleted, and the table in Part 231 is amended by adding a citation to this **Federal Register** page to the entry describing Release No. 33–4936.

These amendments are adopted pursuant to authority in Sections 6, 7, 8, 10 and 19(a) (15 U.S.C. 77f, 77g, 77h, 77j, 77s) of the Securities Act of 1933; Sections 12, 13, 15(d) and 23(a) (15 U.S.C. 78*l*, 78m, 78*o*(d), 78w) of the Securities Exchange Act of 1934; Sections 5(b), 14 and 20(a) (145 U.S.C. 79e, 79n, 79t) of the Public Utility Holding Company Act of 1935; and Sections 8, 30, 31(c) and 38(a) (15 U.S.C. 80a–8, 80a–29, 80a–30(c) and 80a–37(a)) of the Investment Company Act of 1940. Pursuant to Section 23(a)(2) of the Securities Exchange Act, the Commission has considered the impact of these amendments on competition and is not aware of any burden that they would impose on competition.

By the Commission.

George A. Fitzsimmons,

Secretary.

September 2, 1980.

[FR Doc. 80–27817 Filed 9–19–80; 10:30 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 239

[Release No. 33-6235; IC-11327; File No. S7-849]

Proposed Comprehensive Revision to System for Registration of Securities Offerings

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is publishing for comment three proposed new forms to be used to register offerings of securities under the Securities Act of 1933. This action represents another major step in the Commission's efforts to integrate the disclosure systems under the various Federal securities laws and to simplify and streamline the disclosure requirements imposed under those systems. The three new forms proposed today would constitute the basic disclosure document format for most Securities Act registration, with different levels of disclosure and delivery requirements applicable for different levels of companies registering offerings of securities.

DATE: Comments should be submitted on or before January 15, 1981.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-849. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Mary Margaret W. Hammond (202) 272-3059, Bruce S. Mendelsohn (202) 272-2589, or Catherine Collins McCoy (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing three new registration statement forms to be used to register offerings of securities under the Securities Act of 1933 (the "Securities Act") (15 U.S.C. 77a et seq.). These three forms, denominated Forms A, B and C for proposal purposes, would replace the most widely used existing registration statement forms and would constitute the basic framework for Securities Act registration.[1]

This proposal should be considered together with a number of final rulemaking actions also announced today. Those actions are: (1) The adoption of amendments to Form 10-k (17 CFR 249.310), Rule 14a-3 (17 CFR 240.14a-3), and Regulation S-K (17 CFR 229.20) to reduce certain regulatory burdens thereunder and to facilitate the integration of disclosure systems; (2) the adoption of amendments to Regulation S-X (17 CFR Part 210) to establish uniform financial statement instructions for certain forms and reports required to be filed pursuant to the Securities Act and the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a *et seq.*); (3) the adoption of amendments to Regulation S-X to eliminate, to the extent possible, the differences between the requirements of that regulation and the requirements of generally accepted accounting principles ("GAAP"); and (4) the adoption of Form S-15 (17 CFR 239.29), a new simplified form for the registration of securities issued in certain types of business combination transactions. These four rulemaking actions (Securities Act Release Nos. 6231, 6232, 6233, and 6234, respectively, September 2, 1980) were published for comment in January 1980 [2] and constituted a major effort to achieve a simplified and integrated disclosure system. The new Securities Act registration framework being proposed today builds upon that effort and implements its objectives for simplifying and streamlining Securities Act disclosure requirements.

The framework contemplates dividing issuers into three categories.[3] The category to which an issuer belongs would determine the extent to which previously disseminated information would also be required to be presented in the prospectus or otherwise delivered to potential investors. Because of its prior impact on the market and to ensure its accuracy, information not actually delivered would be incorporated by reference.

Proposed Forms A, B, and C are designed to work as a coordinated system using standard disclosure requirements for the registration of securities under the Securities Act.[4] Form A, which is analogous to existing Form S-16 and is to be used by companies widely followed by the market, serves as the initial repository of the uniform disclosure item requirements. In this respect, Forms B and C refer to Form A for much of their content. Form A itself calls for very little prospectus disclosure and would primarily entail incorporation by reference from Exchange Act Information. Form B provides an option to allow companies to incorporate certain information and either to deliver the annual report to security holders or to present substantially equivalent disclosure in the prospectus. Form C is a streamlined Form S-1 and provides for very little incorporation by reference.

The proposed three forms represent a detailed implementation of the approach adumbrated by the Commission in January. The Commission believes that the new Securities Act system which would be implemented by adoption of the forms should reduce unnecessary costs and burdens of registration to issuers without attendant losses in the quality of information flowing to investors. By taking advantage of existing, high quality Exchange Act disclosure documents wherever possible, the approach embodied in these proposed Securities Act forms integrates the disclosure systems under two Acts. By eliminating unnecessary disclosure items and by making those retained uniform wherever possible, these proposed forms should greatly simplify registration of securities under Securities Act.

This release contains a general discussion of the fundamental questions intergration poses; the legislative and administrative background of the integration proposals published today; and the current characteristics of the securities markets and of the technology of information dissemination which also contributed to shape the proposals. This introductory discussion is followed by a detailed synopsis of the proposed froms to assist in a better understanding of their provisions.

I. Integration

The Commission's integration program involves a comprehensive

[1] If proposed Forms A, B and C were adopted by the Commission the following forms would be rescinded: Form S-1 (17 CFR 239.11); Form S-2 (17 CFR 239.12); Form S-7 (17 CFR 239.26); and Form S-16 (17 CFR 239.27).

[2] Securities Act Release Nos. 6176, 6179, 6178 and 6177 (January 15, 1980) (45 FR 5972, 5934, 5943 and 5963).

[3] The classification of issuers is based on such factors as longevity of reporting pursuant to the requirements of the 1934 Act, dissemination and professional analysis of such information, and financial stability.

[4] However, the forms which are presently available for certain specialized offerings of securities, such as Forms S-8 (17 CFR 239.16b), S-11 (17 CFR 239.18), S-14 (17 CFR 239.23) and S-15 (17 CFR 239.29) will continue to be available for the foreseeable future. Also, appropriate accommodation for the special needs of small business, as in Form S-18 (17 CFR 239.28), will continue.

evaluation of the disclosure policies and procedures underlying the Securities Act of 1933 and the Securities Exchange Act of 1934 with a view toward integrating the information systems under those Acts so that investors and the marketplace are provided meaningful, nonduplicative information periodically and when securities are sold to the public, while the costs of compliance for public companies are decreased.

The shape of the program will be influenced by the answers to two fundamental questions:

(1) What information is material to investment decisions in the context of public offerings of securities; and

(2) Under what circumstances and in what form should such material information be disseminated and made available by compaines making public offerings of securities to the various participants in the capital market system?

The task of identifying what information is material to investment and voting decisions is a continuing one in the field of securities regualtion. Intergration, as a concept, involves a conclusion as to equivalency between transactional (Securities Act) and periodic (Exchange Act) reporting. If a subject matter is material information (other than a description of the transaction itself), then it will be material both in the distribution of securities and to the trading markets.

Moreover, requirements governing the description of such subject matters should be the same both purposes. As an example, if a management's discussion of the financial statements is important for transactions involving distributions, then it would also be equally important for an informed trading market. Thus, both prospectuses and periodic reports should take this information into account. Also, the requirements for its content should be essentially the same. This principle of equivalency has led to the development and expansion of Regulation S–K, a technical device designed to state in one place uniform requirements which both Securities Act and Exchange Act items incorporate by reference. It also has led to increasing the quality of reports under the Exchange Act, a trend that started in 1970 when Form 10 was amended.[5]

Intergration consists, however, of more than just the notion of equivalency of reportable material information under both Acts. It involves answers to the second question posed above: Under what circumstances and to whom should this information be made available? Equivalency alone might be read to suggest that all the information contained, for example, in a Form 10–K should also be reiterated in all prospectuses.

However, the concept of integration also proceeds from the observation that information is regularly being furnished to the market through periodic reports under the Exchange Act. This information is evaluated by professional analysts and other sophisticated users, is available to the financial press and is obtainable by any other person who seeks it for free or at nominal cost. To the extent that the market accordingly acts efficiently, and this information is adequately reflected in the price of a registrant's outstanding securities, there seems little need to reiterate this information in a prospectus in the context of a distribution. The fact of market availability of information for sophisticated users also allows the exploration of other values in addition to cost reductions afforded through non-duplication: In particular, readability and effective communication in specific contexts.

Set forth below as additional background information for these proposals is a review of the evolution of the Securities Act and the Exchange Act, the nature of and participants in the securities marketplace, and recent technological advances.

A. Background

1. *The Law.* The Securities Act and the Exchange Act were enacted as separate legislation and in response to different needs. The Securities Act was intended to prevent frauds in the sale of securities by providing full and fair disclosure in the context of public offerings of securities.[6] The Exchange Act was enacted to regulate brokers and dealers and securities markets.[7] The disclosure framework of the Exchange Act contemplated in 1934 pertained primarily to classes of securities traded on stock exchanges. While both statutes were designed to provide disclosure to investors and the marketplace, the framework of the Securities Act was transaction oriented, *i.e.*, the focus was upon the public offering of securities by any company. The framework of the Exchange Act was status oriented *i.e.*, the focus was upon issuers with a class of securities listed and traded on an exchange. Also, the two frameworks operated independently. Information required in the Securities Act context was not modified because of the existence of Exchange Act reporting and was only triggered by public offerings at varying times.

While the disparate orientations of the two statutes still exist, the gap between the disclosure frameworks has significantly narrowed since 1934. In 1936, Section 15(d) was added to the Exchange Act to provide that under certain circumstances the continuous reporting system would apply to unlisted companies with respect to classes of their securities for which a registration statement had become effective under the Securities Act. Thus, Section 15(d) expanded investor protection under the Exchange Act to the over-the-counter market, but only on a fragmentary basis.

The disparity between Exchange Act disclosure requirements for listed and unlisted classes of securities was not resolved until the passage of the Securities Acts Amendments of 1964 [8] which brought many more companies into the continous reporting system of the Exchange Act.[9] With the passage of Section 15(d) and the 1964 amendments, all issuers of a certain size and issuers with certain characteristics selling securities to the public pursuant to an effective registration statement were subjected to the registration and reporting obligations of the Exchange Act.[10] It is estimated that over 9,000

[5] Securities Exchange Act Release No. 8996 (October 14, 1970) (35 FR 16537). These revisions were proposed in Securities Exchange Act Release No. 8681 (September 15, 1969) (34 FR 14236) in response to recommendations of the "Report and Recommendations to the Securities and Exchange Commission from the Disclosure Policy Study, Disclosure to Investors, A Reappraisal of Administrative Policies under the 1933 and 1934 Acts" (March 1969) (The "Wheat Report").

[6] The Act also contains broad liability sections which were intended to have the prophylactic effect of preventing such frauds. *See, e.g.*, Section 11 of the Securities Act of 1933 (15 U.S.C. 77k).

[7] In addition to these purposes, the 1934 Act also established the continous disclosure system whereby companies subject to certain provisions of the Act are required to file periodic reports. *See* Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m).

[8] Pub. L. No. 88–467, 78 Stat. 566 (1964).

[9] Prior to these amendments, issuers could delist their securities from the exchange on which they were traded and thereby avoid the 1934 Act reporting requirements. This simple method of thwarting any Commission effort to upgrade the quality of Exchange Act reports was therefore blocked. Prior to 1964, however, Section 15(d) of the Exchange Act did provide that all registration statements filed under the Securities Act contain an undertaking by the registrant to comply with the reporting requirements of Section 13. However, the undertaking became operative and the reports were required only when the value of the securities offered plus the value of all other outstanding securities of the same class equalled at least $2 million. The duty to file such reports was suspended if, and for as long as, the value of the securities outstanding was reduced to less than $1 million or the issuer had become subject to an equivalent reporting requirement.

[10] The Securities Acts Amendments of 1964, Pub. L. No. 88–467, 78 Stat. 566 (1964), added Section 12(g) to the Act which requires issuers with total assets exceeding $1,000,000 and a class of equity

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companies are now required to file periodic reports under the Exchange Act.

These amendments not only closed a gap under the Exchange Act, but also narrowed the gap between the disclosure framework under the Securities Act—information concerning the issuer and the transaction given only in the context of the public offering—and that under the Exchange Act—continous disclosures about the issuer. Milton Cohen, a principal advocate of the concept of integration, opined that the disclosure frameworks under the Acts would have been quite different—and perhaps more congruent—if they "had been enacted in opposite order, or had been enacted as a single, integrated statute—that is, if the starting point had been a statutory scheme of continuous disclosures covering issuers of actively traded securities and the question of special disclosure in connection with public offerings had then been faced in this setting." [11] In large part, the Commission's efforts will attempt to redress this legislative anomaly by establishing an integrated system of disclosure which will provide investor protection both in public offerings and in the securities markets, at a minimum burden to public companies.

2. *Nature of the Securities Markets.* The basic issues relating to Securities Act disclosure, *i.e.*, the type of information that should be available and the dissemination of that information, must also be considered in light of the composition of today's markets. The participants in the markets, and therefore the users of the information made available to the markets, are varied and have correspondingly varied needs. They include the professional analyst, the institutional investor, the financial press, and the individual investor.

The professional analysts, widespread throughout the country, constantly digest and synthesize market and company-specific information. These professionals use, and often implore the Commission to require, increasingly complex and sophisticated information. The influx of institutional investors, and their financial advisors, also contributes to the constituency for technical but important statistical data. To a large extent, these professionals act as essential conduits in the flow of information to the ordinary investor and as intermediaries acting on behalf of participants in collective investment media.

In addition, this country has a uniquely active and responsive financial press which facilitates the broad dissemination of highly timely and material company-oriented information to a vast readership. The information needs of the individual investor must be considered in this context, recognizing that information reaches the individual investor through both direct and indirect routes.[12]

It is incumbent upon the Commission to consider the entire community of users of company information in developing the proposed system and its model information package and to maintain a balance between the needs of the more and less sophisticated users.

3. *Technological Advances.* The instant proposals are also evidence of an awareness by the Commission of the increasingly easy availability of Exchange Act information through improved technological means. Computerization and electronics are progressing to such a level that information necessary to trading markets is becoming available on a timely and inexpensive basis. Additionally, a large volume of such information can be synthesized, analyzed and presented quickly and in almost any format desired by the user.

The system of public dissemination of Exchange Act information has improved dramatically in recent years. The Commission now employs an outside contractor to microfiche all filed reports. This microfiche is produced not only for the Commission's use, but also for the subscribers of private services. Such subscribers include individual and institutional investors, law firms, corporations and other specialized financial research services. The microfiche covers the entire Exchange Act reporting system, is becoming more timely, and is relatively inexpensive. Should subscribers wish to extract only certain financial data or information regarding insiders or litigation, for instance, they may also subscribe to on-line computer data base systems which will provide such information. Financial research services break down this acquired information into a myriad array of informational matrices depending upon either the purposes of the users' research or the ultimate users' needs. Also developed in the last few years are magnetic tape systems which will extract numerous data items on a particular company and provide the user with a long-term historic view of such company by carrying this information back five to twenty years. The service bureaus which buy and sell Exchange Act information, either directly from the Commission's contractor or through other information providers, furnish the market with sophisticated research which is further disseminated to broker dealers and investment advisers and through them, to the public at large.

B. Materiality of Disclosure Under the Securities Act

As noted above, the determination of what information is material to an investment decision in the context of a public offering is a critical question in establishing an integrated system of disclosure. Prior to the adoption of Regulation S–K (17 CFR 229.20) in December, 1977, there were disparate informational requirements between Securities Act registration forms and Exchange Act reporting forms. Regulation S–K reflects the perception of equivalency discussed above—that information necessary for investment or voting decisions (other than that relating to the transaction itself) should be similar for distribution and for trading markets. With that acknowledgement, the Commission is in a position to develop what information is material, then to shift to determine under what circumstances this information must be reiterated in a prospectus.

Regulation S–K has been designed as the repository for the Commission's requirements for standard and integrated disclosure requirements. In December 1977, the Commission adopted Items 1 and 2 of Regulation S–K, the first significant steps in achieving standard disclosure under both Acts.[13] In the following year, Items 3 through 6 were added as an express response to the suggestions of the Advisory Committee.[14] The Regulation represented the first step in the definition of that company information which is material to an investment or voting decision, whether that decision is under the purview of the Securities Act or the Exchange Act. Accordingly, the multiplication of disclosure item requirements in Regulation S–K is a recognized prerequisite to full integration of the registration and

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security held of record by five hundred or more persons, to comply with the Act's continuous reporting provisions.

[11] *See* Cohen, "Truth in Securities" Revisited, 79 Harv. L. Rev. 1340, 1341 (1966).

[12] For a more complete discussion of various market participants and their respective roles in the dissemination of information to the investment decisionmakers, *see* "The Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission" Committee Print 95–29, House Committee on Interstate and Foreign Commerce, 95th Cong., 1st Sess. at 1–304 (November 3, 1977) (the "Advisory Committee Report").

[13] Securites Act Release No. 5893 (December 23, 1977) (42 FR 65554).

[14] Securities Act Release No. 5949 (July 28, 1978) (43 FR 34407).

reporting requirements under the two Acts. Consequently, in addition to the present Regulation S–K items pertaining to disclosures regarding an issuer's business, property, directors and executive officers, their remuneration and security ownership, and legal proceedings, the Commission has adopted six more item requirements.[15] These new items will ensure uniform disclosure under both Acts of information regarding market price of the issuer's common stock, selected financial data, management's discussion and analysis of the issuer's financial condition, supplementary financial information, and exhibits. It is anticipated that Regulation S–K will develop in time to encompass further disclosure requirements.

C. Dissemination and Availability of Disclosure

The second major issue, concerning under what circumstances and to whom the various elements of the disclosure package should be made available, has been addressed to some extent during the promulgation and subsequent amendments of Forms S–7, S–16, S–8, S–14, and S–15.[16] The goals of the Commission in this area have been to: (1) Avoid duplicative disclosure wherever possible; (2) provide appropriate information for each type of market participant; and (3) foster readability and effective communication wherever possible. Duplicative disclosure stems from similar requirements imposed on registrants when they sell securities to the public, file periodic reports, or solicit proxies. All of these requirements seek to enhance the flow of company-specific disclosure within different, but not mutually exclusive, arenas and at different times. In many cases, the ability to take advantage of prior disclosure is increasingly attractive.

An early step towards examining Securities Act disclosure requirements, taking into consideration the availability of similar information as a result of Exchange Act reporting, was taken in 1967 when Form S–7 was adopted.[17] Form S–7 was envisioned as a simplified form for registration of securities to be offered for cash by companies subject to the reporting requirements of the Exchange Act and having long records of earnings and stability of management and business.[18]

The benefits to be attained from such a shortened form and integration were expressed in terms of easing the burden on the issuer of preparing a registration statement and on the staff of processing it.[19] However, the rationale and benefits of a system of integrated disclosure were not thoroughly analyzed and discussed. Instead, the Commission took advantage of the occasion of Form S–7's adoption to announce a subsequent review of the Exchange Act requirements which was designed to improve both the quality and timeliness of reports filed under that Act.

The Wheat Report, which was the product of the Commission's study, strongly recommended closer coordination of Exchange Act and Securities Act disclosures.[20] Many of the recommendations of the Report (including those related to registration of securities under the Securities Act) anticipated substantial improvement in Exchange Act reporting. Such improved Exchange Act reporting was suggested not only to better the information provided to the trading markets, but also to allow closer coordination between Securities Act and Exchange Act disclosures, resulting in the substitution of Exchange Act disclosure for information otherwise required in the Securities Act context. In the Study's view, the phrase "'improvement in 1934 Act reporting', [had] at least three aspects: (1) More comprehensive reporting forms, (2) better administration and enforcement of requirements relating to the preparation and filing of such forms, and (3) better dissemination of the information contained in such forms."[21]

Since the enactment of the 1964 amendments and the suggestion of the Wheat Report that the Exchange Act forms contain more comprehensive disclosure, the quantity and quality of information in the Exchange Act reports have increased significantly. For instance, in 1965 the basic form for registration of a class of securities pursuant to Section 12 of the Exchange Act, Form 10, required only a brief general description of the business of the registrant, its property, directors and officers, their remuneration, principal holders of the registrant's securities, and other similar information.[22] Today Form 10 requires extensive detailed disclosure pertaining to these topics in compliance with the requirements in Items 1 through 6 of Regulation S–K. In addition to the broad expansion of these requirements with today's action, the Form also requires such information as selected financial data and an analysis of the registrant's financial condition.[23]

Besides the expansion of disclosure requirements in pre-existing Exchange

[15] *See* Securities Act Releases Nos. 6231 and 6233 (September 2, 1980).

[16] Forms S–14 (17 CFR 239.23) and S–8 (17 CFR 239.16b) were specifically designed to elicit disclosure appropriate for certain transactions. Form S–8 was adopted in Securities Act Release No. 3480 (June 16, 1953) (18 FR 3688) to facilitate registration by certain issuers of securities to be offered pursuant to stock purchase, savings or similar plans. This form was broadened to include employee stock options in Securities Act Release No. 4533 (August 30, 1962) (27 FR 9213). Form S–14 was intended to simplify the registration of securities issued in certain merger or acquisition transactions.

[17] Securities Act Release No. 4886 (November 29, 1967) (32 FR 17934).

[18] The eligibility requirements for use of Form S–7 at its initial adoption were the following: (a) The registrant meets either of the following conditions: (1) It has a class of equity securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934; or (2) it is organized under the laws of the United States or any State or Territory or the District of Columbia, has its principal business operations in the United States or its Territories and has a class of equity securities registered pursuant to Section 12(g) of the above Act.

(b) The registrant has been subject to and has complied in all respects, including timeliness, with the requirements of Sections 13 and 14 of the Securities Exchange Act of 1934 for a period of at least five fiscal years immediately preceding the filing of the registration statement on this form.

(c) The registrant has been engaged in business of substantially the same general character since the beginning of the last five fiscal years.

(d) A majority of the existing board of directors of the registrant have been directors of the registrant during each of the last three fiscal years.

(e) The registrant and its subsidiaries have not during the past ten years defaulted in the payment of any dividend or sinking fund installment on preferred stock, or in the payment of any principal, interest or sinking fund installment on any indebtedness for borrowed money, or in the payment of rentals under long term leases.

(f) The registrant and its consolidated subsidiaries had sales or gross revenues of at least $50,000,000 for the last fiscal year and a net income, after taxes but before extraordinary items net of tax effect, of at least $2,500,000 for the last fiscal year and of at least $1,000,000 for each of the preceding four fiscal years.

(g) If the securities to be registered are common stock or securities convertible into common stock, the registrant earned in each of the last five fiscal years any dividends paid in each such year on all classes of securities. If the registrant paid a stock dividend in any of such fiscal years, the aggregate amount transferred from surplus to capital in respect of each such dividend was charged only to the earned surplus account and was equal to the aggregate fair market value of the stock issued as such dividend.

[19] The simplifications evidenced by Form S–7 included the omission of such Form S–1 disclosure item requirements as: Parents of registrant; description of property; organization within five years; pending legal proceedings; directors and executive officers and their remuneration; options to purchase securities; principal holders of securities; and interest of management and others in certain transactions, *i.e.*, for the most part, proxy statement disclosure.

[20] A series of proposals were published in 1969 to implement the Wheat Report's recommendations in the 1934 Act context. *See, e.g.*, Securities Exchange Act Release Nos. 8680, 8681, 8682, 8683 (September 15, 1969) (34 FR 14235–240).

[21] Wheat Report, *supra* at 328.

[22] *See* Securities Exchange Act Release No. 7544 (March 5, 1965) (30 FR 3422).

[23] Securities Act Release No. 6231 (September 2, 1980).

Act forms, the Commission also adopted another reporting form, Form 10–Q, for quarterly reports.[24] The adoption of Form 10–Q keeps filed financial information regarding publicly-held companies more current.[25]

A further response implementing the recommendations of the Wheat Report was the adoption of Form S–16 in 1970.[26] This registration statement form contains minimal prospectus disclosure and places more reliance on information reported under the Exchange Act by simply incorporating by reference Exchange Act documents containing otherwise required information into the registration statement, not by relying upon reiteration and delivery of such information to investors. The issuer is still responsible for such information as if it had been set forth in the prospectus, since the premise is that the existing stock price reflects that information. Initially, this new short form registration statement was limited in its use for the most part to secondary offerings of securities of issuers meeting the Form S–7 eligibility requirements.

The Commission's rulemaking efforts have also focused on the increased use and availability of annual reports to security holders.[27] In 1974 minimum disclosure requirements were mandated in Rule 14a–3(b) (17 CFR 240.14a–3(b)) for annual reports to security holders which either accompanied or preceded the issuer's solicitation of proxies for election of directors at an annual meeting of shareholders. At the time these amendments were adopted the Commission stated that "it is in the public interest that all security holders be provided with meaningful information regarding the business, management operations and financial position of the issuer and that the annual report to security holders is the most suitable vehicle presently available for providing this information."[28] The Commission also adopted rules to improve the dissemination of the annual report. Thus, the Commission could be assured that the most successfully diseminated document contained some minimal information content.[29]

In 1976, the Commission continued its program to integrate and streamline disclosure under the two Acts in recognition of the improved quality of reports filed under the Exchange Act. Once again, the availability of Form S–7 was substantially broadened, both in terms of those issuers eligible to use it and those transactions for which it could be used.[30] These amendments underscored the Commission's resolve toward simplification and integration and permitted the improved information reported pursuant to the requirements of the Exchange Act continuous disclosure system to be relied upon in lieu of Securities Act disclosure by a certain class of issuers.

At the same time that these amendments were adopted, the Commission published a concept release seeking public comments on the advisability of an methodology to be used in making Form S–16 available for certain primary offerings by a limited category of large companies.[31] The release focused on the selection of appropriate criteria for delimiting the availability of this abbreviated prospectus.

However, before the concept could be set forth in proposal form, the Commission received the report of the Advisory Committee on Corporate Disclosure. Like the study group which produced the Wheat Report, the Advisory Committee conditioned its support for further integration and its recommendations as to ways of achieving this goal on additional improvements in the quality and dissemination of disclosures in Exchange Act reports.[32] It also suggested that more staff emphasis be placed on review of Exchange Act reports.[33]

The Advisory Committee also made specific recommendations as to how the Commission could accomplish the goal of integration. It recommended that the Commission adopt a single integrated disclosure form which would contain all the disclosure requirements necessary to comply with the registration, reporting and proxy requirements of both Acts.[34] For purposes of compliance with the Securities Act, it suggested that companies be divided into three levels.[35] Such classification would be appropriately reflected in the integrated disclosure form. More specifically, the Advisory Committee recommended that Form S–16 be made available for primary offerings by the top level of companies, and that a short form registration statement with the Form S–16-type incorporation by reference feature be adopted for exchange offers or transactions subject to Rule 145(a) (17 CFR 230.145(a)) under the Securities Act.[36]

The rationale for this proposed system of integration was set forth as follows:

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[24] Securities Exchange Act Release No. 9004 (November 14, 1970) (35 FR 17537). Before the adoption of Form 10–Q (17 CFR 249.308a), companies were only required to file semi-annual interim reports on Form 9–K. The Commission found in its analysis leading to the adoption of Form 10–Q that current reports on Form 8–K (17 CFR 249.308) were filed irregularly and were not used widely by investors or their advisors.

[25] The amendments to Form 10–Q proposed today would further prescribe requirements relating to the age, form and content of unaudited interim financial information and the management's discussion and analysis of such information. Cite to 10–Q release.

[26] Securities Act Release No. 5117 (December 23, 1970) (36 FR 777).

[27] The practice of sending annual reports to security holders apparently derived from early state corporate and tax laws which required that annual financial statements be filed with state officials or sent, sometimes only upon request, to all security holders or a certain proportion of security holders. *See generally* L. Loss, Securities Regulation 825 (2d ed. 1961). In 1942, the Commission adopted amendments to its proxy rules which required for the first time that annual reports "containing such financial statements for the last fiscal year as will, in the opinion of the management, adequately reflect the position and operations of the issuer" be sent to security holders when management solicited proxies relating to a meeting at which directors were to be elected. *See* Securities Exchange Act Release No. 3347 (December 18, 1942). This requirement, of course, resulted in expanded use and dissemination of such annual reports.

[28] Securities Exchange Act Release No. 11079 (October 31, 1974). (39 FR 40768).

[29] The Commission had already directed some attention in 1969 to improving the disclosures in the annual report filed with the Commission, Form 10–K (17 CFR 249.310). The Commission adopted amendments to divide Form 10–K into two parts, Part I, to be filed by companies subject to the proxy rules under Section 14 of the Exchange Act, and Part II, which would also have to be filed by companies subject only to Section 15(d) of that Act. The purpose was to coordinate proxy statement and annual report disclosure and thereby reduce some of the burdens of reporting under the Exchange Act. See Securities Exchange Act Release No. 8682 (September 15, 1969) (34 FR 14238).

[30] Securities Act Release No. 5791 (December 20, 1976) [41 FR 56304]. These amendments to Form S–7 made this Form, and therefore Form S–16, available for the first time to companies required to file reports pursuant to Section 15(d) of the Exchange Act. However, to ensure that information concerning these issuers was widely available to the investing public, the Comission required them to furnish all of their security holders with a report containing the information called for by Rule 14a–3(b) and Part II of Form 10—K.

In addition to securities offerings for cash, exchange offers were also permitted on Form S–7 by these amendments.

At the same time that Form S–7's availability was broadened, the Commission rescinded Form S–9. Form S–9, which had been adopted in 1954, reduced the then existing disclosure requirements for Securities Act registration of non-convertible fixed interest debt securities where the issuer had been in business at least ten years, met an earnings requirement, and filed reports pursuant to Section 13(a) or 15(d) of the Exchange Act. Because virtually all issuers who had qualified to use Form S–9 could now qualify to use Form S–7, the Commission did not believe there was a continued need for Form S–9.

[31] Securities Act Release No. 5792 (December 20, 1976) (41 FR 56331).

[32] Advisory Committee Report, *supra* at 425.

[33] *Id.* at 427.

[34] The Committee called this single integrated form, Form CD (Coordinated Disclosure). *Id.* at 456–69.

[35] However, the Committee specifically noted in its Report that its classification of issuers may not be appropriate for use in short form registrations. *Id.* at 450.

[36] *Id.* at 420–21.

When a company is engaged in a public offering of its securities, the Committee believes that the necessity of providing information to offerees should vary with the type of company and the type of security involved, and the amount of information already available. Accordingly, it is the Committee's view that a further integration of the 1933 and 1934 Acts, by means of substitution of 1934 Act filed information for that traditionally required in a statutory prospectus, could be effectuated by varying the particular combination of (1) the information comprising the registration statement; (2) the information delivered to offerees; and (3) the information available on request.[37]

This is basically the same rationale for the Securities Act disclosure system proposed for comment today.

The Commission responded to a specific recommendation of the Advisory Committee with the adoption in 1978 of amendments to Form S–16 which made it available to certain issuers for certain specified primary offerings.[38] The benefits to be gained from an integrated system of disclosure were highlighted in the adopting release: reducing the costs of registration, and hence the costs of raising capital; facilitating timely access to the markets by issuers anxious to make public offerings; making Exchange Act reports more meaningful; and eliminating needless duplication which results in increased costs to investors.[39] The Commission's proposing release stated that the expanded use of this abbreviated Form was considered appropriate only for those "transactions or issuers for which detailed disclosure in a registration statement is believed to be unnecessary for the protection of investors because of the wide availability of such information under other provisions of the federal securities acts." [40] In this regard, the Commission believed that the additional standards it imposed for primary offerings followed the theory suggested by the Advisory Committee—that Form S–16 be available for the primary offerings of securities by a "small top tier of companies . . . which usually provide high quality corporate communication documents, including 1934 Act reports, and whose corporate information is widely disseminated" because "members of this class of registrants are widely followed by debt and equity analysts." [41] For example, an eligibility criterion was adopted providing that an issuer may register securities offered to the public in a primary offering on the Form if the aggregate market capitalization of its voting stock held by non-affiliates were $50 million or, if the issuer were a majority-owned subsidiary, its parent met this condition and fully guaranteed the securities. The origin of the $50 million standard was a report by the Financial Analysts Federation to the Advisory Committee concluding, among other things, that New York City-Based brokerage firms, and especially institutions, generally follow companies having at least $50 million in market capitalization.

The Commission's action in expanding the availability of Form S–16 to primary offerings was premised on the interest of professionals in the securities industry in certain issuers. The theory relied on them, as now, is that the operation of today's markets is such that investors are protected by the market's analysis of information about certain companies which is widely-available, both from the Commission's files and other sources, and that such analysis is reflected in the price of the securities offered. Therefore, with companies whose shares are actively traded, disclosure to potential investors in a prospectus may be strictly limited to essential matters concerning the issuer and the offering without loss of investor protection or market efficiency. However, even though the registration statement is abbreviated, it should incorporate by reference the issuer's Exchange Act information which otherwise would be included in the prospectus to ensure that the information previously furnished is accurate in all material respects. Thus, the system operates in an effective manner: interested investors have access to the detailed Exchange Act reports which generally confirm or supplement information previously in the market and all investors are presented with short, readable prospectuses.

D. The Proposals

The three proposed registration forms under the Securities Act attempt to address the two basic issues the Commission faces for Securities Act disclosure, identifying the necessary information package and determining how and to whom such information should be made directly available. The proposed system addresses these issues by dividing issuers into three classes.[42] The class or category to which an issuer belongs would determine what information would be required to be presented in the prospectus or otherwise delivered to potential investors, and what already-disseminated information could be relied on, by incorporation by reference, in place of actual delivery in or with the prospectus.

Proposed Forms A, B, and C are designed to work as a coordinated system. Using standard requirements wherever possible they will serve as the framework for the registration of securities under the Securities Act. Form A, as has been indicated, is analogous to existing Form S–16 and is to be used by companies widely followed by the market. Form B contemplates an option to allow companies to incorporate certain information and either to deliver the annual report to security holders or to provide substantially the same disclosure in the propsectus as is in the annual report. Form C is a streamlined Form S–1 and provides for minimal incorporation by reference.[43]

The system proposed today is designed to be consonant with the purpose of Regulation S–K: to foster uniform and integrated disclosure. Indeed, many of the specific disclosure requirements refer directly to items in Regulation S–K.[44] Further, it is intended that the other uniform disclosure requirements of the three proposed Securities Act forms ultimately will be placed in one or more sections of a recognized Regulation S–K.[45] Although the items contained in the three Forms would represent the basis for Securities Act disclosure, items addressing specialized circumstances and industries also will be considered for inclusion in that Regulation.[46]

[37] *Id.* at 432.

[38] Securities Act Release No. 5923 (April 11, 1978) (43 FR 16677).

[39] *Id.*

[40] Securities Act Release No. 5879 (November 2, 1977).

[41] Securities Act Release No. 5923 (quoting the Advisory Committee Report at 433–34), *supra* note 38.

[42] As indicated previously, the classification of issuers is based on such factors as longevity of reporting pursuant to the requirements of the 1934 Act, dissemination and professional analysis of such information, and financial stability.

[43] An extensive discussion of the content required in registration statements on Forms A, B and C is set forth below.

[44] With the additional items being adopted today, Regulation S–K now contains 11 major disclosure item requirements—the core of the new proposed integrated registration statement system.

[45] For the most part, the first six disclosure item requirements in proposed Forms A, B and C are identical. Numerous item requirements in Part II of these three forms are also substantially the same. Such uniformity of disclosure requirements would naturally lead to inclusion in Regulation S–K.

[46] The Commission will continue its ongoing evaluation and monitoring of the Guides for the Preparation and Filing of Registration Statements and Reports with an emphasis on coordination with the integration and standardization themes of today's adopted rules and forms and these proposals. *See* Securities Act Release No. 6163 (December 5, 1979) (44 FR 72604). It is anticipated

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In the Commission's view, Form A would take full advantage of the market's having digested and synthesized material company-specific information. Form B, representing the transitional phase, strives for improved readability by streamlining disclosure requirements and allowing certain disclosure obligations to be satisfied either through the delivery of the annual report to security holders or by a presentation of comparable updated information in the prospectus. In addition, the primary source of Exchange Act disclosure, the Form 10–K, would be incorporated by reference and would always be available. Form C would be used by companies in the reporting system for less than three years and by companies having certain financial characteristics that would preclude the use of the top two Forms. It sacrifices readability, to some extent, in order to ensure that analysts and other participants in the market have access to the necessary building blocks of disclosure embodied in regulation S–K. The Commission believes that for certain companies, especially new issuers, there is no realistic alternative to full disclosure within the confines of the prospectus.

As is apparent from the above brief description of the content and eligibility requirements of Forms A, B, and C, there is substantial overlap with the present registration system under the Securities Act. Specifically, Forms A, B and C overlap with Forms S–1, S–2, S–7 and S–16 both in function and content. Accordingly, the Commission believes it is necessary to concurrently propose the rescission of these existing forms.

Synopsis

The following discussion of the proposed forms is included in order to assist all interested persons in their understanding of the proposed registration form system under the Securities Act published herein. However, attention is directed to the text of the proposed forms for a more complete understanding.

Eligibility Rules for Use of Forms A, B, and C

Footnotes continued from last page
that staff recommendations concerning the Guides will be submitted to the Commission in the near future. The planned overall review of Regulation C will commence in 1981 and will further reflect the Commission's goal to review all of its Securities Act disclosure requirements with a view towards simplification and reduction in costs.

Form A

Proposed Form A is designed to be used by the same qualified issuers and for the same primary and secondary offerings as existing Form S–16 is now used. This means that Form A could be used by an issuer which meets the following conditions: (1) The issuer has a class of securities registered pursuant to Section 12 of the Exchange Act or is required to file reports pursuant to Section 15(d) of the Exchange Act; (2) the issuer has been subject to the requirements of those Sections, has filed all applicable reports for 36 months prior to filing the registration statement, has timely filed all required reports for the 12 months preceding the filing of the registration statement, and, if subject only to Section 15(d), has sent security holders a report containing the disclosure required by Rule 14a-3(b); (3) the issuer and its subsidiaries have not failed to pay a dividend or sinking fund installment on preferred stock or had a payment default on material indebtedness or on a material long-term lease within the past 36 months;[47] and (4) the issuer has had consolidated net income of at least $250,000 for three of the last four years, including the most recent year. With regard to condition (3) above, which is also in proposed Form B, the Commission is soliciting comment on whether some exception should be made for material defaults [48] which have been "cured" prior to the filing of the registration statement and, if advisable, on how such an exception should be structured. In addition, like existing Form S–16, if proposed Form A is to be used for primary offerings of debt or equity securities to be offered for cash, the issuer must also meet a "float", *i.e.*, the aggregate market value of its voting stock held by non-affiliates must be at least $50 million.

The eligibility criteria for proposed Form A, as stated above, are based upon the understanding that information about companies using the form is already known or is so readily available it need not be repeated in a prospectus. The Commission notes that the reliance on dissemination of Exchange Act information in the Securties Act context, the use of a short form prospectus allowed by Form S–16, and the volatility of the market have all contributed increasing pressure on the staff to reduce drastically processing time for registration statements on Form S–16. In some extreme instances, the staff is requested to declare the registration statement effective within twenty-four hours of filing. The Commission anticipates that market conditions will cause this pressure on the staff to continue. However, such short processing time may overly diminish the opportunity afforded underwriters to make independent verification of the disclosure in the registration statement, and may deprive investors of sufficient time to review Exchange Act information if they so choose. It also raises questions as to whether the eligibility criteria of Form S–16 are sufficiently stringent so that only those companies carefully followed by the market are eligible to come to the market so quickly. If such criteria were too low, there would be danger of companies availing themselves of quick access to a market which has not in fact followed the issuer closely enough to have assimilated publicly available Exchange Act information. The Commission's Directorate of Economic and Policy Analysis has developed a profile of Form S–16 issuers since May of 1978 which is attached as Appendix I. This profile provides empirical data which may be of assistance in formulating eligibility criteria.[49] The Commission urges commentators to address these eligibility criteria questions, particularly in the context of the data presented in Appendix I. In addition, commentators are specifically invited to respond to the following inquiries:

[47] This condition reflects a difference from General Instruction A(c) of Form S–7, which refers simply to defaults, without limiting the scope to material defaults. The proposed change would codify current practice, to some degree, and would help reduce the need for case-by-case waiver determinations by the staff where a non-material default has occurred. However, any failure to pay dividends or sinking fund installments on preferred stock would preclude the use of the form absent a granted waiver request.

[48] This provision of Forms A and B refers to events which have become defaults under the governing instruments, *i.e.*, after the expiration of any period of grace and compliance with any notice requirements.

[49] The variables used to develop the profiles include such characteristics as: The issuer's standard industrial classification code number; the issuer's revenues and net income for the most recent fiscal year; the average weekly trading volume in the issuer's common stock; the number of shareholders; the offering amount; the amount of time it took it process the registration statement; etc.

(1) Should the eligibility criteria for proposed Form A be changed from those of existing Form S–16? Specifically, is the net income test of $250,000 too low? Is the "float" test of $50 million adequate to restrict use of Form A to qualified companies? If not, to what number should it be raised?

(2) Should there be a minimum time period between filing and effectiveness of a registration statement on Form A?

Primary offering use of proposed Form A would be limited to underwritten offerings. Unlike Form S–16, however, proposed Form A could be used by qualified issuers for primary offerings either pursuant to a firm commitment underwriting in which the underwriters are committed to take down at least 90% of the offering, or pursuant to a best efforts underwriting done on an "all-or-none" basis.[50] The Commission believes that the presence of an underwriter who has a degree of responsibility for an offering serves to enhance the likelihood that investor protection will not suffer because of abbreviated disclosure in the prospectus. The Commission invites specific comment with respect to this condition, particularly as to whether proposed Form A should (1) be limited to firm commitment underwritten primary offerings; (2) be available as proposed; (3) be available for all underwritten offerings, regardless of the type of best efforts arrangement involved; or (4) be available to qualified issuers regardless of whether the offering is underwritten at all.

At present, the only foreign private issuers [51] authorized to use Forms S–7 and S–16 are those that are required to file with the Commission the same reports under Section 13(a) or 15(d) of the Exchange Act as domestic issuers, *i.e.*, Forms 10–K, 10–Q, and 8–K. The financial statements of foreign private issuers included in such forms generally are required to be prepared in accordance with United States generally accepted accounting principles and Regulation S–X, or, if appropriate, material differences are to be reconciled thereto. These same requirements are applicable also to the annual report to security holders which, as a condition to the use of Forms S–7 and S–16, must comply with Rule 14a–3(b) under the Exchange Act. Generally, the only foreign private issuers required to file such reports are certain North American issuers, *i.e.*, Canadian and Mexican issuers,[52] and foreign issuers deemed to be essentially United States companies.[53]

Some foreign issuers have inquired whether they would be eligible to use Forms S–7 and S–16 if they voluntarily filed reports on Forms 10–K, 10–Q, and 8–K and prepared an annual report to security holders in compliance with Rule 14a–3 provided they otherwise met the requirements for use of Forms S–7 and S–16. The literal language of the existing instructions to Form S–7 precludes this procedure since the foreign issuers are not actually required to file such reports. The Commission is, however, of the view that foreign private issuers, who, on a voluntary basis, file the same reports with the Commission as domestic issuers should similarly be entitled to use the short forms for registration of securities under the Securities Act. Accordingly, the Commission is proposing to allow the use of Forms A and B by foreign issuers under these circumstances.

Like existing Form S–16, proposed Form A would also be available for use by qualified issuers to register securities (1) to be offered upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants, if the issuer has a $50 million non-affiliate float or if no commission is paid for soliciting the conversion or exercise; (2) to be offered upon the exercise of outstanding rights granted by the issuer; (3) to be offered pursuant to dividend or interest reinvestment plans; (4) to be offered for the account of any person other than the issuer, including standby underwriters and affiliates; (5) to be offered by certain closed-end management investment companies; and (6) to be offered by qualified foreign private issuers upon the exercise of outstanding rights.[54]

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[50] Form S–16 use is restricted to primary offerings pursuant to firm commitment underwritings in which the underwriters are committed to take down at least 90% of the offering. Consistent with the present staff position, an instruction has been included in Form A that would deem delayed delivery arrangements to be part of a firm commitment agreement.

[51] Exchange Act Rule 3b–4(c) (17 CFR 240.3b–4(c)) defines a foreign private issuer as any foreign issuer other than a government or subdivision thereof.

[52] *See* Rule 14a–3(b)(2) under the Exchange Act.

[53] *See* General Instruction to Form 20–F A(b)(1) (17 CFR 249.220–f(b)(1)).

[54] This provision for rights offerings by foreign private issuers is the same as that of existing Form S–16. Because proposed Form A would also be available for somewhat greater use by foreign issuers, however, this provision has been set forth as a separate item.

The first five of these uses of Form A are consistent with the provisions of existing Form S–16. With respect to the registration of securities to be offered pursuant to dividend or interest reinvestment plans, however, the Commission believes that it is appropriate at this time to announce that consideration is being given to allowing such registration statements to become effective automatically. The Commission took a similar step in February 1980 when amendments were adopted to Form S–8 to provide that original filings on that form become effective automatically 20 days after filing and post-effective amendments on Form S–8 become effective automatically upon filing.[55] The same considerations which made automatic effectiveness of registration statements on Form S–8 advisable, *i.e.*, time and cost savings to issuers and the fact that no significant improvement to the quality of disclosure would result from staff review, would appear to be equally applicable to registration statements on Form S–16 or proposed Form A relating to dividend or interest reinvestment plans. Accordingly, commentators are invited to direct comment to the advisability of pursuing this contemplated approach.

Form B

Proposed Form B would be available for the registration of securities to be offered by the middle tier of public companies. The conditions to the Form's use are modeled after but are not entirely the same as those for existing Form S–7. Specifically, proposed Form B would be available where (1) the issuer has a class of securities registered pursuant to Section 12 or is required to file reports pursuant to Section 15(d) of the Exchange Act; (2) the issuer has been subject to the requirements of those Sections, has filed all applicable reports for 36 months prior to filing the registration statement, and has timely filed all required reports for 12 months preceding the filing of the registration statement; (3) the issuer and its subsidiaries have not failed to pay a dividend or sinking fund installment on preferred stock or defaulted in the payment on any material indebtedness or material long-term lease within the past 36 months; and (4) the issuer has had earnings for two of the last three years, including the most recent year.[56]

The Commission notes that its staff receives a number of requests to waive the present Form S–7 requirement for timely filing of Exchange Act reports during the twelve months preceding the filing of the registration statement. Most of these requests involve rather insubstantial periods of lateness.[57] Although the Commission affirms its position that timely reporting is important to the trading markets, commentators are invited to address the appropriateness of this requirement in connection with Form B.

The last condition to the use of proposed Form B is that the issuer does not have any of the financial characteristics specified in General Instruction A(7). These characteristics are: (1) A decline of more than 50% in income from continuing operations over the last fiscal year; (2) any material uncertainty concerning either the issuer's financial position or results or operations which is or will be accompanied by a "subject to" opinion in the accountant's report (such as subject to realization of assets, claims under long-term contracts, or the favorable outcome of pending litigation); and (3) a downgraded bond rating during the last 12 months.

Form B represents a policy choice to favor the readability and communicability that results from use of annual reports to security holders rather than a prospectus providing the more detailed and complex information of Regulation S–K. However, compaines not eligible to use Form A are, by their nature, not sufficienty followed to allow the omission of any reiteration in a prospectus about the company's business. Also, for those compaines which may be financially troubled, but which are not sufficiently followed, the Commission does not believe that readability should be chosen over the more detailed presentation required by Form C. Notwithstanding this judgment, however, the Commission recognizes that it may be exceedingly difficult, if not impossible, to deveop criteria which indicate when a company may be financially troubled or experiencing difficulty. The three criteria proposed in Form B are not intended to be definitive but rather to stimulate comment as to whether any such criteria can be developed. Moreover, commentators are also specifically asked to address the question of whether there are any characteristics of a company otherwise eligible to use Form A that should require it as well use Form C.

Commentators are also asked to consider in this regard whether market criteria, such as the dollar value of voting stock held by non-affiliates, would also be useful characteristics for determining eligibility to use proposed Form B. A deficiency in the extent to which information about a company has been analyzed and assimilated by the market may be as much a reason for a prospectus to contain full Regulation S–K level disclosure as is an indicator of troubled financial condition.

Form C

Proposed Form C would be the basic full form for registering offerings of securities under the Securities Act.[58] This Form would be available to all issuers who either do not qualify to use or choose not to use any other Securities Act registration statement form.

Under the three tier system as proposed, only proposed Form C is contemplated to be used to register securities to be issued in an exchange offer for securities of another person.[59] Comment is specifically invited as to (1) whether either proposed Form A or proposed Form B, or both, should also be so available and (2) what level of prospectus disclosure whit respect to the target company is appropriate where a Form C issuer is exchanging its shares for those of a company qualified to use proposed Form A or Form B.

A general instruction has been included in proposed Forms B and C referring to Guide 4 which interprets Section 6(a) of the Securities Act to limit the types of deferred or extended offerings which may be registered.[60] The Commission requests comments as to the appropriateness of the proposed forms for continuous primary offerings of all types, including those at the maket. Commentators are also invited to indicate what additional eligibility criteria or disclosure requirements they believe would be appropriate for such offerings.

Disclosure Items

As previously described, proposed Forms A, B, and C are designed to work

[55] Securities Act Release No. 6190 (February 22, 1980).

[56] The respects in which these conditions of proposed Form B differ from those of existing Form S–7 are (1) The provision concerning defaults is changed as described in note 47, *supra;* and (2) Form S–7 requires earnings of $250,000 for three of the last four years.

[57] The Commission believes that recently revised Rule 12b–25 (17 CFR 240.12b–25) may address situations where a report cannot be filed timely without unreasonable effort or expense. *See* Securities Act Release No. 6203 (April 2, 1980) (45 FR 23652).

[58] Form S–18 would, of course, still be available to register securities sold to the public by a non-reporting corporation for an aggregate cash price not exceeding $5 million and the Commission will continue its ongoing program to assist, and to reduce the burdens upon, small business.

[59] Of course, Form S–15 would be available for certain exchange offers. In addition, the Commission anticipates a review of Form S–14 with a view to possible revision.

[60] Guide 4 is a subject of the review announced in Securities Act Release No. 6163, discussed in note 46, *supra.*

as a coordinated system. Form A would serve as the initial repository of the uniform disclosure requirements. In this respect, Forms B and C refer to Form A for much of their content.

The following chart is included to assist in the understanding of the proposed forms. The second colum of the chart indicates the derivation of the various disclosure items. The third, fourth and fifth colums indicate where disclosure items are uniform among the three forms and also indicate where material is to be presented in the prospectus or otherwise delivered to investors as opposed to incorporated by deference.

Content of Proposed Forms A, B, and C

Item	Source	Form A	Form B	Form C
Part I.—Prospectus Content				
1. Distribution Spread	Form S-7, modified	X	X (modified)	X (modified).
2. Summary	New (includes Item 10 of Regulation S-K).	X	X	X.
3. Plan of Distribution	Forms S-7, S-16	X	X	X.
4. Use of Proceeds	Form S-1, modified	X	X	X.
5. Selling Security Holders	Form S-16, modified	X	X	X.
6. Description of Securities to be Registered	Forms S-1, S-7, S-16, modified.	X	X	X.
7. Information with Respect to the Issuer	New	All periodic reports are incorporated by reference.	X—Form B has option to deliver annual report to security holders containing this information. Also, periodic reports are incorporated by reference.	X.
(a) Business		Incorporated by reference from periodic reports.	14a-3 (and periodic reports are incorporated by reference).	Item 1, S-K.
(b) Financial Statements		Incorporated by reference from periodic reports (Note: If rules 3-07 or 3-08 of S-X are applicable financial statements must be in prospectus).	Uniform but schedules and non-consolidated financial statements are incorporated by reference.	Uniform.
(c) Segments		Incorporated by reference from 10-K.	Item 1, S-K	Item 1, S-K.
(d) Beneficial Ownership		Incorporated by reference from 10-K.	Incorporated by reference from 10-K	Item 6, S-K incorporated by reference in some cases from 10-K.
(e) Market and Dividend Data		Incorporated by reference from 10-K.	Item 9, S-K, modified incorporated by reference from annual report to security holders in some cases.	Item 9, S-K, modified.
(f) Management's Discussion		Incorporated by reference from 10-K and 10-Q.	Item 11, S-K incorporated by reference from annual report to security holders in some cases.	Item 11, S-K.
(g) Supplementary Financial Data		Incorporated by reference from 10-K.	Item 12, S-K incorporated by reference from annual report to security holders in some cases.	Item 12, S-K.
8. Additional Information	New—based on Forms S-7, S-16.	X	X	X.
(a) Quarterly Financials		(Form 10-Q is incorporated by reference as are all periodic reports).	X (option to deliver Form 10-Q)	X.
(b) Subsequent Material Changes		X	X	
(c) Availability of 1934 Act Reports		X	X	X.
(d) National Exchange Listing		X	X	X.
(e) Undertaking to Provide Periodic Reports That Are Incorporated by Reference Upon Request.		X	X	X.
Part II.—Information Not Required in Prospectus				
9. Incorporated by Reference	New	All 34 Act periodic reports—10-K, 10-Q, 8-K.	Same as Form A plus certain portions of annual report to security holders if used.	Part III and Item 4 of Part I of Form 10-K if necessary.
10. Other Expenses of Issuance and Distribution.	Forms S-7, S-16	X	X	X.
11. Interest of Experts Named	Forms S-7, S-16	X	X	X.
12. Indemnification of Directors and Officers	Form S-7	X	X	X.
13. Other Documents Filed; Exhibits	Form S-7 and New Item 7 of S-K.	X	X	X.
14. Recent Sales of Unregistered Securities	Form S-1			X.
15. Undertakings	Form S-7 modified	1st 3 same, 4th deleted about sending shareholders annual report to security holders if issuer 15(d) co.	1st 3 same, plus adds one—re delivering annual report to security holders with prospectus if used for incorporating by reference.	Same as Form A.
Signatures	Forms S-1, S-7, S-16	X	X	X.

Form A

Form A, like existing Form S-16, requires only minimal prospectus disclosure and relies heavily, through incorporation by reference, on the high quality and widespread dissemination of Exchange Act information for the balance of the standard disclosure package. For the most part, the disclosure that would be included in the prospectus is limited to summary information concerning the issuer and

specific data concerning the offering. Information concerning the offering is the type of disclosure that has not been disseminated to the public and, therefore, should be included in all prospectuses.

Proposed Item 1, "Distribution Spread", was derived from the Form S–7 requirement. The Commission notes that this Item may have to be modified if Form A, when adopted, may be used for other than firm commitment or "all-or-none" best efforts underwritten primary offerings.[61] In this regard, the corresponding items in Forms B and C would require a presentation reflecting minimum and maximum proceeds that may be received if securities are to be offered on a best efforts basis other than an "all-or-none" type of agency arrangement.

The summary presentation required by proposed Item 2 has its genesis in the existing practice of many issuers and in Guide 59, "Summary of Disclosure in the Prospectus."[62] The purpose of the summary is to provide the reader with a succinct picture of the registrant and the offering. In no way is the proposed presentation meant to replace the disclosure found elsewhere in the registration statement or in Exchange Act filings; rather, it is intended to create a starting or reference point in the reading of the prospectus.

Under the proposed formulation of the summary, the text of every prospectus would begin with a brief description of the business conducted by the issuer and the material terms and features of the offering. In addition, the forepart of the prospectus would include selected financial data disclosed in accordance with item 10 of Regulation S–K,[63] which was adopted today, plus information concerning net income and net income per share for five fiscal years and for any applicable interim periods.

The new Regulation S–K Item 10 requirement is designed to present significant five year trend data relating to an issuer's revenues, income from continuing operations, liquidity, and capital resources. Item 10 also allows issuers flexibility to include additional information which they believe would enhance an understanding of and would highlight trends in their financial condition and results of operations. The Commission believes that while net income and net income per share are not necessarily trend related information if there have been discontinued operations or extraordinary events, they nevertheless should be required in the summary because many investors want and expect that information in a section of financial highlights. Item 10 information therefore is appropriate adaptable for use in a prospectus summary. The Commission wishes the summary to be a useful tool and specifically invites comment concerning what, if any, other financial information, such as an indicator of gross profit margin, would be appropriate to require in the summary.

In this regard, the Commission notes that the proposed Summary Information item does not include a requirement to present historical and pro forma ratios of earnings to fixed charges and earnings to combined fixed charges and preferred stock dividends. This ratio information is currently the subject of a separate project of the Office of the Chief Account.[64] When this project is concluded, the Commission will consider the advisability of adding a ratio requirement to the Summary Information item in the proposed forms.

Instructions to the summary would provide that if the issuer has made a material disposition of assets outside the normal course of business after the end of the most recent fiscal year for which information is included in the summary or if an acquisition has occurred or is expected to occur that would require the filing of information pursuant to Rules 3–07 and 3–08 of Regulation S–X,[65] the issuer shall furnish a pro forma condensed balance sheet and a pro forma summary of operations giving effect to the disposition or acquisition for appropriate periods.[66] In addition, if the offering involved the redemption of outstanding preferred stock or indebtedness, the summary would have to include earnings per share data to show what the earnings would have been for the latest fiscal year and interim period if the redemption had taken place at the beginning of the respective period. The Commission believes that the combination of this disclosure is necessary in order that an investor may more easily assess the nature of the offering and the interests being purchased. Similarly, an additional summary provision would require the disclosure of a material dilution of the purchasers' interest or of the existing shareholders' interest.[67] In this regard, the Commission requests commentators to address whether a measure of dilution of book value is appropriate in the context of the prospectus summary.

As an adjunct to the above discussion, the Commission invites commentators to indicate whether a table of capital structure should be required in the proposed forms and, if so, whether it should be similar to that required by Item 5 of Form S–1. A capitalization table item has not been included in the proposed forms because it is believed that the information that would be presented therein is readily apparent from other sources such as the financial statements.

Item 3, "PLan of Distribution,,' would not be changed from the same item in Forms S–16 and S–7. In the Commission's view, this is preferable to but is not significantly different from the Form S–1 item.

Compliance with the disclosure requirements respecting the use of proceeds from the offering has concerned the Commission for some

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[61] *See* eligibility discussion, *supra*.

[62] Guide 59, by its terms, is only applicable to Forms S–1 and S–2. However, in practice many issuers have opted to use it as a standard for other forms.

[63] Item 10 of Regulation S–K reads:

"Furnish in comparative columnar form a summary of selected financial data for the registrant, for

"(1) each of the last five fiscal years of the registrant (or for the life of the registrant and its predecessor, if less), and

"(2) any additional fiscal years necessary to keep the summary from being misleading.

"Instructions

"1. The purpose of the summary of selected financial data shall be to supply in a convenient and readable format selected data which highlights significant trends in the registrant's financial condition and results of operations.

"2. Subject to appropriate variation to conform to the nature of the registrant's business, the following items shall be included in the summary: net sales or operating revenues; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long-term obligations (including long-term debt, capital leases and redeemable preferred stock as defined in ASR 268) and cash dividends declared per common share. Registrants may include additional items which they believe would enhance an understanding of and would highlight trends in their financial condition and results of operations.

"3. Those registrants which are required to provide five year summary information in accordance with SFAS 33 may combine such information with the selected data and may modify the information presented to conform to the requirements to SFAS 33.

"4. All references to the registrant in the summary and in these instructions shall mean the registrant and its consolidated subsidiaries."

[64] That office is now considering the comments it received in response to the concept release which addressed the utility and computation of this ratio. Securities Act Release No. 6196 (March 7, 1980) [45 FR 16498].

[65] *See* discussion of Rules 3–07 and 3–08 accompanying note 72 *infra*.

[66] This release is also proposing a technical amendment to Rule 170 [17 CFR 230.170] under the Securities Act which would allow condensed pro forma financial statements in the prospectus summary even though an offering was not on a firm commitment or best-efforts "all-or-none" basis. This is necessary since the summary requirements would be the same in all three forms.

[67] The Commission notes that this provision concerning material dilutions would be generally inapplicable to offerings on Form A. The prospectus summary item, however, is designed to be standard among forms and would eventually be placed in Regulation S–K.

time. Because of the nature of this disclosure, the prospectus is the primary disseminating document of such information into the market. Too often the disclosure in response to this item has become boilerplate. For this reason, the Commission proposes certain modifications to the Form S–1 item for use in all three tiers.[68]

The proposed Item, which is designated Item 4 in all three Forms, would not include the first sentence of Instruction 1 to Item 3 of Form S–1 which states that "[d]etails of proposed expenditures are not to be given; for example, there need be furnished only a brief outline of any program of construction or addition of equipment." Apparently, issuers have been reading this sentence to allow disclosure of minimal substance. The Commission believes that the language of the item itself, which refers to the "principal purposes" of the proceeds and "approximate amounts intended to be used for each purpose," is sufficiently limited in scope. In addition, the instructions have been refined to require disclosure of the terms of any indebtedness to be discharged from a material part of the proceeds. Additional changes have been made to Instruction 5 concerning assets to be acquired from the proceeds which would only require the name of the seller and an explanation of cost determining principles if the seller were an affiliate of the issuer or an associate of such affiliate. Again, the Commission wishes to call attention to the importance of meaningful disclosure in this area. Accordingly, commentators are requested to submit suggestions that will assist the Commission in upgrading the use of proceeds information.

All three forms would be available for secondary transactions. Therefore, the selling security holders provision, Item 5 in all three Forms, is the same for all tiers and is similar to that in Form S–16.

The "Description of Securities to be Registered", Item 6 of Form A, is derived from the items in Forms S–1, S–7, and S–16 with minor changes and would be present in all three forms. Unlike Form S–16, all three forms would require a description of the securities to be registered even though they are of a class registered prusuant to Section 12 under the Exchange Act. The Commission believes that such information should be presented in the prospectus rather than incorporated by reference from the Exchange Act registration statement.

In addition, because the presence of charter or bylaw provisions or contractual arrangements designed to restrict the rights or alienability of the subject security or to thwart either changes in control of the issuer or acquisitions above a certain percentage of the class of securities being registered may affect the nature, liquidity and value of the securities being offered or may restrict or prevent registration on an exchange, the Commission believes that a description of such provisions as well as the overall effects, advantages, disadvantages and operation of such provisions should be required in this section of the prospectus. Therefore, subparagraph (a)(5) has been incorporated into proposed Item 6. For some time, the Commission has been concerned with anti-takeover proposals in the context of proxy statements [69] and believes that the same concerns are relevant when an initial investment decision is being made. Subparagraph (a)(5) also would require that a legal opinion be set forth or summarized indicating whether a given anti-takeover provision is both lawful and enforceable.

Item 7, "Additional Information", of Form A [70] is based on the corresponding items in Forms S–7 and S–16. A statement would be required indicating that certain information has been incorporated by reference and, at the issuer's option, a statement could also be included stating that specifically described portions which are not incorporated by reference are not part of the registration statement. Detailed descriptions of all material incorporated by reference would have to be provided in Part II of the registration statement and, at the issuer's option, could also be presented in the prospectus.

Perhaps the most important aspect of Item 7 is the requirement for a description of any and all material changes in the issuer's affairs which have occurred since the end of the latest fiscal year and which have not been described in a report on Form 10–Q or 8–K.[71] This Item tracks the present language of Form S–16 and would provide the necessary disclosure link to Exchange Act information which would be incorporated by reference. However, unlike Form S–16, this proposed additional information requirement would not provide that information concerning a material change could be omitted if it had previously been disclosed in a proxy or information statement. This is because the proposed forms only incorporate by reference to periodic reports and not to proxy material.

The corresponding Additional Information item in Form S–16 indicates that financial information may be required in the prospectus if the documents incorporated by reference do not include financial statements which reflect the results of a significant business combination accounted for as a pooling of interests or a change in accounting principles necessitating a substantial restatement of the financial statements. The relevant provisions in form A reflect today's adoption of Rules 3–07 and 3–08 of Regulation S–X [72] which set forth the requirements concerning the type of financial information necessary for significant business combinations, whether they be accounted for as a pooling of interests or as a purchase transaction. These rules are in response to the concerns expressed by the Commission in Securities Act Release No. 4950 (February 20, 1969) regarding compliance with the requirements of Item 27 of Schedule A of the Securities Act.[73] The Commission believes that the information required by these S–X rules is essential to an understanding of the

[68] This Item would also be a standard item and would eventually appear in Regulation S–K. In this regard, Instruction 3 relates to other than firm commitment or "all-or-none" best efforts arrangements and would, therefore, not be applicable to Form A offerings.

[69] *See* Securities Act Release No. 5906 (February 15, 1978) wherein the Commission indicated that the Advisory Committee's recommendations urging the staff to review closely proxy materials containing anti-takeover proposals would be implemented administratively and would be the subject of specific instructions to the staff of the Division of Corporation Finance. These instructions were subsequently made public in Securities Exchange Act Release No.15230 (October 13, 1978) [43 FR 49863].

[70] Variations of the Additional Information item are also in Forms B and C. See Item 7(a)(3) and Item 8 of Form B and Item 8 of Form C.

[71] Item 7(a)(3) of Form B, which relates to the option of delivering the annual report to security holders, requires this information to be placed in the prospectus whether or not it has been previously reported. No such express requirement is included in the second option (Item 7(b)) of Form B since it is implicit that such information would appear in the prospectus because the business information would need to be as of the effective date of the registration statement. *See* Instruction to Item 7(b)(1) of Form B.

[72] Securities Act Release No. 6234 (September 2, 1980).

[73] Item 27 of Schedule A states: "If the proceeds, or any part of the proceeds, of the security to be issued is to be applied directly or indirectly to the purchase of any business, (the registration statement shall include) a profit and loss statement of such business certified by an independent public or certified accountant, meeting the requirements of paragraph (26) of this schedule, for the three preceding fiscal years, together with a balance sheet, similarly certified, of such business, meeting the requirements of paragraph (25) of this schedule of a date not more than ninety days prior to the filing of the registration statement or at the date such business was acquired by the issuer if the business was acquired by the issuer more than ninety days prior to the filing of the registration statement."

issuer's operations and, when applicable, should be included in the prospectus. In addition, since such information is not designed to be presented by itself, historical finanical statements of the issuer and its subsidiaries consolidated (as required by Regulation S–X) would have to be presented in the prospectus whenever Rule 3–07 or 3–08 information would be necessary. This represents the only case where Form A would require the presentation of historical financial statements within the prospectus. In this regard, however, the Commission requests specific comment on whether an issuer should be required to file on Form B or C when Rules 3–07 or 3–08 are applicable.

In addition, the Form A Additional Information item indicates that financial information may have to be filed as an exhibit to the registration statement with regard to a material disposition of assets outside the normal course of business where such information had not been previously filed in an Exchange Act periodic report. Likewise, if there had been a change in accounting principles necessitating a substantial restatement of financial statements which had not been previously filed in a report, such restated financial statements would be a required exhibit of Form A. If either of these two exhibits had to be filed, the prospectus would include a brief description of the subject transaction or change in accounting principles and a statement that relevant finanical information has been filed as an exhibit. In this way, just as the reader knows he has access to the issuer's latest financial statements, he would be put on notice that this additional information was available.

Pursuant to subparagraph (c) of Item 7, the issuer would include an undertaking to provide without charge a copy of any information that has been incorporated by reference, and any financial information exhibit required by the additional information requirement described above, to any requesting person who has been delivered a prospectus. So that each investor will have easy access to the entire disclosure package, the name, address and telephone number of the person to whom a written request for such information is to be directed would be included in the prospectus.

The first item in Part II of the registration statement, Item 8, contains the requirements as to the documents to be incorporated by reference into the registration statement. Although incorporation from the issuer's latest Form 10–K and subsequent periodic reports filed under Section 13(a) or 15(d) of the Exchange Act would be mandated, a registration statement filed on Form A, unlike Form S–16, would need not incorporate from any information in a proxy or information statement. The Commission believes that direct incorporation of proxy material would be unnecessary since Part III of the new Form 10–K will include, through incorporation by reference in most cases, relevant proxy information. Furthermore, the Additional Information item would require disclosure respecting any material changes in the issuer's affairs, including significant business combinations.

Comments at the time Form S–16 was amended to allow primary offering use [74] prompted the Commission to propose certain amendments to Form S–16 which it hoped would alleviate somewhat the concerns of underwriters over potential Section 11 liability for issuers' Exchange Act filings which they had not helped prepare, but which are incorporated by reference into Securities Act registration statements.[75] Specifically, the Commission proposed amendments to Form S–16 which would: (1) Deem the effective date of documents incorporated by reference into registration statements on that Form to be the date of the document's initial filing with the Commission; (2) deem a statement in a document incorporated by reference into the registration statement on that Form not to be part of the registration statement if the statement has been modified or superseded in the registration statement or in subsequently filed documents which are incorporated by reference into a registration statement on that Form; and (3) provide that the making of a modifying or superseding statement shall not be deemed an admission that the modified or superseded statement constituted a violation of the federal securities laws. These proposed amendments were in response to the concern that, because Section 11 imposes liability for statements misleading or untrue when the registration statement becomes effective, liability could be asserted based on Exchange Act documents accurate when filed but subsequently outdated. In addition, they dealt with what underwriters feared would be a reluctance by issuers to accept recommendations to change disclosure in Exchange Act filings because the issuers would not want to admit a deficiency in the original filing.

The Commission believes that further consideration of the proposed amendments to Form S–16 is warranted in connection with the proposed Securities Act disclosures system. Therefore, the Commission has included these proposals as provisions in the relevent incorporation by reference items [76] in all three proposed forms. Although the original proposals to Form S–16 are being withdrawn, the Commission believes that additional public comment in the context of this release is necessary to assist it in determining whether the proposals represent a reasonable and prudent approach to the liability problems relating to incorporated documents.

The balance of the items in Part II of Form A will, with minor exceptions, be standard in all three forms. These are: Item 9, Other Expenses of Issuance and Distribution; Item 10, Interest or Experts Named; Item 11, Indemnification of Directors and Officers; Item 12, Other Documents Filed as a Part of the Registration Statement; and Exhibits. It should be noted that the exhibit item is keyed to recently adopted Item 7 of Regulation S–K.[77] Although disclosure relating to provisions for indemnifying officers and directors is not presently required in Part II of Form S–16, it is called for in Forms S–1 and S–7. The Commission believes that this is important information which may not be succinctly explained elsewhere in its disclosure system and therefore should be included in all three proposed forms. In contrast to existing Forms S–1, S–7 and S–16, the Commission is not proposing to include an item relating to the accounting treatment of proceeds from the stock to be registered [78] because the accounting literature appears to sufficiently address this area.

Form B

As stated previously, Form B relies on Form A for much of its content. The major difference from Form A is the delivery of information either in the form of an annual report to security holders or in the prospectus itself.

Item 7 is the cornerstone of Form B. This Item permits the issuer the option of delivering its annual report to security holders along with the prospectus or including specified information within the prospectus. The option allowing the

[74] *See* comments available in File No. S7–725. *See also* the rulemaking petition filed May 3, 1978 by the Corporate Finance Committee of the Securities Industry Association and the Commission's letter of response dated May 26, 1978 from George A. Fitzsimmons, Secretary.

[75] Securities Act Release No. 5923 (April 11, 1978).

[76] Besides Item 8 of Form A, see Item 9 of Forms B and C.

[77] Securities Act Release No. 6230 (August 27, 1980).

[78] *See, e.g.*, Item 29 of Form S–1.

annual report to be delivered is made possible because of the improved nature of the disclosure within security holder reports required by Rule 14a–3, as it was amended today.[79]

In the Commission's opinion, the option of delivering the annual report to security holders with the prospectus would be most helpful and cost effective in the registration of securities used in transactions which do not involve large numbers of offerees or which will be made at the market or over an exchange. For example, companies could avail themselves of this inexpensive method to register securities that might otherwise be the subject of private placements or of fairness hearings required under Section 3(a)(10) of the Securities Act.[80] In doing so, a company could sell securities without the discount that is commonly attendant to the sale of restricted securities.

If the issuer elects the alternative of delivering its annual report, it would also be presented with an additional option respecting the delivery of updated quarterly financial information. Item 7(a)(2) would require that the issuer provide financial and other information in the form required by Part I of Form 10–Q as of the end of the most recent fiscal quarter which ended after the end of the latest fiscal year for which certified financial statements were included in the latest report to security holders and more than forty-five days prior to the effective date of the registration statement. This requirement coincides with the 135 day financial statement age standard of new Rule 3–12 of Regulation S–X.[81] Three means are set forth by which such updating may be provided: (1) By including such information in the prospectus; (2) by providing without charge to each person to whom a prospectus is delivered a copy of the issuer's latest Form 10–Q; or (3) by providing without charge to each person to whom a prospectus is delivered a copy of the issuer's latest quarterly report to security holders which included the required financial information. Thus, if the issuer so chooses, duplication of previously reported quarterly information may be avoided.

Under Item 7(a)(3), issuers opting to deliver their annual reports to security holders in satisfaction of the Form's requirements would have to describe material changes in their affairs (other than those relating to business combinations or acquisitions or changes in accounting principles or material dispositions of assets for which financial information is required) much in the same manner as in Form A, except that prospectus disclosure could be omitted only [82] if such information had previously been reported in a report on Form 10–Q delivered with the prospectus in the manner described in the previous paragraph. A major departure from Form A would occur if the issuer has effected or were about to effect a transaction for which information is required by Rule 3–07 or Rule 3–08 of Regulation S–X,[83] *i.e.*, has had an accounting principles change that requires a substantial restatement of the financial statements in the annual report or has effected or is about to effect a material disposition of assets that requires financial information to be set forth. In such case the Form B option to deliver the annual report to security holders would be unavailable. The Commission believes that if such a transaction has been or is about to be consummated, all financial information and other required information should be included in the prospectus in order to avoid possible confusion on the part of the reader. Moreover, it is also recognized that the occurrence of this type of event may require that substantial attention be given to various aspects, of disclosure, particularly the description of business, segment information, and management's discussion and analysis of the issuer's financial condition and results of operations.

Item 7(b) would provide the framework of the prospectus content if the option to deliver the annual report were not elected or were unavailable. The Commission is striving in Item 7 of Form B for an equivalent level of disclosure whether accomplished through the delivery of the annual report to security holders or of a prospectus which stands alone. Specifically, Item 7(b) would require a description of business in reasonable detail and to the same extent as would be required in the preparation of an annual report to security holders as required by Rule 14a–3 or Rule 14c–3 under the Exchange Act. An instruction is included that would allow the issuer's most recent annual report to security holders to be used as a guide, but it would insist that the issuer take into account changes in its business which occurred between the most recent annual report to security holders and the effective date of the registration statement.

In general, the remaining requirements would encompass the Regulation S–X and Regulation S–K requirements required in annual reports to security holders by revised Rule 14a–3. Financial statements of the registrant and its subsidiaries consolidated, including any information required by Rules 3–07 and 3–08 of Regulation S–X, would be presented in the prospectus. Industry segment information would be the same as that required in the annual report, *i.e.*, in accordance with the provisions of paragraphs (b), (c)(1)(i) and (d) of Item 1 of Regulation S–K. Market and related information would be the same or equivalent to the information required by new Item 9 of Regulation S–K, depending upon the securities being registered. Management's discussion and analysis would key to new Item 11 of Regulation S–K and, if applicable, to proposed Item 2 of Part I of Form 10–Q. New Item 12 of Regulation S–K, Supplementary Financial Information, would also be addressed. Finally, Item 7(b)(7) would make clear that if the issuer engages in oil and gas related operations which exceed the criteria for exemption specified in Rule 3–18(k) of Regulation S–X,[84] information of the type required in Form 10–K would have to be presented with regard to such operations.

As is described above, the historical financial statements that would be required to be delivered by Form B,

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[79] Securities Act Release No. 6231 (September 2, 1980).

[80] Section 3(a)(10) provides for an exemption from registration for securities issued in an exchange transaction where the terms and conditions of such issuance are approved after a hearing upon their fairness.

[81] In general, Rule 3–12 states that if financial statements in a filing are as of a date more than 135 days prior to the date the filing is expected to become effective, the financial statements shall be supplemented with condensed financial statements through the end of the last fiscal quarter on a comparative basis. Such condensed financial statements are to be given in the same degree of detail as in Part I of From 10–Q.

[82] Under Form A, such information could be omitted if it were previously disclosed in a Form 10–Q or 8–K, even though neither periodic report would be delivered with the prospectus.

[83] For a discussion of Rules 3–07 and 3–08, see the text accompanying note 72 *supra*.

[84] The exemption for oil and gas disclosure under Rule 3–18(k) reads:

Exemption. This paragraph shall not apply to filings under the federal securities laws by any registrant meeting all of the conditions described below for each of the two most recent fiscal years, based on its annual consolidated financial statements:

(i) Gross revenues from sales or transfers of oil and gas (as defined in subparagraph (4)(ii) of this paragraph) do not exceed 10 percent of total revenues;

(ii) Income after taxes (but before extraordinary items) from oil and gas producing activities, including amounts applicable to investees accounted for under the equity method, does not exceed 10 percent of consolidated income before extraordinary items; and

(iii) The "Present Value of Estimated Future Net Revenues" (see subparagraph (6)(ii) of this paragraph), including amounts attributable to investees accounted for under the equity method, plus the net capitalized costs of unproved properties, do not exceed 10 percent of total assets.

either in the prospectus or in the annual report to security holders, are for the issuer and its subsidiaries consolidated. The Commission invites comments on whether any other financial statements contemplated by Regulation S–X should be delivered and, if so, which statements.

Statements respecting incorporation by reference, availability of reports and listing on a national securities exchange would be required by Item 8, Other Information, and would be the same as those in Form A. Additionally, Item 8 would elicit an undertaking from the issuer to provide without charge on the written request of any person to whom a prospectus is delivered a copy of the issuer's latest Form 10–K and the latest Form 10–Q if such Form is not delivered with the prospectus.

Item 9, Incorporation by Reference, in Part II would be identical to the corresponding provision in Form A with one exception. If the issuer elected the Item 7(a) option and delivered the annual report to security holders with the prospectus, certain portions of the annual report would have to be incorporated by reference. This would include: the business description, certified financial statements; industry segment information; selected financial information; and management's discussion and analysis of financial statements. In this way, the disclosure package under both alternatives in Form B would be equivalent to one another. In addition, an undertaking in Part II to deliver the annual report to security holders to each person to whom the prospectus is delivered would be necessary if the Item 7(a) option were used.

Form C

The format of Form C is relatively simply. In essence, it represents a streamlined version of Form S–1. The core informational requirements for the forepart of the prospectus would be the same as Forms A and B. Item 7, Information with Respect to the Issuer, is structured along the lines of Forms S–1 and 10–K. The descriptions of business, properties and legal proceedings would be furnished in accordance with Items 1, 2 and 5 of Regulation S–K, respectively. The financial statements would be those required by Regulation S–X, and schedules required by S–X would be filed as schedules to the registration statement. Market price information, management's discussion and analysis, and supplementary financial information would derive from the relevant new Items 9, 11, and 12 in Regulation S–K.

Under Item 7(b), information called for by Item 3, Directors and Executive Officers, Item 4, Management Remuneration and Transactions,[85] and Item 6, Security Ownership of Certain Beneficial Owners and Management, of Regulation S–K would have to be included in the prospectus for those issuers which have had a change in control within the last three years or have not been reporting companies for the last three years. The Commission believes that this requirement is necessary to ensure adequate dissemination of management and ownership information for these types of companies. All other Form C issuers, except those which voluntarily include such information within the prospectus, would incorporate this information by reference from the pertinent portions of their latest From 10–K: Item 4 of Part I, and all of Part III.

Item 14 of Part II would require the disclosure of sales of unregistered securities during the past three years. This Item would be the same as Item 25 of Form S–1.

Audit Committees

The Commission has endorsed the concept of audit committees for over forty years.[86] More recently, in 1972, the Commission recommended the establishment of such committees, "in order to assist in affording the greatest possible protection to investors who rely upon * * * financial statements."[87] In 1974, the Commission adopted an amendment to Schedule 14A (17 CFR 240.14a–101) of the proxy rules requiring disclosure of the existence and composition of the audit committee of the board of directors.[88] Finally, in 1978, the Commission further amended Schedule 14A to require disclosure of the functions performed by issuers' audit committees and the number of meetings held by such committees.[89]

Comment is requested specifically on whether this same, or some similar, disclosure should be required in Forms A, B, and C. In the case of reporting companies, this information is disclosed, as discussed above, in election of director proxy statements. Therefore, comment also is requested on whether this disclosure requirement should be limited to first time issuers.

Impact of the Proposed Integrated Disclosure System on Foreign Issuers

Although most of the actions taken today relate only to domestic issues,[90] the Commission believes that a similar integrated disclosure system may be feasible for foreign private issuers that file reports on Form 20–F (17 CFR 249.220–f).

Because the registration and reporting requirements of foreign issuers are significantly different from those to which domestic issuers are subject and involve a complicated interrelationship of statutory sections, rules, and forms, this summary may assist commentators in responding to the inquiries listed below.

A. The Exchange Act

Much of the complexity in this area is caused by two principles the Commission adopted in its early years. First, a distinction is made between foreign companies that voluntarily enter the United States securities markets and those companies whose securities are traded in the United States without any voluntary acts or encouragement by the issuer. This distinction is accomplished by deeming all foreign companies having either listed securities on a United States exchange or made a public offering of securities registered under the Securities Act of 1933 as voluntarily entering the United States market. All other foreign companies whose securities are traded in the United States are deemed not to have taken any voluntary acts to enter the United States market. Second, certain North American companies (Canadian and Mexican companies), which have voluntarily entered the United States markets, are treated the same as United States companies for reporting purposes.

Thus, foreign issuers with a class of securities registered pursuant to Section 12(b) of the Exchange Act or with a reporting obligation pursuant to Section 15(d) of the Exchange Act fall within the voluntary classification. Of this group of issuers, North American issuers must file the same disclosure documents as domestic issuers. All other foreign

[85] Foreign issuers would disclose management remuneration in accordance with Guide 63, Disclosure Relating to Management Remuneration by Certain Foreign Private Issuers. *See* Securities Act Release No. 6157 (November 29, 1979).

[86] Accounting series Release No. 19 (December 5, 1940).

[87] Accounting Series Release No. 123 (March 13, 1972).

[88] Accounting series Release No. 165 (December 20, 1974) (40 FR 1010).

[89] Securities Exchange Act Release No. 15384 (December 6, 1978).

[90] In a concurrent release, the Commission has adopted provisions in Regulation S–X that codify the existing policy concerning the use of financial statements presented in accordance with foreign generally accepted accounting principles and reconciliations to United States generally accepted accounting principles. *See* Securities Act Release No. 33–6234 (September 2, 1980). As discussed previously in this release, the Commission is proposing to extend the use of Forms A and B to foreign private issuers that voluntarily file the same reports as domestic issuers.

issuers in this class generally can file on Form 20–F and Form 6–K (17 CFR 249.306) [91] and are exempt from the proxy solicitation and information statement provisions of Section 14 and from the insider reporting and short-swing trading profits provisions of Section 16 of the Exchange Act.[92]

Foreign issuers with more than $1 million of assets and a class of equity securities with 500 holders world-wide are required to register that class of securities pursuant to Section 12(g) of the Exchange Act. No distinction is made between North American and other foreign issuers in this category; all foreign issuers can generally use Forms 20–F and 6–K and will be exempt from the proxy rules. Moreover, many issuers in this category can instead rely on the exemptions from registration specified in Rule 12g3–2.[93] Two of such exemptions are especially relevant. First, paragraph (a) of Rule 12g3–2 provides an exemption from Section 12(g) for the securities of a foreign company that meets the tests of $1 million assets and 500 shareholders of record world-wide but has less than 300 United States shareholders of record. Second, paragraph (b) of the Rule provides another exemption, frequently called the information-supplying exemption. Essentially the securities of a foreign company will be exempt from Section 12(g), regardless of the number of United States shareholders, if the company furnishes to the Commission for public insection copies of the material investor information it makes public in its local jurisdiction or sends to its shareholders either voluntarily or pursuant to foreign law or exchange requirements.

This entire scheme is subject to the concept of "essentially United States companies" which are treated for reporting purposes as domestic registrants. Essentially United States companies are those with (1) more than 50 percent of their voting securities held of record by United States residents and (2) either their business administered principally in the United States or United States residents constituting at least 50 percent of the members of their board of directors.[94]

B. The Securities Act

North American issuers required to file the same reports under the Exchange Act as domestic registrants are permitted to use Forms S–7 and S–16 provided the other conditions to the use of those Forms are met.[95] The Commission, however, has not yet extended the availability of the short forms to any other foreign issuers except for certain rights offerings. Foreign issuers reporting on Form 20–F that otherwise meet the eligibility requirements for the use of Form S–7 may use Form S–16 to register rights offerings to shareholders provided the Form 20–F is either delivered with the prospectus or made available upon request.[96] This would also be true with regard to proposed Form A. In all other situations, however, foreign private issuers must presently use Form S–1, and under the proposals would have to use Form C, to register their offerings of securities.[97]

C. Requests for Comments

In view of the improving disclosure standards of many foreign countries, the increasing efforts to harmonize international disclosure and accounting guidelines, and the recent adoption of the Form 20–F which substantially increased the disclosure requirements of foreign issuers, the Commission believes that it should consider the feasibility of developing an integrated disclosure system for foreign issuers. Although the results of such a system should be similar to those of the integrated disclosure system for domestic issuers, the design and operation of the systems may differ because of the differing reporting structure for foreign issuers under the Exchange Act.

At this time, the Commission is not proposing a specific system for foreign issuers, but rather is requesting comments on the general concept of such a system. The diversity of foreign disclosure standards [98] and the major departure from the Commission's traditional policy such a system would represent make design of any such system especially difficult. Consequently, the Commission believes that information concerning investors in foreign securities, their methods of making investment decisions, and the markets, both domestic and foreign, for foreign securities would be of assistance. Therefore, the Commission is requesting public comments regarding the above discussion, as well as on the specific inquiries listed below.

1. Commentators are invited to address the application of the proposed integration system for domestic users to foreign private issuers reporting on Form 20–F including, but not limited to, the criteria for the eligibility of such issuers to use Forms A and B. Additionally, comments are requested as to whether a separate classification and form(s) should be developed for foreign private issuers.

2. Public comment is sought on whether the Commission's rules and forms should maintain the present distinction made between North American issuers and all other foreign private issuers and, if not, whether any other distinctions should be made or whether private issuers from all foreign countries should be able to use the same forms.

3. Comment is solicited on whether the existence outside the United States of the primary market for the securities of foreign private issuers creates any special difficulties in applying the proposed system to foreign registrants.

4. Commentators are invited to comment on whether foreign laws impede or restrict the information that can be filed with the Commission.

5. The Commission is soliciting comment on whether the investors in foreign securities significantly differ in composition from those investing in the securities of United States issuers and, if such differences exist, whether there are any ramifications for the requirements relating to the disclosure and dissemination of information regarding foreign issuers.

6. In view of the above inquiries, specific comment is solicited with regard to the relative importance to investors, analysts and others of the information contained in a Form S–1 registration statement that is not in a filing on Form 20–F.

General and Specific Inquiries

Any interested persons wishing to submit written comments on the proposed forms, as well as on other matters which might have an impact on the proposals contained herein, are invited to do so. Moreover, commentators are urged to address any

[91] Form 20–F is a consolidated registration and annual report form. Form 6–K is an interim report for furnishing the same type of information required to be furnished by Rule 12g3–2(b) (17 CFR 240.12g3–2(b)) discussed below. These forms require less information than Forms 10–K, 10–Q, and 8–K. *See* Securities Exchange Act Release No. 16371 (November 29, 1979).

[92] *See* Rule 3a12–3 (17 CFR 240.3a12–3).

[93] *See* Securities Exchange Act Release No. 8066 (April 15, 1967) for a detailed discussion of the operation of this rule.

[94] *See* Rule 3a12–3, and Form 20–F General Instructions A(a)(2) and (b)(2).

[95] *See* the discussion *supra* concerning proposals to slightly enlarge this category with regard to Forms A and B.

[96] *See* Form S–16, General Instructions, A(3) and Securities Act Release No. 6156 (November 29, 1979).

[97] Some of the forms designed for special types of offerings or special categories of issuers are available for use by foreign issuers, *e.g.*, Form S–11 for securities of certain real estate companies.

[98] *See, e.g.*, Lafferty and Cairns, "Financial Times World Survey of Annual Reports 1980".

alternatives or modifications which may assist the Commissioner in its reformulation of the Securities Act disclosure system.

The Commission also solicits comment as to whether the proposals would have an adverse effect on competition or would impose a burden on competition which is not necessary or appropriate in furtherance of the purposes of the Securities Act.

Text of Proposed Forms

17 CFR Chapter II is proposd to be amended as follows:

1. By proposing registration statement Forms A, B, and C set forth below:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

Securities and Exchange Commission

Form A—Registration Statement Under the Securities Act of 1933

.....

(Exact name of issuer as specified in its charter)

.....

(State or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code number)

(I.R.S. Employer Identification No.)

.....

(Address, including zip code, and telephone number, including area code, of issuer's principal executive offices)

.....

(Name, address, and telephone number of agent for service)

.....

(Approximate date of commencement of proposed sale to the public)

Calculation of Registration Fee

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

General Instructions

A. Rule as to Use of Form A

(1) Any issuer which meets the following conditions may use this form for registration under the Securities Act of 1933 of securities offered in the transactions specified in (2) below.

(a) The issuer (i) has a class of securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934; or (ii) is organized under the laws of the United States or any State or Territory or the District of Columbia, has its principal business operations in the United States or its Territories and has a class of equity securities registered pursuant to Section 12(g) of the above Act or is required to file reports pursuant to Section 15(d) of the above Act.

(b) The issuer (i) has been subject to the requirements of Section 12 or 15(d) of the Securities Exchange Act of 1934 and has filed all the material required to be filed pursuant to Sections 13, 14 or 15(d) (including Forms 10–K, 10–Q and, if necessary, Forms 8–K), as applicable, for a period of at least thirty-six calendar months immediately preceding the filing of the registration statement on this Form; (ii) has filed in a timely manner all reports required to be filed during the twelve calendar months preceding the filing of the registration statement and, if the issuer has utilized Rule 12b–25(b) of the Securities Exchange Act of 1934 with respect to a report, that report has *actually* been filed within the time period prescribed by that Rule; and (iii) if subject only to the requirements of Section 15(d) of the Securities Exchange Act of 1934, has sent to all security holders of each class of securities to which the registration statements declared effective pursuant to the Securities Act of 1933 relate a report containing the information called for by Rule 14a–3(b) within the twelve calendar months preceding the filing of the registration statement.

(c) The registrant and its subsidiaries have not during the past thirty-six calendar months (i) failed to pay any dividend or sinking fund installment on preferred stock; or (ii) defaulted on any installment on material indebtedness for borrowed money, or on any rental on a material long-term lease.

(d) The issuer and its subsidiaries consolidated had an annual net income, after taxes but before extraordinary items and cumulative effect of a change in accounting principle, of at least $250,000 for three of the last four fiscal years, including the most recent fiscal year.

(e) An issuer shall be deemed to have met conditions (b), (c) and (d) above if (i) its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or (ii) if all predecessors met the conditions at the time of succession and the issuer has continued to do so since the succession.

(f) This Form may be used for the registration of securities of a majority-owned subsidiary which are fully guaranteed as to principal and interest by its parent if the parent meets the above conditions, notwithstanding the failure of the subsidiary issuer to meet such conditions. In such an instance, the guarantor shall be a co-issuer with the issuer.

(g) A foreign private issuer (as defined in Rule 3b–4(c) of the Securities Exchange Act of 1934, 17 CFR 240.3b–4(c)), which satisfies all of the provisions in this instruction for the use of Form A except the provisions in paragraph (1)(a)(ii) of this Instruction relating to incorporation and principal business may use this Form provided such foreign issuer is required to file or otherwise files the same reports with the Commission under Section 13(a) or 15(d) of the above Act as a domestic issuer, and provided further that all of its security holders resident of the United States, including those holding under American Depositary Receipts or similar arrangements, of each class of securities to which the registration statements declared effective pursuant to the Securities Act of 1933 relate, have been sent a report containing the information called for by Rule 14a–3(b).

(2) Securities offered in the following transactions may be registered on this Form.

(a) *Primary Offerings by Certain Issuers.* Debt or equity securities to be offered for cash by or on behalf of the issuer provided the issuer meets the conditions specified in (i), (ii), or (iii) below and also meets the conditions specified in (iv) below:

(i) The aggregate market value of the voting stock held by nonaffiliates of the issuer is $50 million or more; or

(ii) The aggregate market value of the voting stock of the issuer's parent held by nonaffiliates is $50 million or more, the issuer is a majority-owned subsidiary and its parent has fully guaranteed the securities as to principal and interest; or

(iii) The aggregate market value of the voting stock of the issuer's parent held by nonaffiliates is $50 million or more, the issuer is a majority-owned subsidiary; and

A. The issuer has outstanding securities held by nonaffiliates, with an aggregate principal amount or maket value of at least $250 million, the offer or sale of which has been registered pursuant to the provisions of Section 6 of the securities Act of 1933, 15 U.S.C. 77f; and

B. The issuer has at least 1,000 security holders to whom the issuer has furnished an annual report for its most recent fiscal year containing certified financial statements in compliance with the requirements of Rule 14a–3 (17 CFR 240.14a–3) or Rule 14c–3 (17 CFR 240.14c–3). An annual report of the issuer's parent that contains separate certified financial statements of the issuer may be used to satisfy this requirement; and

(iv) The offering is or will be pursuant to a best efforts underwriting which is either done on an "all-or-none" basis, or a firm commitment underwriting in which the underwriters are committed to take and to pay for all or not less than 90% of the securities being offered.

Instruction. The aggregate market value of the issuer's or its parent's outstanding common stock shall be computed by reference to the price at which the stock was sold, or the average of the bid and asked

prices of such stock, as of a specified date within 60 days prior to the date of filing. (See the definition of "affiliate" in Rule 405, 17 CFR 230.405).

Contracts for the delayed delivery of securities included in the offering which are solicited by the principal underwriters shall be deemed part of a firm commitment to purchase by such underwriters.

(b) *Coversions or Warrants.* Securities to be offered upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer, provided:

(i) No Commission or other remuneration is paid for soliciting the conversion of the convertible securities or the exercise of the warrants; or

(ii) The issuer (or the parent, if the issuer is a majority-owned subsidiary and the parent fully guarantees the securities) has one or more classes of outstanding voting stock and the aggregate market value of the voting stock held by its nonaffiliates is $50 million or more determined in accordance with the Instruction to paragraph (2)(a) above.

(c) *Rights Offerings.* Securities to be offered upon the exercise of outstanding rights granted by the issuer of the securities to be offered, provided such rights are granted on a pro rata basis to all existing security holders of the class of securities to which the rights attach.

(d) *Transactions Involving Dividend or Interest Reinvestment Plans.* Securities of the issuer offered solely to its existing security holders pursuant to a plan established to allow such persons to reinvest dividends or interest paid them on securities issued by the issuer, plus additional cash amounts contributed by the participants of the plan, provided that if any securities to be registered are purchased by the registrant for the account of plan participants, the purchase price for such securities shall not exceed either the current market price at the time of the purchase or an amount determined in accordance with a pricing formula specified in the plan and based upon average or current market prices at the time of the purchase.

(e) *Transactions Involving Secondary Offerings.* Outstanding securities to the offered for the account of any person other than the issuer, including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities, if securities of the same class are listed and registered in a national securities exchange or are quoted on the automated quotation system of a national securities association. In addition, Form A may be used by affiliates to register securities for resale pursuant to the conditions specified in General Instruction E to Form S–8 (17 CFR 239.16b).

(f) *Secondary Offerings by Certain Closed End Management Investment Companies.* Form A may be used by closed end management investment companies for the registration of securities under the Securities Act of 1933 only for the purposes specified in paragraphs (2)(d) and (2)(e) above and subject to the applicable requirements of Section 18(d) of the Investment Company Act of 1940 provided that such company: (i) Is registered as a closed end management investment company under the Investment Company Act of 1940; (ii) has been subject to and has filed all material required to be filed pursuant to Sections 20(a), 30(a) and 30(b) of such Act for a period of a least thirty-six calendar months immediately preceding the filing of the registration statement on this Form; (iii) has filed in a timely manner all reports required to be filed during the twelve calendar months preceding the filing of the registration statement; and (vi) meets the requirements of paragraphs (1)(c) through (e) of the Rule as to the Use of this Form.

(g) *Rights Offerings by Foreign Private Issuers.* A foreign private issuer (as defined in Rule 3b–4(c) of the Exchange Act, 17 CFR 240.3b–4(c)) which satisfies all of the provisions of paragraph (1) of the Rule as to Use of this Form, except the provisions in General Instruction A(1)(a) relating to incorporation and principal business operations, General Instruction A(1)(g) relating to the filing with the Commission of the same type of reports filed by domestic issuers, and in General Instruction A(1)(b)(iii) relating to a report containing the information called for by Rule 14a–3(b), may register rights offerings on this form, provided such foreign issuer:

(i) Furnished previously or furnishes with the prospectus to all its security holders resident of the United States, including those holding under American Depositary Receipts or similar arrangements, copies of its latest annual report to security holders, if in the English language, and such annual report to security holders or the prospectus contains the issuer's undertaking to send promptly to any such United States holder, upon written request, a copy of the issuer's latest annual report filed with the Commission under the Exchange Act on Form 20–F; or

(ii) Furnishes with the prospectus a copy of its latest annual report filed with the Commission under the Exchange Act on Form 20–F.

B. Application of General Rules and Regulations

Attention is directed to the General Rules and Regulations under the Securities Act, particularly those comprising Regulation C (17 CFR 230.400 to 230.494). That Regulation contains general requirements regarding the preparation and filing of registration statements. Rules 405, 411, 412, 439, and 473 should be especially noted. Nowithstanding Rules 404(c) and 421(c), no table of contents or cross-reference sheet need be included in the prospectus or the registration statement.

C. Documents Comprising Registration Statement

The registration statement shall consist of the facing sheet of the Form, a prospectus containing the information called for by Part I, the information, list of exhibits, and undertaking specified in Part II, signatures, consents of experts, exhibits, and any other information or documents filed or required to be filed as a part of the registration statement.

Part 1. Information Required in Prospectus

Item 1. Distribution Spread

The information called for by the following table shall be given, in substantially the tabular form indicated, on the outside front cover page of the prospectus as to all securities to be registered (estimated, if necessary).

	Price to public	Underwriting discounts and commissions	Proceeds to issuer or other persons
Per unit			
Total			

Instructions. 1. The term "commissions" is defined in paragraph (17) of Schedule A of the Securities Act. Only commissions paid by the issuer or selling security holders in cash are to be included in the table. Commissions paid by other persons, and other considerations to the underwriters, shall be set forth following the table with a reference thereto in the second column of the table. Any finder's fee or similar payments shall be appropriately disclosed.

2. If it is impracticable to state the price to the public, the method by which it is to be determined shall be explained. In addition, if the securities are to be offered at the market, of if the offering price is to be determined by a formula related to market prices, indicate the market involved and the market price as of the latest practicable date.

3. If any of the securities to be registered are to be offered for the account of security holders, refer on the first page of the prospectus to the information called for by Item 5.

Item 2. Summary Information

Immediately following the cover page of the prospectus, set forth a summary containing the following.

(a) A brief description of the business conducted by the issuer;

(b) A brief description of the material terms and features of the offering;

(c) For the five fiscal years and for any interim periods for which statements of income would be required by Rule 3–02 of Regulation S–X, selected financial data prepared in accordance with Item 10 of Regulation S–K and data concerning net income and net income per share; and

(d) If the proposed offering involves material dilution of the purchasers' interests or of existing shareholders' interests, then such material dilution should be set forth in appropriate tabular form.

Instructions

1. If the issuer has made a material disposition of assets outside the normal course of business after the end of the most recent fiscal year for which information is included in the summary or if an event has occurred or is expected to occur which would require the filing of information pursuant to Rules 3–07 or 3–08 or Regulation S–X, then the issuer shall furnish, as part of or in

addition to the summary, a pro forma condensed balance sheet giving effect to the disposition or acquisition as of the end of the most recent fiscal year and a pro forma summary of operations giving effect to the disposition or acquisition as of the beginning of the most recent fiscal year and through any interim periods shown in the summary.

2. If the offering involves the redemption of outstanding preferred stock or indebtedness, earnings per share data should be furnished to show what the earnings would have been for the latest fiscal year and any subsequent interim period if the redemption had taken place at the beginning of the respective period (or date of issuance of the redeemed security if later).

Item 3. Plan of Distribution

(a) If the securities are to be offered through underwriters, give the names of the principal underwriters, and state the respective amounts underwritten. Identify each such underwriter having a material relationship to the issuer and state the nature of the relationship. State briefly the nature of the obligation of the underwriter(s) to take the securities.

Instruction. All that is required as to the nature of the underwriters' obligation is whether the underwriters are or will be committed to take and to pay for all of the securities if any are taken, or whether it is merely an agency or the type of "best efforts" arrangement under which the underwriters are required to take and pay for only such securities as they may sell to the public. Conditions precedent to the underwriters' taking the securities, including "marketouts," need not be described except in the case of an agency or "best efforts" arrangement.

(b) State briefly the discounts and commissions to be allowed or paid to dealers, including all cash, securities, contracts or other consideration to be received by any dealer in connection with the sale of the securities. If any dealers are to act in the capacity of sub-underwriters and are to be allowed or paid any additional discounts or commissions for acting in such capacity, general statement to that effect will suffice without giving the additional amounts to be sold.

(c) Outline briefly the plan of distribution of any securities to be registered which are to be offered otherwise than through underwriters.

(1) If any securities are to be offered pursuant to divided or interest reinvestment plans the terms of which provide for the purchase of some securities on the market, state whether the issuer or the participant pays fees, commissions, and expenses incurred in connection with the plan. If the participant will pay such fees, commissions, and expenses, state the anticipated cost to participants by transaction or other convenient reference.

(2) If the securities are to be offered through the selling efforts of brokers or dealers, describe the plan of distribution and the terms of any agreement, arrangement, or understanding entered into with broker(s) or dealer(s) prior to the effective date of the registration statement, including volume limitations on sales, parties to the agreement, and the conditions under which the agreement may be terminated. If known, identify the broker(s) or dealer(s) who will participate in the offering and state the amount to be offered each.

(d) State the name of the exchange on which the securities are to be offered, if any; if the securities are to be offered in the over-the-counter market, so state. If the registered securities are to be offered in connection with the writing of exchange-traded call options, briefly describe such transactions.

Item 4. Use of Proceeds to Issuer

State the principal purposes for which the net proceeds to the issuer from the securities to be offered are intended to be used, and the approximate amount intended to be used for each such purpose.

Instructions. 1. If any substantial portion of the proceeds has not been allocated for particular purposes, a statement to that effect shall be made together with a statement of the amount of proceeds not so allocated and how the registrant expects to employ such funds not so allocated.

2. Include a statement as to the use of the actual proceeds if they are not sufficient to accomplish the purposes set forth and the order of priority in which they will be applied. However, such statement need not be made if the underwriting arrangements are such that, if any securities are sold to the public, it can be reasonably expected that the actual proceeds of the issue will not be substantially less than the estimated aggregate proceeds to the issuer as shown under Item 1.

3. If any material amounts of other funds are to be used in conjunction with the proceeds, state the amounts and sources of such other funds.

4. If any material part of the proceeds is to be used to discharge indebtedness, describe the terms of such indebtedness. If the indebtedness to be discharged was incurred within one year, describe the use of the proceeds of such indebtedness.

5. If any material amount of the proceeds is to be used to acquire assets, otherwise than in the ordinary course of business, briefly describe and state the cost of the assets. If the assets are to be acquired from affiliates of the issuer or their associates, give the names of the persons from whom they are to be acquired and set forth the principle followed in determining the cost to the issuer.

Item 5. Selling Security Holders

If any of the securities to be registered are to be offered for the account of security holders, name each such security holder, indicate the nature of any position, office, or other material relationship which he has had within the past three years with the issuer or any of its predecessors or affiliates, and state the amount of securities of the class owned by him, the amount to be offered for his account, and the percentage of the class (if one percent or more) to be owned by him after completion of the offering.

Item 6. Description of Securities To Be Registered

(a) *Capital Stock to be Registered.* If capital stock is to be registered, state the title of the class and furnish the information listed in (1)–(5) below. A complete legal description of the securities need not be given.

(1) Outline briefly: (A) Dividend rights; (B) voting rights; (C) liquidation rights; (D) pre-emptive rights; (E) conversion rights; (F) redemption provisions; (G) sinking fund provisions; and (H) liability to further calls or to assessment by the issuer.

(2) If the rights of holders of such stock may be modified otherwise than by a vote of a majority or more of the shares outstanding, voting as a class, so state and explain briefly.

(3) If preferred stock is to be registered, outline briefly any restriction on the repurchase or redemption of shares by the issuer while there is any arrearage in the payment of dividends or sinking fund installments. If there is no such restriction, so state.

(4) If the rights evidenced by the securities to be registered are materially limited or qualified by the rights of any other class of securities, include such information regarding such other securities as will enable investors to understand the rights evidenced by the securities to be registered. No information need be given, however, as to any class of securities all of which will be redeemed and retired, provided appropriate steps to ensure such redemption and retirement will be taken prior to or upon delivery by the issuer of the securities to be registered.

(5) Briefly describe and discuss any charter or by-law provision or any contractual or other arrangement which (A) restricts the alienability of any securities to be registered; (B) pertains to the classification of the board of directors; (C) operates or could operate to increase the number of shares needed to elect a director, assuming all directors were to be elected at a single meeting; (D) provides that upon the occurrence of any event or condition the securities being registered or other securities within the same class will not have equal voting rights; (E) provides that holders of any other class or series will have a right to disapprove action approved by the holders of the securities to be registered; (F) discriminates against any existing or prospective substantial stockholder of any class of equity securities of the registrant; or (G) has the intent or effect of delaying, deterring or preventing a change in control of the registrant. Such discussion shall describe the purposes, effects, operation, advantages and disadvantages of any such provision or arrangement. A legal opinion, naming counsel, shall be set forth or shall be summarized indicating whether or not such provision or arrangement is both lawful and enforceable in accordance with its terms; and, if such opinion is qualified or conditional, all such qualifications or conditions shall be described.

(b) *Debt Securities to be Registered.* If debt securities are to be registered, state the title of such securities and outline briefly such of the matters listed in (1)–(8) below as are relevant. A complete legal description of the securities need not be given. For purposes solely of this item, debt securities which differ from one another only as to the stated interest rate or the term of maturity shall be regarded as securities of the same class.

(1) Provisions with respect to interest, conversion, maturity, redemption, amortization, sinking fund, or retirement;

(2) Provisions with respect to the kind and priority of any lien securing the issue,

together with a brief identification of the principal properties subject to such lien;

(3) Provisions with respect to the subordination of the rights of holders of the securities registered to other security holders or creditors of the issuer;

(4) Provisions restricting the declaration of dividends or requiring the maintenance of any ratio of assets, the creation or maintenance of reserves, or the maintenance of properties;

(5) Provisions permitting or restricting the issuance of additional securities, the withdrawal of cash deposited against such issuance, the incurring of additional debt, the release or substitution of assets securing the issue, the modification of the terms of the security, and similar provisions. In the case of secured debt, there should be stated: (i) The approximate amount of unbonded bondable property available for use against the issuance of bonds, as of the most recent practicable date, and (ii) whether the securities being registered are to be issued against such property, the deposit of cash, or otherwise. Provisions permitting the release of assets upon the deposit of equivalent funds or the pledge of equivalent property, the release of property no longer required in the business, obsolete property, or property taken by eminent domain, the application of insurance moneys, and similar provisions need not be described.

(6) The name of the trustees and the nature of any material relationship with the issuer or with any of its affiliates; the percentage of securities of the class necessary to require the trustee to take action; and what indemnification the trustee may require before proceeding to enforce the lien.

(7) The general type of event which constitutes a default and whether or not any periodic evidence is required to be furnished as to the absence of default or as to compliance with the terms of the indenture.

(8) Provisions relating to material limitations on or qualifications of the rights evidenced by the securities to be registered. See Item 6(a)(4).

Instruction to Item 6(b). Section 305(a)(2) of the Trust Indenture Act of 1939 shall not be deemed to require the inclusion in the registration statement or in the prospectus of any information not required by this Form.

(c) *Warrants, Rights and Convertible Securities.* If the securities described are to be offered pursuant to warrants, rights, or convertible securities, state: (1) The amount of securites called for by such warrants, convertible securities, or rights; (2) the period during which and the price at which the warrants, convertible securities or rights are exercisable; (3) the amount of warrants, convertible securities or rights outstanding; and (4) any other material terms of such securities.

(d) *Other Securities.* If securities other than capital stock or debt are to be registered, outline briefly the rights evidenced thereby.

Item 7. Additional Information

(a) A statement shall be made that certain information has been incorporated by reference. The issuer may also state, if it so chooses, that specifically described portions of documents which are not incorporated by reference are not a part of the registration statement. In such case, the description of portions which are incorporated by reference or which are excluded shall be made with clarity and in reasonable detail. The detailed description of all material incorporated by reference may, at the issuer's option, either be included both in the prospectus in response to Item 7 and in Part II of the registration statement or only in Part II.

(b) Describe any and all material changes in the issuer's affairs which have occurred since the end of the latest fiscal year for which certified financial statements were included in the latest annual report to security holders and which have not been described in a report on Form 10–Q (17 CFR 249.308a) or Form 8–K (17 CFR 249.308) filed under the Securities Exchange Act of 1934.

If the registrant has effected or is about to effect a transaction for which information is required by Rules 3–07 or 3–08 of Regulation S–X (17 CFR Part 210), the prospectus must include financial statements meeting the requirements of Regulation S–X for the issuers and its subsidiaries consolidated, including any information required by Rules 3–07 and 3–08.

If there has been a change in accounting principles where such change requires a substantial restatement of financial statements which have not been previously filed in any periodic Exchange Act report, such restated financial statements shall be filed as an exhibit to the registration statement. If any financial information required because of a material disposition of assets outside the normal course of business has not been previously filed in any periodic Exchange Act report, such information shall also be filed as an exhibit to the registration statement. A statement that such information has been filed as an exhibit and a brief description of the subject accounting change or disposition shall be furnished in the prospectus.

(c) Include an undertaking to provide without charge to each person to whom a prospectus is delivered, on the written request of any such person, a copy of any and all of the information which has been incorporated by reference in the registration statement, including any exhibit to the registration statement required by paragraph (b) of this item. Exhibits to such information need not be included in the undertaking. Indicate the name, address, and telephone number of the person to whom such a written request is to be directed.

(d) State that reports, proxy statements, and other information filed by the issuer can be inspected and copied at the public reference facilities maintained by the Commission in Washington, D.C., and at certain of its Regional Offices, and state the current address of each facility (see 17 CFR 200.11(b) and 17 CFR 200.80(c)(1)), and that copies of such material can be obtained from the Public Reference Section of the Commission, Washington, D.C. 20549 at prescribed rates.

(e) Name any national securities exchange on which the issuer's securities are listed and state that reports, proxy statements, and other information concerning the issuer can be inspected at such exchanges.

Part II. Information Not Required in Prospectus

Item 8. Incorporation of Certain Information by Reference

(a) *Documents Incorporated by Reference.* The following documents shall be specifically incorporated by reference into the registration statement, by means of a statement to that effect in Part II filed with the Commission:

(1) the issuer's latest Form 10–K filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 which contains certified financial statements for the issuer's latest fiscal year for which a Form 10–K (17 CFR 249.310) was required to have been filed; and

(2) all other reports filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 since the end of the fiscal year covered by the annual report referred to in (a)(1) above.

(b) *Effective Date of Documents Incorporated by Reference.*

(1) Only for purposes of determining pursuant to Section 11(a) of the Securities Act when a document incorporated by reference pursuant to this Item 8 "became effective," the effective date shall be the date of the document's initial filing with the Commission.

(2) For all other purposes under the Act, including Section 13, the effective date shall be the effective date of the registration statement.

(c) *Modified or Superseded Documents.*

(1) Any statement contained in a document incorporated or deemed to be incorporated by reference shall be deemed to be modified or superseded for purposes of the prospectus to the extent that a statement contained in the prospectus or in any other subsequently filed document which also is or is deemed to be incorporated by reference modifies or replaces such statement.

(2) The modifying or superseding statement may, but need not, state that it has modified or superseded a prior statement or include any other information set forth in the document which is not so modified or superseded. The making of a modifying or superseding statement shall not be deemed an admission that the modified or superseded statement, when made, constituted an untrue statement of a material fact, an omission to state a material fact necessary to make a statement not misleading, or the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business or artifice to defraud, as those terms are used in the Act, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, or the rules and regulations thereunder.

Any statement so modified shall not be deemed in its unmodified form to constitute part of the registration statement or prospectus for purposes of the Act. Any statement so superseded shall not be deemed to constitute a part of the registration statement or the prospectus for purposes of the Act.

Instruction. If any accountant, engineer, or any person whose profession gives authority to a statement made by him is named as having prepared or certified any part of the

material incorporated by reference or is named as having prepared or certified a report or valuation for use in connection with any of the material so incorporated, the written consent of such person shall be included in the registration statement. The written consent of persons so named in future material incorporated by reference shall be filed by amendment to the registration statement no later than the date on which such material is filed with the Commission unless express consent to such incorporation by reference is contained in the material incorporated by reference. Attention is directed to Rules 435–439.

Instruction for Items 9 through 11. Items 9 through 11 below need be answered only if the registration statement involves a primary offering of securities in accordance with the criteria in General Instruction A 2(a).

Item 9. Other Expenses of Issuance and Distribution

Furnish a reasonably itemized statement of all expenses in connection with the issuance and distribution of the securities to be registered, other than underwriting discounts and commissions. If any of the securities to be registered are to be offered for the account of security holders, indicate the portion of such expenses to be borne by such security holders.

Instruction. Insofar as practicable, registration fees, federal taxes, state taxes and fees, trustees' and transfer agents' fees, costs of printing and engraving, and legal, accounting, and engineering fees shall be separately itemized. Include as a separate item any premium paid by the issuer or any selling security holder on any policy which insures or indemnifies directors or officers against any liabilities they may incur in connection with the registration, offering, or sale of the securities to be registered. The information may be given as subject to future contingencies. If the amounts of any items are not known, estimates designated as such shall be given.

Item 10. Interest of Experts Named in Registration Statement

If any expert named in the registration statement as having prepared or certified any part thereof was employed for such a purpose on a contingent basis or, at the time of such preparation or certification or at any time thereafter, had a substantial interest in the issuer or any of its parents or subsidaries or was connected with the registrant or any or its subsidiaries as a promoter, underwriter, voting trustee, director, officer, or employee, furnish a brief statement of the nature of such contingent basis, interest, or connection.

Item 11. Indemnification of Directors and Officers

State the general effect of any charter provisions, bylaws, contract, arrangement, or statute under which any director or officer of the issuer is insured or indemnified an any manner against any lability which he may incur in his capacity as such.

Item 12. Other Documents Filed as a Part of the Registration Statement; Exhibits

The following documents shall be filed as a part of the registration statement and shall be listed in Part II:

(a) Statements of eligibility and qualification of persons designated to act as trustee under an indenture to be qualified under the Trust Indenture Act of 1939;

(b) Subject to the rules regarding incorporation by reference, the exhibits as requires by Item 7 of Regulation S–K (17 CFR 229.20); and

(c) Exhibits required by Item 7(b) of this Form.

Instruction. List all exhibits filed with the registration statement and appropriately letter or number each exhibit for convenient reference. Exhibits incorporated by reference may bear the designation given in the previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits.

Item 13. Undertaking

(a) The following undertaking, with appropriate modifications to suit the particular case, shall be included in the registration statement if the securities to be registered are to be offered in a continuous offering over an extended period of time:

"The undersigned issuer hereby undertakes: (1) To file any prospectus required by Section 10(a)(3) as a post-effective amendment to this registration statement;

"(2) that for the purpose of determining any liability under the Act each such post-effective amendment and each filing of the issuer's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 shall be deemed to be a new registration statement relating to the securities offered therein and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof; (3) that all such new registration statements will comply with the applicable forms, rules, and regulations of the Commission in effect at the time such post-effective amendments or annual reports are filed; and (4) to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering."

(b) The following undertaking, with appropriate modifications to suit the particular case, shall be included in the registration statement if the securities to be registered are to be offered to existing security holders pursuant to warrants or rights and any securities not taken by security holders are to be reoffered to the public:

"The undersigned issuer hereby undertakes to supplement the prospectus, after the expiration of the subscription period, to set forth the result of the subscription offer, the transactions by the underwriters during the subscription period, the amount of unsubscribed securities to be purchased by the underwriters, and the terms of any subsequent reoffering thereof. If any public offering by the underwriters is to be made in terms differing from those set forth on the cover page of the prospectus, a post-effective amendment will be filed to set forth the terms of such offering."

(c) The following undertaking, with appropriate modifications to suit the particular case, shall be included in the registration statement if the securities to be registered are to be offered at competitive bidding:

"The undersigned issuer hereby undertakes to file an amendment to the registration statement reflecting the results of bidding, the terms of the reoffering and related matters to the extent required by the applicable form, not later than the first use, authorized by the issuer after the opening of bids, of a prospectus relating to the securities offered at competitive bidding, unless no further public offering of such securities by the issuer and no reoffering of such securities by the purchasers is proposed to be made."

Signatures

Pursuant to the requirements of the Securities Act of 1933, the issuer has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of ————, State of ————, on ————, 19—.

(Issuer) ————

By (Signature and Title) ————

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) ————

(Title) ————

(Date) ————

Instructions. 1. The registration statement shall be signed by the issuer, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least a majority of the board of directors or persons performing similar functions. If the issuer is a foreign person, the registration statement shall also be signed by its authorized representative in the United States.

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement.

Securities and Exchange Commission

Form B—Registration Statement Under the Securities Act of 1933

.....

(Exact name of issuer as specified in its charter)

.....

(State or other jurisdiction of incorporation or organization)

.....

(Primary Standard Industrial Classification Code number)

.....

(I.R.S. Employer Identification No.)

.....

(Address, including zip code, and telephone number, including area code, of issuer's principal executive offices)

.....

(Name, address, and telephone number of agent for service)

.....

(Approximate date of commencement of proposed sale to the public)

Calculation of Registration Fee

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Form B—General Instructions

A. Rule as to Use of Form B.

Any issuer which meets the following conditions may use this Form for registration of securities under the Securities Act of 1933:

(1) The issuer (a) has a class of securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934; or (b) is organized under the laws of the United States or any State or Territory or the District of Columbia, has its principal business operations in the United States or its Territories and has a class of equity securities registered pursuant to Section 12(g) of the above Act or is required to file reports pursuant to Section 15(d) of the above Act.

(2) The issuer (a) has been subject to the requirements of Section 12 or 15(d) of the Securities Exchange Act of 1934 and has filed all the material required to be filed pursuant to Sections 13, 14 or 15(d) (including Forms 10–K, 10–Q and, if necessary, Form 8–K), as applicable, for a period of at least thirty-six calendar months immediately preceding the filing of the registration statement on this Form; and (b) has filed in a timely manner all reports required to be filed during the twelve calendar months preceding the filing of the registration statement and if the issuer has utilized Rule 12b–25(b) of the Securities Exchange Act of 1934 with respect to a report, that report has *actually* been filed within the time prescribed by that Rule.

(3) The registrant and its subsidiaries have not during the past thirty-six calendar months (a) failed to pay any dividend or sinking fund installment on preferred stock, or (b) defaulted on any installment on material indebtedness for borrowed money or on any rental on a material long-term lease.

(4) The issuer and its subsidiaries consolidated had earnings, after taxes but before extraordinary items and the cumulative effect of a change in accounting principle, for two of the last three fiscal years, including the most recent fiscal year.

(5) An issuer shall be deemed to have met conditions (2), (3), and (4) above if (a) its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or (b) if all predecessors met the conditions at the time of succession and the issuer has continued to do so since the succession.

(6) This form may be used for the registration of securities of a majority-owned subsidiary that are fully guaranteed as to principal and interest by its parent if the parent meets the above conditions, notwithstanding the failure of the subsidary issuer to meet such conditions. In such an instance, the parent guarantor shall be a co-issuer with the issuer. The annual report to security holders referred to in Item 7(a) of this Form pertains to the report of the parent if such report contains certified financial statements of the issuer.

(7) The issuer does not have any of the following: (a) A decline in income from continuing operations of more than 50% for the past fiscal year as compared to the prior fiscal year; (b) any material uncertainty concerning either its financial position or results of operations which is or will be accompanied by a "subject to" opinion in the independent accountants' report (such as subject to realization of assets, claims under long-term contracts, or the favorable outcome of pending litigation); or (c) any downgrading during the twelve month period preceding the date of filing of a bond rating assigned by a nationally recognized statistical rating agency.

(8) A foreign private issuer (as defined in Rule 3b–4(c) of the Securities Exchange Act of 1934, 17 CFR 240.3b–4(c)), which satisfies all of the provisions in paragraph (1) of this Instruction relating to incorporation and principal business may use this Form provided such foreign issuer is required to file or otherwise files the same reports with the Commission under Section 13(a) or 15(d) of the Act as a domestic issuer.

(9) Issuers are directed to Guide 4 of the Guides for Preparation of Registration Statements (Securities Act Release No. 4936, December 9, 1968 (33 FR 18671), as amended) which interprets Section 6(a) of the Securities Act to limit the types of deferred or extended offerings which may be registered, including those at the market.

B. Application of General Rules and Regulations

Attention is directed to the General Rules and Regulations under the Act, particularly Regulation C (17 CFR 230.400). That Regulation contains general requirements regarding the use of registration forms and the preparation and filing of the registration statement. The definitions contained in Rule 405, should be especially noted.

C. Documents Comprising Registration Statement

The registration statement shall consist of the facing sheet of the Form, a prospectus containing the information specified in Part I; the information, list of exhibits, and undertakings specified in Part II; and signatures, consents of experts, exhibits, and any other information or documents filed or required to be filed as a part of the registration statement.

D. Form and Content of Prospectus

(1) The information set forth in the prospectus should be presented in a clear, concise, and understandable fashion. Avoid unnecessary and irrelevant details, repetition, or the use of unnecessary technical language. The prospectus shall contain the information called for by all of the items of Part I of the Form, except that no reference need be made to inapplicable items, and negative answers to any item may be omitted.

(2) Unless clearly indicated otherwise, information set forth in any part of the prospectus need not be duplicated elsewhere in the prospectus. Where it is deemed necessary or desirable to call attention to such information in more than one part of the prospectus, this may be accomplished by appropriate cross reference.

E. Omission of Information Regarding Foreign Subsidiaries

Information required by any item or other requirement of this Form with respect to any foreign subsidiary may be omitted to the extent that the required disclosure would be detrimental to the registrant. However, financial statements, otherwise required, shall not be omitted pursuant to this instruction. Where information is omitted pursuant to this instruction, a statement shall be made that such information has been omitted and the names of the subsidiaries involved shall be separately furnished to the Commission. The Commission may, in its discretion, call for justification that the required disclosure would be detrimental.

F. Filing of Other Financial Statements in Certain Cases

The Commission may, upon the request of the issuer, and where consistent with the protection of investors, permit the omission of one or more of the financial statements herein required or the filing in substitution therefor of appropriate statements of comparable character. The Commission may also by informal written notice require the filing of other financial statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

G. Preparation of Part II

Part II of the registration statement shall contain the numbers and captions of the items in Part II of the Form but the text of the items and the instructions thereto are to be omitted. The answers to the items are to be so prepared as to indicate to the reader the coverage of the items without the necessity of referring to the text of the items or the instructions thereto. If the information required by any item of Part II is completely disclosed in the prospectus, such item may be answered by a reference to the specified page or caption of the prospectus which contains such information. If any item of Part II is

inapplicable or the answer thereto is in the negative, a statement to that effect shall be made in answer to the item.

Part I. Information Required in the Prospectus

Item 1. Distribution Spread

[Same as Item 1, Proposed Form A.]

Item 2. Summary Information

[Same as Item 2, Proposed Form A.]

Item 3. Plan of Distribution

[Same as Item 3, Proposed Form A except that this Form B includes the following additional provision.]

4. If the securities are to be offered on a best efforts basis, the cover page should also set forth the termination date of the offering, any minimum required purchase and any arrangements to place the funds received in an escrow, trust, or similar arrangement. The following tabular presentation of the total maximum and minimum securities to be offered should be combined with the table required above:

	Price to public	Underwriting discounts and commissions	Proceeds to issuer or other persons
Total minimum			
Total maximum			

Item 4. Use of Proceeds to Issuer

[Same as Item 4, Proposed Form A.]

Item 5. Selling Security Holders

[Same as Item 5, Proposed Form A.]

Item 6. Description of Securities to be Registered

[Same as Item 6, Proposed Form A.]

Item 7. Information with Respect to the Issuer

Provide the information called for by either paragraph (a) or paragraph (b) of this item. *However,* if (1) the issuer has effected or is about to effect a transaction for which information is required by Rule 3–07 or Rule 3–08 of Regulation S–X; or (2) the financial statements in the issuer's latest annual report to security holders do not reflect the results of a change in accounting principles where such change requires a substantial retroactive restatement of financial statements; or (3) the financial statements in the issuer's latest annual report to security holders do not reflect the results of a material disposition of assets outside the normal course of business, the registrant shall not provide prospectus information in the manner allowed by subparagraph (a) below.

(a) If the issuer elects to deliver this prospectus together with the issuer's latest annual report to security holders, which at the time of original preparation met the requirements of either Rule 14a–3 or Rule 14c–3:

(1) Indicate that the prospectus is accompanied by the issuer's latest annual report to security holders.

(2) Provide financial and other information with respect to the issuer in the form required by Part I of Form 10–Q (17 CFR 239.308a) as of the end of the most recent fiscal quarter which ended after the end of the latest fiscal year for which certified financial statements were included in the latest report to security holders and more than forty-five days prior to the effective date of this registration statement (or as of a more recent date) by one of the following means:

(i) Including such information in the prospectus; or

(ii) Providing without charge to each person to whom a prospectus is delivered a copy of the issuer's latest form 10–Q; or

(iii) Providing without charge to each person to whom a prospectus is delivered a copy of the issuer's latest quarterly report which was delivered to its shareholders and which included the required financial information.

Instruction. Form 10–Q(s) which are to accompany the prospectus should be filed and quarterly reports to security holders which are to accompany the prospectus should be delivered to the staff ten days prior to the expected effective date of the registration statement.

(3) Describe any and all material changes in the issuer's affairs which have occurred since the end of the latest fiscal year for which certified financial statements were included in the latest annual report to security holders and which were not described in a Form 10–Q delivered with the prospectus in accordance with subparagraph (a)(2)(ii) of this item.

(b) If the issuer does not elect to deliver its latest annual report to security holders:

(1) Describe the business of the issuer, its subsidiaries and its predecessors in reasonable detail at least to the same extent as would be required in the preparation of an annual report as required by Rule 14a–3 or Rule 14c–3 under the Securities Exchange Act of 1934.

Instruction. The description in the prospectus should be in comparable detail to the presentation used in the issuer's most recent annual report to security holders but the issuer should take into account changes in its business which have occurred between the date of the most recent annual report to security holders and the effective date of the registration statement.

(2) Include financial statements meeting the requirements of Regulation S–X (17 CFR Part 210) for the registrant and its subsidiaries consolidated, including any information required by Rules 3–07 and 3–08 of Regulation S–X.

(3) Provide information relating to industry segments, classes of similar products or services, foreign and domestic operations, and export sales in accordance with the provisions of paragraphs (b), (c)(1)(i) and (d) of Item 1 of Regulation S–K (17 CFR 229.20).

(4) Provide information required by Item 9 of Regulation S–K or equivalent information depending on the type of security being registered.

(5) Furnish management's discussion and analysis of the issuer's financial condition and results of operations in accordance with Item 11 of Regulation S–K and, if applicable, in accordance with Item 2 of Part I of Form 10–Q. A single presentation of the information required by this Item should be made.

(6) Furnish supplementary financial information in accordance with Item 12 of Regulation S–K.

(7) If the issuer engages in oil and gas related operations which exceed the criteria for exemption specified in Rule 3–18(k) of Regulation S–X, furnish the disclosure with respect to those operations which is required by Regulation S–X and Regulation S–K to be presented in Form 10–K (17 CFR 249.310).

Item 8. Other Information

(a) A statement shall be made that certain information has been incorporated by reference, including but not limited to specified portions of the documents which accompany the prospectus to the extent that those portions have been incorporated or have been duplicated in filed documents. The issuer may also state, if it so chooses, that specifically described portions of documents accompanying the prospectus are not incorporated by reference and are not a part of the registration statement. In such case, the description of portions which are incorporated by reference or which are excluded shall be made with clarity and in reasonable detail. The detailed description of all material incorporated by reference, at the issuer's option, either may be included both in the prospectus and in Part II of the registration statement in response to Item 10 or may be included only in Part II.

(b) State that reports, proxy statements, and other information filed by the issuer can be inspected and copied at the public reference facilities maintained by the Commission in Washington, D.C., and at certain of its Regional Offices, and state the current address of each such facility (see 17 CFR 200.11(b) and 17 CFR 200.80(c)(1)), and that copies of such material can be obtained from the Public Reference Section of the Commission, Washington, D.C. 20549 at prescribed rates.

(c) Name any national securities exchange on which the issuer's securities are listed, and state that reports, proxy statements, and other information concerning the issuer can be inspected at such exchanges.

(d) Include an undertaking to provide without charge to each person to whom a prospectus is delivered, on the written request of any such person, a copy of any and all of the information which has been incorporated by reference (and is not delivered with the prospectus) in the registration statement, other than exhibits to such information. Indicate the name and address of the person to whom such a written request is to be directed.

Part II. Information Not Required in Prospectus

Item 9. Incorporation of Certain Information by Reference

[Same as Item 8, Proposed Form A, but with the following addition.]

(a)(3). If the issuer uses the option available in Item 7(a) of this Form:

(i) Description of business furnished in accordance with the provisions of Rule 14a–3(b)(5) under the Securities Exchange Act of 1934 (17 CFR 240.14a–3(b)(5));

(ii) Certified financial statements furnished in accordance with the provisions of Rule 14a–3(b);

(iii) Information relating to industry segments, classes of similar products or services, foreign and domestic operations, and export sales furnished in accordance with the provisions of paragraphs (b), (c)(1)(i) and (d) of Item 1 of Regulation S–K (17 CFR 229.20);

(iv) Market for common stock and related security holder matters furnished in accordance with Item 9 of Regulation S–K;

(v) Selected financial data furnished in accordance with Item 10 of Regulation S–K; and

(vi) Management's discussion and analysis of financial condition and results of operations furnished in accordance with Item 11 of Regulation S–K.

Item 10. Other Expenses of Issuance and Distribution

[Same as Item 9, Proposed Form A.]

Item 11. Interest of Experts Named in Registration Statement

[Same as Item 10, Proposed Form A.]

Item 12. Indemnification of Directors and Officers

[Same as Item 8, Proposed Form A.]

Item 13. Other Documents Filed as a Part of the Registration Statement; Exhibits

[Same as Items 12 (a) and (b), Proposed Form A.]

Item 15. Undertakings

[Same as Item 13, Proposed Form A, except this Form B also includes the following additional provision.]

(d) The registration statement shall contain an undertaking substantially as follows:

"The undersigned issuer hereby undertakes to deliver or cause to be delivered with the prospectus, to each person to whom the prospectus is sent or given, the issuer's latest annual report to security holders furnished pursuant to and meeting the requirements of Rule 14a–3 or Rule 14c–3."

However, if the issuer elects the option provided in Item 7(b) of this Form, then this undertaking may be omitted.

Signatures

[Same as Signature provisions in Proposed Form A.]

Securities and Exchange Commission

Form C—Registration Statement Under the Securities Act of 1933

.....

(Exact name of issuer as specified in its charter)

.....

(State or other jurisdiction of incorporation or organization)

.....

(Primary Standard Industrial Classification Code No.)

.....

(I.R.S. Employer Identification No.)

.....

(Address, including zip code, and telephone number, including area code, of issuer's principal executive offices)

.....

(Name, address, and telephone number of agent for service)

.....

(Approximate date of commencement of proposed sale to the public)

Calculation of Registration Fee

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Form C—General Instructions

A. Rule as to Use of Form C.

Form C shall be used for registration under the Securities Act of 1933 of securities of all issuers for which no other form is authorized or prescribed, except that this Form shall not be used for securities of foreign governments or political sub-divisions thereof.

B. Application of General Rules and Regulations.

Attention is directed to the General Rules and Regulations under the Act, particularly those comprising Regulation C (17 CFR 230.400). That regulation contains general requirements regarding the preparation and filing of the registration statement. The definitions contained in Rule 405 should be especially noted.

C. Documents Comprising Registration Statement.

The registration statement shall consist of the facing sheet of the Form; a prospectus containing the information called for by Part I, the information, list of exhibits, financial statement schedules, and undertakings specified in Part II; and the signatures, consents of experts, exhibits, and any other information or documents filed or required to be filed as a part of the registration statement.

D. Form and Content of Prospectus.

(1) The information set forth in the prospectus should be presented in clear, concise, understandable fashion. Avoid unnecessary and irrelevant details, repetition or the use of unnecessary technical language. The prospectus shall contain the information called for by all of the items of Part I of the Form, except that no reference need be made to inapplicable items, and negative answers to any item may be omitted.

(2) Unless clearly indicated otherwise, information set forth in any part of the prospectus need not be duplicated elsewhere in the prospectus. Where it is deemed necessary or desirable to call attention to such information in more than one part of the prospectus, this may be accomplished by appropriate cross reference. In lieu of restating information in the form of notes to the financial statements, references should be made to other parts of the prospectus where such information is set forth.

E. Omission of Information Regarding Foreign Subsidiaries.

Information required by any item or other requirement of this Form with respect to any foreign subsidiary may be omitted to the extent that the required disclosure would be detrimental to the registrant. However, financial statements, otherwise required, shall not be omitted pursuant to this instruction. Where information is omitted pursuant to this instruction, a statement shall be made that such information has been omitted and the names of the subsidiaries involved shall be separately furnished to the Commission. The Commission may, in its discretion, call for justification that the required disclosure would be detrimental.

F. Exchange Offers

If any of the securities being registered are to be offered in exchange for securities of any other issuer, the prospectus shall also include the information which would be required by Item 7 if the securities of such other issuer were registered on this Form. There shall also be included the information concerning such securities of such other issuer which would be called for by Item 6 if such securities were being registered. In connection with this instruction, reference is made to Rule 409.

G. Deferred or Extended Offerings

Issuers are directed to Guide 4 of the Guides for Preparation of Registration Statements (Securities Act Release No. 4936, December 9, 1968 (33 FR 18671), as amended) which interprets Section 6(a) of the Securities Act to limit the types of deferred or extended offerings which may be registered, including those at the market.

H. Preparation of Part II

(1) Part II of the registration statement shall contain the numbers and captions of the items in Part II of the Form, but the text of the items may be omitted provided the answers are so prepared as to indicate to the reader the coverage of the items without the necessity of referring to the text of the items or the instructions thereto. If the information required by any item of Part II is completely disclosed in the prospectus, reference may be made to the specific page or caption of the prospectus which contains such information.

(2) If the information required by Part II has been given in a registration statement, application for registration or annual report filed with the Commission pursuant to any act administered by the Commission and no additional information is needed to make the information previously filed accurate, complete, and up-to-date, the required information may be incorporated by a specific reference to the page or pages of the previous filing which contains such information.

Part I. Information Required in Prospectus

Item 1. Distribution spread

[Same as Item 1, Proposed Form A.]

Item 2. Summary Information

[Same as Item 2, Proposed Form A.]

Item 3. Plan of Distribution

[Same as Item 3, Proposed Form B.]

Item 4. Use of Proceeds to Issuer

[Same as Item 4, Proposed Form A.]

Item 5. Selling Security Holders

[Same as Item 5, Proposed Form A.]

Item 6. description of Securities to be Registered

[Same as Item 6, Proposed Form A.]

Item 7. Information With Respect to the Issuer

(a) Provide the following information with respect to the issuer:

(1) Information required by Item 1 of Regulation S–K (17 CFR 229.20). Description of Business;

(2) Information required by Item 2 of Regulation S–K, Description of Property;

(3) Information required by Item 5 of Regulation S–K, Legal Proceedings;

(4) Information required by Item 9 of Regulation S–K or equivalent information depending on the type of security being registered;

(5) Financial statements meeting the requirements of Regulation S–X (17 CFR Part 210) (Schedules required under Regulation S–X shall be filed as "Financial Statement Schedules" pursuant to Item 14, Exhibits and Financial Statement Schedules, of this Form);

(6) Information required by Item 11 of Regulation S–K, Management's Discussion and Analysis of Financial Condition and Result of Operations, and, if applicable, information required by Item 2 of Part I of Form 10–Q (Management's Discussion and Analysis of Quarterly Data) [A single presentation of the information requried by this subparagraph should be made]; and

(7) Information required by Item 12 of Regulation S–K, Supplementary Financial Information.

(b) Issuers who (1) have had a change in control (as defined by Rule 405(f)) within the last three years; or (2) have not been subject to the reporting requirements of Sections 13(a) or 15(d) of the Securities Exchange Act of 1934 for the last three years; or (3) are foreign issuers which are required to report on Form 20–F (17 CFR 249.220f) shall provide the following information in addition to that required by paragraph (a) of this item:

(1) Information required by Item 3 of Regulation S–K, Directors and Executive Officers;

(2) Information required by Item 6 of Regulation S–K, Security Ownership of Certain Beneficial Owners and Management; and

(3) Information required by Item 4 of Regulation S–K, Management Remuneration and Transactions.

Instruction. Any issuer not required to include the information required by subparagraph (b) of this item in its prospectus may do so at its option, in which case incorporation by reference to the Form 10–K (17 CFR 249.310) would not be required. See Item 9.

Item 8. Additional Information

If the issuer is subject to the reporting requirements of Sections 13(a) or 15(d) of the Securities Exchange Act of 1934:

(a) A statement shall be included on the outside front cover page or on the inside front cover page of the prospectus that the issuer is subject to the informational requirements of the Securities Exchange Act of 1934 and in accordance therewith files reports and other information with the Securities and Exchange Commission. If Item 7(b) is inapplicable to the registrant and the information called for by Item 7(b) is not included in the prospectus, provide a statement that the information, as of particular dates, concerning directors and officers, their remuneration, options granted to them, the principal holders of securities of the issuer and any material interest of such persons in transactions with the issuer is disclosed either in proxy statements or in information statements filed under Section 14 of the Securities Exchange Act of 1934 or in Forms 10–K (17 CFR 249.310). Include, if applicable, an undertaking to provide without charge to each person to whom a prospectus is delivered, upon written request of such person, a copy of any Item 7(b) information that has been incorporated by reference. Indicate the name, address, and telephone number of the person to whom such a written request is to be directed.

(b) The statement shall also indicate that such reports, proxy statements, and other information can be inspected and copied at the public reference facilities maintained by the Commission in Washington, D.C. and at certain of its Regional Offices, stating the current address of each such facility (see 17 CFR 200.11(b) and 17 CFR 200.80(c)(1)), and that copies of such material can be obtained from the Public Reference Section of the Commission at Washington, D.C. 20549 at prescribed rates. In addition, name any national securities exchange on which the issuer's securities are listed, and state that reports, proxy statements, and other information concerning the issuer can be inspected at such exchanges.

Part II. Information Not Required in Prospectus

Item 9. Incorporation by Reference

(a) If information called for by Item 7(b) of this Form is not required to be included in the prospectus, and it is not included therein, Item 4 of Part I, Security Ownership of Certain Beneficial Owners and Management, and all of Part III of the issuer's latest Form 10–K (17 CFR 249.310) shall be incorporated by reference into the registration statement by means of a statement to that effect in Part II filed with the Commission.

(b) *Effective Date of Documents Incorporated by Reference.*

(1) Only for purposes of determining pursuant to Section 11(a) of the Securities Act when a document incorporated by reference pursuant to this Item 8 "became effective," the effective date shall be the date of the document's initial filing with the Commission.

(2) For all other purposes under the Act, including Section 13, the effective date shall be the effective date of the registration statement.

(c) *Modified or superseded documents.*

(1) Any statement contained in a document incorporated or deemed to be incorporated by reference shall be deemed to be modified or superseded for purposes of the prospectus to the extent that a statement contained in the prospectus or in any other subsequently filed document which also is or is deemed to be incorporated by reference modifies or replaces such statement.

(2) The modifying or superseding statement may, but need not, state that it has modified or superseded a prior statement or include any other information set forth in the document which is not so modified or superseded. The making of a modifying or superseding statement shall not be deemed an admission that the modified, or superseded statement, when made, consituted an untrue statement of a material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business or artifice to defraud, as those terms are used in the Act, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, or the rules and regulations thereunder.

Any statement so modified shall not be deemed in its unmodified form to constitute part of the registration statement or prospectus for purposes of the Act. Any statement so superseded shall not be deemed to constitute a part of the registration statement or the prospectus for purposes of the Act.

Item 10. Other Expenses of Issuance and Distribution

[Same as Item 9, Proposed Form A.]

Item 11. Interest of Experts Named in Registration Statement

[Same as Item 10, Proposed Form A.]

Item 12. Idenification of Directors and Officers

[Same as Item 11, Proposed Form A.]

Item 13. Other Documents Filed as a Part of the Registration Statement; Exhibits and Financial Statement Schedules

[Same as Item 12, Proposed Form A, except this Form C substitutes the following provision for paragraph (c) of the Form A item.]

(c) Financial statement schedules required by Regulation S–X and Item 7(a)(5) of this Form. These schedules shall be lettered or numbered in the manner described for exhibits in paragraph (a).

Item 14. Recent Sales of Unregistered Securities

Furnish the following information as to all securities of the registrant sold by the registrant within the past three years which were not registered under the Securities Act of 1933. Include sales of reacquired securities, as well as new issues, securities issued in exchange for property, services, or other securities, and new securities resulting from the modification of outstanding securities.

(a) Give the date of sale and the title and amount of securities sold.

(b) Give the names of the principal underwriters, if any. As to any securities sold not publicly offered, name the persons or identify the class of persons to whom the securities were sold.

(c) As to securities sold for cash, state the aggregate offering price and the aggregate underwriting discounts or commissions. As to any securities sold otherwise than for cash, state the nature of the transaction and the nature and aggregate amount of consideration received by the registrant.

(d) Indicate the section of the Act or the rule of the Commission under which exemption from registration was claimed and state briefly the facts relied upon to make the exemption available.

Instructions. 1. Information need not be set forth as to notes, drafts, bills of exchange, or bankers' acceptances which mature not later than one year from the date of issuance.

2. If the sales were made in a series of transactions, the information may be given by such totals and periods as will reasonably convey the information required.

Item 15. Undertakings

[Same as Item 13, Proposed Form A.]

Signatures

[Same as Signature provision in Proposed Form A.]

Part 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

2. By amending § 230.170 to read as follows (► ◄ arrows indicate addition):

§ 230.170 Prohibition of use of certain financial statements.

Financial statements which purport to give effect to the receipt and applicant of any part of the proceeds from the sale of securities for cash shall not be used unless such securities are to be offered through underwriters and the underwriting arrangements are such that the underwriters are or will be committed to take and pay for all of the securities, if any are taken, prior to or within a reasonable time after the commencement of the public offering, or if the securities are not so taken to refund to all subscribers the full amount of all subscription payments made for the securities. ► However, the above sentence is not applicable to financial statements that are required by the prospectus summary item of a registration statement form. ◄ The caption of any such financial statement shall clearly set forth the assumptions upon which such statement is based. The caption shall be in type at least as large as that used generally in the body of the statement.

(Secs. 6, 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; secs. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; 15 U.S.C. 77f, 77g, 77j, 77(s)(a))

Authority

These forms are being proposed pursuant to Sections 6, 7, 10 and 19(a) of the Securities Act of 1933.

By the Commission.

George A. Fitzsimmons,

Secretary.

September 2, 1980.

BILLING CODE 8010-01-M

APPENDIX I
PART I

PROFILE OF FORM S-16 OFFERINGS AND ISSUERS
MAY 1978 - JUNE 1980

Prepared by the Directorate of Economic and Policy Analysis

T.1 - TYPE OF SECURITY

	May 1978 - Jan. 1979		Feb. 1979 - Sept. 1979		Oct. 1979 - June 1980	
	Number of Offerings	Percent of Offerings	Number of Offerings	Percent of Offerings	Number of Offerings	Percent of Offerings
DEBT	24	40.0%	64	50.0%	156	45.5%
STOCK	34	56.7	49	38.3	174	50.7
OTHER	2	3.3	15	11.7	13	3.8
TOTALS	60	100.0%	128	100.0%	343	100.0%

T.2 - INDUSTRY OF ISSUER

EXTRACTIVE	2	4.0%	3	3.1%	11	4.5%
MANUFACTURING	13	26.0	31	32.3	103	41.7
TRANSPORTATION	5	10.0	1	1.0	5	2.0
COMMUNICATION	1	2.0	4	4.2	12	4.9
UTILITIES	16	32.0	26	27.1	51	20.6
FINANCE	5	10.0	22	22.9	29	11.7
MISCELLANEOUS	8	16.0	9	9.4	36	14.6
TOTAL	50	100.0%	96	100.0%	247	100.0%

T.3 - TIME IN REGISTRATION

0-1 Week	5	8.6%	25	19.7%	69	20.2%
1-2 Weeks	15	25.9	43	33.9	111	32.5
2-3 Weeks	13	22.4	25	19.7	62	18.1
3-4 Weeks	11	19.0	22	17.3	36	10.5
4-6 Weeks	8	13.8	5	3.9	37	10.8
6-8 Weeks	2	3.4	4	3.1	13	3.8
8+ Weeks	4	6.9	3	2.4	14	4.1
TOTAL	58	100.0%	127	100.0%	342	100.0%

NOTE: (1) The total number of offerings varies from table to table due to the occasional incidence of missing data which caused some of the offerings to be excluded from certain tables. Offerings are grouped into time periods based upon filing date. Tabulations exclude extended offerings (i.e., employee savings and thrift plans, stock purchase plans, dividend reinvestment plans and American depository receipts), rights and warrants offerings, identified wholly owned subsidiaries, and secondary offerings. The number of offerings and the number of issuers do not coincide because issuers who made more than one offering during the period are accounted for as single issuers.

(2) In many cases, the time in registration depends upon the registrant's own time schedule.

FORM S-16 Tables (continued)

T.4 - AMOUNT OF OFFERING

($000's, except for number of offerings)

	MAY 78 - JAN. 79	FEB. 79 - SEPT. 79	OCT. 79 - JUNE 80
DEBT ISSUES			
NO. OF OFFERINGS	24	64	156
MEDIAN	100,000	100,000	99,200
MEAN	115,493	124,683	108,027
MINIMUM	24,610	8,505	2,500
MAXIMUM	500,000	498,125	600,000
STANDARD DEVIATION	92,587	94,050	90,430
EQUITY ISSUES			
NO. OF OFFERINGS	34	49	174
MEDIAN	23,550	25,000	15,000
MEAN	31,732	42,516	33,742
MINIMUM	164	126	8
MAXIMUM	135,250	328,000	334,028
STANDARD DEVIATION	32,642	57,621	53,426
OTHER ISSUES			
NO. OF OFFERINGS	2	15	13
MEDIAN	110,038	100,000	60,000
MEAN	110,038	128,179	167,600
MINIMUM	21,249	35,000	349
MAXIMUM	198,828	250,000	732,087
STANDARD DEVIATION	125,567	61,915	258,181

T.5 - ANNUAL REVENUES OF ISSUERS 1/

($000,000's, except for number of offerings)

	MAY 78 - JAN. 79	FEB. 79 - SEPT. 79	OCT. 79 - JUNE 80
NO. OF ISSUERS	50	96	237
MEDIAN	580	869	773
MEAN	1,298	1,947	1,861
MINIMUM	27	6	9
MAXIMUM	6,339	21,076	44,488
STANDARD DEVIATION	1,623	3,214	3,835

1/ Most recent fiscal year prior to offering.

FORM S-16 TABLES (continued)

T.6 - ANNUAL EARNINGS OF ISSUERS 2/

($000,000's, except number of offerings)

	MAY 78 - JAN. 79	FEB. 79 - SEPT. 79	OCT. 79 - JUNE 80
NO. OF ISSUERS	50	96	237
MEDIAN	60	85	66
MEAN	92	162	155
MINIMUM	0	1	(121)
MAXIMUM	395	3,111	8,767
STANDARD DEVIATION	92	342	583

T.7 - ANNUAL TRADING VOLUME OF ISSUERS' COMMON STOCK

(000's, except number of offerings)

NO. OF ISSUERS	49	91	238
MEDIAN	5,271	5,920	4,415
MEAN	8,242	8,306	7,507
MINIMUM	31	3	3
MAXIMUM	39,292	46,182	47,610
STANDARD DEVIATION	8,602	8,561	8,688

T.8 - SHAREHOLDERS OF ISSUERS' COMMON STOCK 3/

NO. OF ISSUERS	46	83	210
MEDIAN	30,340	22,001	16,772
MEAN	46,155	55,522	55,439
MINIMUM	2,630	1,025	826
MAXIMUM	251,516	580,572	2,939,090
STANDARD DEVIATION	58,533	90,030	207,748

2/ Most recent fiscal year prior to offerings.

3/ Excludes companies not listed by Moody's Investors Services, Inc.

Source: Moody's Investors Service, Inc. (various manuals) and
Registered Offerings Statistical File
Directorate of Economic and Policy Analysis
Securities and Exchange Commission

PROFILE OF TWENTY-FIVE LARGEST AND TWENTY-FIVE SMALLEST FORM S-16 ISSUERS RANKED ON THE BASIS OF ANNUAL REVENUE
MAY 1978 - JUNE 1980

T.1 - TYPE OF SECURITY

	May 1978 - Jan. 1979		Feb. 1979 - Sept. 1979		Oct. 1979 - June 1980	
	Twenty-Five Largest	Twenty-Five Smallest	Twenty-Five Largest	Twenty-Five Smallest	Twenty-Five Largest	Twenty-Five Smallest
DEBT	13	5	17	6	18	0
STOCK	11	19	4	16	6	23
OTHER	1	1	4	3	1	2
TOTAL	25	25	25	25	25	25

T.2 - INDUSTRY OF ISSUER

EXTRACTIVE	0	2	0	2	0	5
MANUFACTURING	9	4	14	7	14	13
TRANSPORTATION	1	4	0	0	0	0
COMMUNICATION	1	0	1	1	3	1
UTILITIES	7	9	3	9	1	1
FINANCE	2	3	5	5	3	2
MISCELLANEOUS	5	3	2	1	4	3
TOTAL	25	25	25	25	25	25

T.3 - TIME IN REGISTRATION

0 - 1 Week	2	4	9	3	10	0
1 - 2 Weeks	7	5	9	6	5	4
2 - 3 Weeks	8	3	3	4	2	6
3 - 4 Weeks	4	3	3	7	3	3
4 - 6 Weeks	3	5	1	2	2	5
6 - 8 Weeks	0	2	0	2	2	2
8+ Weeks	1	3	0	1	1	5
TOTAL	25	25	25	25	25	25

NOTE: (1) Offerings are grouped into time periods based upon filing date. Tabulations exclude identified wholly owned subsidiaries and issuers of extended offerings (i.e., employee savings and thrift plans, stock option plans, stock purchase plans, dividend reinvestment plans and American depository receipts), rights and warrants offerings, and secondary offerings.

(2) In many cases, the time in registration depends upon the registrant's own time schedule.

FORM S-16 Tables (continued)

T.4 - AMOUNT OF OFFERING ($000's)

	May 78 - Jan. 79		Feb. 79 - Sept. 79		Oct. 79 - June 80	
	Twenty-Five Largest	Twenty-Five Smallest	Twenty-Five Largest	Twenty-Five Smallest	Twenty-Five Largest	Twenty-Five Smallest
MEDIAN	99,500	21,249	150,000	25,000	150,000	1,970
MEAN	98,473	26,890	162,163	40,802	172,029	35,457

T.5 - ANNUAL REVENUES OF ISSUERS 1/ ($000,000's)

MEDIAN	1,505	227	3,526	214	6,622	53
MEAN	2,349	247	5,454	212	9,353	49

T.6 - ANNUAL EARNINGS OF ISSUERS 1/ ($000,000's)

MEDIAN	119	32	230	28	420	4
MEAN	148	33	429	31	709	7

T.7 - ANNUAL TRADING VOLUME OF ISSUERS' COMMON STOCK (000's)

MEDIAN	6,723	2,812	13,982	1,181	15,269	1,429
MEAN	11,869	6,869	15,576	2,165	16,437	2,059

T.8 - SHAREHOLDERS OF ISSUERS' COMMON STOCK

MEDIAN	42,072	16,137	59,712	8,891	75,782	1,831
MEAN	70,569	23,775	122,988	18,962	215,548	2,130

1/ For the most recent fiscal year prior to offering.

SOURCE: Moody's Investors Services, Inc. (various manuals) and
Registered Offerings Statistical File
Directorate of Economic and Policy Analysis
Securities and Exchange Commission

[FR Doc. 80-27818 Filed 9-19-80; 10:30 am]
BILLING CODE 8010-01-C

17 CFR Parts 210, 229, 230, 240, 249, 250, and 260

[Releases Nos. 33-6236; 34-17118; 35-21701; 39-583; File No. S7-850]

Proposed Revision of Form 10-Q, Quarterly Report

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is publishing for public comment proposed amendments to Form 10-Q, Quarterly Report, under the Securities Exchange Act of 1934 designed to (1) encourage and facilitate the integration of formally filed quarterly reports with informal quarterly reports furnished to shareholders; (2) make certain disclosure requirements for interim periods consistent with the revised disclosure requirements for annual periods; and (3) centralize a uniform set of instructions for interim financial statements in Regulation S-X, which governs the form and content of financial statements filed under the federal securities laws. The proposed revisions are intended to simplify present rules and reduce the reporting burdens of most registrants.

DATE: Comments must be received on or before December 15, 1980.

ADDRESS: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities, and Exchange Commission, Washington, D.C. 20549. Comment letters should refer to File No. S7-850. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Accounting Matters—Lawrence C. Best, (202) 272-2130, Office of the Chief Accountant; Other Matters—Bruce S. Mendelsohn, (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission announced today the publication for comment of a revised Form 10-Q (17 CFR 249.318a), the quarterly report form required to be filed by most publicly owned companies, an amendment to Item 11 of Regulation S-K (17 CFR 229.20) which would set forth the requirements as to management's discussion and analysis of interim financial information, a new Article 10 in Regulation S-X which would become the central location of instructions as to form and content of interim financial statements, and a related amendment to the projections safe-harbor rule, Rule 175 (17 CFR 230.175) under the Securities Act. The proposed revisions to Form 10-Q are intended to make it easier for those registrants who may wish to combine the financial information section of the Form 10-Q with an informal quarterly report to shareholders. This release evidences the Commission's intention to encourage the practice of sending quarterly reports to shareholders by emphasizing that issuers have the option of incorporating their informal communications into the Form 10-Q. The Commission believes that costs to issuers can be reduced and shareholder communications enhanced by such integrated reporting.

The proposed amendments to Form 10-Q are intended to be responsive to the recommendation of the Advisory Committee on Corporate Disclosure that the Commission encourage companies to publish readable, understandable quarterly reports to shareholders which include the information content of a Form 10-Q, and to file these documents with the Commission in satisfaction of Form 10-Q reporting obligations.[1] The Commission believes that companies can reduce their burdens by utilizing the option to incorporate by reference to their informal quarterly report in order to fulfill the requirements of Part I, Financial Information, of Form 10-Q. Additionally, if this option is widely used, it could result in an upgrading of the corporate communications system.

The proposed revised Form 10-Q has been designed to be consistent with the newly amended Form 10-K and to be utilized as a part of the Commission's proposed integrated disclosure system. In this regard, the Commission today published four releases announcing the adoption of certain forms and rules which represent a major effort to achieve integration of the disclosure systems under the Securities Act and the Exchange Act.[2] These releases include (1) amendments to Form 10-K (17 CFR 249.310) and rule 14a-3 (17 CFR 240.14a-3) under the Exchange Act and Regulation S-K (17 CFR 229.20) under the Securities Act and the Exchange Act; (2) the adoption of Form S-15 for the registration under the Securities Act of 1933 of securities issued in certain business combination transactions; (3) a general revision of Regulation S-X facilitating, to the extent possible, integration of reporting; and (4) additions to Regulation S-X (17 CFR Part 210) establishing uniform instructions as to financial statements for certain forms and reports required pursuant to the Securities Act and the Exchange Act. In addition, the Commission proposed for public comment a new registration statement system under the Securities Act involving integrated and simplified disclosure.[3] The Commission believes that the proposed changes in Form 10-Q should be viewed in relation to these other rules, forms and proposals, as a further step in implementing the integrated disclosure system.

Discussion of Proposed Revisions

Under the proposals, the structure of Form 10-Q would be essentially the same as the present form. As is currently the case, the interim financial information and management's discussion and analysis called for by Part I of the Form would not be deemed filed for purposes of Section 18 of the Exchange Act[4] and could be incorporated by reference from an informal quarterly report to security holders. Part II of the form is proposed to be amended to eliminate certain items which may provide duplicative disclosure or which may be unnecessary.

Financial Statement Instructions Centralized in Regulation S-X

In Securities Act Release No. 6234 (September 2, 1980), published concurrently with this release, the Commission adopted amendments to conform requirements as to form and content of interim financial statements under the Securities Act with the form and content requirements for interim statements under the Exchange Act (Form 10-Q). The rules adopted, which are applicable to registration statements under the Securities Act, reference the form and content provisions of the current Form 10-Q.

Consistent with the Commission's goals to simplify and make uniform the disclosure requirements under the Securities Act and the Exchange Act, the amendments proposed by this release would remove the instructions as to interim financial statements from

[1] Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission, House Committee on Interstate and Foreign Commerce, 95th Cong., 1st Sess. (1977), Committee Print 95-29, at 470-5.

[2] Securities Act Release Nos. 6231 (Form 10-K, Rule 14a-3 and Regulation S-K); 6232 (Form S-15); 6233 (Revision of Regulation S-X; and 6234 (Uniform Instructions as to Financial Statements) (September 2, 1980).

[3] Securities Act Release No. 6235 (September 2, 1980).

[4] See Rules 13a-13 (17 CFR 240.13a-13) and 15d-13 (17 CFR 240.15d-13) under the Exchange Act.

the current Form 10–Q and establish a uniform set of instructions as to interim financial statements in a new Article 10 of Regulation S–X. The Commission believes that the centralization of these instructions in Regulation S–X represents the next logical step in establishing uniform instructions as to financial statements under both Acts.

Clarification of Interim Disclosure Rules

In addition to the centralization of the uniform instructions as to interim financial statements in Regulation S–X, the Commission is proposing certain modifications to the existing requirements as discussed in this and the following sections.

First, the Commission is proposing to revise the instruction regarding footnote disclosure accompanying interim financial statements. To alleviate present interpretative problems and to clarify the Commission's intent,[5] the revised instruction would make clear that certain disclosures are required to supplement the interim financial statements. The language of Instruction 4(a)(3) to Part I of Form 10–Q,[6] apparently has caused confusion as to whether any footnote disclosure is necessary for interim periods. The proposed amendment attempts to make clear the nature and extent of disclosure required for interim reports filed with the Commission.

The condensed interim financial information should include disclosures either on the face of the financial statements, in accompanying footnotes, or in management's discussion and analysis, sufficient so as to make the interim information presented not misleading. The proposed amendments specify that registrants may presume that users of the condensed interim financial information have read the latest annual report distributed to security holders or have access to such report, and that the adequacy of additional disclosure needed for a fair presentation, except in regard to material uncertainties, may be determined in that context. Accordingly, under the proposal, footnote disclosure which would substantially duplicate the disclosure contained in the recent annual report to security holders, such as a statement of significant accounting policies and practices, details of accounts which have not changed significantly in amount or composition since the end of the most recently completed fiscal year, and detailed disclosures prescribed by Rule 4–08 of Regulation S–X (note requirements for complete financial statements) may be omitted.

However, disclosure under the proposed amendment would be provided where events or circumstances which have a material impact on the registrant have occurred since the end of the most recent fiscal year. Disclosures would encompass, for example, significant changes since the end of the most recently completed fiscal year in such items as: Accounting principles and practices; estimates inherent in the preparation of financial statements; status of long-term contracts; capitalization including significant new borrowings or modification of existing financing arrangements; and the reporting entity resulting from business combinations or dispositions. Notwithstanding these proposed requirements, where material uncertainties; or contingencies exist, dislcosure of such matters would be required to be provided even though a significant change since year end may not have occurred.

Reference to Review by Independent Accountants

A revision regarding reporting where reference is made by the registrant to a review of interim data by an independent accountant is being proposed in response to the issuance of Statement on Auditing Standards ("SAS") No. 24.[7] This new SAS, which supersedes previous standards for independent auditor involvement with interim financial information, provides the accounting profession guidance on the nature timing, and extent of procedures to be applied in conducting interim reviews and on the reporting applicable to such engagements.

Under existing rules,[8] if a registrant states that an independent accountant has performed a review of interim data, it must indicate whether all adjustments or additional disclosures proposed by the independent accountant have been reflected in the data presented, and, if not why not. Further, a letter from the independent accountant may be included as an exhibit to the form confirming or otherwise commenting upon the registrant's representations.

The provisions of SAS No. 24 now require, among other things, a statement in the independent accountants' report as to whether he is aware of any material modifications that should be made to the interim financial information so that it conforms with generally accepted accounting principles. The Commission believes that this expression of limited assurance now provided for by SAS No. 24 may have rendered unnecessary the present Form 10–Q requirement discussed in the preceding paragraph and, therefore, a modification to such requirement is being proposed. Under the proposed rule, if a review of interim data is made in accordance with the established professional standards and procedures for such reviews and the registrant makes reference to such review, the report of the independent accountant on the review would be required to be included as an exhibit to the filing. Additionally, the proposal would delete the present requirement for a statement by the registrant regarding adjustments and disclosures proposed by the independent accountant.

Management's Discussion and Analysis

An important feature of the proposed Form 10–Q is Item 2 of Part I, Management's Discussion and Analysis of Financial Condition and Results of Operations, which incorporates the requirements of proposed paragraph (b) of new item 11 under Regulation S–K. The proposed sub-item would require a discussion of the year to date, the corresponding period in the prior year and, if the registrant has elected to present a trailing year, of the trailing year. The current requirement to discuss the immediately preceding quarter is proposed to be deleted.

Accordingly, Item 11 of Regulation S–K would include requirements for management's discussion and analysis of annual and interim financial information. The proposed requirement

[5] See Securities Act Release No. 5611 (September 10, 1975) (40 FR 46107).

[6] Current Instruction 4(a)(3) reads:

"Rules 3–08 and 3–16 of Regulation S–X and other requirements which calls for detailed footnote disclosure and schedules shall not apply. As with all information filed with the Commission, however, disclosures must be adequate to make the information presented not misleading."

[7] Statement on Auditing Standards No. 24, "Review of Interim Financial Information," American Institute of Certified Public Accountants, March 1979.

[8] Present Instruction 7 to Part I of Form 10–Q, which would be relocated and modified in Regulation S–X, reads as follows:

The financial information included in this form need not be reviewed prior to filing by a independent public accountant. If, however, a review of the data is made in accordance with established professional standards and procedures for such a review, the registrant may state that the independent accountant has performed such a review. If such a statement is made, the registrant shall indicate whether all adjustments or additional disclosures proposed by the independent accountant have been reflected in the data presented, and, if not why not. In addition, a letter from the registrant's independent accountant confirming or otherwise commenting upon the registrant's representations and making such other comments as the independent accountant deems appropriate may be included as an exhibit to the form.

would supplement the analysis that will be required in Form 10–K. That is, the registrant's discussion and analysis would focus on the material changes in financial condition and results of operations as reflected in the interim financial statements. It is intended that the proposed Form 10–Q discussion would serve as an update to the discussion in the annual report and would need to address only material changes. Furthermore, as a provision in Regulation S–K, the management's discussion and analysis of interim financial information would become uniform for forms filed under both the Exchange Act and the Securities Act.

Modifications to Part II of the Form

Item 3, Changes in Security for Registered Securities, Item 5, Increase in Amount Outstanding of Securities or Indebtedness, and Item 6, Decrease in Amount Outstanding of Securities or Indebtedness, are proposed to be deleted from the form. The Commission believes that the information elicited by these items is otherwise generally available and is not necessary in a quarterly report.[9] In addition, the instruction requesting issuers to advise the staff of their intention to file a registration statement on Form S–16 or S–7 is proposed to be deleted because experience has proven that the instruction is not useful.

An additional proposal would require that the Form 10–Q be signed on the registrant's behalf by a duly authorized officer of the registrant and by the principal financial or chief accounting officer of the registrant. This represents a technical amendment which would correct an inadvertent deletion made in Release No. 33–5951 (July 28, 1978) (43 FR 33904).

Safe Harbor Rule for Projections

Finally, the Commission is proposing an amendment to the safe harbor rule for forward-looking information, Rule 175 under the Securities Act,[10] which would make clear that a projection of the type enumerated by that rule is protected if included or properly reaffirmed in Part I of Form 10–Q. This would codify the staff position which deems Part I "filed" for purposes of the safe-harbor rule even though it is not filed for purposes of Section 18 of the Exchange Act.

[9] It should be noted that appropriate technical amendments to Item 7 of Regulation S–K, Exhibits, would be made if these proposed deletions are finalized.

[10] Rule 3b–6 (17 CFR 240.3b–6) under the Exchange Act, and Rule 103A (17 CFR 250.103A) under the Public Utility Holding Company Act of 1935, and Rule 0–11 (17 CFR 260.0–11) under the Trust Indenture Act of 1939.

General and Specific Inquires

Any interested person wishing to submit written comments on the proposed amendments, as well as on other matters which might have an impact upon the proposals contained herein, is invited to do so. Moreover, commentators are urged to address any alternatives or modifications which may assist the Commission in achieving the objectives set forth in the release.

The Commission also solicits comments as to whether the proposed amendments would have an adverse effect on competition or would impose a burden on competition. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 23(a)(2) of the Exchange Act.

Text of Proposals

The text of the proposals is set forth below.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. 17 CFR 249.308a is proposed to be amended by revising Form 10–Q to read as follows:

§ 249.308a Form 10–Q, for quarterly reports under section 13 or 15(d) of the Securities Exchange Act.

Form 10–Q

Securities and Exchange Commission, Washington, D.C. 20549

Quarterly Report Under Section 13 or 15(d) of the Securities Exchange Act of 1934

For quarter ended _____

Commission file number _____

_____

(Exact name of registrant as specified in its charter)

_____

(State or other jurisdiction of incorporation or organization)

_____

(I.R.S. employer identification No.)

_____

_____

(Address of principal executive offices and Zip Code)

Registrant's telephone number, including area code_____

_____

Former name, former address and former fiscal year, if changed since last report.

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes——. No——.

Applicable Only to Issuers Involved in Bankruptcy Proceedings During the Preceding Five Years:

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Sections 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court.

Yes——. No——.

(Applicable Only to Corporate Issuers)

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the close of the period covered by this report.

Exchange Act Forms

For Quarterly Reports Under Section 13 or 15(d) of the Securities Exchange Act of 1934

A. Rule as to Use of Form 10–Q

(a) Form 10–Q shall be used for quarterly reports under Section 13 or 15(d) of the Securities Exchange Act of 1934, filed pursuant to Rule 13a–13 or Rule 15d–13.

(b) A report on this form shall be filed within 45 days after the end of each of the first three fiscal quarters of each fiscal year. No report need be filed for the fourth quarter of any fiscal year.

B. Application of General Rules and Regulations

(a) The General Rules and Regulations under the Act contain certain general requirements which are applicable to reports on any form. These general requirements should be carefully read and observed in the preparation and filing of reports on this form.

(b) Particular attention is directed to Regulation 12B which contains general requirements regarding matters such as the kind and size of paper to be used, the legibility of the report, the information to be given whenever the title of securities is required to be stated, and the filing of the report. The definitions contained in Rule 12b–2 should be especially noted. See also Regulations 13A and 15D.

C. Preparation of Report

(a) This is not a blank form to be filled in. It is a guide copy to be used in preparing the report in accordance with Rules 12b–11 and 12b–12. The Commission does not furnish blank copies of this form to be filled in for filing.

(b) These general instructions are not be filed with the report. The instructions to the various captions of the form are also to be omitted from the report as filed.

D. Incorporation by Reference

(a) If the registrant makes available to its stockholders or otherwise publishes, within the period prescribed for filing the report, a document or statement containing information meeting the requirements of Part I of this form, the information called for may be incorporated by reference to such published document or statement provided copies thereof are filed as an exhibit to Part I of the report on this form. Pursuant to Rule 13a–13(d) and (17 CFR 240.13a–13) and Rule 15d–13(d) (17 CFR 240.15d–13(d)), the financial information required by Items (1) and (2) of Part I of this form shall not be

deemed filed for the purpose of Section 18 of the Act or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act.

(b) Other information may be incorporated by reference in answer or partial answer to any item or items of Part II of this form in accordance with the provisions of Rule 12b–23.

E. Signature and Filing of Report

Three complete copies of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, and five additional copies which need not include exhibits, shall be filed with the Commission. At least one complete copy of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, shall be filed with each exchange on which any class of securities of the registrant is registered. At least one complete copy of the report filed with the Commission and one such copy filed with each exchange shall be manually signed on the registrant's behalf by a duly authorized officer of the registrant and by the principal financial or chief accounting officer of the registrant. Copies not manually signed shall bear typed or printed signatures.

F. Omission of Information by Certain Wholly Owned Subsidiaries

If, on the date of the filing of its report on Form 10–Q, the registrant meets the conditions specified in paragraph (a) below, then such registrant may omit the information called for in the Part II Items specified in paragraph (b) below.

(a) Conditions for availability of the relief specified in paragraph (b) below:

(1) All of the registrant's equity securities are owned, either directly or indirectly, by a single person which is a reporting company under the Act and which has filed all the material required to be filed pursuant to section 13, 14 or 15(d) thereof, as applicable.

(2) During the preceding thirty-six calendar months and any subsequent period of days, there has not been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within thirty days, with respect to any indebtedness of the registrant or its subsidiaries, and there has not been any material default in the payment of rentals under material long-term leases; and

(3) There is prominently set forth, on the cover page of the Form 10–Q, a statement that the registrant meets the conditions set forth in General Instruction F(a)(1) and (2) of Form 10–Q and is therefore filing this Form with the reduced disclosure format.

(b) Registrants meeting the conditions specified in paragraph (a) above may omit the information called for in the following Part II Items: Item 2, Changes in Securities; Item 3, Defaults Upon Senior Securities; and Item 4, Submission of Matters to a Vote of Security Holders.

PART I—FINANCIAL INFORMATION

Item 1. Condensed Financial Statements

Provide the information required by Rule 10–01 of Regulation S–X.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Furnish the information required by Item 11(b) of Regulation S–K (17 CFR 229.20).

PART II—OTHER INFORMATION

Instruction. The report shall contain the item numbers and captions of all applicable items of Part II, but the text of such items may be omitted provided the responses clearly indicate the coverage of the item. Any item which is inapplicable or to which the answer is negative may be omitted and no reference thereto need be made in the report. If substantially the same information has been previously reported by the registrant, an additional report of the information on this form need not be made. The term "previously reported" is defined in Rule 12b–2 (17CFR 240.12b–2).

Item 1. Legal Proceedings

The description of legal proceedings shall include the information required by Item 5 of Regulation S–K, 17 CFR 229.20.5. As to such proceedings which have been terminated during the period covered by the report, provide similar information, including the date of termination and a description of the disposition thereof with respect to the registrant and its subsidiaries.

Instruction. A legal proceeding need only be reported in the 10–Q filed for the quarter in which it first became a reportable event and in subsequent quarters in which there have been material developments. Subsequent Form 10–Q filings in the same fiscal year in which a legal proceeding or a material development is reported should reference any previous reports in that year.

Item 2. Change in Securities

(a) If a constituent instruments defining the rights of the holders of any class of registered securities have been materially modified, give the title of the class of securities involved and state briefly the general effect of such modification upon the rights of holders of such securities.

(b) If the rights evidenced by any class of registered securities have been materially limited or qualified by the issuance or modification of any other class of securities, state briefly the general effect of the issuance or modification of such other class of securities upon the rights of the holders of the registered securities.

Instruction. Working capital restrictions and other limitations upon the payment of dividends are to be reported hereunder.

Item 3. Defaults Upon Senior Securities

(a) If there has been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within 30 days, with respect to any indebtedness of the registrant or any of its significant subsidiaries exceeding 5 percent of the total assets of the registrant and its consolidated subsidiaries, identify the indebtedness and state the nature of the default. In the case of such a default in the payment of principal, interest, or a sinking or purchase fund installment, state the amount of the default and the total arrearage on the date of filing this report.

Instruction. This paragraph refers only to events which have become defaults under the governing instruments, i.e., after expiration of any period of grace and compliance with any notice requirements.

(b) If any material arrearage in the payment of dividends has occurred or if there has been any other material delinquency not cured within 30 days, with respect to any class of preferred stock of the registrant which is registered or which ranks prior to any class of registered securities, or with respect to any class of preferred stock of any significant subsidiary of the registrant, give the title of the class and state the nature of the arrearage or delinquency. In the case of an arrearage in the payment of dividends, strate the amount and the total arrearage on the date of filing this report.

Instruction. Item 4 need not be answered as to any default or arrearage with respect to any class of securities all of which is held by, or for the account of, the registrant or its totally held subsidiaries.

Item 4. Submission of Matters to a Vote of Security Holders

If any matter has been submitted to a vote of security holders, through the solicitation of proxies or otherwise, furnish the following information:

(a) The date of the meeting and whether it was an annual or special meeting.

(b) If the meeting involved the election of directors, state the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(c) Briefly describe each other matter voted upon at the meeting and state the number of affirmative votes and the number of negative votes cast with respect to each such matter.

(d) Describe the terms of any settlement between the registrant and any other participant (as defined in Rule 14a–11 of Regulation 14A under the Act) terminating any solicitation subject to Rule 14a–11, including the cost or anticipated cost to the registrant.

Instructions. 1. If any matter has been submitted to a vote of security holders otherwise than at a meeting of such security holders, corresponding information with respect to such submission shall be furnished. the solicitation of any authorization or consent (other than proxy to vote at a stockholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of security holders within the meaning of this item.

2. Paragraph (a) need be answered only if paragraph (b) or (c) is required to be answered.

3. Paragraph (b) need not be answered if (i) proxies for the meeting were solicited pursuant to Regulation 14 under the Act, (ii) there was no solicitation in opposition to the management's nominees as listed in the proxy statement, and (iii) all of such nominees were elected. if the registrant did not solicit proxies and the board of directors as previously reported to the Commission was re-elected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto.

4. Paragraph (c) need not be answered as to procedural matters or as to the selection or approval of auditors.

5. If the registrant has furnished to its security holders proxy soliciting material containing the information called for by paragraph (d), the paragraph may be answered by reference to the information contained in such material.

6. If the registrant has published a report containing all of the information called for by this item, the item may be answered by a reference to the information contained in such report, provided copies of such report are filed as an exhibit to the report on this form.

Item 5. Other Materially Important Events

The registrant may, at its option, report under this item any events, not previously reported in a report on Form 8–K, with respect to which information is not otherwise called for by this form but which the registrant deems of material importance to security holders.

Item 6. Exhibits and Reports on Form 8–K [17 CFR 249.308].

(a) The exhibits shall be furnished in accordance with the provisions of Item 7 of Regulation S–K, 17 CFR 229.20.

(b) Reports on Form 8–K. State whether any reports on Form 8–K have been filed during the quarter for which this report is filed, listing the items reported, any financial statements filed, and the dates of any such reports.

Signatures

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

(Registrant)
Date

(Signature)*
Date

(Signature)**

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S–K

2. 17 CFR 229.20 is proposed to be amended by revising Item 11 (Added in Release No. 33–6231.) as follows: [► ◄ arrows indicate additions and [ ] brackets indicate deletions):

§ 229.20 Information required in document.

* * * * *

Item 11. Management's discussion and analysis of financial condition and results of operations.

►(a)◄ Discuss registrant's financial condition, changes in financial condition and results in operations. The discussion shall provide . . .

* * * * *

►(1)◄ [(a)] Liquidity

* * * * *

►(2)◄ [(b)] Capital Resources

* * * * *

►(3)◄ [(c)] Results of Operations

* * * * *

Instructions

* * * * *

►b. If interim financial statements are presented, a narrative analysis of the financial condition and results of operation shall be provided so as to enable the reader to assess material changes in financial condition and results of operations between the periods specified below.

(1) Material Changes in Financial Condition

Discuss material changes in financial condition, particularly addressing material changes in those items specifically listed in paragraph (a) of this Item 11 of Regulation S–K (17 CFR 229.20), by comparing financial condition at the end of the most recent interim period for which financial statements are presented with financial condition at the end of the preceding fiscal year. If financial statements are presented as of the end of the corresponding interim period in the preceding fiscal year, a comparison shall also be made with financial condition at the end of such interim period. If both the comparisons with the prior year end and the prior interim period are required, the discussion and analysis may be combined at the discretion of the registrant.

(2) Material Changes in Results of Operations

Discuss any material changes in the registrant's results of operations with respect to the most recent fiscal year-to-date period for which financial statements are presented and the corresponding year-to-date period in the preceding fiscal year. If the registrant is required to or has elected to present financial statements for the most recent fiscal quarter, such discussion also shall cover material changes with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year.

If the registrant has elected to provide financial statements for the twelve month period ending at the end of the most recent interim period for which financial statements have been presented, the discussion also shall cover material changes with respect to that twelve month period and the corresponding twelve month period ending at the end of the corresponding interim period in the preceding fiscal year.

Instructions

1. If interim financial statements are required to be presented and such financial statements are not accompanied by fiscal year financial statements (as is the case in Form 10–Q and in certain registration forms which call for the presentation of interim financial statements in the manner required by Part I of Form 10–Q), then only the discussion called for by this paragraph (b) of Item 11 of Regulation S–K shall be required. In all other cases, where both fiscal year financial statements and interim financial statements are presented together in the same document, both the discussions called for by paragraph (a) and by this paragraph (b) shall be required, and such discussions may be combined.

2. The registrant's discussion and analysis should focus on the material changes in financial condition and results of operations as reflected in the interim financial statements.

3. In order to ensure understanding of material changes, the information provided should include that which is available to the registrant without undue effort or expense but which is not obvious from the registrant's condensed interim financial statements.

4. Where the interim financial statements reveal material changes from period to period in one or more significant line items, the causes for the changes should be described if they have not already been disclosed: *Provided, however,* If the causes for a change in one line item also relate to other line items, no repetition is required. Registrants need not recite the amounts of changes from period to period which are readily computable from the financial statements. The discussion should not merely repeat numerical data contained in the condensed financial statements.

5. The registrant's discussion of material changes in results of operations should identify any significant elements of the registrant's income or loss from continuing operations which do not arise from or are not necessarily representative of the registrant's ongoing business. Such items might include unusually large promotion or research and development expenses, unusually high or low export activities, identifiable costs associated with a business interruption caused by labor disruptions or other events, or significant gains or losses from disposition of assets.

6. The registrant should discuss any seasonal aspects of its business which have had a material effect upon its financial condition or results of operation.

7. Registrants are encouraged but are not required to discuss forward looking information.

8. Additional disclosures required for interim information by Rule 10–01(a)(3) of Regulation S–X (17 CFR Part 210) may be satisfied by inclusion in the management's discussion and analysis.◄

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

3. A new § 210.10–01 (Interim financial statements) is proposed to be added as

*See General Instruction E.

**Print name and title of the signing officer under his signature.

set forth below. The present § 210.10–01 (Financial statements of natural persons) is proposed to be amended by redesignating it as § 210.3–17 and revising it to read as set forth below.

§ 210.10–01 Interim financial statements.

(a) *Condensed statements.* Interim financial statements shall follow the general form and content of presentation prescribed by the other sections of this Regulation with the following exceptions:

(1) Interim financial statements required by this rule need only be provided as to the registrant and its subsidiaries consolidated and may be unaudited. Separate statements of other entities which may otherwise be required by this regulation may be omitted.

(2) Balance sheets and income statements shall include only major captions (i.e., numbered captions) prescribed by the applicable sections of this Regulation with the exception of Inventories where data as to raw materials, work in process and finished goods shall be included, if applicable. Where any major balance sheet caption is less than 10% of total assets, and the amount in the caption has not increased or decreased by more than 25% since the previous balance sheet presented, the caption may be combined with others. When any major income statement caption is less than 15% of average net income for the most recent three years and the amount in the caption has not increased or decreased by more than 20% as compared to the next preceding comparable income statement, the caption may be combined with others. In calculating average net income, loss years should be excluded. If losses were incurred in each of the most recent three years, the average loss shall be used for purposes of this text. Notwithstanding these tests, Rule 4–02 of Regulation S–X applies and de minimis amounts therefore need not be shown separately.

(3) The statement of changes in financial position may be abbreviated, starting with a single figure of funds provided by operations and showing other changes individually only when they exceed 10% of the average of funds provided by operations for the most recent three years. Notwithstanding this test, Rule 4–02 of Regulation S–X applies and de minimis amounts therefore need not be shown separately.

(4) The condensed interim financial information shall include disclosures either on the face of the financial statements, in accompanying footnotes, or in management's discussion and analysis, sufficient so as to make the interim information presented not misleading. Registrants may presume that users of the condensed interim financial information have read the latest annual report distributed to security holders or have access to such report, and that the adequacy of additional disclosure needed for a fair presentation, except in regard to material uncertainties, may be determined in that context. Accordingly, footnote disclosure which would substantially duplicate the disclosure contained in the most recent annual report to security holders, such as a statement of significant accounting policies and practices, details of accounts which have not changed significantly in amount or composition since the end of the most recently completed fiscal year, and detailed disclosures prescribed by Rule 4–08 of this Regulation may be omitted. However, disclosure shall be provided where events or circumstances subsequent to the end of the most recent fiscal year have occurred which have a material impact on the registrant. Disclosures should encompass for example, significant changes since the end of the most recently completed fiscal year in such items as: accounting principles and practices; estimates inherent in the preparation of financial statements; status of long-term contracts; capitalization including significant new borrowings or modification of existing financial arrangements; and the reporting entity resulting from business combinations or dispositions. Notwithstanding the above, where material uncertainties or contingencies exist, disclosure of such matters shall be provided even though a significant change since year end may not have occurred.

(5) Detailed schedules otherwise required by this Regulation may be omitted for purposes of preparing interim financial statements.

(b) *Other instructions as to content.* The following additional instructions shall be applicable for purposes of preparing interim financial statements:

(1) Amounts included in interim financial statements may be stated in thousands or hundred thousands of dollars provided such rounding is clearly stated. Losses or other negative amounts shall be indicated clearly in the caption and the amounts shown in parentheses.

(2) Summarized income statement information shall be given separately as to each subsidiary not consolidated or 50 percent or less owned persons or as to each group of such subsidiaries or fifty percent or less owned persons for which separate individual or group statements would otherwise be required for annual periods. Such summarized information, however, need not be furnished for any such unconsolidated subsidiary or person which would not be required pursuant to Rule 13a–13 or 15d–13 to file quarterly financial information with the Commission if it were a registrant.

(3) If appropriate, the income statement shall show earnings per share and dividends per share applicable to common stock and the basis of the earnings per share computation shall be stated together with the number of shares used in the computation. The registrant shall file as an exhibit a statement setting forth in reasonable detail the computation of per share earnings, unless the computation is otherwise clearly set forth in the report.

(4) If, during the most recent interim period presented the registrant or any of its consolidated subsidiaries, entered into a business combination treated for accounting purposes as a pooling of interests, the interim financial statements for both the current year and the preceding year shall reflect the combined results of the pooled businesses. Supplemental disclosure of the separate results of the combined entities for periods prior to the combination shall be given, with appropriate explanations.

(5) Where the registrant has disposed of any significant portion of its business during any of the periods covered by the interim financial statements, the effect thereof on revenues and net income—total and per share—for all periods shall be disclosed. In addition, where a material business combination accounted for as a purchase has occurred during the current fiscal year, pro forma disclosure shall be made of the results of operations for the current year up to the date of the end of the most recent fiscal quarter (and for the comparable period in the preceding year) as though the companies had combined at the beginning of the period being reported on. This pro forma information should as a minimum show review, income before extraordinary items and the cumulative effect of accounting changes, including such income on a per share basis and net income and net income per share.

(6) In addition to meeting the reporting requirements specified by existing standards for any accounting changes, the registrant shall state the date of any accounting change and the reasons for making it. In addition, for filings on Form 10–Q, a letter from the registrant's independent accountants shall be filed as an exhibit in the first Form 10–Q subsequent to the date of an accounting change indicating whether or not the

change is to an alternative principle which in his judgment if preferable under the circumstances; except that no letter from the accountant need be filed when the change is made in response to a standard adopted by the Financial Accounting Standards Board which requires such change.

(7) Any material retroactive prior period adjustment made during any period covered by the interim financial statements shall be disclosed, together with the effect thereof upon net income—total and per share—of any prior period included and upon the balance of retained earnings. If results of operations for any period presented have been adjusted retroactively by such an item subsequent to the initial reporting of such period, similar disclosure of the effect of the change shall be made.

(8) The interim financial statements furnished shall reflect all adjustments which are, in the opinion of management, necessary to a fair statement of the results for the interim periods presented. A statement to that effect shall be included. Such adjustments shall include, for example, appropriate estimated provisions for bonus and profit sharing arrangements normally determined or settled at year-end.

(c) *Periods to be covered.* The periods for which interim financial statements are to be provided in registration statements are prescribed elsewhere in this regulation (see §§ 210.3–01 and 3–02). For filings on Form 10–Q, interim financial statements shall be provided for the periods set forth below:

(1) Interim balance sheet shall be provided as of the end of the most recent fiscal quarter and as of the corresponding date of the preceding fiscal year.

(2) Interim statements of income shall be provided for the most recent fiscal quarter, for the period between the end of the last fiscal year and the end of the most recent fiscal quarter, and for the corresponding periods of the preceding fiscal year. Such statements may also be presented for the cumulative twelve month period ended during the most recent fiscal quarter and for the corresponding period of the preceding fiscal year.

(3) Interim statements of changes in financial position shall be provided for the period between the end of the last fiscal year and the end of the most recent fiscal quarter, and for the corresponding period of the preceding fiscal year. Such statements may also be presented for the cumulative twelve month period ended during the most recent fiscal quarter and for the corresponding period of the preceding fiscal year.

(4) Registrants engaged in seasonal production and sale of a single-crop agricultural commodity may provide interim statements of income and changes in financial position for the twelve months ended with the most recent fiscal quarter with comparative data for the corresponding period of the preceding fiscal year in lieu of the year-to-date statements specified in paragraphs (c) (2) and (3) of this section.

(d) *Review by independent public accountant.* The interim financial information included in filings with the Commission need not be reviewed by an independent public accountant prior to filing. If, however, a review of the data is made in accordance with established professional standards and procedures for such a review, the registrant may state that the independent accountant has performed such a review. If such a statement is made, the report of the independent accountant on such review shall be included as an exhibit to the filing.

(e) The Commission may, upon the informal written request of the registrant, and where consistent with the protection of investors, permit the omission of any of the interim financial information herein required or the filing in substitution therefor of appropriate information of comparable character. The Commission may also by informal written notice require the filing of other statements in addition to, or in substitution for, the interim statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person for which financial statements are required, or whose statements are otherwise necessary for the protection of investors.

§ 210.3–17 Financial statements of natural persons.

(a) In lieu of the financial statements otherwise required, a natural person may file an unaudited balance sheet as of a date within 90 days of date of filing and unaudited statements of income for each of the three most recent fiscal years.

(b) Financial statements conforming with the instructions as to financial statements of subsidiaries not consolidated and 50 percent or less owned persons under § 210.3–09(a)(1) shall be separately presented for: (1) Each business owned as a sole proprietor, (2) each partnership, business trust, unincorporated association, or similar business organization of which the person holds a controlling interest and (3) each corporation of which the person, directly or indirectly, owns securities representing more than 50 percent of the voting power.

(c) Separate financial statements may be omitted, however, for each corporation, business trust, unincorporated association, or similar business organization if the person's total investment in such entity does not exceed 5 percent of his total assets *and* the person's total income from such entity does not exceed 5 percent of his gross income; *Provided,* That the person's aggregate investment in and income from all such omitted entities shall not exceed 15 percent of his total assets and gross income, respectively.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

4. 17 CFR 230.175(b) is proposed to be amended as follows:

(►◄ arrows indicate additions):

§ 230.175 Liability for Forward-Looking Statements by Issuers.

* * * * *

(b) This rule applies to (1) a forward looking statement (as defined in paragraph (c) below) made in a document filed with the Commission ►(including Part I of a quarterly report on Form 10–Q, 17 CFR 249.308a)◄ or in an annual report to shareholders meeting the requirements of Rules 14a–3 (b) and (c) or 14c–3 (a) and (b) under the Securities Exchange Act of 1934, (2) a statement reaffirming the forward looking statement referred to in (b)(1) subsequent to the date the document was filed or the annual report was made publicly available, or (3) a forward looking statement made prior to the date the document was filed, or the date the annual report was made publicly available if such forward looking statement is reaffirmed in a filed document ►(including Part I of a Form 10–Q)◄ or annual report made publicly available within a reasonable time after the making of such forward looking statement.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT of 1934

5. 17 CFR 240.3b–6 is proposed to be amended as follows:

§ 240.3b–6 Projections of future economic performance by issuers.

(The proposed amendment of the rule is identical to that of Rule 175, § 230.175(b) above.)

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

6. 17 CFR 250.103A is proposed to be amended as follows:

§ 250.103A Projections of Future Economic Performance by Issuers.

(The proposed amendment of the rule is identical to that of Rule 175, § 230.175(b) above.)

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

7. 17 CFR 260.103A is proposed to be amended as follows:

§ 260.0-11A Projections of Future Economic Performance Issuers.

(The proposed amendment of the rule is identical to that of Rule 175, § 230.175(b) above.)

(Secs. 6, 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 658; sec. 1, 79 Stat. 1051. Secs. 13, 15(d), 23(a), 48 Stat. 894, 895, 901; sec. 203(a), 49 Stat. 704; secs. 3, 8, 49 Stat. 1377, 1379; secs. 4, 6, 78 Stat. 469, 570–574; sec. 2, 82 Stat. 454; secs. 1, 2, 84 Stat. 1497; secs. 10, 18, 89 Stat. 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 204, 91 Stat. 1494, 1498, 1499, 1500; Sec. 20(a), 49 Stat. 833; Sec. 319(a), 53 Stat. 1149, 15 U.S.C. 77f, 77g, 77j, 77s(a), 78m, 78o(d), 78w(a), 79t, 77nn(a))

Authority

These amendments are being proposed pursuant to the authority in Sections 6, 7, 8, and 19(a) of the Securities Act of 1933 and Sections 12, 13, 15(d) and 23(a) of the Securities Exchange Act of 1934. The amendment to the safe harbor rules for projections is also being proposed pursuant to Section 20 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79t) and Section 319(a) under the Trust Indenture Act of 1934 (15 U.S.C. 77nnn(c)).

By the Commission.

September 2, 1980.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-27819 Filed 9-19-80; 10:30 am]

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federal register

Thursday
September 25, 1980

Part III

Environmental Protection Agency

Control of Air Pollution From New Motor Vehicles and Motor Vehicle Engines; Gaseous Emission Regulations for 1984 and Later Model Year Light-Duty Trucks

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL 1505-8]

Control of Air Pollution From New Motor Vehicles and Motor Vehicle Engines; Gaseous Emission Regulations for 1984 and Later Model Year Light-Duty Trucks

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rule sets forth a new set of regulations directed at the control of light-duty truck (LDT) exhaust emissions. The primary aspect of this rulemaking action is to introduce new, more stringent standards for hydrocarbon (HC) and carbon monoxide (CO) emissions, beginning with the 1984 model year (0.8 g/mi HC, 10g/mi CO). The existing standard for nitrogen oxides (NO_x) is not being numerically changed. An additional standard is enacted for idle CO emissions from gasoline LDTs.

The "heavier" light-duty trucks (i.e., those with gross vehicle weight ratings (GVWR) greater than 6000 pounds) are to be treated as heavy-duty vehicles under the amended Clean Air Act and as such are encompassed by the emission control requirements of Section 202(a)(3) of the Act (42 U.S.C. 7521). This section provides the statutory authority for the new HC and CO standards. The "lighter" LDTs (less than 6000 lb GVWR) are not specifically treated in the Act but are covered by EPA's general authority under section 202(a)(1). This section also provides the statutory authority for the idle CO standard for the heavier LDTs.

There are several aspects of these regulations that are new to LDTs. A redefinition of "useful life" as it applies to LDTs will require emission compliance throughout the life of the vehicle. Changes in the maintenance allowed during emissions durability testing will help encourage the design of low-maintenance emission systems. And modifications to the LDT Selective Enforcement Auditing (SEA) program will reflect our view that every vehicle should meet the standards, while allowing for measurement error and quality control aberrations.

We estimate that the implementation of these regulations will reduce by 76 percent the lifetime HC emissions and by 82 percent the lifetime CO emissions of an average gasoline LDT. Diesel LDTs will also be cleaner, emitting an average of 37 percent less HC and 20 percent less CO during their lives. These gains translate into average HC and CO reductions for urban mobile sources of 12 percent and 17 percent, respectively, by 1995. As a result, the average urban ambient air quality should improve 1–2 percent in ozone and 3–4 percent in carbon monoxide.

We have taken the opportunity of the republication of the regulations to make corrections and adjustments to the existing regulations.

EFFECTIVE DATE: These regulations will become effective in two stages. First, the technical revisions and corrections to the existing regulations which are listed in the Summary and Explanation Table (preceding Subpart A of the regulations published here) become effective immediately upon publication. EPA finds good cause to waive the statutory 30-day period between the publication date and the effective date. Our justification is that the changes found in the Table add no new requirements but simply correct or clarify certain passages.

All remaining portions of this rulemaking will become effective October 23, 1980.

ADDRESSES: The informational base on which this rulemaking is established is collected in Public Docket No. OMSAPC-79-2. The docket associated with the recently published heavy-duty engine gaseous emission regulations, No. OMSAPC-78-4, is incorporated by reference. These dockets are open to the public and are located at U.S. EPA Headquarters, Room 2902, 401 M Street, S.W., Washington, DC 20460, (202) 755-7924. In addition, we will make available free single copies of both EPA's Regulatory Analysis (containing our environmental and economic analyses) and the Summary and Analysis of Comments through the: Director, Emission Control Technology Division, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105 (Attention: Heavy-Duty Section).

FOR FURTHER INFORMATION CONTACT: Mr. John Anderson, Standards Development and Support Branch, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, Telephone: (313) 668-4496.

SUPPLEMENTARY INFORMATION:

I. Background of the Rule

Although there have been gains in control of air pollution, many air quality control regions still fail to meet the ambient air quality standards for motor vehicle-related pollutants. Light-duty trucks contribute a significant portion of the total nationwide emissions of hydrocarbons, carbon monoxide, and oxides of nitrogen; yet to date they have not been controlled to the stringency represented by 1981 model year light-duty vehicle standards (greater than 95% reduction of HC and CO from the uncontrolled state). They therefore constitute one of the more important sources of potential emission reductions and air quality improvement. For this reason EPA proposed regulations which will realize a reduction for HC and CO similar to that which has been seen for LDVs. (**Federal Register**, Vol. 44, p. 40784, July 12, 1979). The purpose of the action here is to finalize most of that proposal.

1. *History of the Light-Duty Truck Class.* Light-duty truck emission control has had an unusual history. The first Federal regulation controlling motor vehicle emissions placed trucks and similar vehicles having gross vehicle weight ratings (GVWR) of 6,000 pounds or less (typically "half ton" pick-ups and vans) in the light-duty vehicle (LDV) class. The LDV class also included passenger cars and so, beginning in the 1968 model year, trucks of this size were subject to the first Federal passenger car emission standards. As a result of a court order,[1] EPA removed these trucks from the light-duty vehicle class and created a separate light-duty truck class, effective for the 1975 model year. This new class contained all vehicles which were not passenger cars and which had GVWR less than 6,000 lbs., a group composed mostly of pick-ups and vans. Trucks with GVWR greater than 6,000 lbs. including some pick-ups and vans, were at that time classed as heavy-duty vehicles, the engines of which were subject to the heavy-duty engine (HDE) emission regulations.

The LDV standards and later the LDT standards applicable to pick-ups and vans below the 6,000 lbs. GVWR ceiling were always more stringent than the HDE standards applicable to the same type of vehicles above the ceiling. Many pick-ups and vans above and below the ceiling were physically similar, however, and about equally well suited for primary use as personal transportation. Over the course of a few years, the fraction of vehicles above the GVWR ceiling grew. This "migration" to higher GVWR and less expensive, less effective emission control systems undermined the Federal mobile source emission control program. Therefore, EPA expanded the LDT class, effective for the 1979 model year, by raising the GVWR ceiling to 8,500 lbs. Ceilings of 6,000 lbs. for curb weight and 46 square

[1] *International Harvester Co. v. Ruckelshaus*, 478 F.2d 615 (D.C. Cir. 1973).

feet for vehicle frontal area (later amended to 45 square feet) were also added to help separate the smaller and lighter trucks used primarily for personal transportation from the distinctly larger and heavier trucks used primarily in commercial applications. The LDT standards for HC, CO, and NO_x were changed for the same year to reflect advances in emission control technology as demonstrated on light-duty vehicles. EPA considered the heavier weights and larger road loads (aerodynamic drag and tire rolling resistance) typical of light-duty trucks when it decided how much emission control should be required when the LDV technology was applied to LDTs.

The fuel evaporative HC emission standard for the LDT class was first set at 2 grams per test for 1975, measured using a carbon trap procedure later found to greatly underestimate actual evaporative emissions. For 1978, EPA adopted a better measurement procedure (the SHED test) and set the standard at 6 grams. Because of the greater accuracy of the new procedure, the new 6-gram standard was more stringent than the old 2-gram, carbon-trap standard. In 1979, trucks in the 6,000 to 8,500 GVWR range came under this 6-gram standard due to the redefinition of the LDT class. A 2-gram, SHED-based standard will take effect for the 1981 model year.

2. *Statutory Provisions.* With the exception of the recently published particulate standards,* vehicles in the light-duty truck class have been regulated solely under the general authority of Section 202(a)(1) of the Clean Air Act. With the Clean Air Act Amendments of 1977, Congress created a statutory heavy-duty class. All vehicles over 6,000 pounds are considered to be "heavy-duty" under Section 202(b)(3)(C) of the Clean Air Act. This classification includes the 6,000–8,500 pound GVWR portion of EPA's light-duty truck class.** Thus, that portion of the LDT class, as well as EPA's heavy-duty engine class, are subject to the emission reductions required by the Act for heavy-duty vehicles.

The Act goes on to prescribe a system under which HC, CO, and NO_x standards for 1983 and later model year heavy-duty vehicles are to be established. Initially, Section 202(a)(3)(A)(ii) of the Act calls for EPA to promulgate regulations establishing "statutory standards" requiring at least a 90 percent reduction in HC and CO by the 1983 model year and at least a 75 percent reduction in NO_x by the 1985 model year. These percentage reductions are calculated from 1969 model year "baseline" levels for HC and CO and from a 1973 model year "baseline" (or 1972 for those engines having NO_x control in 1973) level for NO_x. These reductions closely parallel those required for light-duty vehicles. However, the Act permits EPA to give manufacturers more time to apply the appropriate technology to "heavy-duty" vehicles than Congress itself allowed manufacturers of light-duty vehicles, which must meet their final standards in 1981. EPA also used different baseline model years in conjunction with heavy-duty vehicles than with light-duty vehicles.

According to subsections 202(a)(3) (B) and (C) of the Act, the Administrator may revise the statutory standards otherwise mandated by the Act. The Administrator may take this action if she/he finds, among other things, "that compliance with the emission standards otherwise applicable for such model year cannot be achieved by technology, processes, operating methods, or other alternatives reasonably expected to be available for production for such model year without increasing cost or decreasing fuel economy to an excessive and unreasonable degree." Revised standards may apply only for a period of three years, beyond which either more stringent standards or the original statutory standards will apply.

As mentioned earlier, the Clean Air Act is quite specific as to how EPA is to treat the "heavier" light-duty trucks. It does not, however, establish minimum standards for vehicles which, because their GVWR is less than 6,000 lbs., are not in the statutory "heavy-duty" class, and because of the *International Harvester* decision, are not in the statutory light-duty vehicle class. These vehicles, the bottom portion of the light-duty truck class as EPA's regulations define it, are also still included in the general statutory authority given EPA in section 202(a)(1). We discuss EPA's requirements for these "lighter" light-duty trucks later in this preamble.

Finally, all motor vehicle emission standards under the Clean Air Act must apply to vehicles or engines for their "useful life". The EPA Administrator is to prescribe regulations under which the "useful life" will be determined (Section 202(d)). The Act defines the "useful life" of all vehicles in the light-duty truck class (both above and below 6,000 lbs. GVWR) to be 5 years or 50,000 miles (or the equivalent), whichever first occurs, unless the Administrator determines that a longer period is appropriate (Section 202(d)(2)).

II. Components of the Rule

This rulemaking is a "package"of interrelated components which together represent a consolidated regulatory approach to light-duty trucks. Though less complex than the heavy-duty emissions regulation published recently (45 FR 4136), this package similarly lays out most of the requirements that are likely to be necessary for effective LDT emission control in the coming years. Our approaching emission regulations from this perspective allows the industry to clearly understand the total regulatory scheme well in advance of the effective model year. At the same time, we believe that promulgating all of these revisions simultaneously is more efficient and cost effective than a piecemeal approach, and it avoids the industry's criticism—familiar in light-duty vehicle regulation—that the rules are changed too often.

A. Emission Standards

1. *"Heavy" Light-Duty Trucks.* For light-duty trucks included in the Act's "heavy-duty" class—that is, trucks ranging between 6000 lbs. and 8500 lbs. GVWR—we are implementing standards approximating the statutory 90 percent reduction in HC and CO emissions. A "baseline" emissions testing program was designed and conducted as a means of finding the level of emissions from earlier, uncontrolled LDT's. Eighteen 1969 LDTs made up the sales-weighted sample. By reducing the average HC and CO emission results by 90 percent, we calculated the following final statutory standards:

Pollutant and Standard (g/mi)	
HC	0.8
CO	10.0

After the completion of testing and the proposal of these standards, we discovered that the contractor which conducted the testing had adjusted the carburetors of ten vehicles improperly. We had these ten trucks retested and, in addition, tested three additional 1969 trucks that had become available. An examination of the average baseline emission results, taking the new data into account, revealed that the properly adjusted vehicles produced a somewhat "cleaner" baseline than the original sample (whether or not the three new vehicles were included). Had we adjusted the baseline accordingly, the

*Particulate Regulation for Diesel-Fueled Light-Duty Vehicles and Light-Duty Trucks, 45 FR 14496, March 5, 1980.

**While creating the heavy-duty class, Congress expressly found that EPA's classification of vehicles in the 6000–8500 lb. range as "light-duty trucks would continue to be appropriate." H.R. Rep. No. 95-564, 95th Cong., 1st Sess. 164 (1977).

resulting standards would have been slightly more stringent than the proposed standards.*

Rather than adopt more stringent standards in response to the new data, we have retained the original standards, as proposed. We have done this primarily for the sake of promptly completing this rulemaking. While it is clear that some small degree of emission control is being forgone for the present time**, we believe that the extension of the useful life which will accompany this package (and which is discussed later in this preamble) will act to offset this loss in HC and CO control by requiring life-long—rather than half-life—emission compliance. EPA may pursue the revised, more stringent standards in future rulemaking activity. Finally, we believe this approach is consistent with the Act as well as its legislative history, which indicate that because of uncertainties in baseline emissions, the Administrator is to have "flexibility" in establishing the statutory standards. H.R. Rep. No. 95-294, 95th Cong., 1st Sess. 274 (1977).

Turning to another issue, EPA has elected against making use of the Act's provisions for revising the statutory standards (section 202(a)(3) (B) and (C)). We are unable to make findings that compliance with these standards is not feasible and that compliance will result in "excessive and unreasonable" costs or fuel economy penalties. The issues of feasibility, cost, and fuel economy are discussed in more detail later in this preamble.

This rulemaking introduces for gasoline LDTs a standard for the control of CO emissions during vehicle idle. The standard is expressed in terms of raw exhaust concentration and has a value of 0.47 percent CO. Heavy-duty 1969 idle baseline data were used as the basis for the standard, owing to the lack of such data relating specifically to LDTs. But many of the HD baseline engines were also used in LDT applications, and we believe that the idle CO standard reasonably represents a 90 percent reduction from 1969 idle emissions. This issue is discussed further in the Summary and Analysis of Comments, under the Idle Test and Economic Impact issues. (For more information about the heavy-duty baseline, the reader can consult the report "1969 Heavy-Duty Engine Baseline Program and 1983 Standards Development" in Public Docket No. OMSAPC-78-4, established for the recently published heavy-duty rulemaking.)

Carbon monoxide emissions at idle contribute to "hot spots" of the pollutant in urban areas where traffic is stop-and-go. These CO "hot spots" are often areas where people are vulnerable to exposure (e.g., busy intersections and parking garages). The idle standard will ensure that idle CO control is not sacrificed by the manufacturers as they work to improve LDT emissions.

Accompanying the idle standard are testing procedures for measuring vehicle idle emissions. They are identical to the idle test procedures published in the heavy-duty regulations (45 FR 4136)* and are compatible with the warranty test procedures adopted in 45 FR 34802. A vehicle passing the certification test should also pass the warranty short test.

2. *"Light" Light-Duty Trucks.* Because Congress has given EPA no specific direction in the treatment of LDTs weighing under 6000 lb. GVW, we are acting to regulate this lower end of the LDT class under the general statutory authority of section 202(a)(1) of the Act. It is clear that HC and CO emissions from LDTs contribute to air pollution which endangers public health; the other threshold criteria for regulating under the general authority—leadtime, feasibility, and cost—are discussed later in this preamble.

Under this general authority, we have chosen to implement the same numerical standards across the entire LDT class. This means that the percentage reduction standards directed at the "heavy" LDTs, 0.8 g/mi HC and 10 g/mi CO, will apply to the under-6000 lb. GVW vehicles as well. The idle standard will also be applied classwide, to be consistent with the HC and CO (non-idle) standards. These standards should not place any special burden on the manufacturers of "light" LDTs. In fact, compliance will be inherently easier to achieve with the lighter trucks because they tend to be cleaner than their heavier counterparts. We do not want to discourage downsizing and weight reductions by imposing stiffer standards on the lighter trucks; but we will reconsider this issue if it appears that manufacturers are taking advantage of the level of the standards to reduce their existing emission controls (or to avoid state-of-the-art control system improvements).

3. *Crankcase Emission Standards for Diesel Light-Duty Trucks.* Along with the exhaust emission standards, this rule requires that no crankcase emissions be released into the atmosphere. Gasoline-fueled LDTs have met this requirement for years (using the Positive Crankcase Ventilation system). Such a requirement, however, is new to diesel LDTs. Two of the three current diesel LDT families (representing the vast majority of sales) already have closed crankcases, and evidence indicates that no major technological problems confront manufacturers in meeting this requirement for all diesel LDTs in 1984.

Diesel crankcase controls for LDTs are simple and inexpensive. In non-turbocharged (naturally-aspirated) engines, crankcase emissions are simply drawn into the intake air flow. While the presence of a turbocharger in the intake system might seem to introduce special problems, this is apparently not the case in small (non-heavy-duty) diesels. Mercedes markets a turbocharged diesel light-duty vehicle today which has a closed crankcase, and we expect that their experience will guide other manufacturers. (This issue is addressed in more detail in Issue J, "Diesel Crankcase Emission Control," in the Summary and Analysis of Comments).

Diesel crankcase emissions are a source of HC, CO, NO_x, and particulate emissions. In heavy-duty diesels, at least, there is evidence as well of the possible presence of various nitrosamines in crankcase fumes (this work is documented in the EPA report titled "Diesel Crankcase Emissions Characterization, Final Report of Task No. 4, Contract 68-03-2196," May 1977, available in the Public Docket of this rule). There is no reason at this time to think that crankcase emissions constituents should be substantially different in light diesels, and thus, we regard these emissions to also be a possible source of nitrosamines (suspected to be carcinogenic in humans).

We have not quantified the emission rates of LDT crankcase pollutants, but the availability of inexpensive control technology, the presence of "conventional" pollutants, and the potential presence of nitrosamines together justify the closed-crankcase requirements under EPA's general regulatory authority (section 202(a)(1) of the Act). For the present, the requirements largely amount to nothing more than prohibiting manufacturers from removing their already installed systems.* In the future, the effect will be to require that the manufacturers

*A more complete discussion of the baseline program is contained in Issue K—"Numerical Standards and Standard Derivation," found in the Summary and Analysis of Comments document.

**The final standards correspond to an 88 percent HC reduction and an 87 CO reduction.

*The idle test procedure (Subpart P) is being amended slightly in this rulemaking to clarify or modify several technical details.

* This contrasts with the case of heavy-duty engines, where crankcase controls are not yet widespread.

continue to pay attention to crankcase controls as they develop and expand their diesel fleets. These rules will also remove any competitive advantage enjoyed by diesel manufacturers as a result of EPA's current policy of singling out gasoline engines for crankcase control.

In the case of crankcase controls, we are fortunate that we can achieve discernible benefits with a minimum of inconvenience to the industry if we act now, at this stage in the industry's development. In our view, the wisdom of this approach is confirmed by the low cost associated with the diesel crankcase control requirements—$6 for each engine which would not otherwise have been controlled.

B. Revised Definition of "Useful Life"

These new light-duty truck regulations incorporate a revised definition for the "useful life" of an engine. Currently defined as 5 years or 50,000 miles of operation (whichever occurs first), the useful life approximates only half or less of the expected lifetime of a vehicle. The new concept of useful life, in contrast, focuses on the actual total lifetime. Congress has provided EPA with considerable discretion in defining the useful life of light-duty trucks. Under section 202(d)(2) the Administrator can determine that a duration or mileage greater than the 5 year/50,000 mile useful life Congress prescribed for light-duty vehicles is appropriate. We are convinced that it is indeed appropriate to expand the useful life of LDTs, for the reasons outlined below.

The revised useful life definition will create a strong incentive among manufacturers to produce emission controls as durable as the engines themselves. As we discuss below, the useful life definition will result in significant air quality benefits. Also, the 50,000-mile five-year useful life definition established by Congress for light-duty vehicles was adopted at a time when mobile source emission control technology and mobile source emission regulation were both in their infancy. Congress did not know in 1970 what control systems or engine designs manufacturers would employ to meet the standards; the technology simply had not been developed and Congress was seeking to "force" its development by setting very stringent standards. Relatively little was known regarding the impact of emission control warranties on the manufacturers. Consequently, Congress took a very cautious approach by limiting warranty liability of light-duty manufacturers through the adoption of the 50,000-mile/five-year definition of useful life.

Today we know a great deal more about emission control technology and about the attendant implications of emission control warranties. In considering the technological feasibility of the emission standards for light-duty trucks, the revised definition of useful life was factored in. The precise emission control technology that will (or can be) utilized to meet these standards is known and will be available. The warranty implications of the standards have been considered and should not prove problematic to the manufacturers.

These regulations alter the manner in which the useful life is determined for light-duty trucks. Instead of simply using a standard EPA-defined value, manufacturers will *themselves* establish for each engine family two indicators of engine life. The first of these is the average period that the vehicle is used before being retired or before the engine is rebuilt. The average period of use cannot be shorter than the engine's basic mechanical warranty or 5 year/50,000-miles, whichever is greater. The manufacturers are to base their useful life values on survey information of in-service engines or durability testing of prototype engines.

Secondly, in addition to establishing an average period of use, these regulations will also require that the manufacturers submit information to define the circumstances under which a vehicle's engine can be considered to need rebuilding. That is, a manufacturer will determine for each engine family what numerical results from a compression test and a measure of oil consumption and of bearing failure indicate that the engine has reached the end of its specific useful life (the manufacturer may add additional criteria). Thus, for each individual truck, an objective, measurable limit will exist to its use in durability testing or, in the field, to its coverage under the emission warranties. Finally, these rebuild criteria—as well as the average period of use—will be explained in the owner's manual.

The end of the useful life of a given LDT, then, is defined by one of two limits, whichever is reached first. Either the engine exceeds the average amount of service seen by its engine family or it deteriorates to the point of needing to be rebuilt. In no instance, however, may this actual useful life be less than the current legal minimum useful life of 5 year/50,000 miles, which is specified in section 202(d) of the Clean Air Act.

From the consumer's point of view, the restructuring of the useful life concept will result in more durable emission systems, improved air quality, and slightly more expensive vehicles. The ramifications of these changes in the useful life definitions are broad. When EPA finalizes in-use durability testing, the useful life concept will delineate the durability testing program during certification. Thus, each durability engine will be run until it reaches the average useful life or the end of its actual useful life. Similarly, the useful life provides an endpoint to the manufacturer's warranty on emission control systems.

C. Revised Durability Testing Requirements

EPA is postponing the finalizing of the new durability testing requirements, which like the revised useful life definition, will shift more of the responsibility for the nation's emission control program to the manufacturer. Since the NPRM indicated that we would waive in-use durability requirements for the 1983 and 1984 model years anyway, delaying its finalization simply deletes the waived provisions. We plan to further analyze and seek additional comments on the design of the durability program and finalize regulations soon—perhaps with the statutory 1985 NO_x standards. Therefore, until the new provisions are finalized, manufacturers will design their own testing procedures for determining emissions deterioration factors. The manufacturers are required to comply with the allowable maintenance provisions to the extent that they apply. A description of the manufacturers' procedures for establishing deterioration factors must be submitted to EPA, but we will not approve or disapprove these procedures.

D. Allowable Maintenance Regulations

When the new durability requirements are promulgated they will improve the quality of durability testing in order to better assess the deterioration of emission control. The allowable maintenance provisions implemented here will put restrictions on the maintenance which may be done during that testing (as well as the testing used to measure emissions deterioration under these 1984 regulations) to encourage the design of longlived emission control components. Thus, both of these sets of provisions have the central purpose of making the durability of emission control systems a major design goal. The revised maintenance concept is introduced under the authority found in sections 206(d) and 207(c)(3)(A) of the Act.

The maintenance revisions fall into two categories. Non-emission-related maintenance is created as a separate classification and is essentially

deregulated. This means that the frequency of maintenance which through neglect or overperformance might affect emissions, but does not strongly influence deterioration, will no longer be restricted. For this maintenance, manufacturers will be able to recommend any intervals to their customers. However, the maintenance actually performed on the test vehicles must be consistent with these intervals.

Maintenance which is emission-related, on the other hand, will be limited to that which is technologically necessary. EPA has established *minimum* technologically necessary intervals for a number of emission-related components. This maintenance, like non-emission-related maintenance, must be consistent with what is recommended to the owner in the operator's manual. The manufacturer may recommend more frequent maintenance in this case, as long as the instructions for such additional maintenance are clearly differentiated (in a format approved by the Administrator) from the technologically necessary emission-related maintenance described in § 86.084–25(c). Since this additional maintenance is intended to be recommended only for occasional special cases, manufacturers may not require its performance as a prerequisite to emission warranty coverage. The issue of whether it is appropriate for a manufacturer to require additional maintenance as a precondition to warranty coverage if such maintenance is necessary to offset the effect of severe and abnormal operating conditions has been considered in the proposed section 207(b) Performance Warranty Regulations (44 FR 23784).

The basis for defining the "technologically necessary" maintenance intervals for most of the components addressed was the longest interval that any manufacturer recommended for that item. With proper emphasis placed on durable, low-maintenance designs, it is reasoned, manufacturers will opt for the best available technology (from a maintenance perspective) for their emission related components. Thus, the minimum level of maintenance currently required for an item should be a lower limit for the 1983 maintenance interval.

The exception to this "longest existing interval" rule is the catalyst, which does not require attention (or replacement) during the current 50,000 mile LDT useful life. To arrive at a technologically necessary maintenance interval for converters, we relied on light-duty vehicle experience as well as knowledge of the physical phenomena associated with the decay of catalyst structure and efficiency. Our investigations have provided convincing evidence that full-life LDT catalysts, if not available today, are within easy reach of manufacturers before 1984 (primarily by more heavily "loading" the converters with noble metals). The 100,000 mile interval for catalyst is reasonable and supported. (See "Allowable Maintenance," Summary and Analysis of Comments.)

EPA has decided to postpone the provisions of the second criterion applying to a prospective maintenance interval—that there be a "reasonable likelihood" that the owners will actually perform the maintenance at that interval. The requirement for meeting this second criterion is being removed from these regulations, but it will probably be reproposed in some form with the forthcoming NO_x regulations.

We believe the manufacturer will be able to show that proper maintenance is being done in the field with respect to such maintenance as spark plug and ignition wire replacement. Therefore, it is not so necessary that in-use performance be demonstrated. However, when NO_x control regulations are promulgated, oxygen sensors may be employed to control closed-loop catalyst systems. The oxygen sensor is an item for which EPA is likely to need a degree of assurance that owners are performing proper maintenance. Consequently, we are likely to repropose such requirements in the future.

The regulations distinguish between emission-related maintenance and non-emission-related maintenance. This distinction is solely for the purposes of engine certification. The Agency recognizes that an owner's failure to perform "non-emission related maintenance" could result in an in-use vehicle's failure to comply with emission standards and could in some instances relieve a vehicle manufacturer from emission warranty liability. For this reason, some of these maintenance items could be subject to reclassification in future regulations.

E. Selective Enforcement Auditing

1. Background. Selective Enforcement Auditing (SEA) is an emission testing program authorized by Section 206(b) of the Clean Air Act for new production light-duty trucks (LDT) as they leave the assembly line. Similarly, Section 206(g) authorizes testing as necessary, according to promulgated regulations, to determine the extent that LDTs with Gross Vehicle Weights (GVW) above 6,000 pounds are not in compliance with the requirements of the Act for the purpose of assessing nonconformance penalties (see Section F, "Production Compliance Auditing and Nonconformance Penalties").

EPA believes that compliance with the Clean Air Act may be demonstrated by a reasonable statistical certainty that every car coming off the assembly line meets the emission standards established under Section 202. Section 207(a) requires that every new motor vehicle be warranted to the ultimate and each subsequent purchaser that it is designed, built and equipped so as to conform at the time of sale with the applicable emission requirements. The SEA program is used to determine compliance with emission standards, after adjustment for deterioration, as production LDTs leave the assembly line. The program employs a 10 percent Acceptable Quality Level (AQL), which imposes a significant risk (5 percent or greater) of failing a SEA if 10 percent or more of a LDT configuration is out of compliance. The 10 percent AQL allows for emissions measurement error and quality control aberrations which can not be totally eliminated at the assembly line. Therefore, a 10 percent AQL is one way of requiring, in effect, that every LDT meet applicable emission standards.

A 10 percent AQL has recently been promulgated (45 CFR 4174, Jan. 21, 1980) for a SEA emission testing program to determine whether heavy duty engines are in compliance with emission requirements. In addition, an "every source in compliance" approach was also adopted by EPA in its SEA programs to determine compliance of portable air compressors and medium and heavy trucks with applicable noise emission standards under the Noise Act, which also contemplates that every source meets the standards. See 41 FR 2162 (January 14, 1976) and 41 FR 15538 (April 13, 1976). A 10 percent AQL SEA program was promulgated in both cases.

A 10 percent AQL also was proposed for the current SEA program for light-duty vehicles and light-duty trucks contained in Subpart G of Part 86 (39 FR 45360 (1974)). However, the manufacturers claimed that the 10 percent AQL would be economically disastrous. As stated in the Preamble to those final regulations (41 FR 31474, July 28, 1976), the manufacturers,

> claimed that, if implemented, it [10 percent AQL] would result in loss of certification for a majority of their engine families, with consequent repercussions on employment and profitability, and that, even if it could be met, that could only be done by adding more emission control equipment, thus decreasing fuel economy and increasing sulfate emissions and price.

EPA recognized that in order to bring noncomplying engine families into

compliance, manufacturers would have to make significant improvements in quality control and in some cases lower the engineering design targets for these families. The Agency acknowledged that,

these kinds of changes could not be made on short notice and would require some reasonable period of time to institute. (41 FR 31473)

A 40 percent AQL was adopted for the current SEA regulations to implement SEA in a manner not unreasonably burdensome to the auto companies. EPA explained that,

The approach taken here, then, of not setting the AQL at 10 percent will provide manufacturers the time and flexibility to bring all their vehicles into conformance with the standards on a reasonable schedule. Such a schedule can be compatible with their parallel efforts to improve fuel economy and which does not expose them unduly to the risk of loss of certification while they are learning to bring their production vehicles into compliance with the law. (41 FR 31475)

The current SEA for new light-duty vehicles and light-duty trucks contained in Subpart G of 40 CFR Part 86 would have required significant quality control upgrading on short notice if the 10 percent AQL were to be adopted. The SEA for light-duty trucks contained in Subpart K is not scheduled for implementation until the 1984 model year. In this rulemaking EPA has determined that LDT manufacturers will have sufficient leadtime to develop and apply the necessary emission control technology and to certify their LDTs by 1984 (see the discussion of "Leadtime" in the Summary and Analysis of Comments). Further, in 1976, when EPA promulgated a 40 percent AQL for light-duty vehicles and light-duty trucks in Subpart G, EPA put light-duty vehicle and light-duty truck manufacturers on notice that EPA intended to establish a 10 percent AQL in the future. It is EPA's judgment, as expressed in its technological feasibility analysis, that LDTs can comply with the emission levels associated with a 10 percent AQL.

In addition, an EPA cost-effectiveness study which analyzed the difference between a 40 and 10 percent AQL concluded that the 10 percent AQL can be implemented in a cost effective manner. Thus, the severe effects anticipated by manufacturers in 1974 due to immediate imposition of a 10 percent AQL (adverse employment and profitability repercussions and the loss of certification) are not likely to be manifested in the LDT industry as a result of this rulemaking.

The above discussion of the AQL raises the question of EPA's intentions concerning any possible lowering of the 40 percent AQL applicable to light-duty vehicles. In fact, we believe that much of the concern shown by manufacturers on the AQL issue as proposed for light-duty trucks was due to this very possibility. Simply put, EPA has no plans to revise the AQL for passenger cars.

There are four reasons behind this position. First, current emissions data for light-duty vehicles coming off the assembly line indicates that they are in most cases meeting emission standards already. We do not see any need to change an existing regulatory requirement to accomplish something which is in large part already being achieved. Second, the emission standards for light-duty vehicles are significantly more stringent than for light-duty trucks and will remain so even upon adoption of the standards contained in this rule. Therefore, the actual emission rate of cars even with a 40 percent AQL is substantially lower than the emission rate of light trucks at a 10 percent AQL. Third, it is more efficient both to promulgate and to comply with a changed AQL as part of a change in the emission standard. No basic revisions of the light-duty vehicle emission standards are contemplated in the future beyond those which are statutorily required for 1981 model year. Fourth, in large measure due to the three preceding points, it is EPA's judgment that moving to a 10 percent AQL for light-duty vehicles would be less cost effective than for light-duty trucks.

2. SEA Audit Procedures. The process of conducting an SEA audit begins with a test order issued by EPA to a manufacturer. The test order is issued either for purposes of general surveillance or in response to evidence indicating noncompliance. If a manufacturer conducts its own assembly-line testing program, the data will help EPA determine compliance with the standards. The manufacturer is required to report these test results to EPA as authorized in Section 208(a) of the Clean Air Act.

Each manufacturer will be assigned a limit on the number of test orders which EPA may issue during a model year, based on its projected annual sales. Every test order will count against a manufacturer's annual limit, with two qualifications. Test orders that result in a manufacturer's LDT configuration not passing an SEA will not count against the limit. Also, in cases where the annual limit has been met, additional test orders may be issued in response to evidence indicating noncompliance.

The test order will instruct the manufacturer to test the specified LDTs or to make them available for Agency testing. EPA Enforcement Officers are authorized to enter the production and test facilities, upon manufacturer consent, to monitor SEA-related activities; a court order or warrant may be sought if entry is denied.

Test orders will specify the manner and location of the selection of LDTs. The "sequential" design of the sampling plans provides sufficient flexibility in sample selection so as not to unduly impact a manufacturer's normal production activities.

The manufacturer may "break-in" LDTs before testing, up to a maximum of 4000 miles. After break-in, emission tests are performed to determine gaseous emissions. (In the case of LDTs with diesel engines, particulate emissions are also measured.) The emission test procedures are identical to the test procedures used in certification, other than minor exceptions promulgated in a previous rulemaking (45 FR 14496, March 5, 1980). After the emission levels are adjusted to account for deterioration, they are compared to the standards and a determination of "pass" or "fail" is made for each LDT for each pollutant. The manufacturer is expected to complete at least four tests per day. This requirement provides the obvious benefits for both EPA and the manufacturer of expediting the completion of the audit.

An audit decision is reached using the "sample inspection criteria" tables found in the regulations. LDTs are sequentially tested until the number of passed LDTs corresponds to a "pass" number on the table or the number of failed LDTs corresponds to a "fail" number. Classifying LDTs as either passing or failing rather than examining their numerical emission levels reflects an "attributes" rather than a "variables" decision-making approach. (The "variables" approach was not practical because of the uncertainty in defining the distribution of emissions among LDT production).

Failure of an SEA audit may result in suspension or revocation of the certificate of conformity for that configuration. To have the certificate reinstated subsequent to a suspension, or reissued subsequent to a revocation, the manufacturer must demonstrate, by passing a follow-up SEA audit, that improvements, modifications, or replacement have brought the original LDT configuration, the modified LDT configuration, or its replacement into compliance. The regulations include hearing provisions which allow the manufacturer to challenge EPA's suspension or revocation decision based on application of the sampling plans or the manner in which the tests were conducted.

Although this rulemaking only concerns LDTs, Subpart K is being republished in its entirety to incorporate the previously promulgated heavy-duty engine regulations (45 FR 4170, Jan. 21, 1980).

F. Production Compliance Auditing and Nonconformance Penalties

EPA believes that manufacturers of both diesel and gasoline LDTs with GVW greater than 6000 pounds (i.e., those defined as "heavy-duty vehicles" by the Clean Air Act) will be able to meet the requirements prescribed in these regulations by 1984. In the NPRM, EPA invited comments on the need for nonconformance penalties. EPA is planning a program to allow certification of LDTs above 6000 pounds GVW which exceed the standards, but which do not exceed a designated "upper limit," if a "nonconformance penalty" (NCP) is paid by the manufacturer. The size of the penalty will depend, in part, on the extent by which the emissions exceed the standards, as determined by Production Compliance Auditing (PCA). The Agency will propose the specific upper limits and penalty formula through a separate rulemaking.

The Agency has determined that proposal and promulgation of nonconformance penalties do not affect leadtime requirements for compliance with statutory emission standards. With the promulgation of standards in this rulemaking, the manufacturers are expected to begin making good faith efforts towards complying with all aspects of the final regulation. Nonconformance penalties should not be viewed as a mechanism allowing a manufacturer to design to higher emission levels. When it is proposed, EPA intends to structure the penalty, as required by law, to remove any competitive disadvantage to complying manufacturers.

G. Clarified Definition of the Light-Duty Truck Class

One of the distinguishing features of the EPA's light-duty truck class as it is currently defined is the inclusion of "special features enabling off-street or off-highway operation and use." The precise meaning of this term when it is applied to particular cases has not always been clear. For this reason, we have defined carefully what the phrase means. The change should not affect the status of any current vehicles since the clarified definition conforms to present EPA practice.

III. How This Rulemaking Relates to Existing Standards

A. Fuel Evaporative Emission Standard

A fuel evaporative emission standard for gasoline LDTs of 2 grams per test will take effect in model year 1981. Then, as now, the regulations will require compliance with the standard for a period of 5 years or 50,000 miles—that is, for the useful life applicable to model years 1981–83. A deterioration factor, derived from testing designed by the manufacturer, is added to the low-mileage emission results to determine compliance over the useful life. In 1984, however, the useful life definition will change (as discussed earlier) to apply to the entire life of the vehicle. We will not disturb the current practice of allowing manufacturers to design their evaporative durability testing; we do expect that they will revise their procedures on their own in order to simulate longer periods of use.

B. Diesel Particulate Standard

Exhaust particulate regulations for diesel LDTs have recently been published. The standards are two-staged and will require 1982–84 trucks to achieve 0.6 g/mi and 1985 trucks to reach 0.26 g/mi. The changes in LDT certification signified by the longer useful life and the interim durability testing provisions will apply to the particulate standards as well beginning with the 1984 model year. We have reviewed the compatibility of the particulate regulations with these new HC and CO standards and find that they are indeed consistent with one another (See "Technological Feasibility", Summary and Analysis of Comments).

IV. Issues Affecting the Rulemaking

A. Applicable Model Year

As it was originally prepared, this rulemaking was to become effective with the 1983 model year. Analyses concluded that 1983 compliance would be a reasonable goal for the manufacturers, both technologically and economically. However, several months have passed since we completed our initial analysis of how much time the industry would need to accomplish the goals of the rulemaking. At that time, we concluded that enough time was available for the manufacturers to meet the requirements by 1983, often with something of a cushion. In the time since that conclusion was reached, much of that cushion has been dissipated.

The detailed analysis of leadtime presented in Issue E of our Summary and Analysis of Comments document indicates that at the present time there is an increasing risk that some manufacturers might not be able to comply with these regulations in time for the 1983 model year. In addition, as leadtime shrinks, an increasing rate of resource investment becomes necessary to attain compliance. Because of this, and in consideration of the particularly difficult economic picture facing the industry today, we have decided to postpone the requirements of these regulations until the 1984 model year.

B. Feasibility of Compliance

The "Technological Feasibility" section of the Summary and Analysis of Comments explores in depth the question, "What emission control approaches will be required for 1983 LDTs to comply with these regulations, and will they be available?" (Clearly the analysis is equally valid for 1984 LDTs.) Our conclusion is that the requirements of this rulemaking can be met by applying largely the same basic control technologies that are in use today—that is, oxidation catalysts, air pumps, and exhaust recirculation. In the environment of more stringent fuel-economy standards for LDTs, however, we believe most manufacturers will be introducing electronic engine controls (EECs) to allow them to meet the emission standards without sacrificing fuel economy. EECs will have an influence on how one views both emissions feasibility and fuel economy, as we discuss here and in Section VI, Effects on Fuel Economy.

Looking first at gasoline LDTs, our analysis shows that many trucks certified for California sales in 1980, mainly the small imported ones, could today comply with EPA's standards. The remaining California trucks are within reach of compliance. Such existing control approaches as increased catalyst loading, larger air pumps, addition exhaust recirculation, and timing adjustments are capable of providing the level of emission reduction necessary for these California-certified vehicles to achieve the 1984 Federal standards. Our conclusion, then, is that application of improved California control technology to current light-duty trucks is one path to compliance available to manufactures.*

However, increasing auxiliary air and exhaust recycling (for HC, CO, and NO_x control) and adjusting the timing (to improve cold-start emission

* This extrapolation from the experience of California LDTs is valid because all but a few of the engines in Federal (49-state) trucks were also sold in California trucks and hence appear in the analysis. The engines not included are not exceptional polluters and do not compromise the extrapolation.

performance) all act to reduce the fuel efficiency of the engine. This is where EECs become attractive because they can be used to optimize all these parameters (and others) throughout the range of the vehicles's operation. By reducing exhaust recirculation and perhaps air injection when they're needed less and returning the timing to a more favorable range after the catalyst has 'lit off", the EEC serves as both an emission control and an improver of fuel economy. EECs are seeing widespread use in passenger cars already, and for the reasons we outlined above, we expect that they will have extensively entered the light-duty truck market by 1984.

Diesel LDTs in 1980 appear to be close to compliance with the 1984 regulations with respect to HC and CO, and within reach with respect to NO_x. Additional exhaust recycling will be needed to meet the NO_x standard, making the exhaust particulate standard which will exist after 1982 more difficult to achieve. However, the particulate standard was extablished at a level which anticipated further NO_x control, and meeting that standard should be no more difficult for 1983 LDTs than for LDVs. (This point is developed in "Technological Feasibility," Summary and Analysis of Comments.)

C. Effects on Fuel Economy

Although manufacturers have suffered a fuel economy penalty in modifying their LDTs for California compliance, this does not imply that these 1984 Federal regulations will likewise cause a loss in fuel economy. The following paragraphs explain our reasoning.

First, manufacturers responded to the California standards in a minimal way, making only those changes to their Federal trucks that most easily brought their emissions down to California levels. Thus, no new technology was reason that the California fuel economy experience should not be over-emphasized is that, on a fleetwide basis, California's standards have required a *greater* reduction in LDT emissions than will these regulations. This means that meeting the 1984 Federal standards will be somewhat easier on the average than meeting California's, and that any fuel economy penalty associated with them based upon use of the same control techniques as used for California would be milder.

Finally, an analysis presented by the National Highway Traffic Safety Administration which accompanied their recently proposed LDT fuel economy standards* concluded that even with a full 5 percent loss in fuel economy due to tighter emission standards, the average fleet fuel economy will go up. A major part of that analysis is the anticipation that electronic engine controls (EEC) will be widely introduced in the LDT fleet. Our finding is that the use of EECs will allow the attainment of the necessary emission reductions without suffering a fuel economy penalty such as accompanies the techniques being used to meet current California standards. The higher initial cost of EECs is more than offset by the resulting fuel savings compared to California type systems. This results in a substantially lower lifetime expense for the purchaser. Since manufacturer's costs are higher with EECs, we are relying on the presence of fuel economy standards set at a level which will insure the use of these fuel efficient systems. Further details of our analysis are found in the Summary and Analysis of Comments, Issue L, "Fuel Economy".

D. Effect on the Environment

The implementation of the standards contained in this rulemaking will reduce substantially the amount of HC and CO emitted into the atmosphere by LDTs, to the extent of making a significant improvement in the nation's average ambient air quality. We have done a comprehensive air quality analysis which appears in the Regulatory Analysis. In it we show that these regulations should reduce the lifetime HC emissions of the average light-duty truck by 76 percent and CO emissions by 82 percent. When these reductions are translated into an air quality improvement, we expect that the average urban ozone level will be 1–2 percent lower by the late 1990's. CO air quality as well will improve, by some 3–4 percent. These figures incorporate the contributions of the growing fleet of diesel LDTs.

Since catalyst technology is not new to the vast majority of LDTs, the sulfuric acid emissions associated with catalysts should not increase as a result of these regulations. Likewise, lead emissions are not an issue here because unleaded fuel is already the standard in the largely catalyst-equipped LDT fleet. And finally, there is no reason to expect an effect on water quality or noise enforcement. As discussed earlier in "Fuel Economy", we expect there to be a net rise in the LDT fleet's fuel economy in 1983.

E. Economic Impact

In order to comply with these regulations most light-duty truck manufacturers will need to direct additional capital toward emission control hardware, development, testing, and certification. These costs will be passed along to the consumers, who will see an increase in the selling price of the trucks. Because a small fraction of today's LDTs will need catalyst systems and unleaded fuel for the first time, buyers of these trucks will experience slightly greater fuel costs than they would in the absence of these regulations.

We discussed earlier the types of control system changes which we expect to be used in 1984 model year LDTs. Our analysis of the gasoline LDT manufacturer costs associated with upgrading catalysts and air injection systems and adding electronic engine controls is presented on an engine-family by engine-family basis in Chapter V of the Regulatory Analysis, "Economic Impact." Engine families are categorized according to number of cylinders as well. Light-duty diesel trucks will vary widely in their need for emission control, but on the average they will require a small additional cost in order to comply with these regulations. If gasoline and diesel trucks are considered together (a valid first order approximation), the manufacturer costs translate into a $95 average first-price increase for the buyers of 1984 through 1988 model year LDTs. While the vast majority of truck owners will not suffer an increase in their operating costs, those who choose the trucks that use catalysts for the first time will. However, these costs will almost exactly be offset by the savings in spark plug and exhaust system maintenance expenses which directly result from the introduction of unleaded fuel and stainless steel exhaust parts.

From a national perspective, the aggregate 5-year cost of this LDT regulatory program (1983–87 in the original analysis, but virtually the same for 1984–88) is estimated to be $1.29 billion (expressed as the present value of a single lump investment at the beginning of 1983 using a 10 percent discounting rate and the 1980 value of a dollar). It is worth noting that the interested reader can find additional analyses of cost-related issues in Chapter V of the Regulatory Analysis, including a look at the sensitivity of our first-price-increase estimate to inaccurate assumptions.

* "Preliminary Regulatory Analysis of Light-Duty Truck Fuel Economy Standards, Model Years 1982–85," National Highway Traffic Safety Administration, December 1979.

F. Cost Effectiveness

Cost effectiveness is a measure of the "economic efficiency" of a regulatory action, expressed in this case as the cost in dollars for each ton of pollutant reduced. We have pursued two distinctly separate approaches to the cost effectiveness of this rulemaking, an incremental analysis and an integrated analysis. The incremental analysis has been performed as a measure of the effect of removing each of the several individual elements which make up this regulation package. The second approach is that of determining the cost effectiveness of the entire package as an integrated strategy. Because of the interrelationships among the various components of the package, the benefits of components can overlap and enhance one another. Thus, it would be improper to total the incremental costs and benefits to obtain an overall figure for the package since there would be a considerable amount of double counting. The integrated cost effectiveness analysis must be used to evaluate overall costs and benefits.

Table 1 presents the results of both the incremental and integrated analyses, reprinted from Chapter VII of the Regulatory Analysis ("Cost Effectiveness"). When the overall (integrated) cost-effectiveness numbers for this package are compared with those of other HC and CO control programs, one finds that these regulations fall in the same range as the other programs.

The reader will find that the incremental breakdown is useful not only in evaluating the components of this rulemaking but also in judging the cost effectiveness of various alternative rulemaking packages because each component is treated separately. As an example, suppose that one would like to estimate the cost effectiveness of these regulations if the allowable maintenance requirements were not included. This can be done by subtracting the allowable maintenance costs and benefits from the integrated costs and benefits. Thus, the reduced lifetime costs of $73, divided equally between the revised benefits of 0.24 tons of HC and 3.5 tons of CO, would result in HC and CO cost-effectiveness values of $152/ton and $10.4/ton, respectively. However, because the benefits of the different components tend to overlap and reinforce each other, such a calculation should not be done for more than one element at a time.

Table 1.—*Incremental and Integrated Lifetime Cost Effectiveness*

Option	Cost (dollars)	Benefit (tons)		Cost effectiveness ($/ton)	
		HC	CO	HC	CO
Useful life	11	0.05	0.6	110	9
Allowable maintenance	11	0.05	0.6	110	9
10 percent AQL[1]	3.70	0.006	0.2	205	6
Overall package (integrated)	95	0.29	4.1	164	12
I/M	37	0.05	0.6	370	31

[1] Note: The 10 percent AQL includes a NO_x benefit of 0.04 tons. Cost is therefore divided three ways. The cost effectiveness for NO_x is $31 per ton.

G. Alternatives Considered

At various times during the rulemaking process options have been available to EPA as to the form and content of the package. Although many of the alternative courses of action have already been discussed in the context of other issues, we will review them here.

EPA had two separate options which dealt with the standards. The first of these was considered prior to the proposal of the regulations. The choice before EPA was whether to subdivide the LDT class, applying different standards to trucks above and below 6000 lb GVWR. For several reasons (for example, we did not want to discourage downsizing with a stiffer standard for lighter trucks) we chose to set uniform standards across the class and proposed them in this form.

Second, the *levels* of the standards presented choices to EPA. When it was discovered that several baseline engines had been tested with maladjusted carburetors (see II–A, "Emission Standards," above) a decision had to be made as to whether to develop a "new" baseline for purposes of computing the 90 percent reductions. In the interest of completing the rulemaking as quickly as possible, we kept the standards as proposed.

Another area in which a policy judgment occurred was the issue of timing (i.e., for what model year should these regulations become effective). We have already mentioned our decision to relax the effective model year from 1983 to 1984, owing in part to delays in promulgation which have made leadtime an issue. To the extent that leadtime constraints were a factor in this decision, the situation resembles that which existed during the recent heavy-duty engine rulemaking. At that time, 1984 was selected as the effective model year after our analysis showed the leadtime to be too short for 1983 compliance. Here, the leadtime argument is not so compelling, but other factors (such as the economic plight of the industry) have been important as well.

The final issue relating to alternatives has to do with other possible compositions of the package. Many comments explicitly or implicitly suggested the elimination, modification, or replacement of the various components of the rulemaking. In order to address these comments, we had to consider, in effect, a number of unique packages. That is, we looked at the total package with and without each component. Concluding that each element was an important addition to the package—and that the air-quality benefits of each were commensurate with the costs—we included all of them in the final package.

H. Role of Inspection and Maintenance (I/M)

While this rulemaking contains no specific reliance on I/M programs and thus claims no related costs or benefits, there are ways in which I/M will enhance the effectiveness of the rulemaking. When it is viewed as an "insurance policy," I/M can be seen to protect against the loss of air quality benefits to such problems as misfueling or tampering. Up to 8 percent of light-duty vehicles are currently misfueled with leaded gasoline, largely in response to an economic incentive to do so—the same incentive that will undoubtedly cause a degree of misfueling in light-duty trucks. Tampering (e.g., removal of the catalyst) will also be discouraged by I/M programs. Thus, the widespread establishment of I/M facilities can help realize the full potential of these regulations.

It could be argued that I/M might secure the same benefit as certain other provisions of this rulemaking which exist, in part, to improve in-use emission control. The extension of the useful life definition and the introduction of allowable maintenance regulations, however, differ in concept from I/M in that instead of focusing on the post-production aspects, they require the manufacturers to build durability into their emission control systems. It is considerably less expensive to the consumer to pay for long-lived designs than to pay for replacement in the field. (We have calculated the incremental hardware cost of a full-life control system over a half-life design to be $22; this compares to a $330 aftermarket replacement cost.) Thus, these components of the package have a clear place in the emission control program independent of I/M.

Accordingly, we see I/M as a necessary provision to assure that the program will not be subverted due to

misfueling and tampering. However, I/M is more cost effective as an insurance policy to back up a program based on durable control system designs than as a program to force repeated in-field maintenance on non-durable equipment.

V. Technical Amendments and Other Changes

The broadness of this rulemaking requires that a major portion of the regulations be revised and republished. In doing this, we revisit many provisions from previous rulemakings, including the 1982 and 1985 diesel particulate regulations, the 1981 high-altitude program, the 1981-1984 Alternative Durability program, and the 1984 heavy-duty engine regulations. This process provided an opportunity to make a number of corrections and adjustments to the regulations.

The first type of change was the correction of errors in the current regulations, most of which were found in the heavy-duty rulemaking (45 FR 4136). Second, we made a number of corrections, adjustments, and clarifying modifications to NPRM in this rulemaking. Finally, we were able to improve the logical construction of several sections by rearranging or combining the light-duty truck and heavy-duty engine provisions in the 1984 regulations.

Acknowledgement of the various kinds of changes appears in several places. Most corrections and clarifying rewordings appear at the beginning of the regulations, in the Summary and Explanation Table. Substantive changes in the proposed rule are discussed in the next section of the preamble, *Public Participation.* These changes consisted of, for example, removing in-use durability requirements and adjusting the certification program to their absence, and changing section references throughout the subpart as appropriate.

The last set of changes was made possible because the recently published 1984 heavy-duty regulations now have to be republished to incorporate the 1984-and-later light-duty truck provisions. We were able to switch the order of some passages to improve their logical sequencing. In addition, the similarities between many provisions relating to light-duty trucks and heavy-duty engines made it desirable to combine some of the requirements into one set of requirements. Thus, maintenance provisions for both vehicle classes now appear in the same paragraph (§ 86.084–25(b)). To varying degrees, the following sections have also been similarly reorganized: §86.084–2, 21, 24, 26, 28, 30, 35, and 38.

VI. Public Participation

During the time that was available for public input into this rulemaking, a number of organizations participated. Of the 18 organizations that presented oral *and/or written comments on the proposal, 10 were manufacturers and their trade association, 7 were municipal, state, and federal government agencies and one was a cattle-growers' association in New Mexico. There was no outside representation of the perspectives that might have been offered by environmental, consumer, labor, or citizens' advocacy groups.

This next section of the Preamble is actually an overview of the Summary and Analysis of comments document which accompanies this final rule (See Availability of Documents, below). The purpose of including this discussion is to highlight for the reader those major areas of comment which resulted in significant changes in the rule as it was proposed and those which did not. It should become clear how the Final Rule differs from the NPRM and why.

A. Redefinition of "Useful Life"

The major aspects of the proposed redefinition of the LDT useful life have been kept intact. On the other hand, several suggestions of the commenters have led to specific changes in some of the provisions.

The comments generally argued that EPA should not disturb the current application of "useful life" to certification. Most commonly cited as a reason was Congressional intent, which was interpreted as supporting the half-life certification process for light-duty trucks. Our reading of the Act and its history finds no such intent. On the contrary, it seems clear that EPA is required to apply the half-life concept only to light-duty *vehicles.* Section 202(d) of the Act specifically empowers the Administrator to establish a longer useful life for light-duty trucks.

Other comments challenged the useful life revision as increasing the stringency of the standards. We agree that in order to comply with full-life emission requirements manufacturers will have to design their vehicles to have lower zero-mile emission levels than if the useful life were not changed. This is a necessary result of applying the full-life concept to certification. But a full-life useful life will also provide significant air quality benefits, because emission control systems will be designed to operate over a longer time period than at present.

Most of the remaining comments were directed at practical problems raised by the extension of the useful life. In this area we were able to adopt some of the suggestions, making the full-life concept more workable. Commenters were concerned that the proposed definition of the "useful life" as the "average period of use up to engine retirement or rebuild" was not specific enough to be applied to individual vehicles. One anticipated result, they said, would be that half of the vehicles would need rebuilding *before* reaching the average, causing a flurry of emission warranty claims. We were able to address this and a range of similar comments by establishing an individual vehicle useful life to accompany the family/average useful life. Thus, a light-duty truck's useful life will be linked both to its individual mechnical integrity and its engine-family's average lifetime, making the implementation of the full-life concept objective and straightforward. And a final change in the regulations encourages a clear understanding among the owners about how the concept works by allowing supplementary information on the engine label and in the owner's manual.

B. Revised Durability Testing Requirements

An array of comments was directed at the in-use service-accumulation proposal. The finalization of this program has been postponed, and we will be considering improving upon the design in the context of the comments we have received. If we decide to repropose a similar program (e.g., in the forthcoming NOx regulations), more public involvement will be solicited, and we will publish a final analysis of all comments at the time of final promulgation.

C. Allowable Maintenance

Many of the commenters challenged EPA's authority and justification for establishing "technologically necessary" maintenance intervals. The intervals themselves also came under criticism.

Our analysis finds adquate legal authority for EPA to make these changes in the certification process and to require that maintenance recommended to the owners be consistent with the certification maintenance. As for the comments regarding our justification, we find unconvincing the industry claims that market pressures strongly encourage low-maintenance emission systems.

While many commenters criticized our specified minimum maintenance intervals for turbochargers, injectors, spark plugs, and catalysts, they

* A public hearing was held on September 10, 1979 in Ann Arbor, Michigan.

provided little to support their positions. While we have reduced the diesel turbocharger and injector intervals, we have retained the remaining intervals as we proposed them. Additional analysis of catalyst durability has, in fact, bolstered our confidence that full-life catalysts will be available for 1983. In addition, the final regulations permit additional maintenance to be recommended for special circumstances.

In response to comments indicating that the proposed regulations were vague as to exactly which maintenance items we would consider "emission-related," we have specified a list of "emission-related" items. Included is a procedure by which EPA can add additional items, allowing 2 years of leadtime. Manufacturers can request a hearing on the issue if EPA designates an additional maintenance item as "emission-related."

The second branch of the proposed allowable maintenance plan, the requiring of proof that a manufacturer's recommended maintenance was being properly performed in the field, has been deleted from the final rule after a reassessment of its necessity at this time. Catalyst replacement has been EPA's primary concern and new long-life catalysts should obviate any need for replacement over the useful life. On the other hand, the advent of feedback carburetor systems, controlled by relatively delicate oxygen sensors, may in the future signal a renewed need for some kind of assurance that proper maintenance is being done. In such an event we may repropose a similar provision and will of course entertain further comments at that time.

D. Selective Enforcement Auditing

EPA had proposed a more stringent "follow-up" sampling plan for testing after suspension or revocation of a certificate of conformity. This plan imposes a greater testing burden than the proposed "initial" plan in order to reduce the probability that a manufacturer will pass the audit even though the true failure rate is greater than the AQL. We justified the increased burden of the follow-up plan on the basis of the expectation that LDTs are no longer in compliance, as evidenced by the inital SEA failure, and therefore the "consumer risk" must be reduced. Several manufacturers commented that the need for this increased stringency was unjustified and would actually serve as a disincentive to bringing nonconforming LDTs into compliance, since, in certain cases, a manufacturer may choose to pay nonconformance penalties rather than bring these LDTs into compliance because of economic considerations. Although EPA believes that its justification for the follow-up plan is valid, the agency is concerned about any potential disincentive to the election by manufacturers to remedy nonconforming LDTs. Since EPA believes that the manufacturer and consumer are still adequately protected by the initial 10 percent AQL sampling plan, the Agency has deleted all references to the follow-up sampling plans in this final rule and will retain only the initial plan, as proposed.

Originally EPA proposed that test orders issued on the basis of evidence of noncompliance with the AQL would not count against the annual limit. Several manufacturers commented that if this proposal were adopted there would be no limit to the number of test orders a LDT manufacturer could receive and manufacturers would not be able to determine how to allocate their testing facilities. Because of its responsibility to investigate LDT configurations for which it has evidence of noncompliance, EPA cannot establish an absolute limit on the number of test orders it will issue. However, EPA is sensitive to the manufacturers' concerns that they may be subjected to an indefinite number of test orders. Therefore, EPA will count test orders issued on the basis of evidence of noncompliance against this annual limit, until such time as the limit is reached.

At the time the proposed light-duty truck regulations were published, a separate SEA testing procedure was published because several manufacturers suggested that the details of the application of the FTP in certification may not be appropriate in the context of SEA. However, EPA's experience with testing under the SEA program since its implementation indicates that there is no compelling reason to continue to have separate test procedures for SEA. Therefore, this regulation in its proposed form deleted separate SEA test procedures and applied certification test procedures (Subpart B) to SEA. Since the time that the NPRM was published some clarifications have been made to Subpart B. These clarifications were originally published in the light-duty diesel particulate regulations (45 FR 14496, March 5, 1980). The clarifications have been made to insure that those requirements of the FTP not appropriate for SEA (e.g., evaporative HC testing, insertion of thermocouples into fuel tanks) are not required for SEA.

E. Nonconformance Penalties/ Production Compliance Auditing

In the proposal (page 40791), EPA stated that "* * * the proposed standards are practical and achievable by the light-duty truck industry as a whole" and that consequently no technological laggards need accomodating, no upper limit need be set and the nonconformance penalty would not be available to the manufacturers. An analysis of the comments has not altered our belief that the standards are achievable by the entire LDT industry. However, the role of NCP's in this situation is still under review by the Agency. The NCP/PCA portions of the proposal therefore are not being finalized in this rulemaking, but they will be the subject of future rulemaking action.

F. Idle Test and Standards

Comments about the idle test included questions of its need and practicality. While agreeing with the commenters on some points, we nevertheless find that the idle test is a useful, practicable tool and will be an important key to the enactment of warranty regulations. The changes we made, though, are substantial. Idle standards for diesels have been completely removed, and the gasoline HC standard has also been deleted.

G. Diesel Crankcase Emissions Control

This issue drew comments about the justification for and feasibility of LDT diesel crankcase control. But only one low-sales engine family is currently without crankcase controls. The effect of our requirement is really only to *maintain* the widespread use of such control systems. Regarding the special problems introduced by turbocharger technology, we point to the positive experience Mercedes has seen with their crankcase-controlled, turbocharged engine. Therefore, we do not think it is necessary or appropriate to exempt turbocharged LDTs even though we make such an exemption for heavy-duty engines.

H. Numerical Standards/Standards Derivation

The size and makeup of the sample of baseline trucks were roundly criticized. Yet an analysis of the sensitivity of the average baseline numbers to additional vehicles shows that more testing would not improve the quality of the standards. Further, the method of sales-weighing the emission values makes it unnecessary to have a perfectly stratified sample. And since our emphasis in procuring test vehicles was

on low-mileage, well-maintained vehicles, the fact that many of them came from the same geographic area is not really an issue, because these emissions should not be a function of location. For these and other reasons we have retained the standards as they were proposed.

I. Fuel Economy

Although most manufacturers claimed that their 1983 LDTs would experience a fuel economy loss in complying with these regulations, very little in the way of hard evidence was provided. Generally, commenters pointed to their experience in meeting California's 1980 standards. But there are a number of major differences between the 1980 California situation and the 1983 Federal scenario. Our analyses show that even if these regulations had been adopted for 1983 the fleet average fuel economy should still have improved between 1982 and 1983. The situation is further improved by the delaying of the compliance date to 1984.

J. Leadtime

By looking at the anticipated pre-certification timetables submitted by several manufacturers and making certain assumptions, we have been able to show that compliance in 1983 can be achieved by all manufacturers (although as we discussed earlier, there is now an increasing risk of missing that deadline). A significant factor was our removal of the in-use service accumulation requirements, compliance with which had been cited as a serious obstacle to 1983 certification. Now, with compliance requirements delayed until 1984, leadtime is effectively removed as an issue.

K. Feasibility

Despite numerous comments which argued that the standards are out of reach, EPA's feasibility analysis demonstrates that achievement of the standards is feasible for the 1984 model year. There do not seem to be any currently-produced LDTs which are incapable of being modified to comply with these regulations. We expect gasoline truck manufacturers to install more efficient catalysts, increase the auxiliary air injection and use a greater amount of exhaust recirculation. At the same time, we anticipate the widespread use of electronic engine controls, which will allow the standards to be met without severe fuel economy consequences (by optimizing the performance of the control systems throughout the range of operating conditions).

The comments about the feasibility of the regulations for diesel light-duty trucks were concerned mainly with the interaction between NO_x and particulate control. During the comment period a LDT particulate standard of 0.20 g/mi had been proposed. Since then, however, a less stringent final standard (0.26 g/mi) was adopted, and the effective model year was relaxed from 1983 to 1985. Thus the environment in which the manufacturers will seek to comply with the gaseous emissions requirements is more favorable now than what was perceived during the comment period. This factor, as well as others discussed in the Summary and Analysis, have led us to conclude that the NO_x control required by these regulations is consistent with the particulate regulations.

L. Environmental Impact

Commenters argued that the analyses presented in the NPRM were deficient in two respects: (1) the cost effectiveness of individual components of the proposal were not presented, and (2) the levels of the standards were not selected through "pollutant-specific" studies but through a process inconsistent with the Act. Also, Ford in particular commented in some detail on EPAs methodology for calculating environmental benefits. A third line of comment focused on the lack of a treatment of parameter adjustment regulations and their effects on in-use emissions. Finally, two Alaska state officials pointed out that because CO emissions are increased by cold temperatures, the full benefits of CO control might not be realized in Alaska.

An analysis of the elements of the final rule has been prepared, although it is limited by lack of data only slightly less severe than what plauged us at the time of the NPRM. Regarding the process of promulgating a standard under § 202(a), we have outlined our interpretation of the required sequence of events in the Summary and Analysis and this discussion fully supports the manner in which these regulations were approached.

While agreeing with Ford that the emissions benefits of this package are just a small fraction of the total air quality improvements of the coming years, we strongly disagree that LDT emission reductions are thus not important. *Each* incremental portion of the overall improvement is crucial to the achieving of those future benefits. Ford's other claims—challenging the air quality benefits of in-use durability testing, the useful life provisions, and the idle standard—are fully rebutted in the Summary and Analysis. We did, however, follow Ford's suggestion that we calculate the air quality on a non-methane hydrocarbon rather than total hydrocarbon basis.

As GM requested, we have included the effects of pre-1983 parameter adjustment regulations in the final air quality analysis. And finally, we respond to the special concerns about Alaska emission reductions by removing Alaskan air quality regions from our calculation of benefits (Alaska may, however, see reduced emissions if manufacturers improve their cold-start emission performance).

M. Economic Impact

We requested in the NPRM that detailed cost estimates be submitted to us for the obvious purpose of accurately assessing the total cost of the package. Only a few manufacturers, however, complied with our request—and quite often even these submissions lacked sufficient detail to be of use. Therefore, we were obliged to make the majority of the estimates on the basis of the other information available to us.

For the sake of completeness and accuracy, our analysis of hardware costs was done on an engine-family by engine-family basis. Thus we determined the nature of each vehicle's probable control system and placed a cost on it. These results are generally consistent with the costs estimated by the manufacturers, although, again, the manufacturer's estimates were far less complete. A divergence between the manufacturer's estimates and ours became clear when we looked at the costs of the other components of the rulemaking. In analyzing the probable costs associated with certification, allowable maintenance, the redefinition of "useful life," diesel crankcase control, and the 10 percent AQL, we found that the manufacturers had in general overestimated those costs (when they addressed them at all).

N. Special Exemptions

Two final issues were brought up in the comments that do not fit nicely into any of the categories mentioned above. The first of these was a request by the New Mexico Cattle Grower's Association that these regulations be modified to exempt agricultural vehicles. Among the reasons for the suggestion were the catalyst-related problems of bulk storage of both leaded and unleaded gasoline and the potential of a range-fire hazard from hot catalysts. Our response is that catalysts are already on many vehicles used on ranches (i.e., current light trucks and most cars), and a trend toward acquiring dual-fuel bulk storage capabilities

should be underway. Also, the U.S. Forest Service has pointed out that catalyst-equipped vehicles pose no greater fire hazard than pre-catalyst vehicles. In any event, an exemption would not necessarily reduce the cost of the vehicles because of the "special production" costs to the manufacturers. These factors, in conjunction with the potential for resale of uncontrolled vehicles into nonagricultural applications, argue against the requested exemption.

The second suggestion was that the effects of frequent cold-weather operation should be taken into account in the certification process. Several comments, made in the context of the exceptional climate of Alaska, pointed out that the full benefits of the regulations will not be achieved in areas of frequent cold starting. We have no immediate solution to this problem to offer, but two factors shed a positive light on the situation. First, EPA is currently conducting "cold-room" testing to develop data for the possible development of low-temperature FTP guidelines. Secondly, the cold-start emission control available through electronic variable spark timing is likely to become more commonplace with these regulations, a scenario which can mean increased emission benefits in cold climates.

Anticompetitive Effects: We expect that this rulemaking will not result in any serious anticompetitive effects. The range in first-price increases for 1984 light-duty trucks is not wide, although the imported trucks will on the average see a greater increase. We believe, however, that any tendency toward a decreased foreign truck sales fraction which might result from the cost differential will be offset by *increased* sales spurred by fuel economy pressures.

Independent parts manufacturers and dealers should not be adversely affected. The regulations introduce nothing that will alter independents' share of the aftermarket parts market.

Administrative Designation: EPA has determined that this action is a "significant" regulation. We have accordingly prepared a comprehensive document entitled "Regulatory Analysis and Environmental Impact of Final Emission Regulations for 1984 and Later Model Year Light-Duty Trucks," which supports the rulemaking and fulfills the requirements of Executive Order 12044 and Section 317 of the amended Clean Air Act. Anyone may review and reproduce this document in the EPA Central Docket Section (see "Availability of Documents" below).

Availability of Documents and the Public Docket: Materials relevant to this rulemaking have been assembled in Public Docket No. OMSAPC–79–2, U.S. Environmental Protection Agency, Central Docket Section, Room 2902, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. Such materials as regulatory support documents, comments, hearing transcripts, correspondence, the Summary and Analysis of Comments, and the Regulatory Analysis may be obtained by anyone from the docket. Also, Public Docket No. OMSAPC–78–4, associated with the recently-published heavy-duty engine regulations, is incorporated by reference. As provided in 40 CFR Part 2, the Agency may charge a reasonable fee for copying services. Additionally, single copies of the Summary and Analysis of Comments and the Regulatory Analysis are available through the Director, Emission Control Technology Division, 2565 Plymouth Road, Ann Arbor, MI 48105.

Evaluation Plan: EPA intends to review the effectiveness and need for continuation of the provisions contained in this action no more than five years after initial implementation of the final regulation. In particular, EPA will solicit comments from affected parties with regard to cost and other burdens associated with compliance and will also review data on the gaseous emissions from light-duty trucks built before and after implementation of the regulations to determine how effective this measure has been.

Reporting and Recordkeeping Requirements: This rulemaking will not impose significant additional reporting requirements or keeping of records. Although the SEA regulations will increase reporting requirements slightly, the requirements associated with the current durability testing will be removed.

Under EPA's recently established "sunset" policy, the reporting requirements of a regulation normally expire after five years unless action is taken to extend them. However, the leadtime required for these regulations will allow for only two years of actual implementation. Also, within the next five years the Agency will undertake a review of *all* of the reporting requirements associated with mobile source emission regulation, including those of this package. An additional review of the new reporting requirements of these regulations may not be necessary or useful.

Nevertheless, the need for future review cannot be determined at this time. Therefore, we establish in these regulations provisions for the automatic expiration of these requirements. But because of the leadtime associated with these regulations, the five-year period will begin not at promulgation but at implementation (model year 1984). Thus, if the Agency does not establish the need for continuation, the new reporting and recordkeeping requirements of this rulemaking will expire after the 1988 model year.

Dated: September 17, 1980.

Douglas M. Costle,

Administrator.

Summary and Explanation Table

Section	Change	Reason
§ 86.084–22(e)(2)(i)(A)	Adds "* * * or for $20 (1978 dollars) or less".	Makes provision consistent for all vehicle (engine) classes.
§ 86.084–25(b)(1)	Passage reworded	Clearer language of § 86.083–25(b)(1) adopted.
(b)(1)(viii)	Passage reworded to delete reference to "durability-data vehicles".	Improper terminology.
§ 86.084–26(a)(2)	Citation changed to "§ 86.025"	Incorrect citation.
(a)(3)	Text after heading inserted	Inadvertantly left out.
(a)(4)	do	Do.
§ 86.084–35(d)	Final sentence added	Makes passage consistent with other similar provisions.
(e)(2)	Reference to paragraph (a)(3)(iii)(I) added	Clarifies meaning.
§ 86.084–40	Section number changed	Incorrectly appears as § 86.084–39 in existing regulations.
§ 86.1344–84	Paragraph designations changed to (d) and (e).	Incorrect in existing regulations.
§ 86.1005–84(a)(1)(iii)	"heavy-duty" changed to "light-duty"	Incorrect in NPRM.
(f)	Division name changed to MOD	Reflects renaming of division.
§ 86.1012–84(k)	Reworded slightly	Clarifies meaning.
(k)(2)	Reworded	Do.
§ 86.1014–84(c)(1)	Division name changed to MOD	Reflects renaming.
(e)(2)	do	Do.
Appendix X	Two different Appendices X now exist (one is related to test procedures, one to sampling plans). The one titled "Appendix X—Selective Enforcement Auditing Test Procedures for 1978 and Later * * *" is deleted.	Deleted appendix was inadvertantly left in place when new Appendix X was published (45 FR 4180).

Part 86 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. § 86.078–7 is amended by changing § 86.078–7(a)(2)(i)(B) as follows:

§ 86.078–7 Maintenance of records; submittal of information; right of entry.

(a) * * *
(2) * * *
(i) * * *

(B) A complete record of all emission tests performed under Subparts B, D, H, I, J, N, and P, as applicable (except tests performed by EPA directly), including all individual worksheets and/or other documentation relating to each such test, or exact copies thereof, the date, time, purpose, and location of each test, the number of miles accumulated on the vehicle (or the number of hours accumulated on the engine), when the tests began and ended, and the names of supervisory personnel responsible for the conduct of the tests.

2. The definition of "useful life" in § 86.084–2 is revised to read as follows:

§ 86.084–2 Definitions.

The definitions in § 86.080–2 remain effective. The definitions listed in this section apply beginning with the 1984 model year.

"Approach angle" means the smallest angle in a plan side view of an automobile, formed by the level surface on which the automobile is standing and a line tangent to the front tire static loaded radius arc and touching the underside of the automobile forward of the front tire.

"Axle clearance" means the vertical distance from the level surface on which an automobile is standing to the lowest point on the axle differential of the automobile.

"Breakover angle" means the supplement of the largest angle, in the plan side view of an automobile, that can be formed by two lines tangent to the front and rear static loaded radii arcs and intersecting at a point on the underside of the automobile.

"Curb-idle" means:

(1) For manual transmission code light-duty trucks, the engine speed with the transmission in neutral or with the clutch disengaged and with the air conditioning system, if present, turned off. For automatic transmission code light-duty trucks, curb-idle means the engine speed with the automatic transmission in the Park position (or the Neutral position if there is no Park position), and with the air conditioning system, if present, turned off.

(2) For manual transmission code heavy-duty engines, the manufacturer's recommended engine speed with the transmission in neutral or with the clutch disengaged. For automatic transmission code heavy-duty engines, curb-idle means the manufacturer's recommended engine speed with the automatic transmission in gear and the output shaft stalled.

"Departure angle" means the smallest angle, in a plan side view of an automobile, formed by the level surface on which the automobile is standing and a line tangent to the rear tire static loaded radius arc and touching the underside of the automobile rearward of the rear tire.

"Non-emission related maintenance" means that maintenance which does not substantially affect emissions and which does not have a lasting effect on the deterioration of the vehicle or engine with respect to emissions once the maintenance is performed at any particular date.

"Emission-related maintenance" means that maintenance which does substantially affect emissions or which is likely to affect the deterioration of the vehicle or engine with respect to emissions, even if the maintenance is performed at some time other than that which is recommended.

"Scheduled maintenance" means any adjustment, repair, removal, disassembly, cleaning, or replacement of vehicle components or systems which is performed on a periodic basis to prevent part failure or vehicle (if the engine were installed in a vehicle) malfunction, or anticipated as necessary to correct an overt indication of vehicle malfunction or failure for which periodic maintenance is not appropriate.

"Unscheduled maintenance" means any adjustment, repair, removal disassembly, cleaning, or replacement of vehicle components or systems which is performed to correct a part failure or vehicle (if the engine were installed in a vehicle) malfunction which was not anticipated.

"Special features enabling off-street or off-highway operation and use" means a vehicle:

(1) That has 4-wheel drive; and

(2) That has at least four of the following characteristics calculated when the automobile is at curb weight, on a level surface, with the front wheels parallel to the vehicle's longitudinal centerline, and the tires inflated to the manufacturer's recommended pressure;

(i) Approach angle of not less than 28 degrees.

(ii) Breakover angle of not less than 14 degrees.

(iii) Departure angle of not less than 20 degrees.

(iv) Running clearance of not less than 8 inches.

(v) Front and rear axle clearances of not less than 7 inches each.

"Static loaded radius arc" means a portion of a circle whose center is the center of a standard tire-rim combination of an automobile and whose radius is the distance from that center to the level surface on which the automobile is standing, measured with the automobile at curb weight, the wheel parallel to the vehicle's longitudinal centerline, and the tire inflated to the manufacturer's recommended pressure.

"Useful life" means:

(a) For light-duty vehicles a period of use of 5 years or 50,000 miles, whichever first occurs.

(b)(1) For a light-duty truck engine family or heavy-duty engine family, the average period of use up to engine retirement or rebuild, whichever occurs first, as determined by the manufacturer under Section 86.084–21(b)(4)(ii)(B).

(2) For a specific light-duty truck or heavy-duty engine, the period of use represented by the first occurring of the following:

(i) The engine reaches the point of needing to be rebuilt, according to the criteria established by the manufacturer under § 86.084–21(b)(4)(ii)(C), or

(ii) The engine reaches its engine family's useful life.

(3) If the useful life of a specific light-duty truck or heavy-duty engine is found to be less than 5 years or 50,000 miles (or the equivalent), the useful life shall be a period of use of 5 years or 50,000 (or the equivalent), whichever occurs first, as required by section 202(d)(2) of the Act.

3. A new § 86.084–4 is added and reads as follows:

§ 86.084–4 Section numbering; construction.

(a) *Section numbering.* (1) The model year of initial applicability is indicated by the last two digits of the 5-digit group. A section remains in effect for subsequent model years until it is superseded. The number following the hyphen designates what previous section is replaced by a future regulation.

Examples: Section 86.077–6 applies to the 1977 and subsequent model years until superseded. If a § 86.080–6 is promulgated it would take effect with the 1980 model year; § 86.077–6 would not apply after the 1979 model year. Section 86.077–10 would be replaced by § 86.078–10 beginning with the 1978 model year.

(2) Where a section still in effect references a section that has been superseded, the reference shall be interpreted to mean the superseding section.

(b) *Construction.* Except where indicated, the language in this subpart applies to both vehicles and engines. In many instances, language referring to engines is enclosed in parentheses and immediately follows the language discussing vehicles.

4. A new § 86.084–9 is added and reads as follows:

§ 86.084–9 Emission standards for 1984 light-duty trucks.

(a)(1) Exhaust emissions from 1984 and later model year light-duty trucks shall not exceed:

(i) *Hydrocarbons.* 0.8 gram per vehicle mile (0.5 gram per vehicle kilometer);

(ii) *Carbon Monoxide.* (A) 10 grams per vehicle mile (6.2 grams per vehicle kilometer);

(B) 0.47 percent of exhaust gas flow at curb idle;

(iii) *Oxides of Nitrogen.* 2.3 grams per vehicle mile (1.4 grams per vehicle kilometer);

(iv) *Particulate Emissions* (diesels only). 0.60 gram per vehicle mile (0.373 gram per vehicle kilometer).

(2) The standards set forth in paragraphs (a)(1)(i), (a)(1)(ii)(A), (a)(1)(iii), and (a)(1)(iv) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B and measured and calculated in accordance with those procedures. The standard set forth in paragraph (a)(1)(ii)(B) of this section refers to the exhaust emitted at curb idle and measured and calculated in accordance with the procedures set forth in Subpart P of this part.

(b)(1) Fuel evaporative emissions from 1984 and later model year gasoline-fueled light-duty trucks shall not exceed: *Hydrocarbons.* 2.0 grams per test.

(2) The standard set forth in paragraph (b)(1) of this section refers to a composite sample of the fuel evaporative emissions collected under the conditions set forth in Subpart B and measured in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any 1984 and later model year light-duty truck.

(d)(1) Model year 1984 and later light-duty trucks sold for principal use at designated high-altitude locations shall not exceed the following exhaust emission standards when tested at the high-altitude reference point if the manufacturer of such vehicles elects to demonstrate compliance with the high-altitude standards.

(i) *Hydrocarbons.* 2.0 grams per vehicle mile;

(ii) *Carbon Monoxide.* 26.0 grams per vehicle mile;

(iii) *Oxides of Nitrogen.* 2.3 grams per vehicle mile.

(2) The standards set forth in paragraph (d)(1) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B of this part and measured and calculated in accordance with those procedures.

(e)(1) Fuel evaporative emissions from 1984 and later model year gasoline-fueled light-duty trucks sold for principal use at designated high-altitude areas shall not exceed 2.6 grams per test when tested at the high-altitude reference point if the manufacturer of such vehicles elects to demonstrate compliance with high-altitude emission standards.

(2) The standard set forth in paragraph (e)(1) of this section refers to a composite sample of the fuel evaporative emission collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

5. § 86.084–21 is revised to read as follows:

§ 86.084–21 Application for certification.

(a) A separate application for a certificate of conformity shall be made for each set of standards (except for high-altitude standards) and each class of new motor vehicles or new motor vehicle engines. Such application shall be made to the Administrator by the manufacturer and shall be updated and corrected by amendment.

(b) The application shall be in writing, signed by an authorized representative of the manufacturer, and shall include the following:

(1)(i) Identification and description of the vehicles (or engines) covered by the application and a description of their engine (vehicles only), emission control system and fuel system components. This shall include a detailed description of each auxiliary emission control device (AECD) to be installed in or on any certification test vehicle (or certification test engine).

(ii)(A) The manufacturer shall provide to the Administrator in the preliminary application for certification:

(*1*) A list of those parameters which are physically capable of being adjusted (including those adjustable parameters for which access is difficult) and that, if adjusted to settings other than the manufacturer's recommended setting, may affect emissions;

(*2*) A specification of the manufacturer's intended physically adjustable range of each such parameter, and the production tolerances of the limits or stops used to establish the physically adjustable range;

(*3*) A description of the limits or stops used to establish the manufacturer's intended physically adjustable range of each adjustable parameter, or any other means used to inhibit adjustment;

(*4*) The nominal or recommended setting, and the associated production tolerances, for each such parameter.

(B) The manufacturer may provide, in the preliminary application for certification, information relating to why certain parameters are not expected to be adjusted in actual use and to why the physical limits or stops used to establish the physically adjustable range of each parameter, or any other means used to inhibit adjustment, are expected to be effective in preventing adjustment of parameters on in-use vehicles to settings outside the manufacturer's intended physically adjustable ranges. This may include results of any tests to determine the difficulty of gaining access to an adjustment or exceeding a limit as intended or recommended by the manufacturer.

(C) The Administrator may require to be provided detailed drawings and descriptions of the various emission related components, and/or hardware samples of such components, for the purpose of making his determination of which vehicle or engine parameters will be subject to adjustment for new certification and Selective Enforcement Audit testing and of the physically adjustable range for each such vehicle or engine parameter.

(2) Projected U.S. sales data sufficient to enable the Administrator to select a test fleet representative of the vehicles (or engines) for which certification is requested.

(3) A description of the test equipment and fuel proposed to be used.

(4)(i) A description of the test procedures to be used to establish the evaporative emission deterioration factors required to be determined and supplied in § 86.084–23(b)(2).

(ii)(A) A description of the test procedures to be used to establish the durability data or the exhaust emission deterioration factors required to be determined and supplied in § 86.084–23(b)(1).

(B)(*1*) A statement of the useful life of use of each light-duty truck engine family and heavy-duty engine family up to engine retirement or rebuild (which ever occurs first) as determined by the

manufacturer on the basis of the following:

(*i*) For existing engine families, survey information on in-service vehicles (or engines) or;

(*ii*) For new engine families, durability testing of prototype vehicles (or engines) or a combination of bench-type component life evaluations and survey information on similar previous vehicles (or engines).

(*2*) The manufacturer shall not determine an engine family's useful life to be less than the basic period of the mechanical warranty on the engine assembly. This useful life shall be expressed as a period of engine or vehicle operation or as an equivalent vehicle mileage (or both) and shall be consistent with the rebuild criteria specified in paragraph (b)(4)(ii)(C) of this section. The manufacturer shall include in the application the data or information on which it based its determination of the useful life.

(C) For each light-duty truck engine family and heavy-duty engine family, a statement of the criteria which are to be used in determining the need for engine rebuild and their critical values, including the following:

(*1*) The minimum cylinder compression for any one cylinder and for any two cylinders, in pounds per square inch (or kilopascals). Compression shall be measured without the addition of oil or another fluid into the cylinder.

(*2*) The maximum rate of engine lubricant oil usage by the engine, in quarts per 1,000 miles (or quarts per 30 hours).

(*3*) The maximum mass of foreign metal in the crankcase, in grams per quart of crankcase oil.

(*4*) Any other measurable indicator(s) of engine condition approved by the Administrator and the critical value(s) which signal(s) the need for a rebuild.

(*5*) A statement of recommended maintenance and procedures necessary to assure that the vehicles (or engines) covered by a certificate of conformity in operation conform to the regulations, and a description of the program for training of personnel for such maintenance, and the equipment required.

(*6*) At the option of the manufacturer, the proposed composition of the emission-data test fleet or (where applicable) the durability-data test fleet.

(c) Complete copies of the application and of any amendments thereto, and all notifications under §§ 86.079–32, 86.079–33, and 86.079–34 shall be submitted in such multiple copies as the Administrator may require.

(d) Incomplete light-duty trucks shall have a maximum completed curb weight and maximum completed frontal area specified by the manufacturer.

6. § 86.084–22 is revised to read as follows:

§ 86.084–22 Approval of application for certification; test fleet selections; determinations of parameters subject to adjustment for certification and Selective Enforcement Audit, adequacy of limits, and physically adjustable ranges.

(a) After a review of the application for certification and any other information which the Administrator may require, the Administrator may approve the application and select a test fleet in accordance with § 86.084–24.

(b) The Administrator may disapprove in whole or in part an application for certification for reasons including incompleteness, inaccuracy, inappropriate proposed mileage (or service) accumulation procedures, test equipment, or fuel, and incorporation of defeat devices in vehicles (or on engines) described by the application.

(c) Where any part of an application is rejected, the Administrator shall notify the manufacturer in writing and set forth the reasons for such rejection. Within 30 days following receipt of such notification, the manufacturer may request a hearing on the Administrator's determination. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objections. If, after the review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078–6 with respect to such issue.

(d)(1) The Administrator does not approve the test procedures for establishing the evaporative emission deterioration factors. The manufacturer shall submit the procedures as required in 86.084–21(b)(4)(i) prior to the Administrator's selection of the test fleet under § 86.084–24(b)(1) and if such procedures will involve testing of durability-data vehicles selected by the Administrator or elected by the manufacturer under § 86.084–24(c)(1), prior to initiation of such testing.

(2) *Light-duty trucks and heavy-duty engines only.* The Administrator does not approve the test procedures for establishing exhaust emission deterioration factors, the manufacturer's determination of the average period of use, nor the manufacturer's determination of the values of the rebuild criteria. The manufacturer shall submit these procedures and determinations as required in § 86.084–21(b)(4)(ii) prior to determining the deterioration factors.

(e) When the Administrator selects emission-data vehicles for the test fleet, he will at the same time determine those vehicle or engine parameters which will be subject to adjustment for certification, Selective Enforcement Audit and Production Compliance Audit testing, the adequacy of the limits, stops, seals, or other means used to inhibit adjustment, and the resulting physically adjustable ranges for each such parameter and notify the manufacturer of his determinations.

(1)(i) The Administrator may determine to be subject to adjustment the idle fuel-air mixture, idle speed, and initial spark timing parameters on gasoline-fueled vehicles (or engines) (carbureted or fuel injected); the choke valve action parameter(s) on carbureted, gasoline-fueled vehicles (or engines); or any parameter on any vehicle (or engine) (diesel or gasoline-fueled) which is physically capable of being adjusted, may significantly affect emissions, and was not present on the manufacturer's vehicles (or engines) in the previous model year in the same form and function.

(ii) The Administrator may, in addition, determine to be subject to adjustment any other parameters on any vehicle or engine which is physically capable of being adjusted and which may significantly affect emissions. However, the Administrator may do so only if he has previously notified the manufacturer that he might do so and has found, at the time he gave this notice, that the intervening period would be adequate to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period. In no event will this notification be given later than September 1 of the calendar year two years prior to the model year.

(iii) In determining the parameters subject to adjustment the Administrator will consider the likelihood that, for each of the parameters listed in paragraphs (e)(1)(i) and (e)(1)(ii) of this section, settings other than the manufacturer's recommended setting will occur on in-use vehicles (or engines). In determining likelihood, the Administrator may consider such factors as, but not limited to, information contained in the preliminary application, surveillance information from similar in-use vehicles (or engines), the difficulty and cost of gaining access

to an adjustment, damage to the vehicle (or engine) if an attempt is made to gain such access and the need to replace parts following such attempt, and the effect of settings other than the manufacturer's recommended setting on vehicle (or engine) performance characteristics including emission characteristics.

(2)(i) The Administrator shall determine a parameter to be adequately inaccessible or sealed if:

(A) In the case of an idle mixture screw, the screw is recessed within the carburetor casting and sealed with lead, thermosetting plastic, or an inverted elliptical spacer or sheared off after adjustment at the factory, and the inaccessibility is such that the screw cannot be accessed and/or adjusted with simple tools in one-half hour or for $20 (1978 dollars) or less.

(B) In the case of a choke bimetal spring, the plate covering the bimetal spring is riveted or welded in place, or held in place with nonreversible screws.

(C) In the case of a parameter which may be adjusted by elongating or bending adjustable members (e.g., the choke vacuum break), the elongation of the adjustable member is limited by design or, in the case of a bendable member, the member is constructed of a material which when bent would return to its original shape after the force is removed (plastic or spring steel materials).

(D) In the case of any parameter, the manufacturer demonstrates that adjusting the parameter to settings other than the manufacturer's recommended setting takes more than one-half hour or costs more than $20 (1978 dollars).

(ii) The Administrator shall determine a physical limit or stop to be an adequate restraint on adjustability if:

(A) In the case of a threaded adjustment, the threads are terminated, pinned or crimped so as to prevent additional travel without breakage or need for repairs which take more than one-half hour or cost more than $20 (1978 dollars).

(B) The adjustment is ineffective at the end of the limits of travel regardless of additional forces or torques applied to the adjustment.

(C) The manufacturer demonstrates that travel or rotation limits cannot be exceeded with the use of simple and inexpensive tools (screwdriver, pliers, open-end or box wrenches, etc.) without incurring significant and costly damage to the vehicle (or engine) or control system or without taking more than one-half hour or costing more than $20 (1978 dollars).

(iii) If manufacturer service manuals or bulletins describe routine procedures for gaining access to a parameter or for removing or exceeding a physical limit, stop, seal or other means used to inhibit adjustment, or if surveillance data indicate that gaining access, removing, or exceeding is likely, paragraphs (e)(2)(i) and (e)(2(ii) of this section shall not apply for that parameter.

(iv) In determining the adequacy of a physical limit, stop, seal, or other means used to inhibit adjustment of a parameter not covered by paragraph (e)(2)(i) or (e)(2)(ii) of this section, the Administrator will consider the likelihood that it will be circumvented, removed, or exceeded on in-use vehicles. In determining likelihood, the Administrator may consider such factors as, but not limited to, information contained in the preliminary application; surveillance information from similar in-use vehicles (or engines); the difficulty and cost of circumventing, removing, or exceeding the limit, stop, seal, or other means; damage to the vehicle (or engine) if an attempt is made to circumvent, remove, or exceed it and the need to replace parts following such attempt; and the effect of settings beyond the limit, stop, seal, or other means on vehicle (or engine) performance characteristics other than emission characteristics.

(3) The Administrator shall determine two physically adjustable ranges for each parameter subject to adjustment:

(i)(A) In the case of a parameter determined to be adequately inaccessible or sealed, the Administrator may include within the physically adjustable range applicable to testing under this subpart (certification testing) all settings within the production tolerance associated with the nominal setting for that parameter, as specified by the manufacturer in the preliminary application for certification.

(B) In the case of other parameters, the Administrator shall include within this range all settings within physical limits or stops determined to be adequate restraints on adjustability. The Administrator may also include the production tolerances on the location of these limits or stops when determining the physically adjustable range.

(ii)(A) In the case of a parameter determined to be adequately inaccessible or sealed, the Administrator shall include within the physically adjustable range applicable to testing under Subpart G or K (Selective Enforcement Audit and Production Compliance Audit) only the actual settings to which the parameter is adjusted during production.

(B) In the case of other parameters, the Administrator shall include within this range all settings within physical limits or stops determined to be adequate restraints on adjustability, as they are actually located on the test vehicle (or engine).

(f)(1) If the manufacturer submits the information specified in § 86.084–21(b)(1)(ii) in advance of its full preliminary application for certification, the Administrator shall review the information and make the determinations required in paragraph (e) of this section within 90 days of the manufacturer's submittal.

(2) The 90-day decision period is exclusive of the elapsed time during which EPA may request additional information from manufacturers regarding an adjustable parameter and the receipt of the manufacturers' response(s).

(g) Within 30 days following receipt of notification of the Administrator's determinations made under paragraph (e) of this section, the manufacturer may request a hearing on the Administrator's determinations. The request shall be in writing, signed by an authorized representative of the manufacturer, and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objections. If, after review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078–6 with respect to such issue.

7. Section 86.084–23 is revised to read as follows:

§ 86.084–23 Required data.

(a) The manufacturer shall perform the tests required by the applicable test procedures, and submit to the Administrator the following information: *Provided, however,* that:

(1) If requested by the manufacturer, the Administrator may waive any requirement of this section for testing of vehicles (or engines) for which emission data are available, or will be made available, under the provisions of § 86.079–29, or

(2) If requested by the manufacturer, the Administrator may waive any requirement of this section for testing of vehicles at zero kilometers of operation.

(b)(1)(i) Exhaust emission durability data on such light-duty vehicles tested in accordance with applicable test procedures and in such numbers as specified, which will show the performance of the systems installed on or incorporated in the vehicle for extended mileage, as well as a record of all pertinent maintenance performed on the test vehicles.

(ii) Exhaust emission deterioration factors for light-duty trucks and heavy-duty engines and all test data that are derived from the testing described under § 86.084–21(b)(4)(ii)(A) as well as a record of all pertinent maintenance. Such testing shall be designed and conducted in accordance with good engineering practice to assure that the engines covered by a certificate issued under § 86.084–30 will meet the emission standards in §§ 86.084–09, 86.084–10, or 86.084–11 as appropriate, in actual use for the useful life of the engine.

(2) Evaporative emission deterioration factors for each evaporative emission family-evaporative emission control system combination and all test data that are derived from testing described under § 86.084–21(b)(4)(i) designed and conducted in accordance with good engineering practice to assure that the vehicles covered by a certificate issued under § 86.084–30 will meet the evaporative emission standards in § 86.081–8 or § 86.084–9, as appropriate, for the useful life of the vehicle.

(3) [Reserved]

(4) [Reserved]

(c) *Emission data.* (1)(i) *Certification vehicles.* Emission data on such vehicles tested in accordance with the applicable test procedures and in such number as specified, which will show their emissions after zero kilometers (zero miles) and 6,436 kilometers (4,000 miles) operation.

(ii) Emission data on those vehicles selected under § 86.084–24(b)(1)(v) and § 86.084–24(b)(1)(vii)(D) and tested in accordance with the applicable test procedures of this subpart and in such numbers as therein specified, which shall be tested at zero kilometers (zero miles) at any altitude, and under high-altitude conditions after 6,436 kilometers (4,000 miles) of operation at any altitude.

(2) *Certification engines.* Emission data on such engines tested in accordance with applicable emission test procedures and in such numbers as specified, which will show their emissions after 125 hours of operation. A zero-hour test may be performed after the engine has been approved by the Administrator to begin service accumulation.

(d) A statement that the vehicles (or engines) for which certification is requested conform to the requirements in § 86.078–5(b), and that the descriptions of tests performed to ascertain compliance with the general standards in § 86.078–5(b), and the data derived from such tests, are available to the Administrator upon request.

(e)(1) A statement that the test vehicles (or test engines) with respect to which data are submitted to demonstrate compliance with the applicable standards of this subpart are in all material respects as described in the manufacturer's application for certification, have been tested in accordance with the applicable test procedures utilizing the fuels and equipment described in the application for certification and that on the basis of such tests the vehicles (or engines) conform to the requirements of this part. If such statements cannot be made with respect to any vehicle (or engine) tested, the vehicle (or engine) shall be identified, and all pertinent data relating thereto shall be supplied to the Administrator. If, on the basis of the data supplied and any additional data as required by the Administrator, the Administrator determines that the test vehicles (or test engine) were not as described in the application for certification or were not tested in accordance with the applicable test procedures utilizing the fuels and equipment as described in the application for certification, the Administrator may make the determination that the vehicle (or engine) does not meet the applicable standards. The provisions of § 86.084–30(b) shall then be followed.

(2) For evaporative emission durability, or light-duty truck or heavy-duty engine exhaust emission durability, a statement of compliance with paragraph (b)(2) or (b)(1)(ii) of this section, as applicable.

8. § 86.084–24 is revised to read as follows:

§ 86.084–24 Test vehicles and engines.

(a)(1) The vehicles or engines covered by an application for certification will be divided into groupings of engines which are expected to have similar emission characteristics throughout their useful life. Each group of engines with similar emission characteristics shall be defined as a separate engine family.

(2) To be classed in the same engine family, engines must be identical in all the following respects:

(i) The cylinder bore center-to-center dimensions.

(ii) The dimension from the centerline of the crankshaft to the centerline of the camshaft.

(iii) The dimension from the centerline of the crankshaft to the top of the cylinder block head face.

(iv) The cylinder block configuration (air cooled or water cooled; L–6, 90° V–8, etc.).

(v) The location of intake and exhaust valves (or ports) and the valve (or port) sizes (within a ⅛-inch range on the valve head diameter or within 10 percent on the port area).

(vi) The method of air aspiration.

(vii) The combustion cycle.

(viii) Catalytic converter characteristics.

(ix) Thermal reactor characteristics.

(x) Type of air inlet cooler (e.g., intercoolers and aftercoolers) for diesel heavy-duty engines.

(3)(i) Engines identical in all the respects listed in paragraph (a)(2) of this section may be further divided into different engine families if the Administrator determines that they may be expected to have different emission characteristics. This determination will be based upon a consideration of the following features of each engine:

(A) The bore and stroke.

(B) The surface-to-volume ratio of the nominally dimensioned cylinder at the top dead center positions.

(C) The intake manifold induction port size and configuration.

(D) The exhaust manifold port size and configuration.

(E) The intake and exhaust valve sizes.

(F) The fuel system.

(G) The camshaft timing and ignition or injection timing characteristics.

(ii) Light-duty trucks and heavy-duty engines produced in different model years and distinguishable in the respects listed in paragraph (a)(2) of this section shall be treated as belonging to a single engine family if the Administrator requires it, after determining that the engines may be expected to have similar emission deterioration characteristics.

(4) Where engines are of a type which cannot be divided into engine families based upon the criteria listed in paragraphs (a) (2) and (3) of this section, the Administrator will establish families for those engines based upon those features most related to their emission characteristics.

(5) The gasoline-fueled vehicles covered by an application for certification will be divided into groupings which are expected to have similar evaporative emission characteristics throughout their useful life. Each group of vehicles with similar evaporative emission characteristics shall be defined as a separate evaporative emission family.

(6) To be classed in the same evaporative emission family, vehicles must be similar with respect to:

(i) Type of vapor storage device (e.g., canister, air cleaner, crankcase).

(ii) Basic canister design.

(iii) Fuel system.

(7) Where vehicles are of a type which cannot be divided into evaporative emission families based on the criteria listed above, the Administrator will establish families for

those vehicles based upon the features most related to their evaporative emission characteristics.

(8) If the manufacturer elects to participate in the Alternative Durability Program, the engine families covered by an application for certification shall be grouped based upon similar engine design and emission control system characteristics. Each of these groups shall constitute a separate engine family group.

(9) To be classed in the same engine family group, engine families must contain engines identical in all of the following respects.

(i) The combustion cycle.

(ii) The cylinder block configuration (air-cooled or water-cooled; L–6, V–8, rotary, etc.).

(iii) Displacement (engines of different displacement within 50 cubic inches or 15 percent of the largest displacement and contained within a multidisplacement engine family will be included in the same engine family group).

(iv) Catalytic converter usage and basic type (noncatalyst, oxidation catalyst only, three-way catalyst equipped).

(10) Engine families identical in all respects listed in paragraph (a)(9) of this section may be further divided into different engine family groups if the Administrator determines that they are expected to have significantly different exhaust emission control system deterioration characteristics.

(b) *Emission date.* (1) *Emission-data vehicles.* Paragraph (b)(1) of this section applies to light-duty vehicle and light-duty truck emission-data vehicles.

(i) Vehicles will be chosen to be operated and tested for emission data based upon the engine family groupings. Within each engine family, the requirements of this paragraph must be met.

(ii) Vehicles for each engine family will be divided into engine displacement-exhaust emission control system combinations as applicable. A projected sales volume will be established for each combination for the model year for which certification is sought. One vehicle of each combination will be selected in order of decreasing projected sales volume until 70 percent of the projected sales of a manufacturer's total production of vehicles of that engine family is represented, or until a maximum of four vehicles is selected. If any single combination represents over 70 percent, then two vehicles of that combination may be selected. The vehicle selected for each combination will be specified by the Administrator as to such features as engine code, transmission type, fuel system, and inertia weight class.

(iii) The Administrator may select a maximum of four additional vehicles within each engine family based upon features indicating that they may have the highest emission levels of the vehicles in that engine family. In selecting these vehicles, the Administrator will consider such features as the emission control system combination, induction system characteristics, fuel system, rated horsepower, rated torque, compression ratio, inertia weight class, transmission options, and axle ratio.

(iv) If the vehicles selected in accordance with paragraphs (b)(1) (ii) and (iii) of this section do not represent each engine-system combination, than one vehicle of each engine-system combination not represented will be selected by the Administrator. The vehicle selected shall be of the engine displacement with the largest projected sales volume of vehicles with the control system combination in the engine family and will be designated by the Administrator as to such features as engine code, transmission type, fuel system, and inertia weight class.

(v) The Administrator may select one additional vehicle for each engine-system combination with which a manufacturer chooses to demonstrate compliance with applicable emission standards at high altitude.

(vi) The Administrator may combine testing requirements for any vehicle selected under paragraph (b)(1)(v) or (b)(1)(vii)(D) of this section with the testing requirements for any similar vehicle in the same engine-system combination selected under paragraph (b)(1) (ii), (iii) or (iv) of this section or any similar vehicle in the same engine-system, evaporative emission family, evaporative emission control system combination selected under paragraph (b)(1)(vii) (A) or (B) of this section. The testing requirements may be combined by the Administrator by requiring a vehicle selected for testing under paragraphs (b)(1) (ii), (iii), (iv), (vii) (A), or (vii) (B) of this section to be modified (if necessary) after mileage accumulation and emission testing for the purpose of demonstrating compliance with § 86.084-23 (c)(1)(ii).

(vii) (A) Vehicles of each evaporative emission family will be divided into evaporative emission control system within the evaporative emission family will be selected.

(B) The Administrator may select a maximum of four additional vehicles with each evaporative emission family based upon features indicating that they may have the highest evaporative emission levels of vehicles in that family.

(C) The Administrator may determine the the vehicles selected under paragraphs (b)(1) (ii) through (iv) of this section may be used to satisfy the requirements of paragraph (b)(1)(vii) (A) or (B) of this section.

(D) The Administrator may also select one additional vehicle for each evaporative emission control system within each evaporative family for those vehicles with which the manufacturer chooses to demonstrate compliance with applicable emission standards at high altitude.

(E) Vehicles selected under paragraph (b)(1)(v) of this section may be used to satisfy the requirements of paragraph (b)(1)(vii)(D) of this section.

(2) *Gasoline-fueled heavy-duty emission-data engines.* Paragraph (b)(2) of this section applies to gasoline-fueled heavy-duty engines.

(i) Engines will be chosen to be run for emission data based upon engine family groupings. Within each engine family, the requirements of this paragraph must be met.

(ii) Engines of each engine family will be divided into engine displacement-exhaust emission control system combinations. A projected sales volume will be established for each combination for the applicable model year. One engine of each combination will be selected in order of decreasing projected sales volume until 70 percent of the projected sales of a manufacturer's total production of engines of that family is represented, or until a maximum of four engines is selected. The engines selected for each combination will be specified by the Administrator as to fuel system.

(iii) The Administrator may select a maximum of two additional engines within each engine family based upon features indicating that they may have the highest emission levels of the engines in that engine family. In selecting these engines, the Administrator will consider such features as the exhaust emission control system, induction system characteristics, ignition system characteristics, fuel system, rated horsepower, rated torque, and compression ratio.

(iv) If the engines selected in accordance with paragraph (b)(2) (ii) and (iii) of this section do not represent each engine displacement-exhaust emission control system combination, then one engine of each engine displacement-exhaust emission control system combination not represented shall be selected by the Administrator.

(3) *Diesel heavy-duty emission-data engines.* Paragraph (b)(3) of this section

applies to diesel heavy-duty engines emission-data vehicles.

(i) Engines will be chosen to be run for emission data based upon engine family groupings. Within each engine family, the requirements of this paragraph must be met.

(ii) Engines of each engine family will be divided into groups based upon their exhaust emission control systems. One engine of each engine system combination shall be run for smoke emission data and gaseous emission data. Either the complete gaseous emission test or the complete smoke test may be conducted first. Within each combination, the engine that features the highest fuel feed per stroke, primarily at the speed of maximum rated torque and secondarily at rated speed, will usually be selected. If there are military engines with higher fuel rates than other engines in the same engine system combinations, than one military engine shall also be selected. The engine with the highest fuel feed per stroke will usually be selected.

(iii) The Administrator may select a maximum of one additional engine within each engine-system combination based upon features indicating that it may have the highest emission levels of the engines of that combination. In selecting this engine, the Administrator will consider such features as the injection system, fuel system, compression ratio, rated speed, rated horsepower, peak torque speed, and peak torque.

(c) *Durability data.* (1) *Light-duty vehicle durability-data vehicles.* Paragraph (c)(1) of this section applies to light-duty vehicle durability-data vehicles.

(i) A durability-data vehicle will be selected by the Administrator to represent each engine-system combination. The vehicle selected shall be of the engine displacement with the largest projected sales volume of vehicles with that control-system combination in that engine family and will be designated by the Administrator as to transmission type, fuel system, inertia weight class, and test weight.

(ii) A manufacturer may elect to operate and test additional vehicles to represent any engine-system combination. The additional vehicles must be of the same engine displacement, transmission type, fuel system and inertia weight class as the vehicle selected for that engine-system combination in accordance with the provisions of paragrraph (c)(1)(i) of this section. Notice of an intent to operate and test additional vehicles shall be given to the Administrator no later than 30 days following notification of the test fleet selection.

(2) *Light-duty trucks.* Paragraph (c)(2) of this section applies to vehicles, engines, subsystems, or components used to establish exhaust emission deterioration factors for light-duty trucks.

(i) The manufacturer shall select the vehicles, engines, subsystems, or components to be used to determine exhuast emission deterioration factors for each engine-family control system combination. Whether vehicles, engines, subsystems, or components are used, they shall be selected so that their emissions deterioration characteristics may be expected to represent those of in-use vehicles, based on good engineering judgment.

(ii) [Reserved]

(3) *Heavy-duty engines.* Paragraph (c)(3) of this section applies to engines, subsystems, or components used to establish exhaust emission deterioration factors for heavy-duty engines.

(i) The manufacturer shall select the engines, subsystems, or components to be used to determine exhaust emission deterioration factors for each engine-family control system combination. Whether engines, subsystems, or components are used, they shall be selected so that their emissions deterioration characteristics may be expected to represent those of in-use engines, based on good engineering judgment.

(ii) [Reserved]

(d) For purposes of testing under § 86.084–26(a)(9) or (b)(11), the Administrator may require additional emission-data vehicles (or emission-data engines) and durability-data vehicles (light-duty vehicles only) identical in all material respects to vehicles (or engines) selected in accordance with paragraphs (b) and (c) of this section, *provided* that the number of vehicles (or engines) selected shall not increase the size of either the emission-data fleet or the durability-data fleet by more than 20 percent or one vehicle (or engine), whichever is greater.

(e) Any manufacturer whose projected sales for the model year in which certification is sought is less than:

(1) 2,000 gasoline-fueled light-duty vehicles, or

(2) 2,000 diesel light-duty vehicles, or

(3) 2,000 gasoline-fueled light-duty trucks, or

(4) 2,000 diesel light-duty trucks, or

(5) 2,000 gasoline-fueled heavy-duty engines, or

(6) 2,000 diesel heavy-duty engines, may request a reduction in the number of test vehicles (or engines) determined in accordance with the foregoing provisions of this section. The Administrator may agree to such lesser number as he determines would meet the objectives of this procedure.

(f) In lieu of testing an emission-data or durability-data vehicle (or engine) selected under paragraph (b) or (c) of this section, and submitting data therefor, a manufacturer may, with the prior written approval of the Administrator, submit exhaust emission data and/or fuel evaporative emission data, as applicable on a similar vehicle (or engine) for which certification has previously been obtained or for which all applicable data required under § 86.084–23 has previously been submitted.

(g)(1) This paragraph applies to light-duty vehicles and light-duty trucks, but does not apply to the production vehicles selected under paragraph (h) of this section.

(2) Where it is expected that more than 33 percent of the vehicles in an engine family will be equipped with an optional item, the full estimated weight of that item shall be included, if required by the Administrator, in the curb weight computation for each vehicle available with that option in the engine family. Where it is expected that 33 percent or less of the vehicles in an engine family will be equipped with an item of optional equipment, no weight for that item will be added in computing curb weight. In the case of mutually exclusive options, only the weight of the heavier option will be added in computing curb weight. Optional equipment weighing less than 3 pounds per item need not be considered.

(3) Where it is expected that more than 33 percent of the vehicles in an engine family will be equipped with an item of optional equipment that can reasonably be expected to influence emissions, then such items of optional equipment shall actually be installed, unless specifically excluded by the Administrator, on all emission-data and durability-data vehicles in the engine family on which the option is intended to be offered in production. Optional equipment that can reasonably be expected to influence emissions are the air conditioner, power steering, power brakes and other items determined by the Administrator.

(4) Optional equipment that can reasonably be expected to influence emissions which is utilized on 33 percent or less of the vehicles in the engine family shall not be installed on any vehicle in that engine family unless specifically required under this section.

(h) *Alternative Durability Program durability-data vehicles.* Paragraph (h)

of this section applies to light-duty vehicle and light-duty truck durability-data vehicles selected under the Alternative Durability Program. The Alternative Durability Program is described in § 86.081–13.

(1) In order to update the durability data to be used to determine a deterioration factor for each engine family group, the Administrator will select durability-data vehicles from the manufacturer's production line. Production vehicles will be selected from the 1981, 1982, and 1983 model year production of vehicles.

(i) The Administrator shall select the production durability-data vehicle designs from the designs that the manufacturer offers for sale. For each model year and for each engine family group, the Administrator may select production durability-data vehicle designs of equal number to the number of engine families within the engine family group, up to a maximum of three vehicles.

(ii) The production durability-data vehicles representing the designs selected in paragraph (h)(1)(i) of this section will be randomly selected from the manufacturer's production. The Administrator will make these random selections unless the manufacturer (with prior approval of the Administrator) elects to make the random selections.

(iii) The manufacturer may select additional production durability-data vehicle designs from within the engine family group. The production durability-data vehicles representing these designs shall be randomly selected from the manufacturer's production in accordance with paragraph (h)(1)(ii) of this section.

(iv) For each production durability-data vehicle selected under paragraph (h)(1) of this section, the manufacturer shall provide to the Administrator (before the vehicle is tested or begins service accumulation) the vehicle identification number. Before the vehicle begins service accumulation the manufacturer shall also provide the Administrator with a description of the durability-data vehicle as specified by the Administrator.

(2) If, within an existing engine family group, a manufacturer requests to certify vehicles of a new design, engine family, emission control system, or with any other durability-related design difference, the Administrator will determine if the existing engine family group deterioration factor is appropriate for the new design. If the Administrator cannot make this determination or deems the deterioration factor not appropriate, the Administrator shall select preproduction durability-data vehicles under the provisions of paragraph (c) of this section. If vehicles are then certified using the new design, the Administrator may select production vehicles with the new design under the provisions of paragraph (h)(1) of this section.

(3) If a manufacturer requests to certify vehicles of a new design that the Administrator determines are a new engine family group, the Administrator shall select preproduction durability-data vehicles under the provisions of paragraph (c) of this section. If vehicles are then certified using the new design, the Administrator may select production vehicles of that design under the provisions of paragraph (h)(1) of this section.

9. § 86.084–25 is revised to read as follows:

§ 86.084–25 Maintenance.

(a) *Light-duty vehicles.* Paragraph (a) of this section applies to light-duty vehicles.

(1) Scheduled maintenance on the engine, emission control system, and fuel system of durability-data vehicles, selected by the Administrator or elected by the manufacturer under § 86.084–24(c)(1), shall be scheduled for performance during durability testing at the same mileage intervals that will be specified in the manufacturer's maintenance instructions furnished to the ultimate purchaser of the motor vehicle. Such maintenance shall be performed, except as provided in paragraph (a)(5)(iii) of this section, only under the following provisions:

(i) Scheduled major engine tuneups to manufacturer's specifications may be performed no more frequently than every 12,500 miles of scheduled driving: *Provided,* that no tuneup may be performed after 45,000 miles of scheduled driving. A scheduled major engine tuneup shall be restricted to paragraph (a)(1)(i)(A) or (B) of this section, and shall be conducted in a manner consistent with service instructions and specifications provided by the manufacturer for use by customer service personnel.

(A) *For gasoline-fueled vehicles,* the following items may be inspected, replaced, cleaned, adjusted, and/or serviced as required:

(*1*) Ignition system.

(*2*) Cold starting enrichment system (includes fast idle speed setting).

(*3*) Curb idle speed and air/fuel mixture.

(*4*) Drive belt tension on engine accessories.

(*5*) Valve lash.

(*6*) Inlet air and exhaust gas control valves.

(*7*) Engine bolt torque.

(*8*) Spark plugs.

(*9*) Fuel filter and air filter.

(*10*) Crankcase emission control system.

(*11*) Fuel evaporative emission control system.

(B) *For diesel vehicles,* a major engine tuneup shall be restricted to the following:

(*1*) Adjust low idle speed.

(*2*) Adjust valve lash if required.

(*3*) Adjust injector timing.

(*4*) Adjust governor.

(*5*) Clean and service injector tips.

(*6*) Adjust drive belt tension on engine accessories.

(*7*) Check engine bolt torque and tighten as required.

(ii) Change of engine and transmission oil, and change or service of oil filter will be allowed at the same mileage intervals that will be specified in the manufacturer's maintenance instructions.

(iii) Readjustment of the engine idle speed (curb idle and fast idle) may be performed, in addition to adjustment during scheduled major engine tuneups, once during the first 5,000 miles of vehicle operation.

(2)(i) *For gasoline-fueled vehicles,* unscheduled maintenance on the engine, emission control system, and fuel system of durability vehicles may be performed, except as provided in paragraph (a)(5)(i) of this section, only under the following provisions:

(A) Any persistently misfiring spark plug may be replaced, in addition to replacement at scheduled major engine tuneup points.

(B) Readjustment of the engine cold starting enrichment system may be performed if there is a problem of stalling or if there is visible black smoke.

(C) Readjustment of the engine idle-speed (curb idle and fast idle) may be performed, in addition to that performed as scheduled maintenance under paragraph (a)(1) of this section, if the idle speed exceeds the manufacturer's recommended idle speed by 300 rpm or more, or if there is a problem of stalling.

(D) The idle mixture may be reset, other than during scheduled major engine tuneups, only with the advance approval of the Administrator.

(ii) *For diesel vehicles,* unscheduled maintenance on the engine emission control system, and fuel system of durability-data vehicles may be performed, except as provided in paragraph (a)(5)(i) of this section, only under the following provisions:

(A) Injectors may be changed if a persistent misfire is detected.

(B) Readjustment of the engine idle speed (curb idle and fast idle) may be performed in addition to that performed as scheduled maintenance under paragraph (a)(1) of this section, if the idle speed exceeds the manufacturer's recommended idle speed by: 300 rpm or more, or if there is a problem of stalling.

(3) An exhaust gas recirculation (EGR) system may be serviced during durability testing only under one of the following provisions:

(i) Manufacturers may schedule service to the EGR system at the scheduled major engine tuneup, if an audible and/or visual signal approved by the Administrator alerts the vehicle operator to the need for EGR system maintenance at each of those mileage points. One additional servicing may also be performed as unscheduled maintenance if there is an overt indication of malfunction and if the malfunction or repair of the malfunction does not render the test vehicle unrepresentative of vehicles in use.

(ii) Manufacturers may service the EGR system a maximum of three times during the 50,000 miles either at a scheduled major engine tuneup point or as unscheduled maintenance, if an audible and/or visual signal approved by the Administrator alerts the vehicle operator to the need for EGR system maintenance. The signal may be activated either by EGR system failure (unscheduled maintenance) or need for scheduled periodic maintenance. If maintenance is performed, the signal for scheduled periodic maintenance shall be reset. One additional servicing may also be performed as unscheduled maintenance if there is an overt indication of malfunction and if the malfunction or repair of the malfunction does not render the test vehicle unrepresentative of vehicles in use.

(iii) Manufacturers may schedule service to the EGR system at the scheduled major engine tuneup(s) if failure to perform EGR system maintenance is not likely, as determined by the Administrator, to result in an improvement in vehicle performance. One additional servicing may also be performed as unscheduled maintenance if there is an overt indication of malfunction and if the malfunction or repair of the malfunction does not render the test vehicle unrepresentative of vehicles in use.

(4) The catalytic converter may be serviced once during 50,000 miles if an audible and/or visual signal approved by the Administrator alerts the vehicle operator to the need for maintenance. The signal may be activated either by component failure or need for maintenance at a scheduled point.

(5) Any other engine, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement on durability-data vehicles shall be performed only with the advance approval of the Administrator.

(i) In the case of unscheduled maintenance, such approval will be given if the Administrator:

(A) Has made a preliminary determination that part failure or system malfunction, or the repair of such failure or malfunction, does not render the vehicle unrepresentative of vehicles in use, and does not require direct access to the combustion chamber, except for spark plug, fuel injection component, or removable prechamber removal or replacement; and

(B) Has made a determination that the need for maintenance or repairs is indicated by an overt indication of malfunction such as persistent misfiring, vehicle stalling, overheating, fluid leakage, loss of oil pressure, or charge indicator warning. For the evaporative emission control system this overt indication may be indicated by such items as fuel odor or fluid leakage.

(ii) Emission measurements may not be used as a means of determining the need for unscheduled maintenance under paragraph (a)(5)(i)(A) of this section.

(iii) Requests for authorization of scheduled maintenance of emission control-related components not specifically authorized to be maintained by these regulations must be made prior to the beginning of durability testing. The Administrator will approve the performance of such maintenance if the manufacturer makes a satisfactory showing that the maintenance will be performed on vehicles in use.

(6) If the Administrator determines that part failure or system malfunction occurrence and/or repair rendered the vehicle unrepresentative of vehicles in use, the vehicle shall not be used as a durability-data vehicle.

(7) Where the Administrator agrees under § 86.084–26 to a mileage accumulation of less than 50,000 miles for durability testing, he may modify the requirements of this paragraph.

(8)(i) Adjustment of engine idle speed on emission-data vehicles may be performed once before the 6,436-kilometer (4,000-mile) test point. Any other engine, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement on emission-data vehicles shall be performed only with the advance approval of the administrator.

(ii) Maintenance on emission-data vehicles selected under § 86.084–24 (b)(1)(v) or (b)(1)(vii)(D) and permitted to be tested for purposes of § 86.084–23(b)(1)(ii) under the provisions of § 86.084–24(b)(1)(vi) may be performed in conjunction with emission control system modifications at the 6,436-kilometer (4,000-mile) test point, and shall be performed in accordance with the maintenance instructions to be provided to the ultimate purchaser required under § 86.084–38.

(iii) Maintenance on those emission-data vehicles selected under § 86.084–24(b)(1)(v) which are not capable of being modified in the field for the purpose of complying with emission standards at an altitude other than intended by the original design may be performed in conjunction with the emission control system modifications at the 6,436-kilometer (4,000-mile) test point, and shall be approved in advance by the Administrator.

(9) Repairs to vehicle components of the durability-data or emission-data vehicle, other than the engine, emission control system or fuel system, shall performed only as a result of part failure, vehicle system malfunction, or with the advance approval of the Administrator.

(10) Complete emission tests (see §§ 86.106 through 86.145) are required, unless waived by the Administrator, before and after any vehicle maintenance which may reasonably be expected to affect emissions. These test data shall be air posted to the Administrator within 24 hours (or delivered within 3 working days), after the tests, along with a complete record of all pertinent maintenance, including a preliminary engineering report of any malfunction diagnosis and the corrective action taken. A complete engineering report shall be delivered or air posted to the Administrator within 10 working days after the tests. In addition, all test data and maintenance reports shall be compiled and provided to the Administrator in accordance with § 86.084–23.

(11) The Administrator shall be given the opportunity to verify the existence of an overt indication of part failure and/or vehicle malfunction (e.g., misfiring, stalling, black smoke), or an activation of an audible and/or visual signal, prior to the performance of any maintenance to which such overt indication or signal is relevant under the provisions of this section.

(12) Equipment, instruments, or tools may not be used to identify malfunctioning, maladjusted, or defective engine components unless the same or equivalent equipment, instruments, or tools will be available to

dealerships and other service outlets and,

(i) Are used in conjunction with scheduled maintenance on such components,

(ii) Are used subsequent to the identification of a vehicle or engine malfunction, as provided in paragraph (a)(5)(i) of this section for durability-data vehicles or paragraph (a)(8)(i) of this section for emission-data vehicles, or

(iii) Unless specifically authorized by the Administrator.

(b) *Light-duty trucks and heavy-duty engines.* Paragraph (b) of this section applies to light-duty trucks and heavy-duty engines.

(1) Any emission-related maintenance which is performed on vehicles, engines, subsystems, or components used to determine exhaust emission deterioration factors must be technologically necessary for compliance with the standards in actual use. All emission-related *scheduled* maintenance must occur at the same mileage intervals (or equivalent intervals if engines, subsystems, or components are used) that will be specified in the manufacturer's maintenance instructions furnished to the ultimate purchaser of the motor vehicle.

(i) The manufacturer must submit data to the Administrator which demonstrates that all of the emission-related scheduled maintenance which is to be performed on the durability-data vehicles is technologically necessary. EPA has determined that emission-related maintenance at shorter intervals than that outlined in paragraphs (b)(1)(ii) and (b)(1)(iii) is not technologically necessary. The Administrator may determine that even maintenance more restrictive (e.g., longer intervals) than that listed in paragraphs (b)(1)(ii) and (b)(1)(iii) is not technologically necessary.

(ii) For gasoline-fueled vehicles or engines, emission-related maintenance in addition to or at shorter intervals than that listed below will not be accepted as technologically necessary, except as provided in paragraph (b)(1)(iv).

(A) The cleaning or replacement of light-duty truck spark plugs at 30,000 miles and at 30,000-mile intervals thereafter and heavy-duty engine spark plugs at 25,000 miles and 25,000-mile intervals thereafter.

(B) The inspecting, cleaning, adjustment, or replacement of the following at 50,000 miles of use and at 50,000-mile intervals thereafter:

(*1*) Positive crankcase ventilation and exhaust gas recirculation valves;

(*2*) Emission-related hoses and tubes;

(*3*) Ignition wires;

(*4*) Oxygen sensor;

(*5*) Idle mixture.

(C) The replacement of the catalytic converter or inspecting and cleaning of the injector tips at 100,000 miles of use and at 100,000-mile (or longer) intervals thereafter.

(iii) For diesel vehicles or engines, emission-related maintenance in addition to or at shorter intervals than that listed below will not be accepted as technologically necessary, except as provided in paragraph (b)(1)(iv).

(A) The following maintenance at 50,000 miles of use and at 50,000-mile intervals thereafter.

(*1*) Cleaning or replacement of the exhaust gas recirculation and positive crankcase ventilation valves;

(*2*) Cleaning of injector tips.

(B) The cleaning, rebuilding, or replacement of the turbocharger and injectors at 100,000 miles of use and at 100,000-mile intervals thereafter for light-duty trucks or at 200,000 miles of use and at 200,000-mile intervals thereafter for heavy-duty engines.

(iv) Requests for authorization of scheduled maintenance of emission control related components in addition to those items of maintenance covered under paragraphs (b)(1)(ii) and (b)(1)(iii) will be considered if the maintenance is a direct result of the implementation of new technology. New technology means any technology not found in production on any motor vehicle prior to the 1980 model year.

(v)(A) Only the maintenance items listed in paragraphs (b)(1)(i) and (b)(1)(ii) are currently considered by EPA to be emission-related maintenance. The Administrator may, however, determine additional maintenance items to be emission-related by announcement in a Federal Register notice. In no event may this notification occur later than September 1 of the calendar year two years prior to the affected model year.

(B) Any manufacturer may request a hearing on the Administrator's determinations in paragraph (b)(1)(v)(A) of this section. The request shall be in writing, signed by an authorized representative of the manufacturer, and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objections. If, after review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, she/he shall provide the manufacturer a hearing in accordance with § 86.078–6 with respect to such issue.

(vi) [Reserved]

(vii) Non-emission related vehicle maintenance which is reasonable and necessary (e.g., oil change, oil filter change, fuel filter change, air filter change, cooling system maintenance, accessory belt inspection, adjustment of idle speed, governor, engine bolt torque, valve lash, injector lash, timing, etc.) may be performed on durability-data vehicles at the intervals recommended by the manufacturer to the ultimate purchaser.

(viii) Unscheduled maintenance may be performed during the testing used to determine deterioration factors, except as provided in paragraph (b)(1)(ix)(A) of this section, only under the following provisions:

(A) An injector or spark plug may be changed if a persistent misfire is detected.

(B) Readjustment of a gasoline-fueled vehicle or engine cold-start enrichment system may be performed if there is a problem of stalling.

(C) Readjustment of the engine idle speed (curb idle and fast idle) may be performed, if the idle speed exceeds the manufacturer's recommended idle speed by 300 rpm or more, or if there is a problem of stalling.

(ix) Any other unscheduled vehicle, engine, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement during testing to determine deterioration factors shall be performed only with the advance approval of the Administrator.

(A) Such approval will be given if the Administrator:

(*1*) Has made a preliminary determination that the part failure or system malfunction, or the repair of such failure or malfunction, does not render the vehicle or engine unrepresentative of vehicles or engines in use, and does not require direct access to the combustion chamber, except for spark plug, fuel injection component, or removable prechamber removal or replacement; and,

(*2*) Has made a determination that the need for maintenance or repairs is indicated by an overt indication of malfunction such as persistent misfiring, engine stalling, overheating, fluid leakage, loss of oil pressure, excessive fuel consumption or excessive power loss.

(B) Emission measurements may not be used as a means of determining the need for unscheduled maintenance under paragraph (b)(1)(vii) of this section.

(x) [Reserved]

(2) [Reserved]

(3)(i) Scheduled maintenance on emission-data vehicles (or engines) is

limited to the adjustment of idle speed once before the 4,000-mile test point (or the 125-hour test point for engines), provided the idle speed is outside the manufacturer's specifications.

(ii) Maintenance on light-duty truck emission-data vehicles selected under § 86.084–24 (b)(1)(v) or (b)(1)(vii)(D) and permitted to be tested for purposes of § 86.084–23(c)(1)(ii) under the provisions of § 86.084–24(b)(1)(vi) may be performed in conjunction with emission control system modifications at the 6,436 kilometers (4,000-mile) test point, and shall be performed in accordance with the maintenance instructions to be provided to the ultimate purchaser required under § 86.084–38.

(iii) Maintenance on those light-duty truck emission-data vehicles selected under § 86.084–24(b)(1)(v) which are not capable of being modified in the field for the purpose of complying with emission standards at an altitude other than that intended by the original design may be performed in conjunction with the emission control system modifications at the 6,436 kilometer (4,000-mile) test point, and shall be approved in advance by the Administrator.

(iv) Any other engine, emission control system, or fuel system, adjustment, repair, removal, disassembly, cleaning, servicing, or replacement shall be performed only with the advance approval of the Administrator.

(4) *Light-duty trucks.* Repairs to vehicle components of the emission-data vehicle other than the engine, emission control system, or fuel system, shall be performed only as a result of part failure, vehicle system malfunction, or with the advance approval of the Administrator.

(5)(i) Complete emission tests (see Subpart B and P of this part) are required, unless waived by the Administrator, before and after catalytic converter or oxygen sensor servicing on any vehicle.

(ii) The Administrator may require emission tests before and after any unscheduled maintenance.

(iii) [Reserved]

(iv) Test data required by paragraph (b)(5) of this section shall be air posted to the Administrator within 72 hours of test completion (or delivered within 5 working days), along with a complete record of all pertinent maintenance.

(v) When unscheduled maintenance is approved, a preliminary engineering report, unless waived by the Administrator, shall be air posted within 72 hours (or delivered within 5 working days). A final engineering report shall be delivered or air posted within 10 working days after the completion of the emission tests. The Administrator may approve an extension of the time requirements for the final engineering report.

(vi) All test data, maintenance reports, and required engineering reports shall be compiled and provided to the Administrator in accordance with § 86.084–23.

(6) The Administrator shall be given the opportunity to verify the existence of an overt indication of part failure and/or engine malfunction (e.g., misfiring, stalling), or an activation of an audible and/or visual signal, prior to the performance of any maintenance to which such overt indication or signal is relevant under the provisions of this section.

(7) Equipment, instruments, or tools may not be used to identify malfunctioning, maladjusted, or defective engine components unless the same or equivalent equipment, instruments, or tools will be available to dealerships and other service outlets and:

(i) Are used in conjunction with scheduled maintenance on such components,

(ii) Are used subsequent to the identification of a vehicle or engine malfunction, as provided in paragraph (b)(3)(iv) of this section for emission-data vehicles, or

(iii) Unless specifically authorized by the Administrator.

10. § 86.084–26 is revised to read as follows:

§ 86.084–26 Mileage and service accumulation; emission measurements.

(a)(1) Paragraph (a) of this section applies to light-duty vehicles.

(2) The procedure for mileage accumulation will be the Durability Driving Schedule as specified in Appendix IV to this part. A modified procedure may also be used if approved in advance by the Administrator. Except with the advance approval of the Administrator, all vehicles will accumulate mileage at a measured curb weight which is within 100 pounds of the estimated curb weight. If the loaded vehicle weight is within 100 pounds of being included in the next higher inertia weight class as specified in § 86.129, the manufacturer may elect to conduct the respective emission tests at higher loaded vehicle weight.

(3) *Emission-data vehicles.* Unless as otherwise provided for in § 86.084–23(a), emission-data vehicles shall be operated and tested as follows:

(i) *Gasoline-fueled.* (A) Each gasoline-fueled emission-data vehicle shall be driven 4,000 miles with all emission control systems installed and operating. Complete exhaust emission tests shall be conducted at zero miles and 4,000 miles on those vehicles selected under § 86.084–24 (b)(1)(ii) through (b)(1)(v). Complete exhaust and evaporative emission tests shall be conducted at zero miles and 4,000 miles on those vehicles selected under § 86.084–24(b)(1)(vii). The manufacturer may at his option test the vehicles selected under § 86.084–24(b)(1)(vii) up to three times at the 4,000-mile test point as long as the ±250-mile test tolerance is adhered to. The Administrator may determine under § 86.084–24(f) that no testing is required.

(B) The emission-data vehicle(s) selected for testing under § 86.084–24 (b)(1)(v) or (b)(1)(vii)(D) shall be driven 6,436 kilometers (4,000 miles) at any altitude. Emission tests shall be conducted at zero kilometers (zero miles) at any altitude and 6,436 kilometers (4,000 miles) under high-altitude conditions.

(C) The emission-data vehicle(s) selected for testing under § 86.084–24 (b)(1)(v) or (b)(1)(vii)(D) and permitted to be tested for purposes of § 86.084–23(b)(1)(ii) under the provisions of § 86.084–24(b)(1)(vi) shall be driven 6,436 kilometers (4,000 miles) at low altitude. Emission tests shall be conducted at zero kilometers (zero miles) at low altitude and 6,436 kilometers (4,000 miles) under both low- and high-altitude conditions. For the purposes of this subparagraph, "low altitude" means any elevation less than 549 meters (1,800 feet).

(ii)(A) *Diesel.* Each diesel emission-data vehicle shall be driven 6,436 kilometers (4,000 miles) with all emission control systems installed and operating. Emission tests shall be conducted at zero kilometers (zero miles) and 6,436 kilometers (4,000 miles).

(B) The emission-data vehicle(s) selected for testing under § 86.084–24(b)(1)(v) shall be driven 6,436 kilometers (4,000 miles) at any altitude. Emission tests shall be conducted at zero kilometers (zero miles) and 6,436 kilometers (4,000 miles) under high-altitude conditions.

(C) The emission-data vehicle(s) selected for testing under § 86.084–24(b)(1)(v) and permitted to be tested for purposes of § 86.084–23(b)(1)(ii) under the provisions of § 86.084–24(b)(1)(vi) shall be driven 6,436 kilometers (4,000 miles) at low altitude. Emission tests shall be conducted at zero kilometers (zero miles) at low altitude and 6,436 kilometers (4,000 miles) under both low- and high-altitude conditions. For the purpose of this subparagraph "low altitude" means any elevation less than 549 meters (1,800 feet).

(4) *Durability-data vehicles.* Unless as otherwise provided for in § 86.084–23(a), durability-data vehicles shall be operated and tested as follows:

(i) *Gasoline-fueled.* Each gasoline-fueled durability-data vehicle selected by the Administrator or elected by the manufacturer under § 86.084–24(c)(1) shall be driven, with all emission control systems installed and operating for 50,000 miles or such lesser distance as the Administrator may agree to as meeting the objective of this procedure. Complete exhaust emission tests shall be made on all durability-data vehicles selected by the Administrator or elected by the manufacturer under § 86.084–24(c) at the following mileage points except as specified by paragraph (a)(4)(iii) of this section: 0; 5,000; 10,000; 15,000; 20,000; 25,000; 30,000; 35,000; 40,000; 45,000; 50,000. The Administrator may determine under § 86.084–24(f) that no testing is required.

(ii) *Diesel.* Each diesel durability-data vehicle shall be driven, with all emission control systems installed and operating, for 50,000 miles or such lesser distance as the Administrator may agree to as meeting the objectives of the procedure. Complete emission tests (see §§ 86.106 through 86.145) shall be made at the following mileage points except as specified by paragraph (a)(4)(iii) of this section: 0; 5,000; 10,000; 15,000; 20,000; 25,000; 30,000; 35,000; 40,000; 45,000; 50,000.

(5) All tests required by this subpart to be conducted after every 5,000 miles of driving for durability-data vehicles and 4,000 miles for emission-data vehicles must be conducted at any accumulated mileage within 250 miles of each of those test points.

(6)(i) The results of each emission test shall be supplied to the Administrator immediately after the test. The manufacturer shall furnish to the Administrator explanation for voiding any test. The Administrator will determine if voiding the test was appropriate based upon the explanation given by the manufacturer for the voided test. If a manufacturer conducts multiple tests at any test point at which the data are intended to be used in the calculation of the deterioration factor, the number of tests must be the same at each point and may not exceed three valid tests. Tests between tests points may be conducted as required by the Administrator. Data from all tests (including voided tests) shall be air posted to the Administrator within 24 hours (or delivered within 3 working days). In addition, all test data shall be compiled and provided to the Administrator in accordance with § 86.084–23. Where the Administrator conducts a test on a durability-data vehicle at a prescribed test point, the results of that test will be used in the calculation of the deterioration factor.

(ii) The results of all emission tests shall be rounded, using the "Rounding Off Method" specified in ASTM E 29–67, to the number of places to the right of the decimal point indicated by expressing the applicable emission standard of this subpart to three significant figures.

(7) Whenever the manufacturer proposes to operate and test a vehicle which may be used for emission or durability data, he shall provide the zero-mile test data to the Administrator (except for those vehicles for which the zero-mile test requirement has been waived under § 86.084–23(a)(2)) and make the vehicle available for such testing under § 86.083–29 as the Administrator may require before beginning to accumulate mileage on the vehicle. Failure to comply with this requirement will invalidate all test data submitted for this vehicle.

(8) Once a manufacturer begins to operate an emission-data or durability-data vehicle, as indicated by compliance with paragraph (a)(7) of this section, he shall continue to run the vehicle to 4,000 miles or 50,000 miles, respectively, and the data from the vehicle will be used in the calculations under § 86.084–28. Discontinuation of a vehicle shall be allowed only with the written consent of the Administrator.

(9)(i) The Administrator may elect to operate and test any test vehicle during all or any part of the mileage accumulation and testing procedure. In such cases, the manufacturer shall provide the vehicle(s) to the Administrator with all information necessary to conduct this testing.

(ii) The test procedures in §§ 86.106 through 86.145 will be followed by the Administrator. The Administrator will test the vehicles at each test point. Maintenance may be performed by the manufacturer under such conditions as the Administrator may prescribe.

(iii) The data developed by the Administrator for the engine-system combination shall be combined with any applicable data supplied by the manufacturer on other vehicles of that combination to determine the applicable deterioration factors for the combination. In the case of a significant discrepancy between data developed by the Administrator and that submitted by the manufacturer, the Administrator's data shall be used in the determination of deterioration factors.

(10) Emission testing of any type with respect to any certification vehicle other than that specified in this part is not allowed except as such testing may be specifically authorized by the Administrator.

(11) This section does not apply to testing conducted to meet the requirements of § 86.084–23(b)(2).

(b)(1) Paragraph (b) of this section applies to light-duty trucks.

(2) There are three types of mileage or service accumulation applicable to light-duty trucks:

(i) Mileage or service accumulation on vehicles, engines, subsystems, or components selected by the manufacturer under § 86.084–24(c)(2)(i). The manufacturer determines the form and extent of this mileage or service accumulation, consistent with good engineering practice, and describes it in the application for certification.

(ii) Mileage accumulation of 4,000 miles duration on emission-data vehicles selected under § 86.084–24(b)(1). The procedure for mileage accumulation will be the Durability Driving Schedule as specified in Appendix IV to this part. A modified procedure may also be used if approved in advance by the Administrator. Except with the advance approval of the Administrator, all vehicles will accumulate mileage at a measured curb weight which is within 100 pounds of the estimated curb weight. If the loaded vehicle weight is within 100 pounds of being included in the next higher inertia weight class as specified in § 86.129, the manufacturer may elect to conduct the respective emission tests at the test weight corresponding to the higher loaded vehicle weight.

(iii) Service or mileage accumulation which may be part of the test procedures used by the manufacturer to establish evaporative emission deterioration factors.

(3) Exhaust emission deterioration factors will be determined on the basis of the mileage or service accumulation described in paragraph (b)(2)(i) of this section and related testing, according to the manufacturer's procedures.

(4) Each emission-data vehicle shall be operated and tested as follows:

(i)(A) *Gasoline-fueled.* (A) Each gasoline-fueled vehicle be driven 4,000 miles with all emission control systems installed and operating. Complete exhaust emission tests shall be conducted at zero and 4,000 miles on emission-data vehicles selected under § 86.0984–24(b)(1)(ii) through (b)(1)(v). Complete exhaust and evaporative emission tests shall be conducted at zero miles and 4,000 miles on those vehicles selected under § 86.084–24(b)(1)(vii). The manufacturer may at its option test the vehicles selected under § 86.084–24(b)(1)(vii) up to three

times at the 4,000-miles test point as long as the ±250-mile test tolerance is adhered to. The Administrator may determine under § 86.084–24(f) that no testing is required.

(B) The emission-data vehicle(s) selected for testing under § 86.084–24 (b)(1)(v) or (b)(1)(vii)(D) shall be driven 6,436 kilometers (4,000 miles) at any altitude. Emission tests shall be conducted at zero kilometers (zero miles) at any altitude and 6,436 kilometers (4,000 miles) under high-altitude conditions.

(C) The emission-data vehicle(s) selected for testing under § 86.084–24 (b)(1)(v) or (b)(1)(vii)(D) and permitted to be tested for purposes of § 86.084–23(b)(1)(ii) under the provisions of § 86.084–24(b)(1)(vi) shall be driven 6,436 kilometers (4,000 miles) at low altitude. Emission tests shall be conducted at zero kilometers (4,000 miles) under both low- and high-altitude conditions. For the purposes of this subparagraph, low altitude means any elevation less than 549 meters (1,800 feet).

(ii)(A) *Diesel.* Each diesel vehicle shall be driven 6,436 kilometers (4,000 miles) with all emission control systems installed and operating. Emission tests shall be conducted at zero kilometers (zero miles) and 6,436 kilometers (4,000 miles).

(B) The emission-data vehicle(s) selected for testing under § 86.084–24(b)(1)(v) shall be driven 6,436 kilometers (4,000 miles) at any altitude. Emission tests shall be conducted at zero kilometers (zero miles) at any altitude and 6,436 kilometers (4,000 miles) under high-altitude conditions.

(C) The emission-data vehicle(s) selected for tesing under § 86.084–24(b)(1)(v) and permitted to be tested for purposes of § 86.084–23(b)(1)(ii) under the provisions of § 86.084–24(b)(1)(v) shall be driven 6,436 kilometers (4,000 miles) at low altitude. Emission tests shall be conducted at zero kilometers (zero miles) at low altitude and 6,436 kilometers (4,000 miles) under both low- and high-altitude conditions. For the purposes of this subparagraph, low altitude means any elevation less than 549 meters (1,800 feet).

(iii) [Reserved]

(iv) All tests required to be conducted at 4,000 miles by paragraph (b)(4) of this section may be conducted at any accumulated mileage within 250 miles of that test point.

(5) [Reserved]

(6) [Reserved]

(7) [Reserved]

(c)(1) Paragraph (c) of this section applies to heavy-duty engines.

(2) There are two types of service accumulation applicable to heavy-duty engines:

(i) Service accumulation on engines, subsystems, or components selected by the manufacturer under § 86.084–24(c)(3)(i). The manufacturer determines the form and extent of this service accumulation, consistent with good engineering practice, and describes it in the application for certification.

(ii) Dynamometer service accumulation on emission-data engines selected under § 86.084–24(b)(2) or § 86.084–24(b)(3). The manufacturer determines the engine operating schedule to be used for dynamometer service accumulation, consistent with good engineering practice. A single engine operating schedule shall be used for all engines in an engine family-control system combination. Operating schedules may be different for different combinations.

(3) Exhaust emission deterioration factors will be determined on the basis of the service accumulation described in paragraph (b)(2)(i) of this section and related testing, according to the manufacturer's procedures.

(4) Each emission-data engine shall be operated on a dynamometer for 125 hours plus or minus eight hours with all emission control systems installed and operating. An emission test shall be conducted at the end of this dynamometer service accumulation. A zero-hour emission test may be performed after the engine has been approved by the Administrator to begin service accumulation. Evaporative emission controls need not be connected provided normal operating conditions are maintained in the engine induction system. If a break-in procedure is used the procedure must be the same as recommended to the ultimate purchaser. The hours accumulated during the break-in procedure will not be counted as part of the service accumulation.

(5) [Reserved]

(6) [Reserved]

(7) [Reserved]

(8) [Reserved]

(d)(1) Paragraph (d) of this section applies to both light-duty trucks and heavy-duty engines.

(2)(i) Data from all emission tests (including voided tests) shall be air posted to the Administrator within 72 hours (or delivered within 5 working days). The manufacturer shall furnish to the Administrator an explanation for voiding any test. The Administrator will determine if voiding the test was appropriate based upon the explanation given by the manufacturer for the voided test. The Administrator may require emission tests at points in addition to those specified in this subpart. In addition, all test data shall be compiled and provided to the Administrator in accordance with § 86.084–23.

(ii) The results of all emission tests shall be recorded and reported to the Administrator using two places to the right of the decimal point. These numbers shall be rounded in accordance with the " Rounding Off Method" specified in ASTM E 29–67.

(3) Whenever the manufacturer proposes to operate and test a vehicle or engine which may be used for emission data, it shall provide such information concerning components used on the vehicle (or engines) as the Administrator may require and make the vehicle (or engine) available for such testing under § 86.084–29 as the Administrator may require, before beginning to accumulate mileage on the vehicle (or engine). Failure to comply with this requirement will invalidate all test data later submitted for this vehicle or engine.

(4) Once the manufacturer begins to operate an emission-data vehicle or engine, as indicated by compliance with paragraph (d)(3) of this section, it shall continue to run that vehicle or engine to 4,000 miles plus or minus 250 miles (for vehicles) or 125 hours plus or minus eight hours (for engines).

(5) [Reserved]

(6) Emission testing of any type with respect to any certification vehicle or engine other than that specified in this subpart is not allowed except as such testing may be specifically authorized by the Administrator.

11. § 86.084–28 is revised to read as follows:

§ 86.084–28 Compliance with emission standards.

(a)(1) Paragraph (a) of this section applies to light-duty vehicles.

(2) The applicable exhaust and fuel evaporative emission standards of this subpart apply to the emissions of vehicles for their useful life.

(3) Since it is expected that emission control efficiency will change with mileage accumulation on the vehicle, the emission level of a vehicle which has accumulated 50,000 miles will be used as the basis for determining compliance with the standards.

(4) The procedure for determining compliance of a new motor vehicle with exhaust emission standards is as follows, except where specified by paragraph (a)(5) of this section for the Alternative Durability Program:

(i) Separate emission deterioration factors shall be determined from the exhaust emission results of the durability-data vehicle(s) for each engine-system combination. A separate

factor shall be established for exhaust HC, exhaust CO, exhaust NO_x, and exhaust particulate (diesel vehicles only) for each engine-system combination. A separate evaporative emission deterioration factor shall be determined for each evaporative emission family-evaporative emission control system combination from the testing conducted by the manufacturer (gasoline-fueled vehicles only).

(A) The applicable results to be used in determining the exhaust emission deterioration factors for each engine-system combination shall be:

(*1*) All valid exhaust emission data from the tests required under § 86.084–26(a)(4) except the zero-mile tests. This shall include the official test results, as determined in § 86.081–29 for all tests conducted on all durability-data vehicles of the combination selected under § 86.084–24(c) (including all vehicles elected to be operated by the manufacturer under § 86.084–24(c)(1)(ii)).

(*2*) All exhaust emission data from the test conducted before the after and scheduled maintenance provided in § 86.084–25.

(*3*) All exhaust emission data from tests required by maintenance approved under § 86.084–25, in those cases where the Administrator conditioned his approval for the performance of such maintenance on the inclusion of such data in the deterioration factor calculation.

(B) All applicable exhaust emission results shall be plotted as a function of the mileage on the system, rounded to the nearest mile, and the best fit straight lines, fitted by the method of least squares, shall be drawn through all these data points. The interpolated 4,000- and 50,000-mile points on this line must be within the low-altitude standards provided in § 86.082–8 or § 86.083–9, as applicable, or the data will not be acceptable for use in calculation of a deterioration factor, unless no applicable data point exceeded the standard. An exhaust emission deterioration factor shall be calculated for each engine-system combination as follows:

Factor = Exhaust emissions interpolated to 50,000 miles divided by exhaust emissions interpolated to 4,000 miles.

These interpolated values shall be carried out to a minimum of four places to the right of the decimal point before dividing one by the other to determine the deterioration factor. The results shall be rounded to three places to the right of the decimal point in accordance with ASTM E 29–67.

(C) An evaporative emissions deterioration factor (gasoline-fueled vehicles only) shall be determined from the testing conducted as described in § 86.084–21(b)(4)(i), for each evaporative emission family-evaporative emission control system combination to indicate the evaporative emission level at 50,000 miles relative to the evaporative emission level at 4,000 miles as follows:

Factor = Evaporative emission level at 50,000 miles minus the evaporative emission level at 4,000 miles.

The factor shall be established to a minimum of two places to the right of the decimal.

(ii)(A) The official exhaust-emission test results for each emission-data vehicle at the 4,000-mile test point shall be multiplied by the appropriate deterioration factor: *Provided:* that if a deterioration factor as computed in paragraph (a)(4)(i)(B) of this section is less than one, that deterioration factor shall be one for the purposes of this paragraph.

(B) The official evaporative emission test results (gasoline-fueled vehicles only) for each evaporative emission-data vehicle at the 4,000-mile test point shall be adjusted by addition of the appropriate deterioration factor: *Provided:* that if a deterioration factor as computed in paragraph (a)(4)(i)(C) of this section is less than zero, that deterioration factor shall be zero for the purposes of this paragraph.

(iii) The emissions to compare with the standard shall be the adjusted emissions of paragraphs (a)(4)(ii) (A) and (B) of this section for each emission-data vehicle. Before any emission value is compared with the standard, it shall be rounded, in accordance with ASTM E 29–67, to two significant figures. The rounded emission values may not exceed the standard.

(iv) Every test vehicle of an engine family must comply with the exhaust emission standards, as determined in paragraph (a)(4)(iii) of this section, before any vehicle in that family may be certified.

(v) Every test vehicle of an evaporative emission family must comply with the evaporative emission standard, as determined in paragraph (a)(4)(iii) of this section before any vehicle in that family may be certified.

(5) The procedure to determine the compliance of new motor vehicles in the Alternative Durability Program (described in § 86.081–13) is the same as described in paragraphs (a)(4)(iii) through (a)(4)(v) of this section. For the engine families that are included in the Alternative Durability Program, the exhaust emission deterioration factors used to determine compliance shall be those that the Administrator has approved under § 86.081–13(c). The evaporative emission deterioration factor for each evaporative emission family shall be determined and applied according to paragraph (a)(4) of this section. The procedure to determine the minimum exhaust emission deterioration factors required under § 86.081–13(d) are as follows:

(i) Separate deterioration factors shall be determined from the exhaust emissions results of the durability-data vehicles for each engine family group. A separate factor shall be established for exhaust HC, exhaust CO, and exhaust NO_x for each engine family group. The evaporative emission deterioration factor for each evaporative family will be determined and applied in accordance with the procedure of paragraph (a)(4) of this section.

(ii) The deterioration factors for each engine family group shall be determined by the Administrator using historical durability data from as many as 3 previous model years. These data will consist of deterioration factors generated by durability-data vehicles representing certified engine families and of deterioration factors from vehicles selected under § 86.084–24(h). The Administrator shall determine how these data will be combined for each engine family group.

(A) The test results to be used in the calculation of each deterioration factor to be combined for each engine family group shall be those test results specified in paragraph (a)(4)(i)(A) of this section.

(B) For each durability-data vehicle selected under § 86.083–24(h), all applicable exhaust emission results shall be plotted as a function of the mileage on the system, rounded to the nearest mile, and the best fit straight lines, fitted by the method of least squares, shall be drawn through all these data points. The exhaust deterioration factor for each durability-data vehicle shall be calculated as specified in paragraph (a)(4)(i)(B) of this section.

(C) *Line crossing.* For the purposes of paragraph (a)(5) of this section, line crossing occurs when either of the interpolated 4,000- and 50,000-mile points of the best fit straight line exceeds the applicable emission standard *and* at least one applicable data point exceeds the standard.

(*1*) The Administrator will not accept for certification line-crossing data from preproduction durability-data vehicles selected under § 86.084–24(c)(1), § 86.084–24(h)(2), or (h)(3).

(*2*) The Administrator will not accept for certification line-crossing data from production durability-data vehicles

selected under § 86.084–24(h)(1) *unless* the following is true: The 4,000-mile test result multiplied by the engine family group deterioration factor does not exceed the applicable emission standard. The deterioration factors used for this purpose shall be those that were used in the certification of the production vehicle. Manufacturers may calculate this product immediately after the 4,000-mile test of the vehicle. If the product exceeds the applicable standard, the manufacturer may, with the approval of the Administrator, discontinue the vehicle and substitute a new vehicle. The manufacturer may continue the original vehicle, but the data will not be acceptable if line crossing occurs.

(b)(1) Paragraph (b) of this section applies to light-duty trucks.

(2) The exhaust and fuel evaporative emission standards of § 86.084–9 apply to the emission of vehicles of their useful life.

(3) Since emission control efficiency generally decreases with the accumulation of mileage on the vehicle, deterioration factors will be used in combination with emission-data vehicle test results as the basis for determining compliance with the standards.

(4)(i) Paragraph (b)(4) of this section describes the procedure for determining compliance of a new vehicle with exhaust emission standards, based on deterioration factors supplied by the manufacturer.

(ii) Separate exhaust emission deterioration factors, determined from tests of vehicles, engines, subsystems, or components conducted by the manufacturer, shall be supplied for each engine-system combination. Separate factors shall be established for transient HC, CO, and NO_x, idle CO (gasoline vehicles only), and exhaust particulat (diesel vehicles only).

(iii) For transient HC, CO, and NO_x, idle CO (gasoline vehicles only), and exhaust particulate (diesel vehicles only), the official exhaust emission results for each emission-data vehicle at the 4,000-mile test point shall be adjusted by multiplication by the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this paragraph.

(iv) The emission values to compare with the standards shall be the adjusted emission values of paragraph (b)(4)(iii) of this section rounded to two significant figures in accordance with ASTM E 29–67 for each emission-data engine.

(5) [Reserved]

(6)(i) Paragraph (b)(6) of this section describes the procedure for determining compliance of a new vehicle with fuel evaporative emission standards. The procedure described here shall be used for all vehicles in all model years.

(ii) The manufacturer shall determine, based on testing described in § 86.084–21(b)(4)(i), and supply an evaporative emission deterioration factor for each evaporative emission family-evaporative emission control system combination. The factor shall be calculated by subtracting the emission level at 4,000 miles from the emission level at the useful life point.

(iii) The official evaporative emission test results for each evaporative emission-data vehicle at the 4,000-mile test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(iv) The emission value to compare with the standards shall be the adjusted emission value of paragraph (b)(6)(iii) of this section rounded to two significant figures in accordance with ASTM E 29–67 for each evaporative emission-data vehicle.

(7) Every test vehicle of an engine family must comply with all applicable standards, as determined in paragraph (b)(4)(iv) or (b)(5)(iv) and paragraph (b)(6) of this section, before any vehicle in that family will be certified.

(c)(1) Paragraph (c) of this section applies to heavy-duty engines.

(2) The exhaust emission standards for gasoline-fueled engines in § 86.084–10 or for diesel engines in § 86.084–11 apply to the emissions of engines for their useful life.

(3) Since emission control efficiency generally decreases with the accumulation of service on the engine, deterioration factors will be used in combination with emission-data engine test results as the basis for determining compliance with the standards.

(4)(i) Paragraph (c)(4) of this section describes the procedure for determining compliance of an engine with emission standards, based on deterioration factors supplied by the manufacturer.

(ii) Separate exhaust emission deterioration factors, determined from tests of engines, subsystems, or components conducted by the manufacturer, shall be supplied for each engine-system combination. For gasoline and diesel engines, separate factors shall be established for transient HC, CO, and NO_x. For gasoline-fueled engines, a separate factor shall be established for idle CO. For diesel smoke testing, separate factors shall also be established for the acceleration mode (designated as "A"), the lugging mode (designated as "B"), and the peak opacity (designated as "C").

(iii)(A) For transient HC, CO, and NO_x (and, in the case of gasoline-fueled engines, for idle CO), the official exhaust emission results for each emission-data engine at the 125-hour test point shall be adjusted by multiplication by the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this paragraph.

(B) For acceleration smoke ("A"), lugging smoke ("B"), and peak smoke ("C"), the official exhaust emission results for each emission-data engine at the 125-hour test point shall be adjusted by the additon of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(iv) The emission values to compare with the standards shall be the adjusted emission values of paragraph (c)(4)(iii) of this section rounded to two significant figures in accordance with ASTM E 29–67 for each emission-data engine.

(5) [Reserved]

(6) [Reserved]

(7) Every test engine of an engine family must comply with all applicable standards, as determined in paragraph (c)(4)(iv) of this section, before any engine in that family will be certified.

12. § 86.084–29 is revised to read as follows:

§ 86.084–29 Testing by the Administrator.

(a)(1) Paragraph (a) of this section applies to light-duty vehicles and light-duty trucks.

(2) The Administrator may require that any one or more of the test vehicles be submitted to him, at such place or places as he may designate, for the purposes of conducting emissions tests. The Administrator may specify that he will conduct such testing at the manufacturer's facility, in which case instrumentation and equipment specified by the Administrator shall be made available by the manufacturer for test operations. Any testing conducted at a manufacturer's facility pursuant to this paragraph shall be scheduled by the manufacturer as promptly as possible.

(3)(i) Whenever the Administrator conducts a test on a test vehicle, the results of that test shall, unless subsequently invalidated by the Administrator, comprise the official data for the vehicle at the prescribed test point and the manufacturer's data for

that prescribed test point shall not be used in determining compliance with emission standards.

(ii) Whenever the Administrator does not conduct a test on a test vehicle at a test point, the manufacturer's test data will be accepted as the official data for that point: *Provided,* that if the Administrator makes a determination based on testing under paragraph (a)(2) of this section, that there is a lack of correlation between the manufacturer's test equipment and the test equipment used by the Administrator, no manufacturer's test data will be accepted for purposes of certification until the reasons for the lack of correlation are determined and the validity of the data is established by the manufacturer, *and further provided,* that if the Administrator has reasonable basis to believe that any test data submitted by the manufacturer is not accurate or has been obtained in violation of any provisions of this part, the Administrator may refuse to accept that data as the official data pending retesting or submission or further information. If the manufacturer conducts more than one test on a vehicle, as authorized under § 86.084–26 (a)(3)(i)(A) or (b)(4)(i)(A), the data from the last test in that series of tests on that vehicle, will constitute the official data.

(iii)(A)(*1*) The Administrator may adjust or cause to be adjusted any adjustable parameter of an emission data vehicle or engine which the Administrator has determined to be subject to adjustment for certification and Selective Enforcement Audit testing in accordance with § 86.084–22(e)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.084–22(e)(3)(i), prior to the performance of any tests to determine whether such vehicle or engine conforms to applicable emission standards, including tests performed by the manufacturer under § 86.084–23(c)(1). However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to a setting which causes a higher engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter on the vehicle before it accumulated any mileage, all other parameters being adjusted identically for the purpose of comparison. The Administrator, in making or specifying such adjustments, will consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use light-duty vehicles or light-duty trucks. In determining likelihood, the Administrator will consider factors such as, but not limited to, the effect of the adjustment on vehicle performance characteristics and surveillance information from similar in-use vehicles.

(*2*) For those vehicles or engine parameters which the Administrator has not determined to be subject to adjustment during certification and Selective Enforcement Audit testing in accordance with § 86.084–22(e)(1), the emission-data vehicle presented to the Administrator for testing shall be calibrated within the production tolerances applicable to the manufacturer's specifications to be shown on the vehicle label (see § 86.084–35(a)(1)(iii)(D) or (a)(2)(iii)(D)) as specified in the application for certification. If the Administrator determines that a vehicle is not within such tolerances, the vehicle will be adjusted, at the facility designated by the Administrator, prior to the test and an engineering report shall be submitted to the Administrator describing the corrective action taken. Based on the engineering report, the Administrator will determine if the vehicle will be used as an emission-data vehicle.

(B) If the Administrator determines that the test data developed on an emission-data vehicle under paragraph (a)(3)(i) of this section would cause that vehicle to fail due to excessive 4,000 mile emissions or by application of the appropriate deterioration factor, then the following procedure shall be observed:

(*1*) The manufacturer may request a retest. Before the retest, those vehicle or engine parameters which the Administrator has not determined to be subject to adjustment for certification and Selective Enforcement Audit testing in accordance with § 86.083–22(e)(1) may be readjusted to manufacturer's specification, if these adjustments were made incorrectly prior to the first test. The Administrator may adjust or cause to be adjusted any parameter which the Administrator has determined to be subject to adjustment to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.084–22(e)(3)(i). However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to a setting which causes a higher engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter on the vehicle before it accumulated any mileage, all other parameters being adjusted identically for the purpose of comparison. Other maintenance or repairs may be performed in accordance with § 86.084–25. All work on the vehicle shall be done at such location and under such conditions as the Administrator may prescribe.

(*2*) The vehicle will be retested by the Administrator and the results of this test shall comprise the official data for the emission-data vehicle.

(iv) If sufficient durability data are not available at the time of any emission test conducted under paragraph (a)(2) of this section to enable the Administrator to determine whether an emission-data vehicle would fail, the manufacturer may request a retest in accordance with the provisions of paragraphs (a)(3)(iii)(A) and (B) of this section. If the manufacturer does not promptly make such request, he shall be deemed to have waived the right to a retest. A request for retest must be made before the manufacturer removes the vehicle from the test premises.

(b)(1) Paragraph (b) of this section applies to heavy-duty engines.

(2) The Administrator may require that any one or more of the test engines be submitted to him, at such place or places as he may designate, for the purpose of conducting emissions tests. The Administrator may specify that he will conduct such testing at the manufacturer's facility, in which case instrumentation and equipment specified by the Administrator shall be made available by the manufacturer for test operations. Any testing conducted at a manufacturer's facility pursuant to this paragraph shall be scheduled by the manufacturer as promptly as possible.

(3)(i) Whenever the Administrator conducts a test on a test engine the results of that test, unless subsequently invalidated by the Administrator, shall comprise the official data for the engine at that prescribed test point and the manufacturer's data for that prescribed test point shall not be used in determining compliance with emission standards.

(ii) Whenever the Administrator does not conduct a test on a test engine at a test point, the manufacturer's test data will be accepted as the official data for that test point: *Provided,* that if the Administrator makes a determination based on testing under paragraph (b)(2) of this section, that there is a lack of correlation between the manufacturer's test equipment and the test equipment used by the Administrator, no manufacturer's test data will be accepted for purposes of certification

until the reasons for the lack of correlation are determined and the validity of the data is established by the manufacturer: *And further provided,* that if the Administrator has reasonable basis to believe that any test data submitted by the manufacturer is not accurate or has been obtained in violation of any provision of this part, the Administrator may refuse to accept that data as the official data pending retesting or submission of further information.

(iii)(A)(*1*) The Administrator may adjust or cause to be adjusted any adjustable parameter of an emission-data engine which the Administrator has determined to be subject to adjustment for certification testing in accordance with § 86.084–22(e)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.084–22(e)(3)(i), prior to the performance of any tests to determine whether such engine conforms to applicable emission standards, including tests performed by the manufacturer under § 86.084–23(c)(2). However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to a setting which causes a higher engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter on the engine before it accumulated any dynamometer service, all other parameters being identically adjusted for the purpose of the comparison. The Administrator, in making or specifying such adjustments, may consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use heavy-duty engines. In determining likelihood, the Administrator may consider factors such as, but not limited to, the effect of the adjustment on engine performance characteristics and surveillance information from similar in-use engines.

(*2*) For those engine parameters which the Administrator has not determined to be subject to adjustment for certification testing in accordance with § 86.084–22(e)(1), the emission-data engine presented to the Administrator for testing shall be calibrated within the production tolerances applicable to the manufacturer's specifications to be shown on the engine label (see § 86.084–35(a)(3)(iii)) as specified in the application for certification. If the Administrator determines that an engine is not within such tolerances, the engine shall be adjusted at the facility designated by the Administrator prior to the test and an engineering report shall be submitted to the Administrator describing the corrective action taken. Based on the engineering report, the Administrator will determine if the engine shall be used as an emission-data engine.

(B) If the Administrator determines that the test data developed under paragraph (b)(3)(iii)(A) of this section would cause the emission-data engine to fail due to excessive 125-hour emission values or by the application of the appropriate deterioration factor, then the following procedure shall be observed:

(*1*) The manufacturer may request a retest. Before the retest, those engine parameters which the Administrator has not determined to be subject to adjustment for certification testing in accordance with § 86.084–22(e)(1) may be readjusted to the manufacturer's specification, if these adjustments were made incorrectly prior to the first test. The Administrator may adjust or cause to be adjusted any parameter which the Administrator has determined to be subject to adjustment in accordance with § 86.084–22(e)(3)(i). However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to a setting which causes a higher engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter on the engine before it accumulated any dynamometer service, all other parameters being identically adjusted for the purpose of the comparison. Other maintenance or repairs may be performed in accordance with § 86.084–25. All work on the vehicle shall be done at such location and under such conditions as the Administrator may prescribe.

(*2*) The engine will be retested by the Administrator and the results of this test shall comprise the official data for the emission-data engine.

(iv) If sufficient durability data are not available at the time of any emission test conducted under paragraph (b)(2) of this section to enable the Administrator to determine whether and emission-data engine would fail, the manufacturer may request a retest in accordance with the provisions of paragraph (b)(3)(iii)(B) (*1*) and (*2*) of this section. If the manufacturer does not promptly make such request, he shall be deemed to have waived the right to a retest. A request for retest must be made before the manufacturer removes the engine from the test premises.

13. Section 86.084–30 is revised to read as follows:

§ 86.084–30 Certification.

(a)(1) If, after a review of the test reports and data submitted by the manufacturer, data derived from any inspection carried out under § 86.078–7(c), and any other pertinent data or information, the Administrator determines that a test vehicle(s) (or test engine(s)) meet(s) the requirements of the Act and of this subpart, he will issue a certificate of conformity with respect to such vehicle(s) (or engine(s)) except in cases covered by paragraph (c) of this section. Each certificate of conformity shall state the altitude(s) at which the vehicle(s) covered by the certificate has demonstrated compliance with the applicable emission standards.

(2) Such certificate will be issued for such period not to exceed one model year as the Administrator may determine and upon such terms as he may deem necessary to assure that any new motor vehicle (or new motor vehicle engine) covered by the certificate will meet the requirements of the Act and of this part. Each such certificate shall contain the following language:

This certificate covers only those new motor vehicles (or new motor vehicle engines) which conform, in all material respects, to the design specifications that applied to those vehicles (or engines) described in the application for certification and which are produced during the —— model year production period of the said manufacturer, as defined in 40 CFR 86.084–2.

It is a term of this certificate that the manufacturer shall consent to all inspections described in 40 CFR 86.078–7(c), 86.606, and 86.1006 and authorized in a warrant or court order. Failure to comply with the requirements of such a warrant or court order may lead to revocation or suspension of this certificate as specified in 40 CFR 86.084–30(c), (d), or (e). It is also a term of this certificate that this certificate may be revoked or suspended for the other reasons stated in § 86.084–30(c), (d), or (e).

(3) One such certificate will be issued for each engine family. For gasoline-fueled light-duty vehicles and light-duty trucks, one such certificate will be issued for each engine family-evaporative emission family combination. Each certificate will certify compliance with no more than one set of standards except for low-altitude standards and high-altitude standards.

(4) The adjustment or modification of any light-duty vehicle or light-duty truck in accordance with instructions provided by the manufacturer as

approved by EPA for the altitude where the vehicle is principally used, will not be considered a violation of section 203(a)(3) of the Clean Air Act.

(5) For the purpose of this subpart, "designated high-altitude location" is any county which has substantially all of its area located above 1,219 meters (4,000 feet) and which is identified below:

Counties Located Substantially Above 1,219 Meters (4,000 Feet) in Elevation

State of Arizona

Apache	Navajo

State of Colorado

Adams	Jefferson
Alamosa	Lake
Arapahoe	La Plata
Archuleta	Larimer
Boulder	Las Animas
Chaffee	Lincoln
Clear Creek	Mesa
Conejos	Mineral
Costilla	Moffat
Crowley	Montezuma
Custer	Montrose
Delta	Morgan
Denver	Ouray
Dolores	Park
Douglas	Pitkin
Eagle	Pueblo
Elbert	Rio Blanco
El Paso	Rio Grande
Fremont	Routt
Garfield	Saguache
Gilpin	San Juan
Grand	San Miguel
Gunnison	Summit
Hinsdale	Teller
Huerfano	Washington
Jackson	Weld

State of Idaho

Bannock	Custer
Bear Lake	Franklin
Bingham	Fremont
Blaine	Jefferson
Bonneville	Madison
Butte	Minidoka
Camas	Oneida
Caribou	Power
Cassia	Teton
Clark	Valley

State of Montana

Beaverhead	Madison
Deer Lodge	Meager
Gallatin	Park
Jefferson	Silver Bow
Judith Basin	Wheatland
Powell	

State of Nebraska

Banner	Kimball
Cheyenne	Sioux

State of Nevada

Carson City	Lander
Douglas	Lyon
Elko	Mineral
Esmeralda	Storey
Eureka	White Pine
Humboldt	Pershing
Lincoln	Washoe
Nye	

State of New Mexico

Bernalillo	Mora
Catron	Rio Arriba
Colfax	Sandoval
Curry	San Juan
De Baca	San Miguel
Grant	Santa Fe
Guadalupe	Sierra
Harding	Socorro
Hidalgo	Roosevelt
Lincoln	Taos
Los Alamos	Torrance
Luna	Union
McKinley	Valencia
Otero	

State of Oregon

Harney	Klamath
Lake	

State of Texas

Jeff Davis	Parmer
Hudspeth	

State of Utah

Beaver	Morgan
Box Elder	Piute
Cache	Rich
Carbon	Salt Lake
Daggett	San Juan
Davis	Sanpete
Duchesne	Sevier
Emery	Summit
Garfield	Tooele
Grand	Uintah
Iron	Utah
Juab	Wasatach
Kane	Wayne
Millard	Weber

State of Wyoming

Albany	Natrona
Campbell	Washakie
Carbon	Niobrara
Converse	Park
Fremont	Platte
Goshen	Sublette
Hot Springs	Sweetwater
Johnson	Teton
Laramie	Uinta
Lincoln	Weston

(6) The provisions of paragraph (a)(4) of this section shall not apply to any light-duty vehicle or light-duty truck sold, offered for sale, introduced, or delivered for introduction into commerce in California provided that the vehicle is covered by a certificate of conformity with emission standards in effect in California.

(7) Certificates issued for light-duty vehicles or light-duty trucks certified with catalytic converters shall be subject to the following term in addition to the term in paragraph (a)(2) of this section: "Catalyst-equipped vehicles, otherwise covered by this certificate, which are driven outside the United States, Canada, and Mexico will be presumed to have been operated on leaded gasoline resulting in deactivation of the catalysts. If these vehicles are imported or offered for the importation without retrofit of the catalyst, they will be considered not to be within the coverage of this certificate unless included in a catalyst control program operated by a manufacturer or a United States Government Agency and approved by the Administrator."

(8) Certificates issued for incomplete light-duty trucks shall be subject to the following term in addition to the term in paragraph (a)(2) of this section: "For incomplete light-duty trucks, this certificate covers only those new motor vehicles which when completed by having the primary load-carrying device or container attached, conform to the maximum curb weight and frontal area limitations described in the application for certification as required in 40 CFR 86.084–21(d)."

(9) Certificates issued for heavy-duty engines shall be subject to the following term in addition to the term in paragraph (a)(2) of this section: "For heavy-duty engines, this certificate covers only those new motor vehicle engines installed in heavy-duty vehicles which conform to the minimum gross vehicle weight rating, curb weight, or frontal area limitations for heavy-duty vehicles described in 40 CFR 86.084–2."

(b)(1) The Administrator will determine whether a vehicle (or engine) covered by the application complies with applicable standards by observing the following relationships:

(i) *Light-duty vehicles.* (A) The durability-data vehicle(s) selected under § 86.084–24(c)(1)(i) shall represent all vehicles of the same engine-system combination.

(B) The emission-data vehicle(s) selected under § 86.084–24(b)(1)(ii) through (b)(1)(iv) shall represent all vehicles of the same engine-system combination as applicable.

(C) The emission-data vehicle(s) selected under § 86.084–24 (b)(1)(vii)(A) and (b)(1)(vii)(B) shall represent all vehicles of the same evaporative control system within the evaporative family.

(D) The emission-data vehicle(s) selected under § 86.084–24(b)(1)(v) shall represent all vehicles of the same engine-system combination to be sold at high altitude.

(E) The emission-data vehicle(s) selected under § 86.084–24(b)(1)(vii)(D) shall represent all vehicles of the same evaporative control system within the evaporative family sold at high altitude.

(ii) *Light-duty trucks.* (A) [Reserved]

(B) The emission-data vehicle(s) selected under § 86.084–24(b)(1)(ii), shall represent all vehicles of the same engine-system combination as applicable.

(C) The emission-data vehicle(s) selected under § 86.084–24 (b)(1)(vii)(A) and (b)(1)(vii)(B) shall represent all vehicles of the same evaporative control system within the evaporative family.

(D) The emission-data vehicle(s) selected under § 86.084–24(b)(1)(v) shall represent all vehicles of the same evaporative control system within the evaporative family sold at high altitude.

(E) The emission-data vehicle(s) selected under § 86.084–24(b)(1)(vii)(D) shall represent all vehicles of the same evaporative control system within the evaporative family sold at high altitude.

(iii) *Heavy-duty engines.* (A) A gasoline-fueled emission-data test engine selected under § 86.080–24(b)(2)(ii) and (iv) shall represent all engines in the same family of the same engine displacement-exhaust emission control system combination.

(B) A gasoline-fueled emission-data test engine selected under § 86.080–24(b)(2)(iii) shall represent all engines in the same engine family of the same engine displacement-exhaust emission control system combination.

(C) A diesel emission-data test engine selected under § 86.084–24(b)(3)(ii) shall represent all engines in the same engine-system combination.

(D) A diesel emission-data test engine selected under § 86.084–24(b)(3)(iii) shall represent all engines of that emission control system at the rated fuel delivery of the test engine.

(E) [Reserved]

(2) The Administrator will proceed as in paragraph (a) of this section with respect to the vehicles (or engines) belonging to an engine family or engine family-evaporative emission family combination (as applicable), all of which comply with all applicable standards.

(3) If, after a review of the test reports and data submitted by the manufacturer, data derived from any additional testing conducted pursuant to § 86.084–29, data or information derived from any inspection carried out under § 86.078–7(c) or any other pertinent data or information, the Administrator determines that one or more test vehicles (or test engines) of the certification test fleet do not meet applicable standards, he will notify the manufacturer in writing, setting forth the basis for his determination. Within 30 days following receipt of the notification, the manufacturer may request a hearing on the Administrator's determination. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections to the Administrator's determination and data in support of such objections. If, after a review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078–6 with respect to such issue.

(4) For light-duty vehicles and light-duty trucks the manufacturer may, at his option, proceed with any of the following alternatives with respect to an emission-data vehicle determined not in compliance with all applicable standards for which it was tested:

(i) Request a hearing under § 86.078–6; or

(ii) Remove the vehicle configuration (or evaporative vehicle configuration, as applicable) which failed, from his application;

(A) If the failed vehicle was tested for compliance with exhaust emission standards only: The Administrator may select, in place of the failed vehicle, in accordance with the selection criteria employed in selecting the failed vehicle, a new emission-data vehicle to be tested for exhaust emission compliance only.

(B) If the failed vehicle was tested for compliance with both exhaust and evaporative emission standards: The Administrator may select, in place of the failed vehicle, in accordance with the selection criteria employed in selecting the failed vehicle, a new emission-data vehicle which will be tested for compliance with both exhaust and evaporative emission standards. If one vehicle cannot be selected in accordance with the selection criteria employed in selecting the failed vehicle, then two vehicles may be selected (i.e., one vehicle to satisfy the exhaust emission vehicle selection criteria and one vehicle to satisfy the evaporative emission vehicle selection criteria). The vehicle selected to satisfy the exhaust emission vehicle selection criteria will be tested for compliance with exhaust emission standards only. The vehicle selected to satisfy the evaporative emission vehicle selection criteria will be tested for compliance with both exhaust and evaporative emission standards; or

(iii) Remove the vehicle configuration (or evaporative vehicle configuration, as applicable) which failed from the application and add a vehicle configuration(s) (or evaporative vehicle configuration(s), as applicable) not previously listed. The Administrator may require, if applicable, that the failed vehicle be modified to the new engine code (or evaporative emission code, as applicable) and demonstrate by testing that it meets applicable standards for which it was originally tested. In addition, the Administrator may select, in accordance with the vehicle selection criteria given in § 86.084–24(b), a new emission-data vehicle or vehicles. The vehicles selected to satisfy the exhaust emission vehicle selection criteria will be tested for compliance with exhaust emission standards only. The vehicles selected to satisfy the evaporative emission vehicle selection criteria will be tested for compliance with both exhaust and evaporative emission standards; or

(iv) Correct a component or system malfunction and show that with a correctly functioning system or component the failed vehicle meets applicable standards for which it was originally tested. The Administrator may require a new emission-data vehicle, of identical configuration (or evaporative vehicle configuration, as applicable) to the failed vehicle, to be operated and tested for compliance with the applicable standards for which the failed vehicle was originally tested.

(5) For heavy-duty engines the manufacturer may, at his option, proceed with any of the following alternatives with respect to any engine family represented by a test engine(s) determined not in compliance with applicable standards:

(i) Request a hearing under § 86.078–6; or

(ii) Delete from the application for certification the engines represented by the failing test engine. (Engines so deleted may be included in a later request for certification under 86.079–32.) The Administrator will then select in place of each failing engine an alternate engine chosen in accordance with selection criteria employed in selecting the engine that failed; or

(iii) Modify the test engine and demonstrate by testing that it meets applicable standards. Another engine which is in all material respects the same as the first engine, as modified, shall then be operated and tested in accordance with applicable test procedures.

(6) If the manufacturer does not request a hearing or present the required data under paragraph (b)(4) or (b)(5) (as applicable) of this section, the Administrator will deny certification.

(c)(1) Not withstanding the fact that any certification vehicle(s) (or certification engine(s)) may comply with other provisions of this subpart, the Administrator may withhold or deny the issuance of a certificate of conformity (or suspend or revoke any such certificate which has been issued) with respect to any such vehicle(s) (or engine(s)) if:

(i) The manufacturer submits false or incomplete information in his application for certification thereof;

(ii) The manufacturer renders inaccurate any test data which he submits pertaining thereto or otherwise circumvents the intent of the Act, or of

this part with respect to such vehicle (or enginee);

(iii) Any EPA Enforcement Officer is denied access on the terms specified in § 86.078–7(c) to any facility or portion thereof which contains any of the following:

(A) The vehicle (or engine):

(B) Any components used or considered for use in its modification or buildup into a certification vehicle (or certification engine);

(C) Any production vehicle (or production engine) which is or will be claimed by the manufacturer to be covered by the certificate;

(D) Any step in the construction of a vehicle (or engine) described in (C) of this subdivision;

(E) Any records, documents, reports, or histories required by this part to be kept concerning any of the above;

(iv) Any EPA Enforcement Officer is denied "reasonable assistance" (as defined in § 86.078–7(c)) in examining any of the items listed in paragraph (c)(1)(iii) of this section.

(2) The sanctions of withholding, denying, revoking, or suspending of a certificate may be imposed for the reasons in paragraphs (c)(1)(i), (ii), (iii), or (iv) of this section only when the infraction is substantial.

(3) In any case in which a manufacturer knowingly submits false or inaccurate information or knowingly renders inaccurate or invalid any test data or commits any other fraudulent acts and such acts contribute substantially to the Administrator's decision to issue a certificate of conformity, the Administrator may deem such certificate void ab initio.

(4) In any case in which certification of a vehicle (or engine) is proposed to be withheld, denied, revoked, or suspended under paragraph (c)(1)(iii) or (c)(1)(iv) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.078–7(c) in fact occurred, the manufacturer, if he wishes to contend that, even though the violation occurred, the vehicle (or engine) in question was not involved in the violation to a degree that would warrant withholding denial, revocation, or suspension of certification under either paragraph (c)(1)(iii) or (c)(1)(iv) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(5) Any revocation or suspension of certification under paragraph (c)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.078–6 hereof.

(ii) Extend no further than to forbid the introduction into commerce of vehicles (or engines) previously covered by the certification which are still in the hands of the manufacturer, except in cases of such fraud or other misconduct as makes the certification invalid ab initio.

(6) The manufacturer may request in the form and manner specified in paragraph (b)(3) of this section that any determination made by the Administrator under paragraph (c)(1) of this section to withhold or deny certification be reviewed in a hearing conducted in accordance with § 86.078–6. If the Administrator finds, after a review of the request and supporting data, that the request raises a substantial factual issue, he will grant the request with respect to such issue.

(d)(1) *For light-duty vehicles.* Notwithstanding the fact that any vehicle configuration or engine family may be covered by a valid outstanding certificate of conformity, the Administrator may suspend such outstanding certificate of configuration in whole or in part with respect to such vehicle configuatrion or engine family if:

(i) The manufacturer refuses to comply with the provisions of a test order issued by the Administrator pursuant to § 86.603; or

(ii) The manufacturer refuses to comply with any of the requirements of § 86.603; or

(iii) The manufacturer submits false or incomplete information in any report or information provided pursuant to the requirements of § 86.609; or

(iv) The manufacturer renders inaccurate any test data which he submits pursuant to § 86.609; or

(v) Any EPA Enforcement Officer is denied access to a facility on the terms specified in § 86.606; or

(vi) Any EPA Enforcement Officer is denied the opportunity on the terms specified in § 86.606, to:

(A) Monitor vehicle selection pursuant to § 86.607, or

(B) Select vehicles for testing pursuant to § 86.607, or

(C) Monitor vehicle testing performed to satisfy any of the requirements of this part; or

(vii) Any EPA Enforcement Officer is denied "reasonable assistance" as defined in § 86.606 in examining any of the items listed in that section; or

(viii) The manufacturer refuses to comply with the requirements of §§ 86.604(a), 86.605, and 86.607, 86.608, 86.610, or 86.611.

(2) The sanction of suspending a certificate may not be imposed for the reasons in paragraphs (d)(1)(i), (ii), or (viii) of this section where such refusal is caused by conditions and circumstances outside the control of the manufacturer which renders it impossible to comply with those requirements. Such conditions and circumstances shall include, but not be limited to, any uncontrollable factors which results in the temporary unavailability of equipment and personnel needed to conduct the required tests, such as equipment breakdown or failure or illness of personnel, but shall not include failure of the manufacturer to adequately plan for and provide the equipment and personnel needed to conduct the tests. The manufacturer will bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(3) The sanctions of suspending a certificate may be imposed for the reasons in paragraphs (d)(1)(iii), (iv), (v), (vi), or (vii) of this section only when the infraction is substantial.

(4) In any case in which a manufacturer knowingly submitted false or inaccurate information or knowingly rendered inaccurate any test data or committed any other fraudulent acts, and such acts contributed substantially to the Administrator's original decision not to suspend or revoke a certificate of conformity in whole or in part, the Administrator may deem such certificate void from the date of such fraudulent act.

(5) In any case in which certification of a vehicle is proposed to be suspended under paragraph (d)(1)(v), (d)(1)(vi), or (d)(1)(vii) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.606 in fact occurred, the manufacturer, if he wishes to contend that even though the violation occurred, the vehicle configuration or engine family in question was not involved in the violation to the degree that would warrant suspension of certification under either paragraph (d)(1)(v), (d)(1)(vi), or (d)(1)(vii) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) Any suspension of certification under paragraph (d)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.613 hereof, and

(ii) Not apply to vehicles no longer in the hands of the manufacturer.

(e) *For light-duty trucks and heavy-duty engines.* (1) Notwithstanding the fact that any vehicle configuration or engine family may be covered by a valid outstanding certificate of conformity, the Administrator may suspend such outstanding certificate of conformity in whole or in part with respect to such vehicle or engine configuration or engine family if:

(i) The manufacturer refuses to comply with the provisions of a test order issued by the Administrator pursuant to § 86.1003; or

(ii) The manufacturer refuses to comply with any of the requirements of § 86.1003; or

(iii) The manufacturer submits false or incomplete information in any report or information provided pursuant to the requirements of § 86.1009; or

(iv) The manufacturer renders inaccurate any test data submitted pursuant to § 86.1009; or

(v) Any EPA Enforcement Officer is denied the opportunity to conduct activities related to entry and access as authorized in § 86.1006 of this part and in a warrant or court order presented to the manufacturer or the party in charge of a facility in question; or

(vi) EPA Enforcement Officers are unable to conduct activities related to entry and access as authorized in § 86.1006 of this part because a manufacturer has located a facility in a foreign jurisdiction where local law prohibits those activities; or

(vii) The manufacturer refuses to or in fact does not comply with the requirements of §§86.1004(a), 86.1005, 86.1007, 86.1008, 86.1010, 86.1011, or 86.1013.

(2) The sanction of suspending a certificate may not be imposed for the reasons in paragraphs (e)(1)(i), (ii), or (vii) of this section where such refusal or denial is caused by conditions and circumstances outside the control of the manufacturer which renders it impossible to comply with those requirements. Such conditions and circumstances shall include, but are not limited to, any uncontrollable factors which result in the temporary unavailability of equipment and personnel needed to conduct the required tests, such as equipment breakdown or failure or illness of personnel, but shall not include failure of the manufacturers to adequately plan for and provide the equipment and personnel needed to conduct the tests. The manufacturer will bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(3) The sanction of suspending a certificate may be imposed for the reasons outlined in paragraph (e)(1) (iii), (iv), or (v) of this section only when the infraction is substantial.

(4) In any case in which a manufacturer knowingly submitted false or inaccurate information or knowingly rendered inaccurate any test data or committed any other fraudulent acts, and such acts contributed substantially to the Administrator's original decision not to suspend or revoke a certificate of conformity in whole or in part, the Administrator may deem such certificate void from the date of such fraudulent act.

(5) In any case in which certification of a light-duty truck or heavy-duty engine is proposed to be suspended under paragraph (e)(1)(v) of this section and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.1006 in fact occurred, if the manufacturer wishes to contend that, although the violation occurred, the vehicle or engine configuration or engine family in question was not involved in the violation to a degree that would warrant suspension of certification under paragraph (e)(1)(v) of this section, he shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) Any suspension of certification under paragraph (e)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.1014 and

(ii) Not apply to vehicles or engines no longer in the hands of the manufacturer.

(7) Any voiding of a certificate of conformity under paragraph (e)(4) of this section shall be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.1014.

14. § 86.084–35 is revised to read as follows:

§ 86.084–35 Labeling.

(a) The manufacturer of any motor vehicle (or motor vehicle engine) subject to the applicable emission standards of this subpart, shall, at the time of manufacture,, affix a permanent legible label, of the type and in the manner described below, containing the information hereinafter provided, to all production models of such vehicles (or engines) available for sale to the public and covered by a certificate of conformity under § 86.084–30(a).

(1) *Light-duty vehicles.* (i) A permanent, legible label shall be affixed in a readily visible position in the engine compartment.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Vehicle Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches), engine, family identification and evaporative family identification;

(D) Engine tune-up specifications and adjustments, as recommended by the manufacturer in accordance with the applicable high or low altitude emission standards, including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing, and valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tune-up and what accessories (e.g., air conditioner), if any, should be in operation. If adjustments or modifications to the vehicle are necessary to insure compliance with either the emission standards at low altitude or the optional emission standards at high altitude, the manufacturer shall either include the instructions for such adjustments on the label, or indicate on the label where instructions for such adjustments may be found. The label shall indicate whether the engine tune-up or adjustment specifications are applicable to elevation below or above 4,000 feet.

(E) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to light-duty vehicles;

(F) For vehicles which demonstrate compliance with the optional high-altitude standards, a statement indicating that the vehicle was sold to the ultimate purchaser for principal use at high altitude.

(2) *Light-duty trucks.* (i) A legible, permanent label shall be affixed in a readily visible position in the engine compartment.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for

such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label.

(A) The label heading: Important Vehicle Information;

(B) Full corporate name and trademark of manufacturers;

(C) Engine displacement (in cubic inches) and engine family identification;

(D) Engine tune-up specifications and adjustments, as recommended by the manufacturer in accordance with the applicable high or low altitude emission standards, including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing, and valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tune-up and what accessories (e.g., air conditioner), if any, should be in operation. If adjustments or modifications to the vehicle are necessary to insure compliance with either the emission standards at low altitude or the optional emission standards at high altitude, the manufacturer shall either include the instructions for such adjustments on the label, or indicate on the label where instructions for such adjustments may be found. The label shall indicate whether the engine tune-up or adjustment specifications are applicable to elevation below or above 4,000 feet.

(E) The prominent statement: "(Manufacturer's corporate name) has determined this vehicle has an average useful life of —— miles or —— hours of operation, whichever occurs first." The manufacturer may alter this statement only to express the useful life in terms other than miles or hours (e.g., years, or hours only).

(F) The subordinate addition to the statement in paragraph (a)(2)(iii)(E) of this section: "This engine's actual life may vary depending on its service application. (For additional information see the owner's maintenance instructions.) This engine conforms to U.S. EPA regulations applicable to 19— Model Year New Heavy-Duty Engines for its useful life."

(G) For vehicles which demonstrate compliance with the optional high-altitude standards, a statement indicating that the vehicle was sold to the ultimate purchaser for principal use at high altitude.

(3) *Heavy-duty engines.* (i) A permanent legible label shall be affixed to the engine in a position in which it will be readily visible after installation in the vehicle.

(ii) The label shall be attached to an engine part necessary for normal engine operation and not normally requiring replacement during engine life.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Important Engine Information;

(B) Full corporate name and trademark of manufacturers;

(C) Engine displacement (in cubic inches) and engine family and model designations;

(D) Date of engine manufacture (month and year);

(E) Engine specifications and adjustments as recommended by the manufacturer. These specifications should indicate the proper transmission position during tune-up and what accessories (e.g., air conditioner), if any, should be in operation;

(F) For gasoline-fueled engines the label should include the idle speed, ignition timing, and the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), and valve lash.

(G) For diesel engines the label should include the advertised hp at rpm, fuel rate at advertised hp in mm^3 stroke, valve lash, initial injection timing, and idle speed.

(H) The prominent statement: "(Manufacturer's corporate name) has determined that this engine has an average useful life of —— miles or —— hours of operation, whichever occurs first." The manufacturer may alter this statement only to express the useful life in terms other than miles or hours (e.g., years, or hours only).

(I) The subordinate addition to the statement in paragraph (a)(3)(iii)(H) of this section: "This engine's actual life may vary depending on its service application. (For additional information see the owner's maintenance instructions.) This engine conforms to U.S. EPA regulations applicable to 19— Model Year New Heavy-Duty Engines for its useful life."

(iv) The label may be made up of one or more pieces; *Provided,* That all pieces are permanently attached to the same engine or vehicle part as applicable.

(b) The provisions of this section shall not prevent a manufacturer from also reciting on the label that such vehicle (or engine) conforms to any applicable state emission standards for new motor vehicles (or new motor vehicle engines) or any other information that such manufacturer deems necessary for, or useful to, the proper operation and satisfactory maintenance of the vehicle (or engine).

(c)(1) The manufacturer of any light-duty vehicle or light-duty truck subject to the emission standards of this subpart shall, in addition and subsequent to setting forth those statements on the label required by the Department of Transportation (DOT) pursuant to 49 CFR 567.4, set forth on the DOT label or on an additional label located in proximity to the DOT label and affixed as described in 40 CFR 567.4(b), the following information in the English language, lettered in block letters and numerals not less than three thirty-seconds of an inch high, of a color that contrasts with the background of the label:

(i) The Heading: "Vehicle Emission Control Information."

(ii)(A) *For light-duty vehicles,* the statement: "This Vehicle Conforms to U.S. EPA Regulations Applicable to 19— Model Year New Motor Vehicles."

(B) *For light-duty trucks,* the statement: "(Manufacturer's Corporate Name) Has Determined That This Vehicle Has An Average Useful Life Of —— Miles Or —— Hours of Operation, Whichever Occurs First. This Engine's Actual Life May Vary Depending On Its Service Application (For additional information see the owner's maintenance instructions.) This Vehicle Conforms To U.S. EPA Regulations Applicable To 19— Model Year New Motor Vehicles, For Its Useful Life." The manufacturer may alter this statement only to express the useful life in terms other than miles or hours (e.g., years, or hours only).

(iii) One of the following statements, as applicable, in letters and numerals not less than six thirty-seconds of an inch high and of a color that contrasts with the background of the label:

(A) For all vehicles certified as non-catalyst-equipped: "NON-CATALYST"

(B) For all vehicles certified as catalyst-equipped which are included in a manufacturer's catalyst control program for which approval has been given by the Administrator: "CATALYST—APPROVED FOR IMPORT"

(C) For all vehicles certified as catalyst-equipped which are not included in a manufacturer's catalyst control program for which prior

approval has been given by the Administrator: "CATALYST"

(2) In lieu of selecting either of the labeling options of paragraph (c)(1) of this section, the manufacturer may add the information required by paragraph (c)(1)(iii) of this section to the label required by paragraph (a) of this section. The required information will be set forth in the manner prescribed by paragraph (c)(1)(iii) of this section.

(d)(1) Incomplete light-duty trucks or incomplete heavy-duty vehicles optionally certified as light-duty trucks shall have the following prominent statement printed on the label required in paragraph (a)(2) of this section in lieu of the statement required by paragraph (a)(2)(iii)(E) of this section: "(Manufacturer's Corporate Name) has determined that this vehicle has an average useful life of —— miles or hours of operation, whichever occurs first." The manufacturer may alter this statement only to express the useful life in terms other than miles or hours (e.g., years, or hours only).

(2) The subordinate addition to the statement in subparagraph (1) of this paragraph: "This vehicle's actual life may vary depending on its service application. (For additional information see the owner's maintenance instructions.) This engine conforms to U.S. EPA regulations applicable to 19— Model Year New Heavy-Duty Engines when installed in a vehicle completed at a curb weight of more than 6,000 pounds or with a frontal area greater than 45 square feet for its useful life."

(e)(1) Incomplete heavy-duty vehicles having an 8,500-pound gross vehicle weight rating or less shall have the following prominent statement printed on the label required in paragraph (a)(3) of this section in lieu of the statement required by paragraph (a)(3)(iii)(H) of this section: ("Manufacturer's corporate name) has determined that this engine has an average useful life of —— miles or —— hours of operation, whichever occurs first." The manufacturer may alter this statement only to express the useful life in terms other than miles or hours (e.g., years, or hours only).

(2) In addition, the label shall have the following subordinate statement in lieu of the statement required by paragraph (a)(3)(iii)(I) of this section: "This engine's actual life may vary depending on its service application. (For additional information see the owner's maintenance instructions.) This engine conforms to U.S. EPA regulations applicable to 19— Model Year New Heavy-Duty Engines when installed in a vehicle completed at a curb weight of more than 6,000 pounds or with a frontal area greater than 45 square feet for its useful life."

(f) The manufacturer of any incomplete vehicle shall notify the purchaser of such vehicle of any curb weight, frontal area, or gross vehicle weight rating limitations affecting the emission certificate applicable to that vehicle. This notification shall be transmitted in a manner consistent with National Highway Traffic Safety Administration safety notification requirements published in 49 CFR Part 568.

15. Section 86.084–38 is revised to read as follows:

§ 86.084–38 Maintenance instructions.

(a) The manufacturer shall furnish or cause to be furnished to the purchaser of each new motor vehicle (or motor vehicle engine) subject to the standards prescribed in §§ 86.082–8, 86.084–9, 86.084–10, or 86.084–11, as applicable, written instructions for the maintenance and use of the vehicle (or engine) by the purchaser as may be reasonable and necessary to assure the proper functioning of the emission control system.

(1) Such instructions shall be provided for those vehicle and engine components listed in Appendix VI to this part (and for any other components) to the extent that maintenance of these components is necessary to assure the proper functioning of emission control system.

(2) Such instructions shall be in clear, and to the extent practicable, nontechnical language.

(b) The maintenance instructions required by this section shall contain a general description of the documentation which the manufacturer will require from the ultimate purchaser or any subsequent purchaser as evidence of compliance with the instructions.

(c) For gasoline-fueled light-duty vehicles.

(1) Such instructions shall specify the performance of all scheduled maintenance performed by the manufacturer under § 86.084–25(a), and shall explain the conditions under which EGR system and catalytic converter maintenance are to be performed (e.g., what type of warning device is being employed and whether the device is activated by component failure or the need for periodic maintenance).

(2) [Reserved]

(3) [Reserved]

(d) For diesel light-duty vehicles.

(1) Such instructions shall specify the performance of all scheduled maintenance performed by the manufacturer under § 86.084–25(a) and shall explain the conditions under which EGR system and catalytic converter maintenance are to be performed (e.g., what type of warning device is being employed and whether the device is activated by component failure or the need for periodic maintenance).

(2) [Reserved]

(e) *For light-duty trucks.* (1) Maintenance shall specify the performance of all scheduled emission-related maintenance approved by the Administrator under § 86.084–25(b). Scheduled emission-related maintenance in addition to that performed under § 86.084–25(b) may be recommended for reasons such as to offset the effects of operating conditions which differ from the conditions experienced during the determination of deterioration factors. Such additional recommended maintenance shall be clearly differentiated, in a form approved by the Administrator from that approved under § 86.083–25(b). The instructions may schedule maintenance on a calendar time basis, mileage basis, engine service time basis, or combinations of each.

(2) Such instructions shall specify the useful life of the vehicle as determined by the manufacturer under § 86.084–21(b)(4)(ii)(B). This period of use shall be expressed as a period of engine or vehicle operation or as an equivalent vehicle mileage (or both). The manufacturer shall also present the method(s) by which the need for engine rebuild can be determined, including the criteria and values required in § 86.084–21(b)(4)(ii)(C) and the necessary measurement equipment and instrumentation. The manufacturer shall also include in the instructions an explanation of how it determined both the average useful life and the values of the rebuild criteria. An explanation may be included of how the useful life is determined for an individual engine (the first occurring of either the average useful life or the need for rebuild) and of how the actual useful lives of engines used in various applications are expected to differ from the average useful life. The explanation(s) shall be in clear, nontechnical language that is understandable to the ultimate purchaser.

(f) *For heavy-duty engines.* (1) Maintenance instructions shall specify the performance of all scheduled emission-related maintenance approved by the Administrator under § 86.084–25(c). Scheduled emission-related maintenance in addition to that performed under § 86.084–25(b) may be recommended for reasons such as to offset the effects of operating conditions which differ from the conditions experienced during the determination of

deterioration factors. Such additional recommended maintenance shall be clearly differentiated, in a form approved by the Administrator from that approved under § 86.084–25(b). The instructions may schedule maintenance on a calendar time basis, mileage basis, engine service time basis, or combinations of each.

(2) Such instructions shall specify the useful life of the engine as determined by the manufacturer under § 86.084–21(b)(4)(ii)(B). This period of use shall be expressed as a period of engine or vehicle operation or as an equivalent vehicle mileage (or both). The manufacturer shall also present the method(s) by which the need for engine rebuild can be determined, including the criteria and values required in § 86.084–21(b)(4)(ii)(C) and the necessary measurement equipment and instrumentation. The manufacturer shall also include in the instructions an explanation of how it determined both the average useful life and the values of the rebuild criteria. An explanation may be included of how the useful life is determined for an individual engine (the first occurring of either the average useful life or the need for rebuild) and of how the actual useful lives of engines used in various applications are expected to differ from the average useful life. The explanation(s) shall be in clear, nontechnical language that is understandable to the ultimate purchaser.

16. § 86.084–40 is added and reads as follows:

§ 86.084–40 Automatic expiration of reporting and recordkeeping requirements.

(a) [Reserved]

(b) *Light-duty trucks and heavy-duty engines.*

(1) All of the recordkeeping and reporting requirements in this subpart for which 1984 is the first model year of implementation will automatically expire on December 31, 1988, unless the Administrator acts to retain them.

(2) If the Administrator determines that the reporting and recordkeeping requirements should be retained she/he will also at that time establish the subsequent date of expiration, which will not be later than December 31, 1993.

17. § 86.085–9 is revised to read as follows:

§ 86.085–9 Emission standards for 1985 light-duty trucks.

(a)(1) Exhaust emissions from 1985 and later model year light-duty trucks shall not exceed:

(i) *Hydrocarbons.* 0.8 gram per vehicle mile (0.5 gram per vehicle kilometer);

(ii)(A) *Carbon Monoxide.* 10 grams per vehicle mile (6.2 grams per vehicle kilometer);

(B) 0.47 percent of exhaust gas flow at curb idle.

(iii) *Oxides of Nitrogen.* 2.3 grams per vehicle mile (1.4 grams per vehicle kilometer);

(iv) *Particulate Emissions (diesels only).* 0.26 gram per vehicle mile (0.162 gram per vehicle kilometer).

(2) The standards set forth in paragraphs (a)(1)(i), (a)(1)(ii)(A), (a)(1)(iii), and (a)(1)(iv) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B and measured and calculated in accordance with those procedures. The standard set forth in paragraph (a)(1)(ii)(B) of this section refers to the exhaust emitted at curb idle and measured and calculated in accordance with the procedures set forth in Subpart P of this part.

(b)(1) Fuel evaporative emissions from 1985 and later model year gasoline-fueled light-duty trucks shall not exceed:

(i) *Hydrocarbons.* 2.0 grams per test.

(2) The standard set forth in paragraph (b)(1) of this section refers to a composite sample of the fuel evaporative emissions collected under the conditions set forth in Subpart B and measured in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any 1985 and later model year light-duty truck.

(d)(1) Model year 1985 and later light-duty trucks sold for principal use at designated high-altitude locations shall not exceed the following exhaust emission standards when tested at the high-altitude reference point if the manufacturer of such vehicles elects to demonstrate compliance with the high-altitude standards.

(i) *Hydrocarbons.* 2.0 grams per vehicle mile;

(ii) *Carbon Monoxide.* 26.0 grams per vehicle mile;

(iii) *Oxides of Nitrogen.* 2.3 grams per vehicle mile.

(2) The standards set forth in paragraph (d)(1) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B of this part and measured and calculated in accordance with those procedures.

(e)(1) Fuel evaporative emissions from 1985 and later model year gasoline-fueled light-duty trucks sold for principal use at designated high-altitude areas shall not exceed 2.6 grams per test when tested at the high-altitude reference point if the manufacturer of such vehicles elects to demonstrate compliance with high-altitude emission standards.

(2) The standard set forth in paragraph (e)(1) of this section refers to a composite sample of the fuel evaporative emission collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

18. § 86.085–28 is revised to read as follows:

§ 86.085–28 Compliance with emission standards.

(a)(1) Paragraph (a) of this section applies to light-duty vehicles.

(2) The applicable exhaust and fuel evaporative emission standards of this subpart apply to the emissions of vehicles for their useful life.

(3) Since it is expected that emission control efficiency will change with mileage accumulation on the vehicle, the emission level of a vehicle which has accumulated 50,000 miles will be used as the basis for determining compliance with the standards.

(4) The procedure for determining compliance of a new motor vehicle with exhaust emission standards is as follows:

(i) Separate emission deterioration factors shall be determined from the exhaust emission results of the durability-data vehicle(s) for each engine-system combination. A separate factor shall be established for exhaust HC, exhaust CO, exhaust NO_x, and exhaust particulate (diesel vehicles only) for each engine-system combination. A separate evaporative emission deterioration factor shall be determined for each evaporative emission family-evaporative emission control system combination from the testing conducted by the manufacturer (gasoline-fueled vehicles only).

(A) The applicable results to be used in determining the exhaust emission deterioration factors for each engine-system combination shall be:

(*1*) All valid exhaust emission data from the tests required under § 86.084–26(a)(4) except the zero-mile tests. This shall include the official test results, as determined in § 86.081–29 for all tests conducted on all durability-data vehicles of the combination selected under § 86.084–24(c) (including all vehicles elected to be operated by the manufacturer under § 86.084–24(c)(1)(ii)).

(*2*) All exhaust emission data from the tests conducted before and after the scheduled maintenance provided in § 86.084–25.

(*3*) All exhaust emission data from tests required by maintenance approved under § 86.084–25, in those cases where the Administrator conditioned his

approval for the performance of such maintenance on the inclusion of such data in the deterioration factor calculation.

(B) All applicable exhaust emission results shall be plotted as a function of the mileage on the system, rounded to the nearest mile, and the best fit straight lines, fitted by the method of least squares, shall be drawn through all these data points. The interpolated 4,000- and 50,000-mile points on this line must be within the low-altitude standards provided in § 86.085–8 or § 86.085–9, as applicable, or the data will not be acceptable for use in calculation of a deterioration factor, unless no applicable data point exceeded the standard. An exhaust emission deterioration factor shall be calculated for each engine-system combination as follows:

Factor=Exhaust emissions interpolated to 50,000 miles divided by exhaust emissions interpolated to 4,000 miles.

These interpolated values shall be carried out to a minimum of four places to the right of the decimal point before dividing one by the other to determine the deterioration factor. The results shall be rounded to three places to the right of the decimal point in accordance with ASTM E 29–67.

(C) An evaporative emissions deterioration factor (gasoline-fueled vehicles only) shall be determined from the testing conducted as described in § 86.084–21(b)(4)(i), for each evaporative emission family-evaporative emission control system combination to indicate the evaporative emission level at 50,000 miles relative to the evaporative emission level at 4,000 miles as follows:

Factor=Evaporative emission level at 50,000 miles minus the evaporative emission level at 4,000 miles.

The factor shall be established to a minimum of two places to the right of the decimal.

(ii)(A) The official exhaust-emission test results for each emission-data vehicle at the 4,000-mile test point shall be multiplied by the appropriate deterioration factor: *Provided,* that if a deterioriation factor as computed in paragraph (a)(4)(i)(B) of this section is less than one, that deterioration factor shall be one for the purposes of this paragraph.

(B) The official evaporative emission test results (gasoline-fueled vehicles only) for each evaporative emission-data vehicle at the 4,000-mile test point shall be adjusted by addition of the appropriate deterioration factor: *Provided,* that if a deterioration factor as computed in paragraph (a)(4)(i)(C) of this section is less than zero, that deterioration factor shall be zero for the purposes of this paragraph.

(iii) The emissions to compare with the standard shall be the adjusted emissions of paragraph (a)(4)(ii) (A) and (B) of this section for each emission-data vehicle. Before any emission value is compared with the standard, it shall be rounded, in accordance with ASTM E 29–67, to two significant figures. The rounded emission values may not exceed the standard.

(iv) Every test vehicle of an engine family must comply with the exhaust emission standards, as determined in paragraph (a)(4)(iii) of this section, before any vehicle in that family may be certified.

(v) Every test vehicle of an evaporative emission family must comply with the evaporative emission standard, as determined in paragraph (a)(4)(iii) of this section before any vehicle in that family may be certified.

(b)(1) Paragraph (b) of this section applies to light-duty trucks.

(2) The exhaust and fuel evaporative emission standards of § 86.085–9 apply to the emissions of vehicles for their useful life.

(3) Since emission control efficiency generally decreases with the accumulation of mileage on the vehicle, deterioration factors will be used in combination with emission-data vehicle test results as the basis for determining compliance with the standards.

(4)(i) Paragraph (b)(4) of this section describes the procedure for determining compliance of a new vehicle with exhaust emission standards, based on deterioration factors supplied by the manufacturer.

(ii) Separate exhaust emission deterioration factors, determined from test of vehicles, engines, subsystems, or components conducted by the manufacturer, shall be supplied for each engine-system combination. Separate factors shall be established for transient HC, CO, and NO_x, idle CO (gasoline vehicles only), and exhaust particulate (diesel vehicles only).

(iii) For transient HC, CO, and NO_x, idle CO (gasoline vehicles only), and exhaust particulate (diesel vehicles only), the official exhaust emission results for each emission-data vehicle at the 4,000-mile test point shall be adjusted by multiplication by the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this paragraph.

(iv) The emission values to compare with the standards shall be the adjusted emission values of paragraph (b)(4)(iii) of this section rounded to two significant figures in accordance with ASTM E 29–67 for each emission-data engine.

(5) [Reserved]

(6)(i) Paragraph (b)(6) of this section describes the procedure for determining compliance of a new vehicle with fuel evaporative emission standards. The procedure described here shall be used for all vehicles in all model years.

(ii) The manufacturer shall determine, based on testing described in § 86.084–21(b)(4)(i), and supply an evaporative emission deterioration factor for each evaporative emission family-evaporative emission control system combination. The factor shall be calculated by substracting the emission level at 4,000 miles from the emission level at the useful life point.

(iii) The official evaporative emission test results for each evaporative emission-data vehicle at the 4,000-mile test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(iv) The emission value to compare with the standards shall be the adjusted emission value of paragraph (b)(6)(iii) of this section rounded to two significant figures in accordance with ASTM E 29–67 for each evaporative emission-data vehicle.

(7) Every test vehicle of an engine family must comply with all applicable standards, as determined in paragraph (b)(4)(iv) or (b)(5)(iv) and paragraph (b)(6) of this section, before any vehicle in that family will be certified.

(c)(1) Paragraph (c) of this section applies to heavy-duty engines.

(2) The exhaust emission standards for gasoline-fueled engines in § 86.084–10 or for diesel engines in § 86.085–11 apply to the emissions of engines for their useful life.

(3) Since emission control efficiency generally decreases with the accumulation of service on the engine, deterioration factors will be used in combination with emission-data engine test results as the basis for determining compliance with the standards.

(4)(i) Paragraph (c)(4) of this section describes the procedure for determining compliance of an engine with emission standards, based on deterioration factors supplied by the manufacturer.

(ii) Separate exhaust emission deterioration factors, determined from tests on engines, subsystems, or components conducted by the manufacturer, shall be supplied for each engine-system combination. For gasoline and diesel engines, separate factors shall be established for transient HC,

CO, and NOx. For gasoline-fueled engines, a separate factor shall be established for idle CO. For diesel smoke testing, separate factors shall also be established for the acceleration mode (designated as "A"), the lugging mode (designated as "B"), and the peak opacity (designated as "C").

(iii)(A) For transient HC, CO and NOx (and, in the case of gasoline-fueled engines, for idle CO), the official exhaust emission results for each emission-data engine at the 125-hour test point shall be adjusted by multiplication by the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this paragraph.

(B) For acceleration smoke ("A"), lugging smoke ("B"), and peak smoke ("C"), the official exhaust emission results for each emission-data engine at the 125-hour test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(iv) The emission values to compare with the standards shall be the adjusted emission values of paragraph (c)(4)(iii) of this section rounded to two significant figures in accordance with ASTM E 29–67 for each emission-data engine.

(5) [Reserved]

(6) [Reserved]

(7) Every test engine of an engine family must comply with all applicable standards, as determined in paragraph (c)(4)(iv) of this section, before any engine in that family will be certified.

19. § 86.1344–84 is revised by correcting paragraph designations for paragraphs (d) and (e). The revised paragraphs read as follows:

§ 86.1344–84 Required information.

* * * * *

(d) *Pre-test data.* The following data shall be recorded, and reported to the Administrator for each test conducted for Compliance with the provisions of 40 CFR 86, Subpart A:

(1) Engine-system combination.

(2) Engine identification.

(3) Instrument operator(s).

(4) Engine operator(s).

(5) Number of hours of operation accumulated on the engine prior to beginning the test sequence (Figure N84–10).

(6) Fuel identification with average of test fuel used.

(7) Date of most recent analytical assembly calibration.

(8) All pertinent instrument information such as tuning, gain, serial numbers, detector number, calibration curve number, etc. As long as this information is traceable, it may be summarized by system number or analyzer identification numbers.

(e) *Test data.* The physical parameters necessary to compute the test results and insure accuracy of the results shall be recorded for each test conducted for compliance with the provisions of 40 CFR 86, Subpart A. Additional test data may be recorded at the discretion of the manufacturer. Extreme details of the test measurements such as analyzer chart deflections will generally not be required on a routine basis to be reported to the Administrator for each test, unless a dispute about the accuracy of the data arises. The following type of data shall be required to be reported to the Administrator. The Application Format for Certification for the applicable Model Year will specify the exact requirements which may change slightly from year to year with the addition or deletion of certain items.

(1) Date and time of day.

(2) Test number.

(3) Engine intake air or test cell temperature.

(4) Barometric pressure. A central laboratory barometer may be used:

Provided, that individual test cell barometric pressure are shown to be within ±0.1 percent of the barometric pressure at the central barometer location.

(5) Engine intake or test cell and CVS dilution air humidity.

(6) Maximum torque versus speed curve as determined in § 86.1332, with minimum and maximum engine speeds.

(7) Measured maximum horsepower, maximum torque, and rated speeds.

(8) Measured maximum horsepower and torque.

(9) High idle engine speed (diesel engines only).

(10) Fuel consumption at maximum power and torque (diesel engines only).

(11) Curb-idle fuel flow rate.

(12) Cold soak time interval and cool down procedures.

(13) Temperature set point of the heated continuous analysis system components (if applicable).

(14) Test cycle validation criteria as specified in § 86.1341 for each test phase (cold-hot).

(15) Total CVS flow rate with dilution factor for each test phase (cold-hot).

(16) Sample concentrations (background corrected) for HC, CO, CO_2, and NOx for each test phase (cold-hot).

(17) Brake specific emissions (g/BHP–hr) for HC, CO and NOx for each test phase (cold-hot).

(18) The weighted (cold-hot) brake specific emissions (g/BHP–hr) for the total test.

(19) The weighted (cold-hot) carbon balance brake specific fuel consumption for the total test.

(20) The number of hours of operation accumulated on the engine after completing the test sequences described in Figure N84–10.

20. Subpart K entitled "Selective Enforcement Auditing of New Gasoline Fueled and Diesel Heavy-Duty Engines," is hereby repealed. A new Subpart K, applicable to both Light-Duty Trucks and Heavy-Duty Engines, is added and reads as follows:

Subpart K—Selective Enforcement Auditing of New Gasoline-Fueled and Diesel Heavy-Duty Engines and Light-Duty Trucks

Sec.

86.1001–84 Applicability.
86.1002–84 Definitions.
86.1003–84 Test orders.
86.1004–84 Testing by the Administrator.
86.1005–84 Maintenance of records; submittal of information.
86.1006–84 Entry and access.
86.1007–84 Sample selection.
86.1008–84 Test procedures.
86.1009–84 Calculation and reporting of test results.
86.1010–84 Compliance with acceptable quality level and passing and failing criteria for Selective Enforcement Audits.
86.1011–84 [Reserved]
86.1012–84 Suspension and revocation of certificates of conformity.
86.1013–84 [Reserved]
86.1014–84 Hearings on suspension, revocation and voiding of certificates of conformity.

Subpart K—Selective Enforcement Auditing of New Gasoline-Fueled and Diesel Heavy-Duty Engines and Light-Duty Trucks

§ 86.1001–84 Applicability.

The provisions of this subpart are applicable for 1984 and later model year gasoline-fueled land diesel heavy-duty engines and light-duty trucks.

§ 86.1002–84 Definitions.

(a) The definitions in this section apply to this subpart.

(b) As used in this subpart, all terms not defined herein have the meaning given them in the Act.

"Acceptable Quality Level" (AQL) means the maximum percentage of failing engines or vehicles that, for purposes of sampling inspection, can be considered satisfactory as a process average.

"Configuration" means a subclassification, if any, of a heavy-duty

engine family for which a separate projected sales figure is listed in the manufacturer's Application for Certification and which can be described on the basis of emission control system, governed speed, injector size, engine calibration, and other parameters which may be designated by the Administrator, or a subclassification of a light-duty truck engine family-emission control system combination on the basis of engine code, inertia weight class, transmission type and gear ratios, rear axle ratio, and other parameters which may be designated by the Administrator.

"In the Hands of the Manufacturer" means that heavy-duty engines or light-duty trucks are still in the possession of the manufacturer and have not had their bills of lading transferred to another person for the purpose of transporting.

"Test Sample" means the collection of light-duty trucks or heavy-duty engines of the same configuration which have been selected to receive exhaust emission testing.

§ 86.1003–84 Test orders.

(a) The Administrator shall require any testing under this subpart by means of a test order addressed to the manufacturer.

(b) The test order will be signed by the Assistant Administrator for Enforcement or his designee. The test order will be delivered in person by an EPA Enforcement Officer to a company representative or sent by registered mail, return receipt requested, to the manufacturer's representative who signs the Application for Certification submitted by the manufacturer pursuant to the requirements of the applicable sections of Subpart A of this part. Upon receipt of a test order, the manufacturer shall comply with all of the provisions of this subpart and instructions in the test order.

(c)(1) The test order will specify the engine or vehicle configuration selected for testing, the manufacturer's vehicle or engine assembly plant or associated storage facility from which the engines or vehicles must be selected, the time and the location at which engines or vehicles must be selected, and the procedure by which engines or vehicles of the specified configuration must be selected. The test order may include alternative configurations to be selected for testing in the event that engines or vehicles of the first specified configuration are not available for testing because those engines or vehicles are not being manufactured at the specified assembly plant, not being manufactured during the specified time, or not being stored at the specified assembly plant or associated storage facility. In addition, the test order may include other directions or information essential to the administration of the required testing.

(2) The following instructions are applicable to each test order issued under this subpart.

(i) The manufacturer shall make the following documents available to EPA Enforcement Officers upon request:

(A) A properly filed and current application for certification, following the format prescribed by the EPA for the appropriate model year; and

(B) A copy of the shop manual and dealer service bulletins for the configurations being tested.

(ii) Only one mechanic at a time per engine or vehicle shall make authorized checks, adjustment, or repair, unless a particular check, adjustment, or repair requires a second mechanic as indicated in the shop manual or dealer service bulletins.

(iii) A mechanic shall not perform any check, adjustment, or repair without an Enforcement Officer present unless otherwise authorized.

(iv) The manufacturer shall utilize only those tools and test equipment utilized by its dealers or those dealers using its engines when performing authorized checks, adjustments, or repairs.

(d) A manufacturer may submit a list of engine families and the corresponding assembly plants or associated storage facilities from which the manufacturer prefers to have engines or vehicles selected for testing in response to a test order. In order that a manufacturer's preferred location be considered for inclusion in a test order for a configuration of a particular engine family, the list must be submitted prior to issuance of the test order. Notwithstanding the fact that a manufacturer has submitted the above list, the Administrator may order selection at other than a preferred location.

(e) Upon receipt of a test order, a manufacturer shall proceed in accordance with the provisions of this subpart.

(f)(1) During a given model year, the Administrator shall not issue to a manufacturer more Selective Enforcement Auditing (SEA) test orders than an annual limit determined by the following:

(i) For manufacturers of heavy-duty engines, either gasoline-fueled or diesel, the number determined by dividing the projected heavy-duty engine sales bound for the United States market for that year, as made by the manufacturer in its Application for Certification, by 30,000 and rounding to the nearest whole number, unless the projected sales are less than 15,000, in which case the number is one;

(ii) For manufacturers of light-duty trucks, either gasoline-fuel or diesel, the number determined by dividing the projected light-duty truck sales bound for the United States market for that model year, as made by the manufacturer in its Application for Certification, by 300,000 and rounding to the nearest whole number, unless the projected sales are less than 150,000, in which case the number is one.

(2) Any SEA test order for which the configuration fails in accordance with § 86.1010–84 or for which testing is not completed will not be counted against the annual limit.

(3) When the annual limit has been met, the Administrator may issue additional test orders for those configurations for which evidence exists indicating noncompliance. An SEA test order issued on this basis will include a statement as to the reason for its issuance.

§ 86.1004–84 Testing by the Administrator.

(a) The Administrator may require by test order that engines or vehicles of a specified configuration be selected in a manner consistent with the requirements of § 86.1007–84 and submitted to him at such place as he may designate for the purpose of conducting emission tests. These tests will be conducted in accordance with § 86.1008–84 of these regulations to determine whether engines or vehicles manufactured by the manufacturer conform with the regulations with respect to which the certificate of conformity was issued.

(b)(1) Whenever the Administrator conducts a test on a test engine or vehicle or the Administrator and manufacturer each conduct a test on the same test engine or vehicle, the results of the Administrator's test will comprise the official data for that engine or vehicle.

(2) Whenever the manufacturer conducts all tests on a test engine or vehicle, the manufacturer's test data will be accepted as the official data: *Provided*, That if the Administrator makes a determination based on testing under paragraph (a) of this section that there is a substantial lack of agreement between the manufacturer's test results and the Administrator's test results, no manufacturer's test data from the manufacturer's test facility will be accepted for purposes of this subpart.

(c) If testing conducted under paragraph (a) of this section demonstrates a lack of agreement under

paragraph (b)(2) of this section, the Administrator shall—

(1) Notify the manufacturer in writing of his determination that the test facility is inappropriate for conducting the tests required by this subpart and the reasons therefor; and

(2) Reinstate any manufacturer's data upon a showing by the manufacturer that the data acquired under paragraph (a) of this section was erroneous and the manufacturer's data was correct.

(d) The manufacturer may request in writing that the Administrator reconsider his determination in paragraph (b)(2) of this section based on data or information which indicates that changes have been made to the test facility and these changes have resolved the reasons for disqualification.

§ 86.1005–84 Maintenance of records; submittal of information.

(a) The manufacturer of any new gasoline-fueled or diesel heavy-duty engine or light-duty truck subject to any of the provisions of this subpart shall establish, maintain, and retain the following adequately organized and indexed records:

(1) *General records.* A description of all equipment used to test engines or vehicles in accordance with § 86.1008–84 pursuant to a test order issued under this subpart, specifically—

(i) If testing heavy-duty gasoline engines, the equipment requirements specified in §§ 86.1306–84 and 86.1506–84 of this part;

(ii) If testing heavy-duty diesel engines, the equipment requirements specified in §§ 86.1306–84, 86.1506–84, 86.879–6, 86.879–8, and 86.879–9 of this part; [§ 86.306–79 for Subpart D testing only.]

(iii) If testing light-duty gasoline-fueled trucks, the equipment requirements specified in §§ 86.106 (excluding all references to evaporative and particulate emission testing) and 86.1506–84 of this part; and

(iv) If testing light-duty diesel trucks, the equipment requirements specified in § 86.106 (excluding all references to evaporative emission testing) of this part.

(2) *Individual records.* These records pertain to each audit conducted pursuant to this subpart.

(i) The date, time, and location of each test;

(ii) The number of hours of service accumulated on the engine or the number of miles on the vehicle when the test began and ended;

(iii) The names of all personnel, including supervisory personnel, involved in the conduct of the audit;

(iv) A record and description of any repairs performed prior to and/or subsequent to approval by the Administrator, giving the date and time of the repair, the reason for it, the person authorizing it, and the names of all personnel involved in the supervising and performance of the repair;

(v) The date when the engine or vehicle was shipped from the assembly plant or associated storage facility and when it was received at the testing facility;

(vi) A complete record of all emission tests performed pursuant to this subpart (except test performed by EPA directly), including all individual worksheets and/or other documentation relating to each test, or exact copies thereof, specifically—

(A) If testing heavy-duty gasoline engines, the record requirements specifed in §§ 86.1342–84 and 86.1542–84 of this part;

(B) If testing heavy-duty diesel engines, the record requirements specified in §§ 86.1342–84, 86.1542–84, and 86.879–10; (§ 86.337–79 for Subpart D testing only).

(C) If testing light-duty gasoline-fueled trucks, the record requirements specified in §§ 86.142 (excluding all references to diesel vehicles) and 86.1542–84; and

(D) If testing light-duty diesel trucks, the record requirements specified in § 86.142; and

(vii) A brief description of any significant audit events commencing with the test engine or vehicle selection process, but not described by any subparagraph under paragraph (a)(2) of this section, including such extraordinary events as engine damage during shipment or vehicle accident.

(3) The manufacturer shall record test equipment description, pursuant to pargraph (a)(1) of this section, for each test cell that can be used to perform emission testing under this subpart.

(b) The manufacturer shall retain all records required to be maintained under this subpart for a period of one (1) year after completion of all testing in response to a test order. Records may be retained as hard copy or reduced to microfilm, punch cards, etc., depending upon the manufacturer's record retention procedure: *Provided,* That in every case all the information contained in the hard copy is retained.

(c) Heavy-duty engine or light-duty truck manufacturers shall submit to the Administrator on a quarterly basis no later than thirty days after the close of each calendar quarter or other reporting schedule as approved by the Administrator all emission data, whether or not from FTP testing, from testing of production engines or vehicles. The manufacturer shall provide the following information with respect to these engines or vehicles:

(1) Description of quality audit or other program under which production engines or vehicles are tested, including a description of sampling plans, method of sample selection, sampling rates, and emissions test employed.

(2) EPA engine family.

(3) Engine or vehicle indentification number.

(4) Configuration.

(5) Engine or vehicle model year and build date.

(6) Number of hours of service accumulated on engine or number of miles on vehicle prior to testing.

(7) Description of any preparation, maintenance, modification or repair on test engines or vehicles.

(8) Emission test results for each vaild test. If the above information is available on Automatic Data Processing (ADP) equipment, the manufacturer shall submit the information on an ADP storage device such as magnetic tape, magnetic disc, punched cards, etc. *Provided,* That the manufacturer's storage device is compatible with EPA's ADP equipment. EPA shall return ADP equipment submitted by the manufacturer or, upon a request by the manufacturer, furnish the necessary ADP storage devices. Information submitted once need not be submitted again if there are so subsequent changes.

(d) Pursuant to a request made by the Administrator, the manufacturer shall submit to him the following information with regard to engine or vehicle production:

(1) Number of engines or vehicles, by configuration and assembly plant, scheduled for production for the time period designated in the request.

(2) Number of engines or vehicles, by configuration and assembly plan, produced during the time period designated in the request which are complete for introduction into commerce.

(e) Nothing in this section limits the Administrator's discretion in requiring the manufacturer to retain additional records or submit information not specifically required by this section.

(f) The manufacturer shall address all reports, submissions notifications, and requests for approvals made under this subpart to: Director, Manufacturers Operations Division, U.S. Environmental Protection Agency, EN–340, 401 M Street S.W., Washington, D.C. 20460.

§ 86.1006–84 Entry and access.

(a) To allow the Administrator to determine whether a manufacturer is

complying with the provisions of this subpart and a test order issued thereunder, EPA Enforcement Officers are authorized to enter during operating hours and upon presentation of credentials any of the following:

(1) Any facility where any engine or vehicle to be introduced into commerce or any emission related component is manufactured, assembled, or stored;

(2) Any facility where any tests conducted pursuant to a test order or any procedures or activities connected with these tests are or were performed;

(3) Any facility where any engine or vehicle which is being tested, was tested, or will be tested is present; and

(4) Any facility where any record or other document relating to any of the above is located.

(b) Upon admission to any facility referred to in subsection (a) of this section, EPA Enforcement Officers are authorized to perform the following inspection-related activities:

(1) To inspect and monitor any aspects of engine or vehicle manufacture, assembly, storage, testing and other procedures, and the facilities in which these procedures are conducted;

(2) To inspect and monitor any aspect of engine or vehicle test procedures or activities, including, but not limited to, monitoring engine or vehicle selection, preparation, service or mileage accumulation, preconditioning, emission test cycles, and maintenance; and to verify calibration of test equipment;

(3) To inspect and make copies of any records or documents related to the assembly, storage, selection and testing of an engine or vehicle in compliance with a test order; and

(4) To inspect and photograph any part or aspect of any engine or vehicle and any component used in the assembly thereof that is reasonably related to the purpose of the entry.

(c) EPA Enforcement Officers are authorized to obtain reasonable assistance without cost from those in charge of a facility to help them perform any function listed in this subpart and are authorized to request the recipient of a test order to make arrangements with those in charge of a facility operated for its benefit to furnish reasonable assistance without cost to EPA whether or not the recipient controls the facility.

(d) EPA Enforcement Officers are authorized to seek a warrant or court order authorizing the EPA Enforcement Officers to conduct activities related to entry and access as authorized in this section, as appropriate, to execute the functions specified in this section. EPA Enforcement Officers may proceed *ex parte* to obtain a warrant whether or not the Enforcement Officers first attempted to seek permission of the recipient of the test order or the party in charge of the facilities in question to conduct activities related to entry and access as authorized in this section.

(e) A recipient of a test order shall permit EPA Enforcement Officers who present a warrant or court order as described in paragraph (d) of this section to conduct activities related to entry and access as authorized in this section and as described in the warrant or court order. The recipient shall cause those in charge of its facility or a facility operated for its benefit to permit EPA Enforcement Officers to conduct activities related to entry and access as authorized in this section pursuant to a warrant or court order whether or not the recipient controls the facility. In the absence of such a warrant or court order, EPA Enforcement Officers may conduct activities related to entry and access as authorized in this section only upon the consent of the recipient of the test order or the party in charge of the facilities in question.

(f) It is not a violation of this Part or the Clean Air Act for any person to refuse to permit EPA Enforcement Officers to conduct activities related to entry and access as authorized in this section without a warrant or court order.

(g) A manufacturer is responsible for locating its foreign testing and manufacturing facilities in jurisdictions in which local foreign law does not prohibit EPA Enforcement Officers from conducting the entry and access activities specified in this section. EPA will not attempt to make any inspections which it has been informed that local foreign law prohibits.

(h) For purposes of this section, the following definitions are applicable:

(1) "Presentation of Credentials" means display of the document designating a person as an EPA Enforcement Officer.

(2) Where engine or vehicle storage areas or facilities are concerned, "operating hours" means all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(3) Where facilities or areas other than those covered by paragraph (h)(2) of this section are concerned, "operating hours" means all times during which an assembly line is in operation, engine or vehicle assembly is taking place, testing, repair, service accumulation, preparation or compilation of records is taking place, or any other procedure or activity related to engine or vehicle manufacture, assembly or testing is being carried out in a facility.

(4) "Reasonable assistance" includes, but is not limited to, clerical, copying, interpreting and translating services, and the making available on an EPA Enforcement Officer's request of personnel of the facility being inspected during their working hours to inform the EPA Enforcement Officer of how the facility operates and to answer his or her questions. Any employee whom an EPA Enforcement Officer requests the manufacturer to cause to appear for questioning will be entitled to be accompanied, represented and advised by counsel.

§ 86.1007-84 Sample selection.

(a) Engines or vehicles comprising a test sample which are required to be tested, pursuant to a test order issued in accordance with this subpart, will be selected at the location and in the manner specified in the test order. If a manufacturer determines that the test engines or vehicles cannot be selected in the manner specified in the test order, an alternative selection procedure may be employed: *Provided*, That the manufacturer requests approval of the alternative procedure in advance of the start of test sample selection and that the Administrator approves the procedure.

(b) The manufacturer shall have assembled the test engines or vehicles of the configuration selected for testing using its normal mass production processes for engines or vehicles to be distributed into commerce. In the case of heavy-duty engines, if the test engines are selected at a location where they do not have their operational and emission control systems installed, the test order will specify the manner and location for selection of components to complete assembly of the engines. The manufacturer shall assemble these components onto the test engines using normal assembly and quality control procedures as documented by the manufacturer.

(c) No quality control, testing, or assembly procedures will be used on the completed test engine or vehicle or any portion thereof, including parts and subassemblies, that will not be used during the production and assembly of all other engines or vehicles of that configuration.

(d) The test order may specify that EPA Enforcement Officers, rather than the manufacturer, will select the test engines or vehicles according to the method specified in the test order.

(e) The order in which test engines or vehicles are selected determines the order in which test results are to be used in applying the sampling plan in accordance with § 86.1010-84.

(f) The manufacturer shall keep on hand all untested engines or vehicles, if any, comprising the test sample until such time as a pass or fail decision is reached in accordance with § 86.1010–84(d). The manufacturer may ship any tested engine or vehicle which has not failed in accordance with § 86.1010–84(b). However, once the manufacturer ships any test engine or vehicle, it relinquishes the prerogative to conduct retests as provided in § 86.1008–84(i).

§ 86.1008–84 Test procedures.

(a)(1) For heavy-duty engines, the prescribed test procedure is the Federal Test Procedure as described in Subparts N, I, and P of this Part.

(2) If a heavy-duty diesel engine manufacturer uses the test procedure in Subpart D of this part to certify 1984 model year engines pursuant to § 86.084–11 (a)(1)(i)(B), (a)(1)(ii)(B), (a)(1)(iii)(B), and (a)(2), that manufacturer shall use the test procedure in Subpart D when conducting emission tests on those engines pursuant to this subpart.

(3) For light-duty trucks, the prescribed test procedure is the Federal Test Procedure as described in Subparts B and P of this part. The manufacturer shall not perform the evaporative emission test procedure contained in Subpart B.

(4) When testing light-duty trucks the following exceptions to the test procedures in Subpart B are applicable:

(i) The manufacturer may use gasoline test fuel meeting the specifications of paragraph (a) of § 86.113 for mileage accumulation. Otherwise, the manufacturer may use fuels other than those specified in this section only with advance approval of the Administrator.

(ii) The manufacturer may measure the temperature of the test fuel at other than the approximate mid-volume of the fuel tank, as specified in paragraph (a) of § 86.131, and may drain the test fuel from other than the lowest point of the fuel tank, as specified in paragraph (b) of § 86.131, with the advance approval of the Administrator.

(iii) The manufacturer may perform additional preconditioning on SEA test vehicles other than the preconditioning specified in § 86.132 only if the additional preconditioning had been performed on certification test vehicles of the same configuration.

(iv) The manufacturer shall perform the heat build procedure 11 to 34 hours following vehicle preconditioning rather than according to the time period specified in paragraph (a) of § 86.133. All references in § 86.133 to an evaporative emission enclosure (SHED) and analyzing for HC during the heat build can be ignored.

(v) The manufacturer may substitute slave tires for the drive wheel tires on the vehicle as specified in paragraph (e) of § 86.135: *Provided,* That the slave tires are the same size.

(vi) The cold start exhaust emission test described in § 86.137 shall follow the heat build procedure described in § 86.133 by not more than one hour.

(vii) In performing exhaust sample analysis under § 86.140,

(A) When testing diesel vehicles, the manufacturer shall allow a minimum of 20 minutes warm-up for the HC analyzer, and a minimum of 2 hours warm-up for the CO, CO_2 and NO_x analyzers. [Power is normally left on infrared and chemiluminescent analyzers. When not in use, the chopper motors of the infrared analyzers are turned off and the phototube high voltage supply to the chemiluminescent analyzers is placed in the standby position.]

(B) The manufacturer shall exercise care to prevent moisture from condensing in the sample collection bags.

(viii) The manufacturer need not comply with § 86.142, since the records required therein are provided under other provisions of Subpart K of this part.

(ix) In addition to the requirements of Subpart B of this part, the manufacturer shall prepare gasoline-fueled vehicles as follows prior to exhaust emission testing:

(A) The manufacturer shall inspect the fuel system to insure the absence of any leaks of liquid or vapor to the atmosphere by applying a pressure of 14.5+0.5 inches of water to the fuel system, allowing the pressure to stabilize, and isolating the fuel system from the pressure source. Following isolation of the fuel system, pressure must not drop more than 2.0 inches of water in 5 minutes. If required the manufacturer shall perform corrective action in accordance with paragraph § 86.1008(d) and report this action in accordance with paragraph § 86.1009(d).

(B) When performing this pressure check, the manufacturer shall exercise care to neither purge nor load the evaporative emission control system.

(C) The manufacturer shall not modify the test vehicle's evaporative emission control system by component addition, deletion, or substitution, except to comply with paragraph (a)(4)(ii) of this section if approved in advance by the Administrator.

(b)(1) The manufacturer shall not adjust, repair, prepare, or modify the engines or vehicles selected for testing and shall not perform any emission tests on engines or vehicles selected for testing pursuant to the test order unless this adjustment, repair, preparation, modification, and/or tests are documented in the manufacturer's engine or vehicle assembly and inspection procedures and are actually performed or unless these adjustments and/or tests are required or permitted under this subpart or are approved in advance by the Administrator.

(2) For 1984 and later model years the Administrator may adjust or cause to be adjusted any engine parameter which the Administrator has determined to be subject to adjustment for certification and Selective Enforcement Audit testing in accordance with § 86.084–22(e)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.084–22(e)(3)(ii), prior to the performance of any tests. However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to any setting which causes a lower engine idle speed then would have been possible within the physically adjustable range of the idle speed parameter if the manufacturer had accumulated 125 hours of service on the engine or 4,000 miles on the vehicle under paragraph (c) of this section, all other parameters being identically adjusted for the purpose of the comparison. The Administrator, in making or specifying these adjustments, may consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use heavy-duty engines or light-duty trucks. In determining likelihood, the Administrator may consider factors such as, but not limited to, the effect of the adjustment on engine or vehicle performance characteristics and surveillance information from similar in-use engines or vehicles.

(c) The manufacturer may accumulate up to 125 hours of service on each engine or 4,000 miles on each vehicle prior to performing exhaust emission testing. Service or mileage accumulation may be performed in any manner the manufacturer desires.

(1) The manufacturer shall accumulate service at a minimum rate of 16 hours or mileage at a minimum rate of 300 miles during each 24-hour period, unless otherwise provided by the Administrator.

(2) Service or mileage accumulation shall be performed on a sufficient number of test engines or vehicles

during each 24-hour period to assure that the number of engines or vehicles tested per day fulfills the requirements of paragraph (g) of this section.

(d) No maintenance shall be performed on test engines or vehicles after selection for testing nor will any test engine or vehicle substitution or replacement be allowed, unless requested of the Administrator in advance of the performance of any maintenance or engine or vehicle substitution.

(e) The manufacturer shall expeditiously ship test engines or vehicles from the point of selection to the test facility. If the test facility is not located at or in close proximity to the point of selection, the manufacturer shall assure that test engines or vehicles arrive at the test facility within 24 hours of selection: *Except,* That the Administrator may approve more time based upon a request by the manufacturer accompanied by a satisfactory justification.

(f) If an engine or vehicle can not complete the service or mileage accumulation or emission tests because of engine or vehicle malfunction, the manufacturer may request that the Administrator authorize the repair or replacement of the engine or vehicle. Any replacement engines or vehicles will be selected in a manner prescribed in the test order.

(g) Within one working day of receipt of the test order, the manufacturer shall notify the Administrator which test facility will be used to comply with the test order. If no test cells are available at a desired facility, the manufacturer must provide alternate testing capability satisfactory to the Administrator.

(1) Heavy-duty engine manufacturers with projected sales bound for the United States market for that year of 30,000 or greater, as made in their respective Applications for Certification, shall complete emission testing at their testing facility on a minimum of two engines per 24 hour period, including voided tests.

(2) Heavy-duty engine manufacturers with projected sales bound for the United States market for that year of less than 30,000, as made in their respective Applications for Certification, shall complete emission testing at their testing facility on a minimum of one engine per 24 hour period, including voided tests.

(3) Light-duty truck manufacturers shall complete emission testing on a minimum of four vehicles per 24-hour period, including voided tests.

(4) The Administrator may approve a longer period of time for conducting emission tests based upon a request by a manufacturer accompanied by a satisfactory justification.

(h) The manufacturer shall perform test engine or vehicle selection, shipping, preparation, service or mileage accumulation, and testing in such a manner as to assure that the audit is performed in an expeditious manner.

(i) The manufacturer may retest any engines or vehicles tested during a Selective Enforcement Audit once a fail decision for the audit has been reached in accordance with § 86.1010–84(d) based on the first test on each engine or vehicle: *Except,* That the Administrator may approve retesting at other times based upon a request by the manufacturer accompanied by a satisfactory justification. The manufacturer may test each engine or vehicle a total of three times. The manufacturer shall test each engine or vehicle the same number of times. The manufacturer may accumulate additional service or mileage before conducting a retest, subject to the provisions of paragraph (c) of this section.

§ 86.1009–84 Calculation and reporting of test results.

(a) Initial test results are calculated following the Federal Test Procedure specified in paragraph (a) of § 86.1008–84.

(b) Final test results are calculated by summing the initial test results derived in paragraph (a) of this section for each test engine or vehicle, dividing by the number of test conducted on the engine or vehicle, and rounding in accordance with ASTM E29–67 to the same number of decimal places contained in the applicable standard expressed to one additional significant figure.

(c) *Final deteriorated test results.* (1) The final deteriorated test results for each heavy-duty engine or light-duty truck tested according to Subpart B, D, N, or P of this Part are calculated by multiplying the final test results by the appropriate deterioration factor, derived from the certification process for the engine family-control system combination and model year for the selected configuration to which the test engine or vehicle belongs. If the deterioration factor computed during the certification process is less than one, that deterioration factor will be one.

(2) The final deteriorated test results for each heavy-duty engine tested according to Subpart I of this Part are calculated by adding the appropriate deterioration factor, derived from the certification process for the engine family-control system combination and model year for the selected configuration to which the test engine belongs, to the final test results. If the deterioration factor computed during the certification process is less than zero, that deterioration factor will be zero.

(3) The final deteriorated test results are rounded to the same number of significant figures contained in the applicable standard in accordance with ASTM E29–67.

(d) Within five working days after completion of testing of all engines or vehicles pursuant to a test order, the manufacturer shall submit to the Administrator a report which includes the following information:

(1) The location and description of the manufacturer's exhaust emission test facilities which were utilized to conduct testing reported pursuant to this section;

(2) The applicable standards against which the engines or vehicles were tested;

(3) Deterioration factors for the engine family to which the selected configuration belongs;

(4) A description of the engine or vehicle and any emission-related component selection method used;

(5) For each test conducted,

(i) Test engine or vehicle description, including:

(A) Configuration and engine family identification,

(B) Year, make and build date,

(C) Engine or vehicle identification number, and

(D) Number of hours of service accumulated on engine or number of miles on vehicle prior to testing;

(ii) Location where service or mileage accumulation was conducted and description of accumulation procedure and schedule;

(iii) Test number, date, initial test results before and after rounding, final test results and final deteriorated test results for all exhaust emission tests, whether valid or invalid, and the reason for invalidation, if applicable;

(iv) A complete description of any modification, repair, preparation, maintenance, and/or testing which was performed on the test engine or vehicle and has not been reported pursuant to any other paragraph of this subpart and will not be performed on all other production engines or vehicles;

(v) Where a replacement engine or vehicle was authorized by the Administrator, the reason for the replacement and the information in (iii) above, if any, for the replacement engine or vehicle; and

(vi) Any other information the Administrator may request relevant to the determination as to whether the new heavy-duty engines or light-duty trucks being manufactured by the manufacturer do in fact conform with the regulations

with respect to which the certificate of conformity was issued; and

(6)(i) For light-duty trucks the following statement and endorsement: This report is submitted pursuant to section 206 and section 208 of the Clean Air Act. This Selective Enforcement Audit was conducted in complete conformance with all applicable regulations under 40 CFR Part 86 et seq., and the conditions of the test order. All data and information reported herein is, to the best of

(Company name)

knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder.

(Authorized Company Representative)

(6)(ii) For heavy-duty engines the following statement and endorsement: This report is submitted pursuant to section 206 and section 208 of the Clean Air Act. All testing for which data is reported herein was conducted in strict conformance with applicable regulations under 40 CFR Part 86 et seq. All the data reported herein is a true and accurate representation of such testing. All other information reported herein is to the best of

(Company name)

knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder.

(Authorized company representative)

§ 86.1010–84 Compliance with acceptable quality level and passing and failing criteria for Selective Enforcement Audits.

(a) The prescribed acceptable quality level is 10 percent.

(b) A failed engine or vehicle is one whose final deteriorated test results pursuant to paragraph 86.1009–84(c), for one or more of the applicable exhaust pollutants, exceed the applicable emission standard.

(c) The manufacturer shall test heavy-duty engines or light-duty trucks comprising the test sample until a pass decision is reached for all pollutants, or a fail decision is reached for one pollutant. A pass decision is reached when the cumulative number of failed engines or vehicles, as defined in paragraph (b) of this section, for each pollutant is less than or equal to the pass decision number appropriate to the cumulative number of engines or vehicles tested. A fail decision is reached when the cumulative number of failed engines or vehicles for one or more pollutants is greater than or equal to the fail decision number appropriate to the cumulative number of engines or vehicles tested. The pass and fail decision numbers associated with the cumulative number of engines or vehicles tested are determined by use of the tables in Appendix X of this part appropriate for the annual projected sales as made by the manufacturer in its Application for Certification. In the Tables in Appendix X, sampling plan "stage" refers to the cumulative number of engines or vehicles tested. Once a pass or fail decision has been made for a particular pollutant, the number of engines or vehicles whose final deteriorated test results exceed the emission standard for that pollutant shall not be considered any further for the purposes of the audit.

(d) Passing or failing of an SEA audit occurs when the decision is made on the last engine or vehicle required to make a decision under paragraph (c) of this section.

(e) The Administrator may terminate testing earlier than required in paragraph (c) of this section.

(f) [Reserved]

(g) [Reserved]

§ 86.1011–84 [Reserved]

§ 86.1012–84 Suspension and revocation of certificates of conformity.

(a) The certificate of conformity is suspended with respect to any engine or vehicle failing pursuant to paragraph (b) of § 86.1010–84 effective from the time that testing of that engine or vehicle is completed.

(b) The Administrator may suspend the certificate of conformity for a configuration which does not pass an SEA, pursuant to paragraph § 86.1010–84(c), based on the first test or all tests conducted on each engine or vehicle. This suspension will not occur before ten days after failure to pass the audit.

(c) [Reserved]

(d) [Reserved]

(e) If the results of testing pursuant to these regulations indicate that engines or vehicles of a particular configuration produced at one plant of a manufacturer do not conform to the regulations with respect to which the certificate of conformity was issued, the Administrator may suspend the certificate of conformity with respect to that configuration for engines or vehicles manufactured by the manufacturer at all other plants.

(f) [Reserved]

(g) The Administrator shall notify the manufacturer in writing of any suspension or revocation of a certificate of conformity in whole or in part: *Except,* That the certificate is immediately suspended with respect to any failed engines or vehicles as provided for in paragraph (a) of this section.

(h) The Administrator may revoke a certificate of conformity for a configuration when the certificate has been suspended pursuant to paragraph (b), (c) or (e) of this section if the proposed remedy for the nonconformity, as reported by the manufacturer to the Administrator, is one requiring a design change or changes to the engine and/or emission control system as described in the Application for Certification of the affected configuration.

(i) Once a certificate has been suspended for a failed engine or vehicle as provided for in paragraph (a) of this section, the manufacturer shall take the following actions:

(1) Before the certificate is reinstated for that failed engine or vehicle,

(i) Remedy the nonconformity, and

(ii) Demonstrate that the engine or vehicle conforms to the applicable standards by retesting the engine or vehicle in accordance with these regulations; and

(2) Submit a written report to the Administrator within five working days after successful completion of testing on the failed engine or vehicle, which contains a description of the remedy and test results for each engine or vehicle in addition to other information that may be required by this regulation.

(j) Once a certificate for a failed configuration has been suspended pursuant to paragraph (b), (c) or (e) of this section, the manufacturer shall take the following actions before the Administrator will consider reinstating the certificate:

(1) Submit a written report to the Administrator which identifies the reason for the noncompliance of the engines or vehicles, describes the proposed remedy, including a description of any proposed quality control and/or quality assurance measures to be taken by the manufacturer to prevent future occurrences of the problem, and states the date on which the remedies will be implemented; and

(2) Demonstrate that the engine or vehicle configuration for which the certificate of conformity has been suspended does in fact comply with these regulations by testing engines or vehicles selected from normal production runs of that engine or vehicle configuration, at the plant(s) or associated storage facilities specified by the Administrator, in accordance with the conditions specified in the initial test order; *Except,* That if the manufacturer elects to continue testing individual engines or vehicles after suspension of a

certificate, the certificate is reinstated for any engine or vehicle actually determined to be in conformance with the applicable standards through testing in accordance with the applicable test procedures: *Provided,* That the Administrator has not revoked the certificate pursuant to paragraph (h) of this section.

(k) Once the certificate has been revoked for a configuration and the manufacturer desires to continue introduction into commerce of a modified version of that configuration, the following actions shall be taken before the Administrator may consider issuing a certificate for that modified configuration:

(1) If the Administrator determines that the proposed change or changes in engine or vehicle design may have an effect on emission performance deterioration, he shall notify the manufacturer, within five (5) working days after receipt of the report in paragraph (h) of this section, whether subsequent testing under this subpart will be sufficient to evaluate the proposed change or changes or whether additional testing will be required; and

(2) After implementing the change or changes intended to remedy the nonconformity, the manufacturer shall demonstrate that the modified engine or vehicle configuration does in fact conform with these regulations by testing engines or vehicles selected from normal production runs of that modified engine or vehicle configuration in accordance with the conditions specified in the initial test order. This testing will be considered by the Administrator to satisfy the testing requirements of § 86.078–32 or § 86.079–33 if the Administrator had so notified the manufacturer. If the subsequent audit results in passing of the audit at the level of the standards, the Administrator shall reissue or amend the certificate, as the case may be, to include that configuration: *Provided,* That the manufacturer has satisfied the testing requirements specified pursuant to paragraph (j)(2) of this section. If the subsequent audit is failed, the revocation remains in effect. Any design change approvals under this subpart are limited to the configuration affected by the test order.

(l) At any time subsequent to an initial suspension of a certificate of conformity for a test engine or vehicle pursuant to paragraph (a) of this section, but not later than fifteen (15) days or such other period as may be allowed by the Administrator after notification of the Administrator's decision to suspend or revoke a certificate of conformity in whole or in part pursuant to paragraphs (b), (c), (d), (e), or (h) of this section, a manufacturer may request a hearing as to whether the tests have been properly conducted or any sampling methods have been properly applied.

(m) After the Administrator suspends or revokes a certificate of conformity pursuant to this section or notifies a manufacturer of his intent to suspend, revoke or void a certificate of conformity under paragraph § 86.084–30(e), and prior to the commencement of a hearing under § 86.1014–84, if the manufacturer demonstrates to the Administrator's satisfaction that the decision to suspend, revoke or void the certificate was based on erroneous information, the Administrator shall reinstate the certificate.

(n) To permit a manufacturer to avoid storing non-test engines or vehicles when conducting an audit of a configuration subsequent to suspension or revocation of the certificate of conformity for that configuration resulting from failure of an SEA, it may request that the Administrator conditionally reinstate the certificate for that configuration. The Administrator may reinstate the certificate subject to the condition that the manufacturer consents to recall all engines or vehicles of that configuration produced from the time the certificate is conditionally reinstated if the configuration fails the subsequent audit at the level of the standard and to remedy any nonconformity at no expense to the owner.

§ 86.1013–84 [Reserved]

§ 86.1014–84 Hearings on suspension, revocation and voiding of certificate of conformity.

(a) *Applicability.* The procedures prescribed by this section apply whenever a manufacturer requests a hearing pursuant to § 86.084–30(e)(6)(i), § 86.084–30(e)(7), or § 86.1012–84(l).

(b) *Definitions.* The following definitions are applicable to this section:

(1) "Hearing Cerk" shall mean the Hearing Clerk of the Environmental Protection Agency.

(2) "Manufacturer" means a manufacturer contesting a suspension or revocation order directed at the manufacturer.

(3) "Party" means the Agency and the manufacturer.

(4) "Presiding Officer" means an Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 (see also 5 CFR Part 930 as amended).

(5) "Judicial Officer" means an officer or employee of the Agency appointed as a Judicial Officer by the Administrator pursuant to this section who shall meet the qualifications and perform functions as follows:

(i) Officier—there may be designated for the purposes of this section one or more Judicial Officers. As work requires, there may be a Judicial Officer designated to act for the purposes of a particular case.

(ii) Qualifications—a Judicial Officer may be a permanent or temporary employee of the Agency who performs other duties for the Agency. The Judicial Officer shall not be employed by the Office of Enforcement or have any connection with the preparation or presentation of evidence for a hearing held pursuant to this subpart. The Judicial Officer shall be a graduate of an accredited law school and a member in good standing of a recognized Bar Association of any state or the District of Columbia.

(iii) Functions—the Administrator may consult with Judicial Officer or delegate all or part of his authority to act in a given case under this section to a Judicial Officer: *Provided,* that this delegation does not preclude the Judicial Officer from referring any motion or case to the Administrator when the Judicial Officer determines such referral to be appropriate.

(c) *Request for public hearing.* (1) If the manufacturer disagrees with the Administrator's decision to suspend, revoke or void a certificate or disputes the basis for an automatic suspension pursuant to § 86.1012–84(a), the manufacturer may request a public hearing as described in this section. The manufacturer shall file with the Administrator a request for this hearing not later than fifteen (15) days after the Administrator's notification of his decision to suspend or revoke unless otherwise specified by the Administrator. The manufacturer shall simultaneously serve two copies of this request upon the Director of the Manufacturers Operations Division and file two copies with the Hearing Clerk. Failure of the manufacturer to request a hearing within the time provided constitutes a waiver of the right to a hearing. Subsequent to the expiration of the period for requesting a hearing as of right, the Administrator may, in his discretion and for good cause shown, grant the manufacturer a hearing to contest the suspension or revocation.

(2) A manufacturer shall include in the request for a public hearing——

(i) A statement as to which engine or vehicle configuration is to be the subject of the hearing;

(ii) A concise statement of the issues to be raised by the manufacturer at the hearing: *Provided, however,* that in the case of the hearing requested under

§ 86.1012–84(1), the hearing is restricted to the following issues:

(A) whether tests have been properly conducted, specifically, Whether the tests were conducted in accordance with applicable regulations under this part and whether test equipment was properly calibrated and functioning; and

(B) Whether sampling plans have been properly applied, specifically, whether sampling procedures specified in Appendix X were followed and whether there exists a basis for distinguishing engines or vehicles produced at plants other than the one from which engines or vehicles were selected for testing which would invalidate the Administrator's decision under § 86.1012–84(e);

(iii) A statement specifying reasons why the manufacturer believes it will prevail on the merits of each of the issues raised; and

(iv) A summary of the evidence which supports the manufacturer's position on each of the issues raised.

(3) A copy of all requests for public hearings will be kept on file in the Office of the Hearing Clerk and will be made available to the public during Agency business hours.

(d) *Summary decision.* (1) In the case of a hearing requested under § 86.1012–84(1), when it clearly appears from the data and other information contained in the request for a hearing that there is no genuine and substantial question of fact with respect to the issues specified in § 86.1014–84(c)(2)(ii), the Administrator shall enter an order denying the request for a hearing and reaffirming the original decision to suspend or revoke a certificate of conformity, if this decision has been made pursuant to § 86.1012–84(g) at any time prior to the decision to deny the request for a hearing.

(2) In the case of a hearing requested under § 86.084–30(e)(6)(i), to challenge a proposed suspension of a certificate of conformity for the reasons specified in § 86.084–30 (e)(1)(i) or (e)(1)(ii), when it clearly appears from the data and other information contained in the request for a hearing that there is no genuine and substantial question of fact with respect to the issue of whether the refusal to comply with the provisions of a test order or any other requirement of § 86.1003–84 was caused by conditions and circumstances outside the control of the manufacturer, the Administrator shall enter an order denying the request for a hearing and suspending the certificate of conformity.

(3) Any order issued under paragraphs (d)(1) or (d)(2) of this section has the force and effect of a final decision of the Administrator, as issued pursuant to paragraph (w)(4) of this section.

(4) If the Administrator determines that a genuine and substantial question of fact does exist with respect to any of the issues referred to in paragraphs (d)(1) and (d)(2) of this section, he shall grant the request for a hearing and publish a notice of public hearing in accordance with paragraph (h) of this section.

(e) *Filing and service.* (1) An original and two copies of all documents or papers required or permitted to be filed pursuant to this section must be filed with the Hearing Clerk. Filing is considered timely if mailed, as determined by the postmark, to the Hearing Clerk within the time allowed by this section. If filing is to be accomplished by mailing, the documents must be sent to the address set forth in the notice of public hearing as described in paragraph (h) of this section.

(2) To the maximum extent possible, testimony will be presented in written form. Copies of written testimony will be served upon all parties as soon as practicable prior to the start of the hearing. A certificate of service will be provided on or accompany each document or paper filed with the Hearing Clerk. Documents to be served upon the Director of the Manufacturers Operations Division must be sent by registered mail to:

Director, Manufacturers Operations Division, U.S. Environmental Protection Agency, EN–340, 401 M Street S.W., Washington, D.C. 20460.

Service by registered mail is complete upon mailing.

(f) *Time.* (1) In computing any period of time prescribed or allowed by this section, except as otherwise provided, the day of the act or event from which the designated period of time begins to run is not included. Saturdays, Sundays, and Federal legal holidays are included in computing the period allowed for the filing of any document or paper, except that when the period expires on a Saturday, Sunday, or Federal legal holiday, the period is extended to include the next following business day.

(2) A prescribed period of time within which a party is required or permitted to do an act is computed from the time of service, except that when service is accomplished by mail, three days will be added to the prescribed period.

(g) *Consolidation.* The Administrator or the Presiding Officer in his discretion may consolidate two or more proceedings to be held under this section for the purpose of resolving one or more issues whenever it appears that consolidation will expedite or simplify consideration of these issues. Consolidation does not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

(h) *Notice of public hearings.* Notice of a public hearing under this section is given by publication in the **Federal Register** and by such other means as the Administrator finds appropriate to provide notice to the public. To the extent possible hearings under this section will be scheduled to commence within fourteen (14) days of receipt of the application in paragraph (c) of this section.

(i) *Amicus curiae.* Persons not parties to the proceeding wishing to file briefs may do so by leave of the Presiding Officer granted on motion. A motion for leave must identify the interest of the applicant and state the reasons why the proposed amicus brief is desirable.

(j) *Presiding Officer.* The Presiding Officer shall conduct a fair and impartial hearing in accordance with 5 U.S.C. sections 554, 556 and 557 and take all necessary action to avoid delay in the disposition of the proceedings and to maintain order. He shall have all power consistent with Agency rule and with the Administrative Procedure Act necessary to this end, including the power—

(1) To administer oaths and affirmations;

(2) To rule upon offers of proof and exclude irrelevant or repetitious material;

(3) To regulate the course of the hearings and the conduct of the parties and their counsel therein;

(4) To hold conferences for simplification of the issues or any other proper purpose;

(5) To consider and rule upon all procedural and other motions appropriate to these proceedings;

(6) To require the submission of direct testimony in written form with or without affidavit whenever, in his opinion, oral testimony is not necessary for full and true disclosure of the facts;

(7) To enforce agreements and orders requiring access as authorized by law;

(8) To require the filing of briefs on any matter on which he is required to rule;

(9) To require any party or any witness, during the course of the hearing, to state his position on any issue;

(10) To take or cause depositions to be taken whenever the ends of justice would be served thereby;

(11) To make decisions or recommend decisions to resolve the disputed issues on the record of the hearing; and

(12) To issue, upon good cause shown, protective orders as described in paragraph (n) of this section.

(k) *Conferences.* (1) The Presiding Officer may hold conferences prior to or during any hearing. The Presiding Officer shall direct the Hearing Clerk to notify all parties of the time and location of any conference. At the discretion of the Presiding Officer, persons other than parties may attend. At a conference the Presiding Officer may—

(i) Obtain stipulations and admissions, receive requests, order depositions to be taken, identify disputed issues of fact and law, and require or allow the submission of written testimony from any witness or party;

(ii) Set a hearing schedule for as many of the following as he considers necessary:

(A) Oral and written statements;

(B) Submission of written direct testimony as required or authorized by the Presiding Officer;

(C) Oral direct and cross-examination of a witness where necessary as prescribed in paragraph (p) of this section; and

(D) Oral argument, if appropriate;

(iii) Identify matters of which official notice may be taken;

(iv) Consider limitation of the number of expert and other witnesses;

(v) Consider the procedure to be followed at the hearing; and

(vi) Consider any other matter that may expedite the hearing or aid in the disposition of the issue.

(2) The Presiding Officer shall summarize in writing the results of any conference, including all stipulations, if not transcribed, and shall make the summary part of the record.

(l) *Primary discovery (exchange of witness lists and documents).*

(1) At a prehearing conference or within some reasonable time set by the Presiding Officer prior to the hearing, each party shall make available to the other parties the names of the expert and other witnesses the party expects to call, together with a brief summary of their expected testimony and a list of all documents and exhibits which the party expects to introduce into evidence. Thereafter, witnesses, documents, or exhibits may be added and summaries of expected testimony amended upon motion by a party.

(2) The Presiding Officer, may, upon motion by a party or other person, and for good cause shown, by order—

(i) Restrict or defer disclosure by a party of the name of a witness or a narrative summary of the expected testimony of a witness; and

(ii) Prescribe other appropriate measures to protect a witness.

(3) Any party affected by an action in paragraph (l)(2) of this section shall have an adequate opportunity, once he learns the name of a witness and obtains the narrative summary of his expected testimony, to prepare for the presentation of his case.

(m) *Other discovery.* (1) Except as provided by paragraph (1) of this section, further discovery, under this paragraph is permitted only upon determination by the Presiding Officer—

(i) That this discovery will not in any way unreasonably delay the proceeding;

(ii) That the information to be obtained is not obtainable voluntarily; and

(iii) That the information has significant probative value. The Presiding Officer shall be guided by the procedures set forth in the Federal Rules of Civil Procedure, where practicable, and the precedents thereunder, except that no discovery will be undertaken except upon order of the Presiding Officer or upon agreement of the parties.

(2) The Presiding Officer shall order depositions upon oral questions only upon a showing of good cause and upon a finding that—

(i) The information sought cannot be obtained by alternative methods; or

(ii) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(3) Any party to the proceeding desiring an order of discovery shall make a motion or motions therefor. The motion must include—

(i) The circumstances warranting the taking of the discovery;

(ii) The nature of the information expected to be discovered; and

(iii) The proposed time and place where it will be taken. If the Presiding Officer determines the motion should be granted, he shall issue an order for the taking of the discovery together with the conditions and terms thereof.

(4) Failure to comply with an order issued pursuant to this paragraph may lead to the inference that the information to be discovered would be adverse to the person or party from whom the information was sought.

(n) *Protective orders, in camera proceedings.* (1) Upon motion by a part or by the person from whom discovery is sought, and upon a showing by the movant that the disclosure of the information to be discovered, or a particular part thereof (other than emission data), would result in methods or processes entitled to protection as trade secrets of the person being divulged, the Presiding Officer may enter a protective order with respect to this material. Any protective order will contain terms governing the treatment of the information which are appropriate under the circumstances to prevent disclosure outside the hearing: *Provided,* That the order states that the material will be filed separately from other evidence and exhibits in the hearing. Disclosure is limited to parties to the hearing, their counsel and relevant technical consultants, and authorized representatives of the United States concerned with carrying out the Act. Except in the case of the government, disclosure may be limited to counsel for parties who shall not disclose such information to the parties themselves. Except in the case of the government, disclosure to a party or his counsel is conditioned on execution of a sworn statement that no disclosure of the information will be made to persons not entitled to receive it under the terms of the protective order. (This provision is not necessary where government employees are concerned because disclosure by them is subject to the terms of 18 U.S.C. 1905.)

(2)(i) A party or person seeking a protective order may be permitted to make all or part of the required showing in camera. A record will be made of the in camera proceedings. If the Presiding Officer enters a protective order following a showing in camera, the record of the showing will be sealed and preserved and made available to the Agency or court in the event of appeal.

(ii) Attendance at any in camera proceeding may be limited to the Presiding Officer, the Agency, and the person or party seeking the protective order.

(3) Any party, subject to the terms and conditions of any protective order issues pursuant to paragraph (n)(1) of this section, desiring for the presentation of his case to make use of any in camera documents or testimony, shall make application to the Presiding Officer by motion setting forth the justification therefor. The Presiding Officer, in granting this motion, shall enter an order protecting the rights of the affected persons and parties and preventing unnecessary disclosure of this information, including the presentation of the information and oral testimony and cross-examination concerning it in executive session, as in his discretion is necessary and practicable.

(4) In the submittal of proposed findings, briefs, or other papers, counsel for all parties shall make a good faith attempt to refrain from disclosing the specific details of in camera documents and testimony. This shall not preclude references in these proposed findings, briefs, or other papers to the documents or testimony, including generalized statements based on their contents. To

the extent that counsel considers it necessary to include specific details in their presentations, these details will be incorporated in separate proposed findings, briefs, or other paper marked "confidential", and wil become part of the in camera record.

(o) *Motions.* (1) All motions, except those made orally during the course of the hearing, must be in writing and state with particularity the grounds therefor, set forth the relief or order sought, and be filed with the Hearing Clerk and served upon all parties.

(2) Within the time fixed by the Administrator, the judicial officer, or the Presiding Officer, as appropriate, any party may serve and file an answer to the motion. The movant shall, if requested by the Administrator, the judicial officer, or the Presiding Officer, as appropriate, serve and file reply papers, within the time set by the request.

(3) The Presiding Officer shall rule upon all motions filed or made prior to the filing of his decision or accelerated decision, as appropriate. The Administrator or the judicial officer, as appropriate, shall rule upon all motions filed prior to the appointment of a Presiding Officer and all motions filed after the filing of the decision of the Presiding Officer or accelerated decision. Oral argument of motions will be permitted only if the Presiding Officer, the Administrator or the judicial officer, as appropriate, considers it necessary.

(p) *Evidence.* (1) The official transcripts and exhibits, together with all papers and requests filed in the proceeding, consitute the record. Immaterial or irrelevant part of an admissible document will be segregated and excluded so far as practicable. Documents or parts thereof subject to a protective order under pargarph (n) of this section wil be segregated. Evidence may be received at the hearing even though inadmissible under the rules of evidence applicable to judicial proceedings. The weight to be given evidence will be determined by its reliability and probative value.

(2) The Presiding Officer shall allow the parties to examine and cross-examine a witness to the extent that this examination and cross-examination is necssary for a full and true disclosure of the facts.

(3) Ruling of the Presiding Officer on the admissibility of evidence, the propriety of examination and cross-examination, and other procedural matters will appear in the record.

(4) Parties shall automatically be presumed to have taken exception to an adverse ruling.

(Q) *Record.* (1) Hearings will be stenographically reported and transcribed and the original transcripts will be part of the record and the sole official transcript. Copies of the record will be filed with the Hearing Clerk and made available during Agency business hours for public inspection. Any thereof, except as provided in paragraph (n) of this section, shall be entitled to the same upon payment of the cost thereof.

(2) The official transcripts and exhibits, together with all paper and requests filed in the proceeding, constitute the record.

(r) *Proposed findings, conclusions.* (1) Within four (4) days of the close of the reception of evidence, or within such longer time as the Presiding Officer may fix, any party may submit for the consideration of the Presiding Officer proposed findings of fact, conclusions of law, and proposed order, together with reasons therefor and briefs in support thereof. These proposals will be in writing, be served upon all parties, and contain adequate references to the record and authorities relied upon.

(2) The record will show the Presiding Officer's ruling on the proposed findings and conclusions except when his order disposing of the proceeding otherwise informs the parties of the action taken by him thereon.

(s) *Decision of the Presiding Officer.* (1) Unless extended by the Administrator, the Presiding Officer shall issue and file with the Hearing Clerk his decision within fourteen (14) days (or within seven (7) days in the case of a hearing requested under § 86–1012–84(l)) after the period for filing proposed findings as provided for in paragraph for in paragraph (r) of this section has expired.

(2) The Presiding Officer's decision becomes the decision of the Administrator—

(i) When no notice of intention to appeal as described in paragraph (t) and (u) of this section is filed, ten (10) days after issuance thereof, unless in the interim the Administrator shall have acted to review or stay the effective date of the decision; or

(ii) When a notice of intention to appeal is filed but the appeal is not perfected as required by paragraph (t) or (u) of this section, five (5) days after the period allowed for perfection of an appeal has expired unless within that five (5) day period, the Administrator shall have acted to review or stay the effective date of the decision.

(3) The Presiding Officer's decision must include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact or law presented on the record and an appropriate rule or order. The decision must be supported by substantial evidence and based upon a consideration of the whole record.

(4) At any time prior to the issuance of his decision, the Presiding Officer may reopen the proceeding for the reception of further evidence. Except for the correction of clerical errors, the jurisdiction of the Presiding Officer is terminated upon the issuance of his decision.

(t) *Appeal from the decision of the Presiding Officer.* (1) Any party to a proceeding may appeal the Presiding Officer's decision to the Administrator: *Provided,* That within ten (10) days after issuance of the Presiding Officer's decision the party files a notice of intention to appeal and an appeal brief within twenty (20) days of the decision.

(2) When an appeal is taken from the decision of the Presiding Officer, any party may file a brief with respect to the appeal. The party shall file the brief within fifteen (15) days of the date of the filing of the appellant's brief.

(3) Any brief filed pursuant to this paragraph will contain, in the order indicated, the following:

(i) A subject index of the matter in the brief, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto:

(ii) A specification of the issues intended to be urged; provided, however, that in the case of a hearing requested under § 86.1012–84(l), the brief will be restricted to the issues specified in paragraph (c)(2)(ii) of this section;

(iii) The argument presenting clearly the points of fact and law relied upon in support of the position taken on each issue, with specific page references to the record and the legal or other material relied upon; and

(iv) A proposed order for the Administrator's consideration if different from the order contained in the Presiding Officer's decision.

(4) No brief in excess of 40 pages will be filed without leave of the Administrator.

(5) The Administrator may allow oral argument.

(u) *Summary appeal.* (1) In the case of a hearing requested under § 86.1012–84(l), any appeal taken from the decision of the Presiding Officer will be conducted under this sub-section.

(2) Any party to the proceeding may appeal the Presiding Officer's decision to the Administrator by filing a notice of appeal within ten (10) days.

(3) The notice of appeal must be in the form of a brief and conform to the requirements of paragraph (t)(3) of this section.

(4) Within ten (10) days after a notice of appeal from the decision of the Presiding Officer is filed under this paragraph, any party may file a brief with respect to that appeal.

(5) No brief in excess of fifteen (15) pages will be filed without leave of the Administrator.

(v) *Review of the Presiding Officer's decision in the absence of appeal.* (1) If, after the expiration of the period for taking appeal as provided for by paragraphs (t) or (u) of this section, no notice of intention to appeal the decision of the Presiding Officer has been filed, or if filed, not perfected, the Hearing Clerk shall so notify the Administrator.

(2) The Administrator, upon receipt of notice from the Hearing Clerk that no notice of intention to appeal has been filed, or if filed, not perfected pursuant to paragraphs (t) or (u) of this section, may, on his own motion, within the time limits specified in paragraph (s)(2) of this section, review the decision of the Presiding Officer. Notice of the intention of the Administrator to review the decision of the Presiding Officer will be given to all parties and will set forth the scope of the review and the issues to be considered and will make provision for filing of briefs.

(w) *Decision of appeal or review.* (1) Upon appeal from or review of the Presiding Officer's decision, the Administrator shall consider such parts of the record as are cited or as may be necessary to resolve the issues presented and in addition shall, to the extent necessary or desirable, exercise all the powers which he could have exercised if he had presided at the hearing.

(2) In rendering his decision, the Administrator shall adopt, modify or set aside the findings, conclusions, and order contained in the decision of the Presiding Officer and shall set forth in his decision a statement of the reasons or basis for his action.

(3) In those cases where the Administrator believes that he should have further information or additional views of the parties as to the form and content of the rule or order to be issued, the Administrator, in his discretion, may withhold final action pending the receipt of the additional information or views, or may remand the case to the Presiding Officer.

(4) Any decision rendered under this paragraph which completes disposition of a case constitutes a final decision of the Administrator.

(x) *Reconsideration.* (1) Within twenty (20) days after issuance of the Administrator's decision, any party may file with the Administrator a petition for reconsideration of this decision, setting forth the relief desired and the grounds in support thereof. Any petition filed under this subsection must be confined to new questions raised by the decision or final order and upon which the petitioner had no opportunity to argue before the Presiding Officer or the Administrator: *Provided,* however, that in the case of a hearing requested under § 86.1012–84(l) these questions will be limited to the issues specified in paragraph (c)(2)(ii) of this section.

(2) Any party desiring to oppose this petition shall file an answer thereto within ten (10) days after the filing of the petition. The filing of a petition for reconsideration does not operate to stay the effective date of the decision or order or to toll the running of any statutory time period affecting the decision or order unless specifically so ordered by the Administrator.

(y) *Accelerated decision, dismissal.* (1) The Presiding Officer, upon motion of any party or sua sponte, may at any time render an accelerated decision in favor of the Agency or the manufacturer as to all or any part of the proceeding, without further hearing or upon limited additional evidence such as affidavits which he may require, or dismiss any party with prejudice, for any of the following reasons:

(i) Failure to state a claim upon which relief can be granted, or direct or collateral estoppel;

(ii) The lack of any genuine issue of material fact, causing a party to be entitled to judgment as a matter of law; or

(iii) Such other reasons as are just, including specifically failure to obey a procedural order of the Presiding Officer.

(2) If, under this sub-section, an accelerated decision is issued as to all the issues and claims joined in the proceeding, the decision will be treated for the purposes of these procedures as the decision of the Presiding Officer as provided in paragraph (s) of this section.

(3) If, under this sub-section, judgment is rendered on less than all issues or claims in the proceeding, the Presiding Officer shall determine what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. He shall thereupon issue an order specifying the facts which appear without substantial controversy, and the issues and claims upon which the hearing will proceed.

(z) *Conclusion of hearing.* (1) If, after the expiration of the period for taking an appeal as provided for by paragraphs (t) and (u) of this section, no appeal has been taken from the Presiding Officer's decision, and after the expiration of the period for review by the Administrator on his own motion as provided for by paragraph (v) of this section, the Administrator does not move to review the decision, the hearing is considered ended at the expiration of all periods allowed for the appeal and review.

(2) If an appeal of the Presiding Officer's decision is taken pursuant to paragraphs (t) and (u) of this section, or if, in the absence of this appeal, the Administrator moves to review the decision of the Presiding Officer pursuant to paragraph (v) of this section, the hearing is considered ended upon the rendering of a final decision by the Administrator.

(aa) *Judicial review.* (1) The Administrator shall designate the General Counsel, Environmental Protection Agency as the officer upon whom copy of any petition for judicial review must be served. This officer shall be responsible for filing in the court the record on which the order of the Administrator is based.

(2) Before forwarding the record to the court, the Agency shall advise the petitioner of costs of preparing it and as soon as payment to cover fees is made, shall forward the record to the court.

21. Appendix X—Selective Enforcement Auditing Test Procedures for 1978 and Later Model Year Light-Duty Vehicles and Light-Duty Trucks (40 CFR 86 Appendix X) is being replaced and Appendix X—Sampling Plans for Selective Enforcement Auditing of Heavy-Duty Engines (45 FR 4180, January 21, 1980) is being revised with a new Appendix X to read as follows:

Appendix X.—Sampling Plans for Selective Enforcement Auditing of Heavy-Duty Engines and Light-Duty Trucks

Table 1.—*Sampling Plan Code Letter*

Annual sales	Code letter
50–99	A
100–199	B
200–399	C
400 or greater	D

Table 2.—*Sample Plan for Code Letter "A"*

Sample Inspection Criteria		
Stage	Pass No.	Fail No.
1	(1)	(2)
2	(1)	(2)
3	(1)	3
4	(1)	3
5	(1)	3
6	(1)	3
7	0	3
8	0	4
9	0	4
10	0	4
11	1	4
12	1	4
13	1	5
14	1	5
15	1	5

Table 2.—*Sample Plan for Code Letter "A"*—Continued

Sample Inspection Criteria		
Stage	Pass No.	Fail No.
16	2	5
17	2	5
18	2	5
19	2	6
20	2	6
21	3	6
22	3	6
23	3	6
24	3	6
25	4	6
26	4	7
27	4	7
28	4	7
29	4	7
30	6	7

(1) Test sample passing not permitted at this stage.
(2) Test sample failure not permitted at this stage.

Table 3.—*Sample Plan for Code Letter "B"*

Sample Inspection Criteria		
Stage	Pass No.	Fail No.
1	(1)	(2)
2	(1)	(2)
3	(1)	3
4	(1)	3
5	(1)	3
6	(1)	3
7	0	4
8	0	4
9	0	4
10	0	4
11	0	4
12	1	5
13	1	5
14	1	5
15	1	5
16	1	5
17	2	6
18	2	6
19	2	6
20	2	6
21	3	6
22	3	7
23	3	7
24	3	7
25	3	7
26	4	7
27	4	7
28	4	8
29	4	8
30	4	8
31	5	8
32	5	8
33	5	8
34	5	9
35	6	9
36	6	9
37	6	9
38	6	9
39	6	9
40	8	9

(1) Test sample passing not permitted at this stage.
(2) Test sample failure not permitted at this stage.

Table 4.—*Sample Plan for Code Letter "C"*

Sample Inspection Criteria		
Stage	Pass No.	Fail No.
1	(1)	(2)
2	(1)	(2)
3	(1)	3
4	(1)	3
5	(1)	3
6	(1)	4
7	0	4
8	0	4
9	0	4
10	0	4

Table 4.—*Sample Plan for Code Letter "C"*—Continued

Sample Inspection Criteria		
Stage	Pass No.	Fail No.
11	0	5
12	1	5
13	1	5
14	1	5
15	1	5
16	1	6
17	2	6
18	2	6
19	2	6
20	2	6
21	3	7
22	3	7
23	3	7
24	3	7
25	3	7
26	4	8
27	4	8
28	4	8
29	4	8
30	4	8
31	5	8
32	5	9
33	5	9
34	5	9
35	5	9
36	6	9
37	6	10
38	6	10
39	6	10
40	6	10
41	7	10
42	7	11
43	7	11
44	7	11
45	8	11
46	8	11
47	8	11
48	8	11
49	8	11
50	10	11

(1) Test sample passing not permitted at this stage.
(2) Test sample failure not permitted at this stage.

Table 5.—*Sample Plan for Code Letter "D"*

Sample Inspection Criteria		
Stage	Pass No.	Fail No.
1	(1)	(2)
2	(1)	(2)
3	(1)	3
4	(1)	3
5	(1)	3
6	(1)	4
7	0	4
8	0	4
9	0	4
10	0	4
11	0	5
12	1	5
13	1	5
14	1	5
15	1	5
16	1	6
17	2	6
18	2	6
19	2	6
20	2	6
21	2	7
22	3	7
23	3	7
24	3	7
25	3	7
26	3	8
27	4	8
28	4	8
29	4	8
30	4	8
31	4	9
32	5	9
33	5	9
34	5	9
35	5	9
36	6	10
37	6	10
38	6	10

Table 5.—*Sample Plan for Code Letter "D"*—Continued

Sample Inspection Criteria		
Stage	Pass No.	Fail No.
39	6	10
40	6	11
41	7	11
42	7	11
43	7	11
44	7	11
45	7	12
46	8	12
47	8	12
48	8	12
49	8	12
50	8	13
51	9	13
52	9	13
53	9	13
54	9	13
55	9	13
56	10	13
57	10	13
58	10	13
59	10	13
60	12	13

(1) Test sample passing not permitted at this stage.
(2) Test sample failure not permitted at this stage.

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Thursday
September 25, 1980

Part IV

Department of Energy

Office of Conservation and Solar Energy

Residential Conservation Service Program

DEPARTMENT OF ENERGY

Office of Conservation and Solar Energy

10 CFR Part 456

[Docket No. CSA-RM-79-101]

Residential Conservation Service Program

AGENCY: Department of Energy.

ACTION: Interim final rule.

SUMMARY: The Department of Energy (DOE) is implementing the Residential Conservation Service (RCS) Program pursuant to Title II, Part 1 of the National Energy Conservation Policy Act (NECPA) (Public Law 95-619, 92 Stat. 3206 *et seq.*) and amended by the Energy Security Act (ESA) (Public Law 96-294, 94 Stat. 611 *et seq.*). The purpose of the program is to encourage the installation of energy conservation measures and renewable resource measures, in existing houses by residential customers of larger gas and electric utilities and home heating suppliers.

On November 7, 1979, DOE issued a Final Rule for the RCS program (44 FR 64602). Included in the Final Rule were several reserved sections.

A Proposed Rule which filled in these reserved sections and proposed additional sections was published on December 21, 1979, (44 FR 75956); two of these reserved sections are finalized here. References to "the Interim Final Rule" will refer to the rule published today unless otherwise specified.

This Interim Final Rule establishes interim material standards and installation standards for urea-formaldehyde (U-F) foam insulation.

EFFECTIVE DATE: Sections 456.810 and 456.909 shall be effective on an interim basis on February 24, 1981.

ADDRESS: All reports in this Interim Final Rule are available for inspection in the Department of Energy Reading Room, Room 5B-180, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

James R. Tanck, Chief, Building Applications and Incentives Branch, Department of Energy, Room GH-068, 1000 Independence Avenue, S.W., Washington, D.C. 20585 (202) 252-9161

Susan Caplan, Office of General Counsel, Department of Energy, Room 1E-254, 1000 Independence Avenue, S.W., Washington, D.C. 20585 (202) 252-9513

SUPPLEMENTARY INFORMATION:

I. Introduction.
II. Standards.
III. Regulatory Analysis and Urban Impact Assessment.
IV. Environmental Impact Statement.
V. Record of Decision.
VI. Consultation with Other Federal Agencies.
VII. Contractor Contributions to the Rulemaking.

I. Introduction

The Department of Energy (DOE) is amending Part 456 of Chapter II of Title 10 CFR to complete the rulemaking requirements for Title II, Part 1 of the National Conservation Policy Act (NECPA) (Public Law 95-619). Several areas in the Final Rule established November 7, 1979, (44 FR 64602) were reserved pending further study and investigation. These reserved sections were proposed December 13, 1979, (44 FR 75956, December 21, 1979), and two are finalized here. Included herein are interim final standards for urea-formaldehyde (U-F) foam insulation.

II. Standards

A. Background

NECPA requires the Secretary to develop material and installation standards necessary to ensure general safety and effectiveness of the installed material. Included herein is an interim final material standard for U-F foam insulation and an interim final installation standard for U-F foam insulation.

B. Material Standard for Urea-Formaldehyde (U-F) Foam Insulation

Background

Considerable controversy exists regarding whether or not DOE should promulgate standards for U-F foam. More people submitted comments on U-F foam insulation (approximately 80) than on any other section of the December 21, 1979, Proposed Rule. Many contractors and manufacturers recommended development of a standard while several Federal agencies stated that development of a standard now is premature. Specifically:

- The Consumer Product Safety Commission (CPSC) strongly recommended that DOE not issue a standard. Their concerns were as follows:

(a) Absence of knowledge regarding tolerable human reaction level to formaldehyde;

(b) Lack of conclusive evidence of the performance of U-F foam under varying conditions;

(c) Uncertainty that DOE will address off-gassing problems;

(d) Potential carcinogenic effects.

- The Environmental Protection Agency (EPA) suggested that DOE not issue a standard because of:

(a) Potential carcinogenic effects;

(b) Degradation of U-F foam due to thermal and humidity cycling which cannot be controlled;

(c) The existence of adequate substitutes for U-F foam.

- The Federal Trade Commission (FTC) presented "staff concerns" which, although not necessarily the views of the Commission, included:

(a) Possible health risks from U-F foam and uncertainties about insulation effectiveness;

(b) Inclusion of U-F foam could be mistakenly perceived as Federal assurance regarding safety and effectiveness.

In addition, four national organizations and one State energy office were also opposed to issuance of a U-F foam standard. Several of these stated that it was the responsiblility of CPSC to develop a standard or to make a determination on the safety of the product.

On the other hand, the National Bureau of Standards (NBS) stated that "As long as U-F foam continues to be installed, standards should be available. Although the existence of standards in themselves cannot ensure effectiveness and safety, they can contribute to greater effectiveness and safety." This recommendation was made providing that specific additional programmatic safeguards were incorporated in the RCS rule. Numerous manufacturers and installers of U-F foam and one utility strongly recommended that DOE issue U-F foam standards.

DOE agrees with the several commenters who asserted that it is the responsibility of CPSC to take action to reduce or eliminate risk or injury associated with consumer products such as insulation. However, the CPSC is presently awaiting the results of two studies on the subject. The first study includes a panel of scientists from the Federal Government assembled by CPSC to evaluate the risk to humans of exposure to formaldehyde. The scientists will consider information relating to chronic human experience animal carcinogenicity, mutagenicity, and the effects of formaldehyde on teratology and reproduction. The panel hopes to complete a preliminary report by September 1980. The second study is being conducted by the Franklin Research Institute for CPSC to examine the chemical characteristics of various types of U-F foam insulation. Although

a draft of this study is complete, it is not expected to be finalized until September or October.

Because of these studies and for other reasons discussed below, we are delaying the effective date of this rule for 150 days after publication when preliminary results of the studies will be complete. At that time the standard would in the absence of other action by DOE and CPSC become effective on an interim basis. During this period, as discussed below, DOE will also propose amendments to the interim standard. Moreover, if during this period of time significant new information arises, DOE will be able to take whatever, action is appropriate, including if necessary, banning U–F foam from the RCS program. Obviously, DOE will conform its regulations with any legal action taken by the CPSC with respect to U–F foam. The interim nature of the U–F foam standard is recognition that further research is needed. Specific areas where additional information is needed are discussed later.

A further consideration in promulgating this rule on an interim basis is DOE's conclusion that there is insufficient information to respond fully to the questions postulated in the preamble of the Proposed Rule concerning the safety issues associated with U–F foam insulation (44 FR 75960, December 21, 1979). In response to the question of whether the standards adequately address off-gassing, DOE believes that these standards meet some of the problems of off-gassing and provide a minimum level of general safety and effectiveness, which would not be assured by any Federal regulation in the absence of these standards. For further discussion see section B under General Technical Issues. We are unable to respond to the second question on tolerable levels of formaldehyde since there is no available data establishing an acceptable level of formaldehyde exposure. For further discussion see section A under General Technical Issues. The third question dealt with whether the RCS standards are practical, are capable of being followed and are likely to be followed by installers. DOE is confident that these standards are indeed practical and capable of being followed and that the manufacturers' certification responsibility gives added assurances that the standards will be met. See section C under General Technical Issues for further discussion.

In addition, CPSC made several suggestions for improving the interim U–F foam standards after the close of comment period, February 19, 1980. Because these suggestions have the potential to increase the effectiveness of the standards, DOE intends to propose them for comment shortly. It is DOE's intent to adopt any of these proposals supported by the record so that they may become effective at the same time as the interim final standard adopted here. The proposed provisions will include:

- Limitation of methylol content in resin—current limitations on only formaldehyde in the resin may be counterproductive because this may reduce durability of the foam. Additives, including methylol, are being used to replace some percentage of the formaldehyde. After installation certain temperature and humidity conditions may cause a chemical reaction which may be transported as a vapor through the wall cavity. DOE will, therefore, propose a limitation on the combined contents of formaldehyde and methylol.
- Test procedure for determining formaldehyde content of fresh foam—in addition to measuring the formaldehyde content immediately after foaming, DOE will also propose testing at about 3 weeks and again at about 3 months. This should give a more accurate indication of not only the free formaldehyde which is present shortly after foaming, but also any hydrolyzable formaldehyde which may have formed later.
- Testing by a NVLAP accredited laboratory—DOE will request that the Department of Commerce incorporate the U–F foam test procedures into the National Voluntary Laboratory Accreditation Program (NVLAP). DOE will then propose that all U–F foam testing be done at an accredited laboratory once accredited laboratories exist.
- C–13 NMR testing—DOE will propose that each manufacturer submit samples from each batch of chemicals for carbon–13 Nuclear Magnetic Resins testing. It is anticipated that testing expense is low ($.50–$2.00/sample) and that there is sufficient laboratory capability to accommodate this requirement. C–13 will determine the chemical composition of U–F foam materials and verify that this composition does not change from batch to batch.
- Equipment calibration—DOE will propose criteria for calibrating equipment to be done semi-annually.
- Recirculation of chemicals during foaming—DOE will propose that resins and foaming agents be continuously agitated and recirculated to maintain uniformity of components. Equipment which continuously recirculates the resin and foaming agent will help ensure that no chemical separation occurs and that no temperature gradient builds up.
- Requirement for bottled gas—because oil contamination from air compressors can cause foaming problems, DOE will propose that bottled gas replace air compressors.
- Equipment requirement for air pressure monitoring—DOE will propose that only equipment which responds by shutdown to a drop in air pressure or to a 20 percent change in component ratios be used. DOE will also propose that shutdown occur within 15 seconds rather than 5 minutes as is required in the interim standards.

DOE defines an interim final standard as one which is temporary, pending additional information. Although all standards are continually being reevaluated, issuance of an interim final standard is recognition that further research is needed in certain areas. Specific areas where additional information is needed are discussed later.

Although DOE has concerns about alleged health and safety hazards associated with the material, there is insufficient data at the present time to exclude U–F foam from the RCS program. Specifically, DOE considered the following:

(a) The National Energy Conservation Policy Act (NECPA) requires DOE to issue standards which ensure "*general* safety and effectiveness." "General" does not imply complete safety. The conference report of NECPA states "The conferees intend that activities of the Secretary with respect to standards for general safety and effectiveness of residential energy conservation measures be limited to those necessary to establish a *minimum* level for general safety and effectiveness of any such measure." The issue then is whether DOE's U–F foam standards ensure a minimum level of general safety. Based upon a thorough review of the evidence submitted in the course of the rulemaking, DOE believes that the interim standards do assure a minimum level for general safety and effectiveness of U–F foam. Certain evidence submitted during the rulemaking, however, including evidence submitted by CPSC, if confirmed by further analysis or additional data, could require a reassessment of this conclusion. Nevertheless, DOE is confident that the interim standard provides safeguards that would not exist in the absence of any Federal standard. Reasons for this are:

- The standards greatly limit areas of application. They do not permit, for instance, application of U–F foam in

ceilings, in knee walls, below grade, in mobile homes, or in areas with an impermeable exterior facing. Although reporting format in the CPSC complaint cases is inconsistent, it appears that a substantial portion of complainants had U–F foam installed in one of these areas.

• The standards require suppliers to take responsibility for the use of their product by training, certifying, and inspecting installers who use their product. Specific criteria are required for inclusion in the training program.

• The standards require suppliers to recommend and test equipment used by their installers and they require installers to use the recommended equipment. Equipment also must meet specific criteria.

• The standards limit the amount of free formaldehyde in the resin and the fresh foam. Although this by itself provides no guarantee that off-gassing of formaldehyde will not occur, it does reduce the potential for initial off-gassing.

(b) There is insufficient technical data at this time to exclude the material from the RCS program. Specifically:

• Although the Chemical Industry Institute of Toxicology (CIIT) is conducting studies on the carcinogenic effects of formaldehyde, no relationship has been established between urea-formaldehyde and carcinogenic effects on humans. (See Progress Report on "Formaldehyde Toxicity Study," CIIT, P.O. Box 12137, Research Triangle Park, NC 27709.) When rats, mice and monkeys were exposed to 15 ppm of urea-formaldehyde 6 hours per day, 5 days a week (tolerances established by several European countries for indoor air levels for humans are considered to be between 0.1–0.4 ppm), only rats exhibited cancerous nodules. Laboratory animals, when exposed to lower levels (0.2–1.0 ppm) have to date exhibited no carcinogenic effects.

• No one in the United States has been able to establish an acceptable formaldehyde tolerance level for humans. The National Academy of Sciences (NAS), under contract to CPSC, attempted to establish a level and was unable to do so. (See "Formaldehyde—An Assessment of Its Health Effects" prepared by NAS, March 1980 for CPSC.) They concluded that there is no population threshold for the irritant effects of formaldehyde in humans. Information from controlled human studies and complaint-related investigations suggests that even at extremely low air borne concentrations, a proportion of the population will respond with some irritation. NAS recommended that formaldehyde be kept at the lowest practical concentration in indoor residential air. Without a specific tolerance level, however, it is difficult to determine what constitutes an health problem and what does not.

• Although CPSC has case study information for some 200 U–F foam complaints, in only 17 percent of the cases are doctors willing to link specific symptoms to urea-formaldehyde. Nor do the case studies always indicate whether good installation practice has been followed. For instance, sometimes a case study will specify that U–F foam was installed in an attic or interior wall, areas clearly prohibited by our standards. Many times, however, no mention is made of where the material is installed or under what conditions. While there is little question that there is a causal connection betwen U–F foam and certain health problems, it is difficult to draw definitive conclusions from the case studies regarding what measures are appropriate to deal with these problems.

• Because U–F foam shrinks after installation, FTC questioned the thermal performance of the material. To ensure that the thermal performance of U–F foam was not misrepresented, DOE originally proposed a 40 percent derating of the R-value to account for shrinkage. The 40 percent derating elicited considerable negative commentary from manufacturers and contractors (discussion of this follows). Even if, however, a 40 percent derating is justified, the R-value is greater than other materials included in the RCS program. (Glass fiber loose fill per 1" thickness @75°F = 2.2hft²F/Btu; U–F foam per thickness @75°F = 4.2hft²F/Btu × 60% = 2.52hft²F/Btu) (based on "Assessment of Thermal Insulation Materials and Systems for Building Applications," June 1978, BNL–50862). DOE's primary concern is that the R-value of the material not be misrepresented. Since shrinkage has considerable impact on the resulting thermal performance, this must be taken into account.

(c) In some installations, there are no acceptable substitutes for U–F foam. U–F foam can be installed through a smaller nozzle than other insulations and can, therefore, be applied through the joints in brick or block constructions. Because the material is denser than loose fill materials, it fills small cavities, especially those with obstructions, much more completely. Eliminating U–F foam from the RCS program would eliminate an important conservation material.

(d) DOE's interim U–F foam standards do not preempt States from taking any legal or legislative action they deem appropriate to restrict its use or sale. Also, it does not prevent CPSC from taking any more stringent regulatory action since any such action by CPSC will supersede our standards.

General Technical Issues

A. *Tolerable Limits of Formaldehyde Exposures.* Several commenters, including Consumer Product Safety Commission (CPSC) and the Environmental Protection Agency (EPA), urged the Department of Energy (DOE) to address the significance of establishing and monitoring exposure limits to formaldehyde. Several European countries have either proposed or established such limits between 0.1 ppm and 0.4 ppm. However, a number of considerations affect the practicality of this.

First, it is very difficult to measure low levels of formaldehyde with any degree of accuracy at a reasonable cost. Results of accepted measurement procedures, including the NIOSH method, vary substantially at low level concentrations. Secondly, those European countries which have established limits, do not enforce them because they have no practical mechanism to do so. In the case of U–F foam insulation, formaldehyde measurements would have to be taken before and one or more times after installation.

Lastly, even if formaldehyde levels could be measured and these measurements could be enforced, there is still no agreement on what an acceptable level should be. The way people react to formaldehyde varies dramatically from individual to individual. For instance, some small segment of our population, estimated by the National Academy of Sciences (NAS) at 4.5 percent to 7.8 percent, will react more severely than normal individuals to lower concentrations of formaldehyde. They will be affected by levels that go unnoticed by the majority of our population. The NAS, under contract to CPSC to develop formaldehyde levels, concluded that ". . . there is no population threshold for the irritant effects of formaldehyde in humans." (See "Formaldehyde—An Assessment of Its Health Effects," prepared by NAS, March 1980 for CPSC. CPSC, 5401 Westbard Avenue, Washington, D.C. 20207.) In light of this, DOE has made no attempt to duplicate or expand the work done by NAS. If, however, either CPSC or EPA recommend a formaldehyde level and practical, cost-effective means of monitoring it, DOE would incorporate them into the RCS program.

B. *Off-Gassing of Formaldehyde.* DOE acknowledges that formaldehyde limitations in the resin and fresh foam as described in the standards will not guarantee that off-gassing will not take place. It will, however, address some of the problems with such off-gassing. Factors recognized as contributing to formaldehyde emission problems which can be controlled through material and installation standards are:

—Formaldehyde in the resin;
—Amount of resin in the product;
—Temperature and humidity cycling;
—Shelf-life of the resin and the foaming agent with catalyst;
—Additives.

Each of these factors is addressed under "Specific Technical Issues" with the exception of additives. Additives are not addressed in the DOE standard but are currently being studied under a research grant from CPSC to the Franklin Research Institute. Recent findings established that the free formaldehyde content of the resin has a direct bearing on initial formaldehyde odor problems reported for some U–F foam installations. (See "Problems Associated with the Use of Urea-Formaldehyde Foam for Residential Insulation," by K. R. Long, D. A. Rierson, S. T. Brennan, C. W. Frank, and R. A. Hahne; ORNL/SUB 7559/1.)

Sources of formaldehyde emission from U–F foam are known to emanate from two sources: (a) the free formaldehyde content of the resin and the fresh foam. (b) hydrolyzable formaldehyde resulting from hydrolysis of methylol and other chemical bonds in the cured foam under certain conditions of ambient temperature and humidity over time.

While adoption of material and installation standards will not guarantee a trouble-free installation, DOE believes they will address some of the problems associated with formaldehyde off-gassing and thus reduce the overall potential of formaldehyde problems in residential applications.

C. *Practicality of Standards.* CPSC questioned whether the DOE installation standard was practical and capable of being met. DOE maintains it is practical and that the certification requirements in § 456.810 will go a long way to ensuring that installers are capable of meeting them. Certification requirements include successful completion of an extensive training program and a comprehensive examination with annual refresher courses and examinations. They also require manufacturers to conduct on-site observations of all U–F installers and equipment checks.

Specific Technical Issues

Definitions. The proposed standard defined the person generally recognized as the installer of U–F foam installation as the manufacturer because he actually manufactures the insulation at the job site from components supplied to him. The insulation supplier was that person who supplied U–F foam components to installers and distributors. Many contractors complained that by being labeled manufacturer, they would have to accept product liability as well as responsibility for the installation process. They were also concerned their insurance rates would reflect this and increase accordingly. DOE agrees with the contractors that the definitions placed more responsibility on them than they should have to bear. That person who combines the foam components and installs the foam is now called the "installer." In addition, the proposed standard also defined that person who furnishes the U–F foam components to distributors and installers as the supplier. This designation has been changed in the Interim Final Rule to "manufacturer." This was done to ensure consistency with the rest of the Final Rule.

Labeling. Comments on labeling were varied. At least 21 people commented. Most were representatives of the U–F foam industry who felt that the warning label proposed by DOE was discriminatory and not within the jurisdiction of DOE. Other commenters, including CPSC, stated that the warning label was not severe enough and recommended that the RCS rule be amended to require that all listed contractors have homeowners sign a form prior to signing their contract to show thay had been presented with the warning.

DOE has determined that the 200 CPSC case studies of odor or health problems allegedly resulting from U–F foam installations are sufficient justification for a disclosure notice. No other insulation material has resulted in this level of complaint; hence DOE does not require a disclosure notice for other insulation materials. Additionally, DOE has received many telephone calls from homeowners who want to verify whether or not the insulation product they are considering contains formaldehyde. Apparently, many times they are told explicitly by the salesman that the product does not contain formaldehyde when, in fact, it does. The disclosure notice will provide homeowners with sufficient information upon which to make a decision about what is best for them.

Subsequent to DOE's proposed standards which contained a warning statement, CPSC proposed a mandatory U–F foam disclosure notice. If the Consumer Product Safety Commission determines a final notice is necessary, it will take several months to become effective. Because DOE is attempting to minimize redundant labeling requirements, DOE included in the interim standard, a notice similar to that proposed by CPSC. With relatively few changes, the notice meets the intent of that originally proposed. If CPSC finalizes their notice requirement making it mandatory for all manufacturers to comply, DOE will delete its labeling requirement.

CPSC suggested that all manufacturers label their products as to batch and lot number. DOE accepts this suggestion so that test results can now be related to specific products. This should not place any additional burden on manufacturers since many are already including this on their products.

DOE has required U–F foam contractors to present the disclosure notice to homeowners prior to the signing of the contract. Homeowners will not be required to sign a statement to that effect since it is unclear what responsibility that may create for the homeowner should an odor problem result.

Laboratory Testing. Several commenters suggested that DOE should require U–F foam manufacturers to submit their materials to a independent laboratory to certify compliance with the standard.

In the Interim Final Rule, DOE requires manufacturers to submit their material to an independent laboratory and to undergo follow-up testing at least once a year to ensure continued quality control. All test procedures described in § 456.810 must be performed on the same batch of material. This is to ensure that manufacturer's product can meet all tests simultaneously. One commenter stated that this requirement placed an unreasonable burden on the manufacturer because if the material failed one test, the entire battery of tests would have to be rerun at the manufacturer's expense. DOE recognizes the difficulty this requirement presents, but determined it was essential that one sample of material could meet all tests.

Althought DOE has not to date required the same lab certification for other insulation materials, we will consider it.

Application Limitations. In the proposed standard, DOE limited application of U–F foam to exterior walls. The National Association of

Home Insulation Contractors (NAHIC) recommended that DOE prohibit applications in mobile homes, knee walls, and below grade areas. DOE agreed with this suggestion for several reasons. Mobile homes with an impermeable, exterior, metal skin are more likely to experience off-gassing of formaldehyde to the interior. Below grade areas are more likely to have higher relative humidities which may cause hydrolysis of U–F foam components resulting in off-gassing. Attic knee wall areas are likely to result in the same problem as attics. High temperatures and humidities in attics may cause deterioration of the foam or hydrolysis of components resulting in off-gassing of formaldehyde vapors. Because formaldehyde is denser than air, it may sink into the living area of the house.

In the Interim Final Rule, DOE therefore prohibits application of U–F in any area but exterior sidewalls.

R-value Derating. In the Proposed Rule, DOE suggested a 40 percent R-value derating for U–F foam to account for shrinkage. This was based on several field measurements and laboratory data. Experimental work done by Dynatech R/D Company showed a "direct relationship between effective thermal performance and size of air gap of the order of 5 percent for each 1 percent of shrinkage . . . ." The results confirm the validity of the NBS Derating analysis for deriving effective resistence of materials which shrink within a cavity. (See "The Effective Thermal Performance of an Insulated Standard Stud Wall Containing Air Gap" by R.P. Tye, A.O. Desjarlairs, J.G. Bourne, and S.C. Spinney, Dynatech R/D Company, Cambridge, Massachusetts.)

Other experimental work conducted by the National Research Council of Canada shows a similar relationship between linear shrinkage and R-value reduction. It showed, for instance, that if the material shrank 6 percent, reduction in R-value would be about 29 percent. (See September 4, 1979 Minutes of "Committee on Urea-Formaldehyde Thermal Insulation," Canadian Specifications Board, 1105–51–8P110.)

DOE's experience with U–F foam has been that the material always shrinks, but there is considerable variation in the amount of shrinkage. The proposed 40 percent derating was based on DOE's estimate that 8 percent shrinkage was common. This was the experience at the NBS Bowman House (See "Retrofitting an Existing Wood-Frame Residence for Energy Conservation—An Experimental Study" D.M. Burch and C.M. Hunt, NBS, Washington D.C. 20234, NBS Building Science Series 105.) In addition, DOE opened 43 wall cavities of homes in Portland, Oregon, which had been reinsulated by U–F foam. Results showed that the overall mean shrinkage was 10.5 percent from 32 homes while the mean width shrinkage was 8.1 percent from 41 homes. (See "A Field Study of Moisture Damage in Walls Insulated Without A Vapor Barrier" Oregon Department of Energy, November 1979, ORNL/Sub–78/97726/1.)

More recent data has shown that the shrinkage may be more in the order of 6 percent although even this is speculative. An NBS sponsored study of 17 homes measured an average shrinkage of 6 percent. (See "A Field Study of the Performance Properties of Insulation Used to Retrofit Cavity Walls of Residences" presented at ASHRAE/DOE Conference December 13, 1979.)

In addition, a field study done at the University of Connecticut also showed shrinkage of 6 percent on a test house. (See "The Thermal Resistance of In-Situ Urea-Formaldehyde Foam Insulation" by Peter W. McFadden, Kaveh Azar, and Thaddeus J. Zebrowski, University of Connecticut, March 1980.)

Based on this data, DOE has reduced the derating from 40 percent to 30 percent. This assumes an average shrinkage of 6 percent with a ratio of shrinkage to reduced thermal performance of 1:5. DOE considered giving to manufacturers the option of the 30 percent derating or the opportunity to demonstrate or more accurate, product-specific derating value. This did not appear practical since there are no standardized procedures for accelerated aging to U–F foam. Standardized procedures would be difficult to develop since foam products do not mature at the same rate, but instead are dependent upon ambient conditions and additives. Although DOE has heard that low shrinkage foams are being manufactured, manufacturers have never provided verification of these reports. The 30 percent derating, therefore, was determined to be an equitable treatment for U–F foam.

Corrosion. A few comments were submitted on the corrosion test procedure. One commenter stated that the corrosion test was not reproducible. Although little data is available to address this comment, the Ontario Research Foundation found the procedure reproducible when conducted in the same laboratory with the same operator. These standardized conditions cannot be expected under the RCS program. At a later date, DOE would like to include the test procedures for U–F foam in the National Voluntary Laboratory Accreditation Program (NVLAP) sponsored by the Department of Commerce. The NVLAP program accredits laboratories to conduct specific tests. It would assure that accredited laboratories have the capability to conduct a test properly. Some of the uncertainty regarding the validity of test procedures like the one for corrosion may be eliminated if an accredited laboratory conducts the tests. DOE is concerned about the reproducibility of this test as we are about the reproducibility of all corrosion tests. As a result, we are working with the American Society of Testing and Materials (ASTM) to develop one reproducible corrosion test which can be applied to all insulation materials. In the meantime, DOE will retain the test procedure originally proposed with minor modifications. DOE specifies that the foam must cure for 1-week prior to adding the coupons. This is based on experimental work done at Stevens Institute of Technology which shows that it takes close to 1-week to ensure complete curing.

CPSC suggested that, to more closely simulate in situ conditions, the test be conducted by foaming around the coupons instead of placing the coupons between blocks of foam. DOE acknowledges the advantages of both corrosiveness tests and has therefore added a fresh foam test in addition to that foamed block test which was proposed. The fresh foam test is identical to the proposed by the ASTM task force. The requirement for both tests will give a better indication of the corrosiveness of foam than either of the tests could provide separately because U–F foam is considered most corrosive immediately after foaming. However, if U–F foam is subjected to high humidity and somewhat elevated temperatures (90°C) as may be found throughout the life of the installed foam, it can still be corrosive.

End-Use Thickness. Four commenters stated that DOE's requirements for a 3-inch test sample to determine thermal resistancy was inappropriate since most stud cavities would accommodate 3½-inch of U–F foam. They also complained that requiring a 3-inch test sample with a variance of 1 mm was a level of precision difficult to achieve by slicing or cutting U–F foam samples. DOE originally required the 3-inch sample so that if the material shrank after foaming a 3½-inch cavity, it would still be possible to acquire a 3-inch sample. If a 3½-inch sample were required, this may not be possible. In order to be responsive to these comments, DOE has modified the procedure so that manufacturers may submit a sample a

minimum of 3-inch in thickness, as long as the thickness is specified. With this requirement, a variance of 1 mm is no longer necessary and manufacturers are not precluded from using 3½-inch samples.

Moisture Absorption. There were two separate comments on the moisture absorption tests. One expressed confusion over whether both the floating and methyl violet tests were required or whether a manufacturer had the option of selecting one test over the other. Two other commenters suggested deleting the methyl violet test since it duplicated the floating test.

DOE intended in the proposed standard that manufacturers use both moisure absorption tests. DOE agrees with the commenters, however, that both tests are not necessary and will only add to the cost of testing. The methyl violet test has therefore been deleted in the interim standard.

In the Final Rule, DOE also clarified the test procedure by stating that the foam samples must "stand at room temperature until three successive daily weighings vary no more than 1 percent." In their comments, CPSC claimed the time frame within which a test must be conducted was missing from many of the test procedures. The additional statement in the water absorption test procedure addresses this.

Formaldehyde Content in Fresh Foam. Several suppliers suggested an alternative test procedure for determining the formaldehyde content of the fresh foam. The suggested procedure is also contained in the ASTM draft U–F foam standard. It contains minor modifications which DOE believes will make the test more reproducible, more sensitive, and faster. DOE has, therefore, incorporated the modified test procedure into the interim standard.

One commenter requested that DOE specify a deviation range for the required 0.3 percent formaldehyde content of fresh foam. DOE maintains that no variance is needed since manufacturers may already go as far below 0.3 percent as they wish (as long as they pass the other required test procedures); they just cannot exceed the 0.3 percent limit.

CPSC also expressed concern about a lack of time limitations within which this test must be conducted. DOE agrees that these limitations are particularly important when determining the formaldehyde content of the fresh foam. In the Interim Final Rule, DOE sets these limits at between 15 minutes and 1 hour. This falls within the decay curve established at the University of Iowa and will ensure that measurements are taken prior to the drying phase when formaldehyde begins to release.

Wet Density. Many commenters objected to the wet density limitations in the proposed standard. DOE originally specified that the wet density should be between 2.5 lb/ft ^{3} and 5.5 lb/ft ^{3}. Some commenters suggested other limits and some suggested that the limits remain unspecified by DOE, and at the manufacturer's discretion. DOE agrees with the latter approach since wet density limits must correlate with dry density. Because there is sufficient variation in density from product to product, DOE determined to leave the limitations up to each manufacturer. The interim standard contains a lower dry density limit only. Manufacturers must specify wet density limits and upper dry density limits on a product-by-product basis.

Set Time. Many commenters suggested many alternatives to the set time limits contained in the Proposed Rule. DOE proposed that the set time should be between 20–60 seconds. DOE has reduced the lower set time to 10 seconds to accommodate most manufacturers. A set time of 10–60 seconds will aid in troweling applications and is also acceptable in wood frame applications a set time of 10 second is probably too short for masonry cavity constructions and installers will have to adjust their formulations accordingly.

Training and Certification. CPSC suggested that manufacturers be responsible for conducting a specified number of on-site inspections of installers. DOE agrees that this could be an important element in ensuring that installers are using good practice. DOE, therefore, has included a requirement for manufacturer to conduct an on-site observation of all installers prior to recertification to ensure they are following procedures contained in the training program. (See § 456.810(d)(12).)

Fungal Growth. DOE is concerned about increasing evidence of fungal growth within U–F foam. It is not addressed in these standards since no test method has been validated for determining potential fungal growth in U–F foam. It will be addressed, however, in future DOE research projects where both laboratory and field work are planned to develop this test method.

Temperature/Humidity Resistance. DOE is also concerned about the effect of temperature and humidity on U–F foam. High temperatures and humidities can cause deterioration of the foam insulation and, therefore, affect the durability of the material. High humidities may also cause hydrolysis of foam components which result in off-gassing of formaldehyde vapors. DOE, therefore, believes that some measurement of temperature and humidity resistance is an important element in a U–F foam standard. Although the draft ASTM U–F foam standard contains a test procedure for measuring temperature/humidity resistance, no data is presently available to validate it. DOE is, therefore, working to develop such a test procedure and will incorporate one into the U–F foam standard at the appropriate time.

C. Interim Final Installation Standard for Urea-Formaldehyde Foam Insulation

Included in this Interim Final Rule is an interim installation standard for U–F foam. Comments on the proposed standard were varied and are addressed individually below.

One commenter requested that the note in the Proposed Rule containing specific hazards associated with U–F foam insulation be deleted as it was with all other types of installation. DOE agrees with this comment and has deleted the specific hazards noted in the Interim Final Rule.

Several contractors and manufacturers questioned the appropriateness of the equipment testing procedures in the proposed installation standard (§ 456.909). Because the testing procedures require such large quantities of material (40 gallons), DOE agrees that it is impractical to require installers to conduct the tests with the frequency described in the Proposed Rule. In the Interim Final Rule, DOE changed the provision so that manufacturers are now responsible for recommending equipment to their installers that meets the equipment test requirements described in § 456.810(f)(1) when tested in accordance with the test procedures described in § 456.810(f)(2). The installer is still responsible for using only equipment recommended by the manufacturer.

Several commenters questioned the need for a uniform cell size of 1 mm or less. DOE agrees that it is not the size of the cells that determines the quality of the foam so much as the uniformity of the cell size. The provisions for a uniform cell size of 1 mm or less was therefore changed in the Interim Final Rule to a requirement for uniform cell distribution without stipulating cell size.

One commenter suggested that since U–F foam is combustible, it should be protected with a standard fire-rated finish material. Because U–F foam, like other foam plastic insulations, must have a flame spread of no more than 75 when tested in accordance with ASTM

E–84, DOE agreed other fire safety requirements should be compatible. DOE requires that other foam plastic insulations be protected on the interior by a layer of ½-inch gypsum board (or equivalent) when tested in accordance with ASTM E–119. An identical requirement was therefore added to the U–F foam installation standard in the Interim Final Rule.

The Proposed Rule contained a provision which required installers to leave entry holes open for 72 hours after foaming. This was included so that initial formaldehyde vapors would have a means to exfiltrate to the exterior of the house. It was also included because it was thought to aid in the curing of a foam. Most everyone who commented on the U–F foam standards complained about this provision. Contractors were concerned about damage to or loss of siding, shingles, or exterior building materials in the interim 72 hours as well as the inconvenience of making two trips to the job site. Manufacturers stated that open entry holes would not aid in the curing process, but suggested vent plugs as a compromise. Because DOE has a data to verify the effectiveness of open entry holes following installation, DOE has deleted this provision in the Interim Final Rule.

The Proposed Rule required that special attention be paid to wall cavities which contain dissimilar metals because wet foam which is mildly acid can cause rapid electro-chemical corrosion. U–F foam in wall cavities containing both copper plumbing pipes and aluminum electric wiring may promote this type of corrosion. One commenter doubted that sufficient dissimilar metals would be found in the wall. Because DOE continues to recognize this situation as a protential problem, the provision was retained in the Interim Final Rule.

Several commenters stated that the proposed requirement of turning off all electric power circuits located in exterior walls was unnecessary. DOE agreed with this suggestion since the resistivity requirements contained in the material standard are sufficiently low to preclude any opportunity for shock hazards.

Other changes made to the installation standards such as limitations on wet density specification and set time also affect the manfacturer of U–F foam, and are included in the material standard also, and are described under "B. Material Standard for Urea-Formaldehyde (U–F) Foam Insulation."

III. Regulatory Analysis and Urban Impact Assessment

The President, by Executive Order 12044, has directed agencies of the executive branch to conduct a Regulatory Analysis of regulations which they prepare that are likely to have a major economic impact. In accordance with OMB Circular A–116, and Urban and Community Impact Assessment should be prepared when the Proposed Rule is a major policy and program initiative. This assessment should be incorporated into the Regulatory Analysis.

DOE determined that the Residential Conservation Service Program, authorized under Title II, Part 1 of the National Energy Conservation Policy Act, was a major action which required preparation of Regulatory Analysis and an Urban and Community Impact Assessment. Consequently, the Department prepared the two analyses in draft in conjunction with the publication of the Proposed Rule for the RCS program on March 19, 1979 (44 FR 16546). These analyses were finalized for publication in conjunction with the Final Rule which was published November 7, 1979 (44 FR 64602). The final Regulatory Analysis, which incorporates the final Urban and Community Impact Assessment, includes analysis of this Interim Final Rule.

A single copy of the Final Regulatory Analysis may be obtained by writing: Mr. James R. Tanck, Chief, Building Applications and Incentives Branch, Department of Energy, Conservation and Solar Energy, 1000 Independence Avenue, S.W., Room GH–068, Washington, D.C. 20585.

IV. Environmental Impact Statement

In accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et. seq.*, DOE prepared an Environmental Impact Statement for the entire Residential Conservation Service Program. The subject matter of this rulemaking was evaluated in the programmatic Environmental Impact Statement (DOE/EIS–0050) was published in the Federal Register on November 7, 1979, (44 FR 64602). A copy of the final Environmental Impact Statement may be obtained by writing: Mr. James R. Tanck, Chief, Building Applications and Incentives Branch, Department of Energy, Conservation and Solar Energy, 1000 Independence Avenue, S.W., Room GH–068, Washington, D.C. 20585.

V. Record of Decision

In accordance with section 1505.2 of the Council on Environmental Quality Regulations Implementing the National Environmental Policy Act (40 CFR 1500–1508), the Department is required to publish a Record of Decision at the time a final decision is reached on actions for which an environmental impact statement was prepared. This section is intended to fulfill these requirements for the subject interim final rulemaking.

A complete discussion of the decision reached by this rulemaking and the background information supporting it is contained in the "Summary," "Introduction" and "Standards" sections of the preamble. A number of alternatives to the interim final rulemaking were considered, including a "no action" alternative, a further delay in promulgating the rule, and various modifications to the specific technical provisions in the rule regarding material content of the U–F foam and the installation procedures associated with its use. For the reasons discussed in the "General Technical Issues" section of the preamble, the Department determined that the environmentally-preferred alternative is the action published herein.

VI. Consultation With Other Federal Agencies

In preparing this Interim Final Rule, issues and options were reviewed by representatives of the National Bureau of Standards and the Consumer Product Safety Commission.

VIII. Contractor Contributions to the Rulemaking

The following contractor contributions were made to this rulemaking: Hittman Associates, Inc., and the Agricultural Medicine Department of the University of Iowa assisted in the development of the interim final material and installation standards for U–F foam.

Authority: Part 1 of Title II of the National Energy Conservation Policy Act, Pub. L. 95–619, 92 Stat. 3206 *et seq.*, as amended by Title V, subtitle B of the Energy Security Act, Pub. L. 96–294, 94 Stat. 611 *et seq.*, Department of Energy Organization Act, Pub. L. 95–619, 91 Stat. 565 *et seq.*, 42 U.S.C. 7101 *et seq.*

In consideration of the foregoing, the Department of Energy amends Chapter II, Title 10, Part 456 of the Code of Federal Regulations, as set forth below.

Issued in Washington, D.C., September 11, 1980.

Maxine Savitz,

Deputy Assistant Secretary for Conservation, Conservation and Solar Energy.

1. 10 CFR Part 456 is amended by revising the following entries to the Table of Contents:

* * * * *

Sec.

456.810 Interim final standard for urea-formaldehyde foamed-in-place insulation.

* * * * *

456.909 Interim final standard practice for the installation of urea-formaldehyde foamed-in-place insulation.

2. 10 CFR Part 456 is amended by adding § 456.810 to read as follows:

§ 456.810 Interim standard for urea-formaldehyde foamed-in-place insulation.

(a) *Scope.* This section presents an interim standard which applies to urea-formaldehyde foamed-in-place insulation of existing residential buildings. This material is approved for exterior sidewall application only, and is not approved for use in attics, above ceilings, under floors, in knee walls, in mobile homes, or in below-grade applications.

(b) *Definitions.* (1) "Urea-formaldehyde foam insulation" (U–F foam) is a cellular plastic material generated in a continuous stream by mixing the components which are a urea-formaldehyde resin, air, and a foaming agent.

(2) "Foamed-in-place" means sprayed or pumped in place to form rigid or semi-rigid insulation in its permanent location.

(3) "Insulation installer" (installer) means the person who combines these component materials and foams the insulation in place.

(4) "Insulation Manufacturer" (manufacturer) means the organization or person that supplies the resin, foaming agent, and other ingredients to the foam insulation distributor and/or installer.

(5) "Vapor barrier" means any material (as defined in ASTM Designation C–755–73) that has a water vapor permeance (perm) rating of one (1) or less.

Note.—The following materials, upon proper application, constitute vapor barriers. Asphalt impregnated kraft paper, aluminum foil, plastic film, and paint and wallcoverings which are labeled by the manufacturer as having a perm rating of one (1) or less when applied in accordance with the manufacturer's instructions.

(6) "Independent test laboratory" means a test facility which has no organizational tie or financial interest in a manufacturer, or in the promotion of the type of product being tested. It must have sufficient breadth of interest or activity so that the loss or award of a specific contract for test services would not be a substantive factor in financial well-being of the facility. It may offer test services under contract or on a fee basis and may be a profit or non-profit activity.

(7) "ANSI/ASTM B 152–79" means ANSI/ASTM Standard Specification for Copper Sheet, Strip, Plate, and Rolled Bar.

(8) "ANSI/ASTM B 446–75" means ANSI/ASTM Standard Specification for Nickel-Chromium-Molybdenum-Columbium Alloy Rod and Bar.

(9) "ASTM C 177–76" means ASTM Standard Test Method for Steady State Thermal Transmission Properties by Means of the Guarded Hot Plate.

(10) "ASTM C 236–66 (Reapproved 1971)" means ASTM Standard Test Method for Thermal Conductance and Transmittance of Built-Up Section by Means of the Guarded Hot Box.

(11) "ASTM C 518–76" means ASTM Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter.

(12) "ASTM D 257–76" means ASTM Standard Test for D–C Resistance or Conductance of Insulating Materials.

(13) "ASTM D 1622–63" means ASTM Standard Test Method for Apparent Density of Rigid Cellular Plastics.

(14) "ASTM E 84–79A" means ASTM Standard Test Method for Surface Burning Characteristics of Building Materials.

(c) *Coverage.* The component material manufacturer is responsible for ensuring that the requirements contained in this section have been met in all operations through and including time of delivery to the insulation installer.

(d) *Material requirements.* (1) *Thermal resistivity.* Thermal resistivity shall be tested in accordance with the test method described in paragraph (f)(2) of this section. Thermal resistivity for any given specimen of U–F foam insulation shall not be more than 5 percent below the arithmetic average of the resistivities of the foam specimens tested. Effective thermal resistivity of U–F foam shall be computed as 70 percent of the laboratory thermal resistivity value, and shall be the value reported to the public.

(2) *Fire safety.* The flame spread classification of U–F foam insulation shall not exceed 75, when tested in accordance with ASTM E 84.

(3) *Corrosiveness.* When tested as specified in paragraph (f)(3) and (f)(4), the corrosion rates shall not exceed the values specified in Table XIII below.

Table XIII

Metal	Corrosion Rate
Carbon Steel	0.15 mm/yr (0.006 in./yr)
Copper	0.025 mm/yr (0.001 in./yr)
Galvanized Steel	0.09 mm/yr (0.0035 in./yr)
Aluminum	0.025 mm/yr (0.001 in./yr)

The two corrosion tests shall be conducted on the same batch of foam manufactured at the same time and place.

(4) *Density.* (i) The dry density of U–F foam insulation shall be no less than 10.4 kg/m^3 (0.65 lb/ft^3) when tested in accordance with ASTM D 1622.

(ii) The manufacturer shall specify upper and lower limits on the wet density of U–F foam insulation, using the test method specified in paragraph (f)(5) and assure that wet density is within the specified limits.

(iii) The manufacturer shall specify upper and lower limits on the specific gravity of dilute resin so that the installer is able to measure the specific gravity of the dilute resin with a clean hydrometer prior to foaming, and assure that is is within the specified limits.

(5) *Water absorption.* Under conditions specified in paragraph (f)(6) of this section, the water absorption of U–F foam insulation shall not exceed 15 percent by volume.

(6) *Free formaldehyde content.* (i) The free formaldehyde content of the resin used in U–F foam insulation shall not exceed 0.5 percent by weight when tested as specified in paragraph (f)(7).

(ii) The free formaldehyde content of fresh U–F foam shall not exceed 0.3 percent by weight when tested as specified in paragraph (f)(8).

(7) *Setting time.* U–F foam insulation shall set in not less than 10 seconds and not more than 60 seconds when tested in accordance with paragraph (f)(9).

(8) *Volume resistivity.* The volume resistivity of fresh U–F foam shall be not less than 5 kΩ-cm when tested as specified in paragraph (f)(10).

(9) *Water drainage.* U–F foam insulation shall manifest no water leakage from a plywood cavity when tested in accordance with paragraph (f)(11) of this section.

(10) *Shrinkage.* U–F foam insulation shall not shrink more than 4.0 percent in any direction when subjected to the conditions specified in paragraph (f)(12) of this section.

(11) *Labeling.* (i) Containers of urea-formaldehyde resin and foaming agents shall have labels showing storage temperatures and dates (shelf-life) after

which resin and foaming agent are not usable.

(ii) The following notice shall be provided to installers to present to residents prior to the signing of a contract for installing U–F foam insulation:

Safety Information

This product may release formaldehyde gas into your home over a long period of time.

Formaldehyde gas may cause eye, nose, and throat irritation, coughing, shortness of breath, skin irritation, nausea, headaches, and dizziness. People with respiratory problems or allergies may suffer more serious reactions, especially persons allergic to formaldehyde.

The symptoms may appear immediately, or not until months after installation.

The U.S. Department of Energy recommends application of U–F foam in exterior sidewalls only, because other installations may increase the likelihood of formaldehyde release into the home. In some instances the formaldehyde gas cannot be controlled by ventilation or other means.

If you have health concerns, call your doctor. Also, contact (installer-phone) or (material supplier-phone).

(12) *Training requirements.* (i) The manufacturer of the U–F foam components shall train and certify the installers of U–F foamed-in-place thermal insulation. An approved training course and comprehensive examination shall require and demonstrate proficiency in the following:

(A) Overview of heat transfer and thermal insulations
(*1*) Condensation control/vapor barriers
(*2*) Effects of moisture on thermal insulations
(*3*) Air infiltration
(B) Overview of U–F foam insulation
(*1*) Physical properties
(*2*) Mechanical properties
(*3*) Thermal properties
(*4*) Chemical properties
(C) U–F foam technology
(*1*) Manufacture and composition of U–F foam components, i.e., resin and catalyst solutions
(*2*) Chemical reactions during production of U–F foam and of final foamed product
(*3*) Field manufacture of U–F foam *in situ*
(D) Post-installation curing of U–F foam
(*1*) Shrinkage
(*i*) Normal
(*ii*) Excessive
(*2*) Formaldehyde release
(*i*) Inherent post-installation release
(*ii*) Possible delayed release
(*iii*) Solids content of components and foam
(*iv*) Factors affecting rate of drying
(E) Installation procedures
(*1*) General guidelines
(*i*) Vapor barriers
(*ii*) Wall venting
(*iii*) Drilling and plugging requirements
(*iv*) Problem installations
(*2*) Specific guidelines (covers opening and closing techniques and equipment and tools to use)
(*i*) Brick-on-brick
(*ii*) Concrete block
(*iii*) Brick veneer on frame construction
(*iv*) Drill and plug
(*v*) Wood shingle and wood shake siding
(*vi*) Slate shingles
(*vii*) Aluminum, vinyl, and steel siding
(*viii*) Clapboard wood siding
(*ix*) Metal clad buildings
(*x*) Stucco and pebbledash
(*xi*) Imitation brick asphalt roll or sheet
(*xii*) Balloon construction
(*xiii*) Pipe chases
(*xiv*) Windows and door frames
(F) Problem applications
(*1*) Knee walls
(*2*) Mobile homes
(*3*) Ceilings
(*4*) Below grade
(G) Proper cavity fill techniques
(*1*) Stud cavity
(*i*) Check for obstructions
(*ii*) How to determine number of holes per cavity necessary for complete fill
(*iii*) Methods of preventing over pressurized or ruptured walls
(*iv*) Demonstration of proper fill technique
(*2*) Continuous cavity, i.e., brick-on-brick
(*i*) Methods of preventing overpressurized or ruptured walls
(*ii*) Demonstration of proper fill technique
(*3*) Other cavities
(*i*) Methods of preventing overpressurized or ruptured walls
(*ii*) *Demonstration of proper fill techniques*
(H) Resin and foaming agent/catalyst handling
(*1*) Storage conditions
(*2*) Solution temperatures during application
(*3*) Shelf life
(*4*) Safety precautions
(*5*) Shipping requirements
(I) Practical demonstration
(*1*) Proper foaming technique
(*i*) Pre-foaming quality control checks
(*ii*) Pre-installation quality control checks
(*iii*) Quality control checks during installation
(*2*) Trouble shooting off-specification foam
(*i*) Off-ratio foam
(*ii*) Incorrect density foam
(*iii*) Over aged resin
(*iv*) Incorrect solution temperatures
(*v*) faulty, malfunctioning, or inadequate equipment
(*vi*) Overacidified or underacidified foaming agent
(*vii*) Effects of using equipment not properly maintained
(J) Equipment
(*1*) Manufacturer's recommended equipment
(*2*) Proper care and maintenance
(*3*) Troubleshooting
(K) Recordkeeping
(*1*) Required disclosures to consumer
(*2*) Manufacturer's required recordkeeping

(13) *Certification.* Upon successful completion of the manufacturer's training programs and a comprehensive examination, installers may then be certified to apply U–F foam insulation.

(i) The manufacturer shall issue application licenses to the certified dealers and maintain a current roster of its licensed installers.

(ii) Annual refresher courses and re-certification examinations shall be required for each installer to maintain his certification.

(iii) The manufacturer shall conduct one on-site observation of a U–F foam installation of each of its certified installers at least once per year to ensure that the installer is using the procedures and techniques demonstrated in the training program. During the on-site inspection, the manufacturer shall test the installer's equipment to ensure proper functioning.

(iv) The manufacturer of the U–F foam components shall recommend to installers only equipment which has been certified by the equipment manufacturer as meeting the testing requirements of paragraph (g) of this section. During the on-site inspection described in paragraph (c) of this section, the manufacturer shall ensure that this equipment is being used by the installer.

(v) Installers trained by a manufacturer other than their current manufacturer must use equipment that complies with the current manufacturer's specifications and must successfully complete that manufacturer's certification requirements. Complete re-training is not necessary, but should depend on the current proficiency of the installer.

(vi) The manufacturer of the U–F foam components shall provide materials control and installation instructions to installers.

(e) *Laboratory testing.* The manufacturer shall have a continuing annual program of retesting by an independent laboratory to assure compliance with these standards. Laboratory testing must include all the materials test methods specified in paragraph (f).

(f) *Materials test methods.* (1) *Preparation of specimens.* Neither the specimen composition nor foaming conditions shall be altered to produce qualifying samples for the tests required in this section. All tests described in this section shall be conducted on the same batch of U–F foam insulation (made from the same resin, foaming agent, and additives) and under the same conditions. Unless otherwise specified in the following test procedures, the foam shall be prepared and applied in accordance with the manufacturer instructions using specified equipment. The temperature of the unreacted materials prior to foaming shall be between 15° and 32°C (59° and 90°F). Unless otherwise specified, specimens shall be foamed at ambient conditions of 23±2°C (73±4°F) and 50±5 percent relative humdity into closed cavities constructed of (nominal) 2×4 inch studs (51×102 mm) and ½ inch (13 mm) thick exterior grade plywood. Maintain test specimens in the closed cavities in vertical positions at 23±2°C and 50±5 percent relative humidity for 28 days prior to testing. Then remove specimens from cavities and condition at 23±2°C (73±4°F) and 50±5 percent relative humidity until a constant weight (±1.0 percent) is maintained over a three day period.

(2) *Test method for thermal resistivity.* (i) The Laboratory value of thermal resistivity shall be determined as specified in ASTM C 177, ASTM C 518 or ASTM C 236 using specimens not less than 75 mm (3 in.) thick, a mean temperature of 24°C (75°F) and a mean temperature differential across the specimen of 22±3°C (72±5°F). In cases of a question, ASTM C 177 shall be used. Specimen surfaces shall be either those obtained during foaming or those obtained by slicing the specimen to remove not more than 5 mm from each side.

(ii) The effective thermal resistivity shall be computed as 70 percent of the laboratory thermal resistivity value determined by the preceding paragraph.

(3) *Test method for corrosiveness*—1 (i) The following apparatus and materials shall be used to test for corrosiveness:

(A) Oven capable of maintaining 40±2°C (104±4°F).

(B) Small container, approximately 90 mm in diameter, 50 mm high (3.6 in. diameter, 2 in. high) made of inert material such as polypropylene and equipped with a lid so designed that water condensing on it will not drip but will run to the walls of the container. The container shall be designed such that it is not potentially hazardous after it has been sealed at room temperature and heated to 40°C (104°F).

(C) Large container, capable of housing the small container, but which will fit inside the oven.

(D) Test coupons, approximately 50 x 50 mm x 0.0762 mm (2 x 2 x .003 in) thick metal, free of tears, punctures or crimps as follows: 3003 Bare Aluminum, soft temper; ANSI/ASTM B 152–79 type ETP, Cabra No. 110, soft copper; and low carbon, commercial quality, cold rolled shim steel.

(E) Test coupons, approximately 50 x 50 x 1.0 mm (2 x 2 x .04 in.) made from hot dipped galvanized sheet steel conforming to Grade A or B, ANSI/ASTM B 446–75 with a total zinc coating of 275–0, +31 g/m². At least 40 percent of the zinc shall be on any one side of the test coupons. (Metal of this quality is used in the manufacture of truss plates.)

(F) Balance, capable of determining the mass of the galvanized specimen to an accuracy of 0.2 mg.

(G) Distilled water, nitric acid (specific gravity 1.42), ammonium hydroxide (specific gravity 0.90), chromium trioxide, silver nitrate, hydriodic acid, reagent grade chemicals.

(H) Several noncorrosive plastic supports and a 150 g mass.

(ii) Prepare foam specimens from blocks. Allow the foam to cure for at least seven days. Cut a specimen 60 x 60 mm (2.4 x 2.4 in.) square and 15 mm (0.6 in.) thick from blocks such that one 60 x 60 mm (2.4 x 2.4 in.) surface is that obtained from foaming and not slicing the foam. All other surfaces of the specimen shall be obtained by slicing the foam. Surfaces obtained from foaming shall be placed adjacent to the metal specimens in the test.

(iii) Make duplicate tests for each determination. Wash the metal coupons with a laboratory detergent to remove any oil or grease. Rinse the cleaned coupons in flowing water to remove residues. Inspect each coupon for a water-break free surface. A water-break is a separation, beading, or retraction of the water film as the coupon is held vertically after wetting. At no time shall the metal coupons be touched with ungloved hands. Handle the cleaned metal specimens with clean forceps. Hot air dry the coupons at 105°C (221°F). Weigh the coupons and record their masses. Place a noncorrosive plastic screen support in the small container and add 20 ml (deionized) water. Place a foam block on the support at least 5 mm (0.2 in.) above the surface of the water. Place the metal coupon on the foam block, put another foam block on the metal coupon and then place on top of the sandwich a non-corrosive plastic screen and a 150 g mass which shall not block air flow to the top foam block. Seal the small container with a lid. Place the small container in the large container, add sufficient distilled water (approximately 20 ml) to the large container and seal it. Place the assembly in an oven at 40±2°C (104±4°F) for 28 days. Upon completion of the test remove the assembly from the oven and dismantle. Both containers shall not be dry but contain visible water. If there is no water present at the end of the test, then the test shall be repeated. Remove the corrosion products from the metal coupons by the procedures recommended in ASTM G1. Rinse all metal coupons in distilled water and dry. Examine the specimen and control coupons. The controls shall be metal coupons not exposed in the oven but which are cleaned identically to the specimens. Subtract the loss in mass of the controls from the loss in mass of the specimen coupons. For each set of duplicate specimens to meet the requirements of paragraph (d)(3), the spread between results shall not exceed an absolute value equal to 15 percent of the maximum permissible corrosion rate specified for that material and the average of both results shall be below that maximum limit set for that material.

(iv) Calculations. Corrosion rates shall be calculated by the following equation:

$$\text{Corrosion Rate (mm/yr)} = \frac{87.6 \times W}{A \times T \times D}$$

Where:

W = weight loss in mg to the nearest 0.2 mg
A = total surface area in cm^2 to the nearest 0.01cm^2
T = time of exposure in hours to the nearest 0.1 hr
D = density in g/cm^3

(4) *Test method for corrosiveness–2.* The following test procedure utilizes the principle of ASTM G 4 testing method to simulate the actual environment in which pieces of carbon steel, galvanized iron, copper, and aluminum (alloy 6061) will be subjected to an actual field condition. The cleaning and evaluation of the corrosion test specimen shall utilize the recommended practice in Method G 1, and G 46; the resulting data will be evaluated by the recommended practice in Method G 16. This test method is required in addition to test method for corrosiveness–1.

(1) Preparation of Test Coupons. Six (6) test coupons of each material, three (3) coupons each for each test tray, shall be cut or punched from a No. 10 U.S. gauge sheet (approximately 3.5 mm) thick, with a diameter of 3½ inches (88.9 mm) as shown in Figure 1. The test materials shall be cut from sheets of carbon steel, galvanized iron, copper, and aluminum (alloy 6061) and have 1 1/32 inch diameter (11.9 mm) hole drilled in the center and all edges shall be machine finished. Each test coupon shall be stamped with an appropriate letter to identify the material of the coupon, and a number to identify the particular sample. The following letter identification shall be used for the test materials:

a—aluminum
c—copper
s—carbon steel
z—galvanized iron

BILLING CODE 6450-01-M

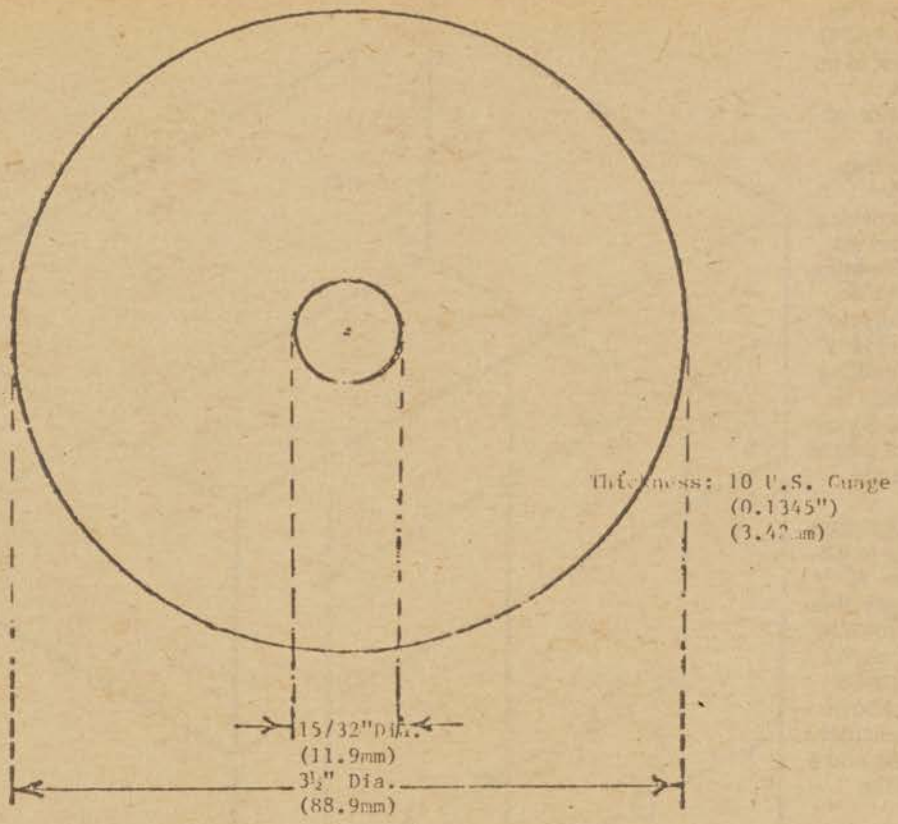
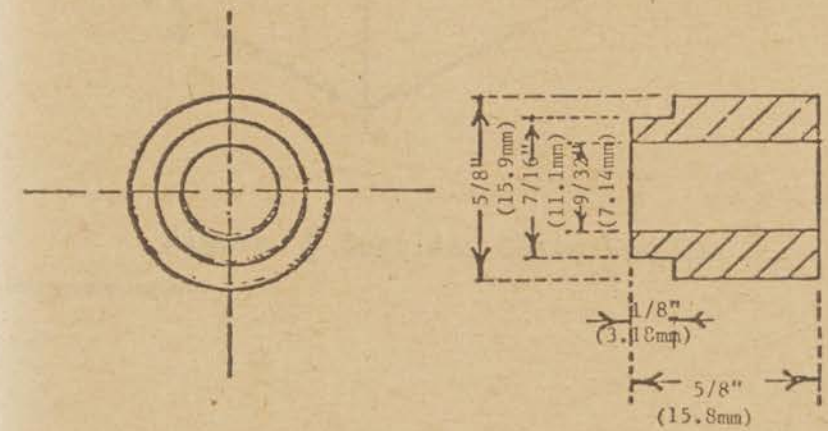


Figure 1. Test Specimen for Corrosion Test

Figure 2.



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All coupons or test specimens shall be prepared in accordance with Method G 1. The coupons shall be degreased in an organic solvent, such as acetone, hexane, methanol, or a combination of these. Hot alkalis and chlorinated solvents are not to be used since they may attack some metals. Abrasive cleaners shall not be used and brushing shall be kept to a minimum to prevent work hardening of the surface. Cleaning of the coupon shall be followed by a water rinsing, drying by an air jet, and storing in an oven maintained at 110° F (43° C) until ready to be used. Handling of the clean coupon must be kept to an absolute minimum, and no towel drying used, to avoid the introduction of grease, lint or other foreign materials on the coupon.

(ii) Apparatus. (A) 1 Analytic balance, capable of weighing test coupons to 0.2 mg. (B) 1 Specimen corrosion box. A plastic tray with inside dimensions of no less than 12 by 7¾ by 5 inches (304.8 by 197 by 127 mm) shall all have three $\frac{5}{32}$ inch holes drilled in the 12 inch (304.8 mm) long side, 2½ inch (63 mm) above the bottom of the tray and at the center line of the 12 inch (304.8 mm) side, and 4 inches (100 mm) on each side of the center line as shown in Fig. 3.

(C) 6¼ inch PVC or other suitable plastic threaded rod with plastic nuts.

(D) Plastic spacers, fabricated from ⅝ inch (15.9 mm) diameter PVC or other plastic rods, with a $\frac{9}{32}$ inch (7.14 mm) diameter hole drilled through the center, which should have one edge machined to a $\frac{7}{16}$ inch (11.1 mm) diameter for a depth of ⅛ inch. (3.18 mm) on one end of the rod, as shown in Figure 2. The test coupon is to be slid over the machine end, and the adjacent spacer shall secure the test coupon on the ¼ inch (6.4 mm) diameter threaded plastic rod.

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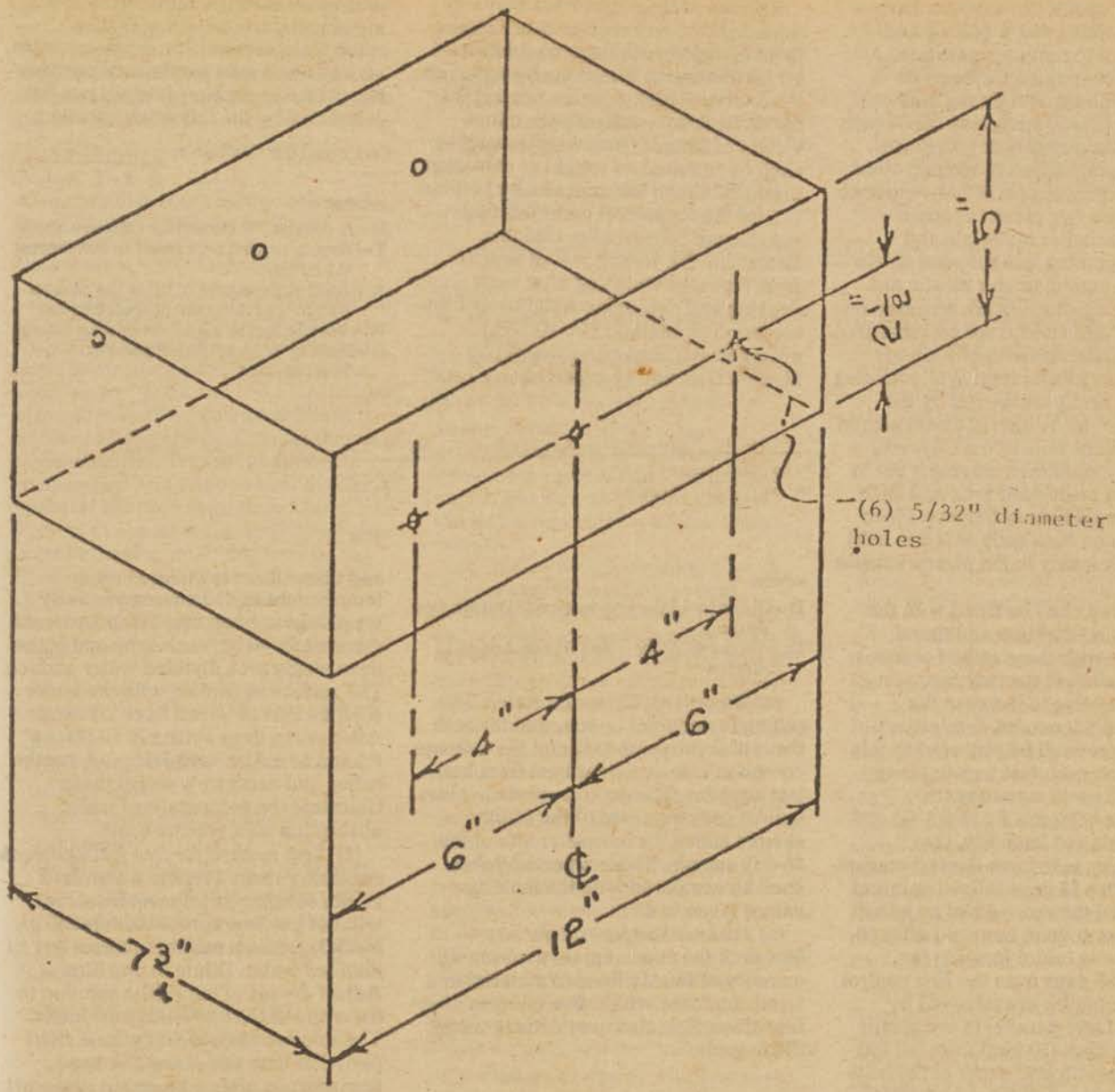

Figure 3 Specimen Corrosion Box

BILLING CODE 6450-01-C

(iii) Remove the test coupons from oven maintaining 110° F (43° C) and allow to cool to room temperature. Weigh test coupon on the analytic balance to the nearest 0.2 mg and position on plastic spacer on the ¼ inch (6.4 mm) diameter plastic rod. Place similar coupons adjacent to each other and place a plastic spacer between each coupon. Place two plastic spacers between dissimilar materials and continue mounting test coupons on the ¼ inch (6.4 mm) diameter plastic rod.

(iv) After all coupons are mounted on plastic rod, add special spacer measured to hold all the spacers tightly when fitted into the plastic tray. While holding the coupon firmly on the rod by the spacer, slide the ¼ inch (6.4 mm) plastic rod through one hole in the tray, and then slip the rod down moving it out in the hole just positioned into, and slide through second hole in the tray. Place plastic nuts on both ends of rod to hold the coupons rigidly in the plastic sample tray.

(v) The tray shall be fitted with the three holes, so that two additional plastic rods with three sets of samples can be installed in the tray for additional testing to increase the reliability of the results. A minimum of two test trays shall be prepared in this matter. Foam each test tray to the top edge and allow to cure at room temperature of 73 ± 3°F (23 ± 2°C) and 50% ± 5% relative humidity. One corrosion tray is to have the test coupon removed after 28 days following initial foaming, and the second test tray shall have the test coupon removed after 56 days following initial foaming (an additional 28 days from the first control tray). The samples are removed by cutting the foam parallel to the plastic rod and 2 inches (50 mm) from the rod for the full width and depth of the tray. The plastic nuts shall be removed from the threaded plastic rod, and the rod with the test coupon and block of foam shall be removed from the tray as a unit. The foam shall be cut away from around each test coupon and loose particles removed with an air jet.

Remove each coupon from the threaded rod, and remove excess loose foam by light brushing or an additional air jet treatment. Weigh each coupon on the analytic balance to the nearest 0.2 mg and compare weight with initial weight of sample. Any weight increase shall be reported as weight of corrosion products. Clean test coupons by Method G 1 for the respective materials and weigh each coupon after cleaning. Determine the weight loss of sample from repeated weighing after each cleaning and determine weight loss from corrosion by Method G 1–A2. Any pitting attack shall be evaluated by Method G 46 and be reported as a ratio of deepest metal penetration to average metal penetration (pitting factor).

(vi) Calculations. The corrosion rates, expressed as mils penetration per year (mpy) or mm per year (mmpy) can be calculated by the following equation:

$$\text{Corrosion Rate} = \frac{K \times W}{A \times T \times D}$$

where:

K = A constant to correct for different units.
T = Time of exposure in hours to the nearest 0.1 hours.
A = Total surface area in in^2 to the nearest 0.01 in^2 or cm^2 to the nearest 0.01 $cm.^2$
W = Weight loss in mg to the nearest 0.2 mg.
D = Density in g/cm^3 (see Appendix A 1, Method G 1.)

Constant K

Corrosion Rate Units Desired	Area in in^2	Area in cm^2
mils per year (mpy)	534.75	3450
mm per year (mmpy)	13.57	87.6

The Area = $\frac{\pi}{4}(D^2 - D_h^2)$

where:

D = Diameter of the test coupon (3½ inches or 89 mm)
D_h = Diameter of the hole (15/32-inches or 12 mm)

(vii) Reporting Corrosion Rates. The pitting factor shall be reported for both the initial corrosion rate and the average corrosion rate as determined from both test coupons. The acutal reported values will be corrosion rate of the 56-day sample minus the corrosion rate of the 28-day sample. These reported values shall be compared with the limiting values given in 6.7.

(5) *Test method for wet density.* Weigh to the nearest gram a measured quantity of freshly foamed material in a tared container within five minutes after formation. Calculate wet density using the formula:

$$\text{Density } (kg/m^3) = 1{,}000 \times \frac{\text{Tare Weight of Container (g)} - \text{Weight (g)}}{\text{Volume } (cm^3)}$$

(6) *Test method for water absorption.* Cut three cubes, each 180×180×90 mm (7.1×7.1×3.5 in.) from a block of foam, and allow them to stand at room temperature until 3 successive daily weighings vary no more than 1 percent. Accurately weigh each cube and place them singly on a distilled water surface. The surface in contact with the water shall be that obtained from foaming. After seven days at 23 ± 2° C. (73 ± 4° F.) and 50 ± 5 percent R.H., remove the cubes and accurately weigh them. Calculate the percentage of water absorption on a volume basis.

(7) *Test method for free formaldehyde content of resin.* Prepare a standard sulfite solution as follows: Dissolve, without heating, approximately 250 g Na_2SO_3 (sodium sulfite) in about 200 ml distilled water. Dilute to one litre. Adjust the pH of the sulfite solution to 8.9 with H_2SO_4, and NaOH solutions. The solution is stable only for a short period of time and it must be used immediately after adjustment of the pH. Place 20 ml distilled water in an Erlenmeyer flask. Accurately weigh approximately 2 g resin solution (ready for foaming) and add it to the flask. Stir the mixture well, add approximately 10 g crushed ice and mix thoroughly. Add

50.0 ml of the standard sulfite solution and titrate immediately with 0.01 N H_2SO_4 to pH 8.9. Perform the procedure in duplicate and run a blank. Calculate the percentage formaldehyde content to the resin as follows:

Percent formaldehyde = 3(A–B)D/C

Where:

A = mL of 0.01 N H_2SO_4 for the specimen
B = mL of 0.0] N H_2SO_4 for the blank
C = mass of resin solution, g
D = normality of the H_2SO_4 solution.

(8) *Test method for free formaldehyde content of fresh urea-formaldehyde foam.* This test shall be conducted on three foam specimens taken from the same slab of foam and one blank. These specimens shall be collected fifteen minutes after foaming. Produce a cone of foam and allow it to set at ambient temperature and relative humidity for 15 minutes, but not longer than 1 hour. Each of the procedures described below must be conducted in this time frame. Slice off the exterior surfaces and cut three samples measuring about 50×50×75 mm (2×2×3 in.) each weighing approximately 6 to 10 grams.

(i) The following laboratory equipment and chemicals are required:

(A) 50-ml burette

(B) Four 1000 ml beakers

(C) pH meter

(D) Magnetic stir and stir bar

(E) Blender

(F) Balance (capable of 0.01 grams)

(G) A solution of 50% reagent grade methanol and 50% distilled water

(H) 0.05 N acid (standardized HCl or H_2SO_4)

(I) 0.1 N sodium hydroxide

(J) 1 M acid (HCl or H_2SO_4)

(K) 1 M sodium sulfite

(ii) Prepare a 1 M sodium sulfite solution by dissolving without heating approximately 252 grams $Na_2SO_3 \times 7$ H_2O or 126 grams of Na_2SO_3 in about 400 mL of formaldehyde-free distilled or deionized water. Dilute to 1,000 mL. Adjust the pH of the sulfite solution to 9.0 with 1 M acid and 0.1 N sodium hydroxide. This solution then is stable for 24 hours at 20–25°C (68–77°F) or five days of 0–7°C (32–44.6°F).

(iii) Cool approximately 400 ml of water/methanol solution to about 0°C. Weigh a foam specimen and place it in the blender with about 200 ml of the cold water/methanol solution. Blend at a medium speed until the foam sample is completely disintegrated (5–10 seconds).

(iv) Pour the blended mixture into a beaker. Rinse the blender with the remaining ice water in three portions, adding the rinses to the beaker.

(v) Immediately adjust the pH of the mixture in the beaker to 9.0 with 0.1 N NAOH while stirring vigorously.*

(vi) From a graduated cylinder, add 50 ml of 1 M sodium sulfite (adjusted to pH 9.0).

(vii) Titrate immediately to pH 9.0 with 0.05 N acid. No more than 30 seconds should elapse from the addition of the sulfite solution to the end point of the titration.

(viii) Run a blank determination using the same amounts of water and sodium sulfite solution but without the sample.

(ix) The percentage of free formaldehyde contained in the foam shall be determined by the following equation.

$$\text{Percentage formaldehyde} = \frac{3.003\ (A - B)\ D}{C}$$

Where:

A = ml of 0.05 N acid titrate added to the sample
B = ml of 0.05 N acid added to the blank
C = weight of foam in grams
D = normality of the acid solution

Report the mean of the three determinations. If the difference between the highest and the lowest values exceeds 0.1 percent, the test should be repeated on a fresh foam sample.

(9) *Test method for setting time.* A conical specimen with a bottom diameter of approximately 30 cm (12 in.) and a height of approximately 30 cm (12 in.) shall be made by foaming from a hose. Start a stopwatch immediately after the cone has been formed and immediately commence slicing the cone with a spatula. Record the time when the foam no longer slices as if it were whipped cream but shears off leaving a smooth surface. This time is the setting time.

(10) *Test method for volume resistivity of fresh foam.* Foam the specimen in a plastic box which is made of non-conductive plastic and so designed that it may be opened for easy cleaning. Provide slits in the box to accommodate the brass electrodes forming a 90 mm (3.5 in.) cube of foam when they are inserted into the box. The box shall be equipped with grooves, about 2 mm (0.08 in.) in depth on the interior between the slits, to act as guides for the electrodes. Insert the electrodes into the slits, through the foam and through the other slits. The bevelled edge of the electrodes shall face outwards during insertion so that the foam specimen is not compressed. Then determine the volume resistivity of the foam in accordance with ASTM D 257 using a potential difference of 110V. The time between foaming the specimen and taking the instrument reading shall not exceed 30 seconds.

*The specimen must be stirred using the magnetic stirrer during the titration procedure to prevent the formation of a top layer of foam particles. Unless it is broken up, this covering of foam particles will obscure the end point and make a determination very difficult in the 30-second allowable titration time period.

(11) *Test method for water drainage.* Prepare a cavity approximately 2440 mm high, 400 mm wide and 90 mm deep (97.6 x 16 x 3.5 in.) from wood studs and plywood. Fill the cavity by foaming in place or trowelling. Leave the cavity in a vertical position for 24 hours, during which time the bottom and underside of the structure shall be examined for water. The cavity shall be built so that any free water from the foam can run out easily at the bottom. Caulks, sealants, and adhesives are not to be used in the construction of the cavity.

(12) *Test method for shrinkage.* Construct three boxes, approximately 480 x 480 x 90 mm (19 x 19 x 3.5 in.) from nominal 2 x 4 inch wood studs and exterior grade plywood. Fill these three boxes with U–F foam, cover them, and maintain for 28 days at 23 ± 2°C (73 ± 4°F) and 50 ± 5 Percent R.H. Then open the boxes and measure the linear shrinkage of the U–F foam in the two principal directions. Report the average of all six determinations as linear shrinkage. If fractures in the specimens occur, the data shall be discounted, and the test repeated.

(g) *Equipment.* (1) *Testing Requirements.* (i) The volume flows shall be consistent from the beginning to the end of continuous foaming operations of a quantity of 20 ± 5 gallons of both resin and foaming agent to within a tolerance of ± 5 percent of the standard set out in paragraph (g)(2)(i) of this section.

(ii) The ratio of flow between the liquid ingredients shall be consistent from beginning to end of continuous foaming of a quantity of 20 ± 5 gallons of both liquid ingredients to within a tolerance of ± 5 percent from manufacturer's prescribed ratio between the liquids when tested in accordance with the test method specified in paragraph (g)(2)(i).

Example. Assuming 20 gallons of foaming agent used and 20.5 gallons of dilute resin, the ratios would be 1 to 1.025 foaming agent to dilute resin, which is an acceptable ratio for a

product required to maintain a 1 to 1 ratio.

(iii) The wet density of the U–F foam shall be consistent from beginning to end of continuous foaming of a quantity of 20 ± 5 gallons of both liquid ingredients to within a tolerance of ± 5 percent of the manufactuer's test procedure. A minimum of three density tests must be taken over the 20 ± 5 gallons pumped of both liquids (shortly after start, middle, and just before the end).

(iv) Alarm shutdown mechanisms shall be tested per paragraph (g)(2)(iii). Equipment that fails the flow ratio per paragraph (g)(2)(i) but does not activate the alarm or shut-down mechanism, constitutes noncompliance to this standard. For each test per paragraph (g)(2)(i) that fails, an additional successful test must be run. A test failure is one that was interrupted because of alarm or shut-down mechanism being activated.

(v) The equipment shall be subject to a cyclic performance test to simulate typical wall filling conditions. Ten on-off cycles (30 ± 5 seconds on and 15 ± 5 seconds off) shall be run without causing out-of-tolerance flow ratios. The wet density of foam on the first cycle shall be within the manufacturer's specification and when compared with a wet density test after the last cycle, shall be within ± 5 percent of that from cycle one. Cleaning of the exit hose or other components in contact with mixed ingredients is allowed prior to final wet density test. The ratio of flow between the liquid ingredient shall be within a tolerance of ± 5 percent from the manufacturer's prescribed ratio between liquid when tested in accordance with the paragraph (g)(2)(iii) test method. The provisions of paragraph (g)(1)(iv) shall apply to this cyclic performance.

(2) *Equipment Testing Procedures.* (i) Measure the volumes of ingredients consumed while making U–F foam to an accuracy of ± 2.0 percent of full scale. A plastic pipe with a sight glass connected in a verticle position can be calibrated to serve as a graduated column. Set up and prime the liquid systems after connecting the graduated column. Make trial U–F foam to achieve the manufacturer's proper specification. Note the level of both liquid ingredients in the graduated columns prior to measurement during timed trials. On continuous pumping trials, a minimum of four sets of readings must be taken and spaced uniformly over the pumping period. The elapsed time between each reading must be determined to ± 2.0 percent. If the prescribed amounts of liquid are made into U–F foam and no automatic alarm or shutdown has occurred, collect the data as described below:.

(A) For each time interval, determine the volume pumped and the time; calculate the ratio of foaming agent to resin of each time interval.

(B) Calculate the overall ratio for the total test period.

(C) Calculate the gallons per minute flow rate for each time interval.

(D) Calculate the total volume pumped for foaming agent and resin at the completion of the test. The foam density at the completion of the test shall be determined per the manufacturer's prescribed method to specification.

(E) Verify that alarm or shut-down devices are working properly per paragraph (g)(2)(iii) since they were not activated during the test.

(ii) The cyclic testing shall measure the volumes of ingredients consumed while making U–F foam to an accuracy of ± 2.0 percent of full scale using graduated columns as described in paragraph (g)(2)(i) of this section. Perform the prescribed checks and note the liquid levels. Perform the prescribed cycle of operations per paragraph (g)(1)(v). Measure the total volume of ingredients used and determine the overall ratio.

3. 10 CFR Part 456 is amended by adding § 456.909 to read as follows:

§ 456.909 Interim standard practice for the installation of urea-formaldehyde foamed-in-place insulation.

(a) *Scope.* (1) This section presents an interim standard which applies to urea-formaldehyde foamed-in-place insulation of existing residential buildings. This material is approved for exterior sidewall application only, and is not approved for use in attics, above ceilings, under floors, in knee walls, in mobile homes, or in below-grade applications.

(2) This practice covers the installation process from pre-installation procedures through post-installation procedures. It does not cover the manufacturing of the material components, but it does cover the process of combining components to form foam and it also covers field quality control checks.

(3) This practice provides minimum requirements that will help to insure the installation of insulation in a safe and effective manner. It must be noted that actual conditions in existing buildings vary greatly and in some cases substantial additional care and precaution may have to be taken to assure effective and safe installation.

(4) This practice covers aspects of installation relating to the safety of persons and property, effectiveness, and durability of insulation in service, and prevention of related structural damage to the residence.

(b) *Definitions.* The definitions in § 456.810(b) apply to this section.

(c) *Significance.* (1) This practice recognizes that effectiveness, durability, prevention of related structural damage, and safety of insulation depends not only on the quality of the insulation materials, but also on their proper and workmanlike installation.

(2) Improper installation of U–F foam may reduce its thermal effectiveness, cause damage to the structure, and cause unsafe conditions.

(d) *Safety Precautions.* (1) Wear safety equipment to protect hands and eyes against acid contained in the chemicals.

(2) Avoid contact between the uncombined chemical components of U–F foam and building materials to prevent staining or corrosion.

(3) Follow label instructions regarding hazards related to the materials.

(4) Observe all safety rules provided by the installation equipment manufacturer. Properly set relief valves on pressurized liquid and air vessels and exercise proper use of electrical power tools.

(5) Keep all persons not involved in the installation a safe distance from work areas and installation equipment.

(6) Maintain proper ventilation on the job to prevent excessive exposure to formaldehyde gas.

(7) Follow the manufacturer's instructions for storage of U–F foam components and follow proper methods of disposal of old or unusable resin and foaming agent solutions.

(e) *Installer requirements.* (1) The installation of U–F foam may only be performed by insulation installers trained and certified by the material components manufacturer.

(2) Persons installing U–F foam must have a working knowledge of the applicable codes and regulations, tools, equipment, and methods necessary for the installation of thermal insulation materials. These persons are also required to have an understanding of the fundamentals of residential construction that affect the installation of insulation.

(f) *Equipment.* (1) Use only equipment which has been recommended by the manufacturer for use with the manufacturer's product.

(2) Ensure that hose lengths conform to the insulation manufacturer's requirements.

(3) Check the equipment for proper functioning and cleanliness before starting a job. Clean and maintain the equipment according to the equipment

manufacturer's instructions but at a minimum, at the following intervals:

(i) Before installing each new batch of U–F foam.

(ii) After every down time of at least 15 minutes.

(iii) At the conclusion of the installation process.

(g) *Foam Generation and Field Quality Control Checks.* (1) Follow the manufacturer's instructions for generating the foam.

(2) Do not use containers of resin or foaming agent after the shelf-life date specified on the container labels by the manufacturer.

(3) Use only materials supplied by the same insulation manufacturer and, where that manufacturer supplies more than one product, ensure that the individual components to be combined are compatible.

(4) Handle all insulation materials in accordance with the manufacturer's instructions. Keep powdered products dry and free of extraneous materials.

(5) Perform all field quality control checks prescribed by the manufacturer. At a minimum, perform the following checks at the specified frequencies:

(i) Setting time (gel time). Test in accordance with Standard for Urea-Formaldehyde Foamed-in-Place Insulation [see § 456.810(e)(9)]. Test before installation each day on each job for each material batch. Check setting time after any change in chemical concentration. Setting time must conform with the manfacturer's recommendations for the type of structure and procedure being used but shall not exceed 60 seconds nor be less than 10 seconds.

(ii) Wet density. Test in accordance with Standard for Urea-Formaldehyde Foamed-in-Place Insulation [see § 456.810(e)(5)], and ensure that wet density is within manufacturer's specifications. The wet density shall be measured five minutes after foaming. Check the wet density on each new batch of materials, on each new job, and after each down time of at least 45 minutes. Whenever changing from an empty to full container, the density must be retested. The density must also be repetitively tested throughout the foam-making period at a frequency depending on the setting time: for a set time of 20 seconds, check the density at intervals of no more than twenty (20) minutes; for a 60 second set time, check the density at intervals of no more than sixty (60) minutes.

(iii) Ratio of resin to foaming agent. Determine the ratio of resin to foaming agent for each batch of materials on each day on each job by measuring the number of gallons of each liquid used.

(iv) Temperature of liquids. The temperature of the liquids shall be within the acceptable range specified by the manufacturer.

(v) Specific gravity of dilute resin. Check the specific gravity of each batch of dilute resin with a hydrometer to insure that the specific gravity is within the upper and lower limits specified by the manufacturer. Do not use materials whose specific gravity is out of range.

(vi) Water temperature and hardness. When reconstituting powdered U–F foam components ensure that the water temperature and hardness are within the acceptable ranges specified by the manufacturer. Maintain a reconstitution record for each batch of material prepared.

(vii) Ensure that the foam is characterized by uniform cell distribution.

(6) Maintain a record of the results of all field quality control checks and of other pertinent information required by the maufacturer, including, but not limited to:

(i) Date of application,

(ii) Outdoor ambient air temperature,

(iii) Material lot number(s),

(iv) Expiration date(s),

(v) Equipment identification number,

(h) *Pre-Installation Procedures.* (1) Inspect and identify areas where a previous moisture problem has caused paint peeling, warpage, stain, visible fungus growth, rotting, or other structural damage. Do not install insulation in such areas until the resident has been notified and these conditions have been corrected and their source(s) eliminated. If the resident, after being informed of the moisture condition and the effects of installing insulation in such areas, elects to proceed with the installation, the resident must so state in writing on the contract.

(2) Block all openings in sidewalls through which the insulation material may escape. Seal all wall cavities which open into an attic, basement, or crawl space prior to installing insulation.

(3) For buildings located in Zone I of Firgure 1, provide a vapor barrier on the interior surface of all walls to be insulated in bathrooms, and unvented kitchens and laundry areas. Caulk or seal all major cracks on the interior face of exterior walls of these rooms including joints between the floor and wall (except where impractical because of carpeting), between wall and ceiling, at joints around window frames, and around wall penetrations for electrical services (outlets and switches), plumbing stacks, and heating and air-conditioning ducts.

Note 1.—It is recommended that a vapor barrier and caulking, such as described in this section, also be provided on all walls to be insulated in bathrooms and unvented kitchens and laundry areas in buildings in Zone II of Figure 1.

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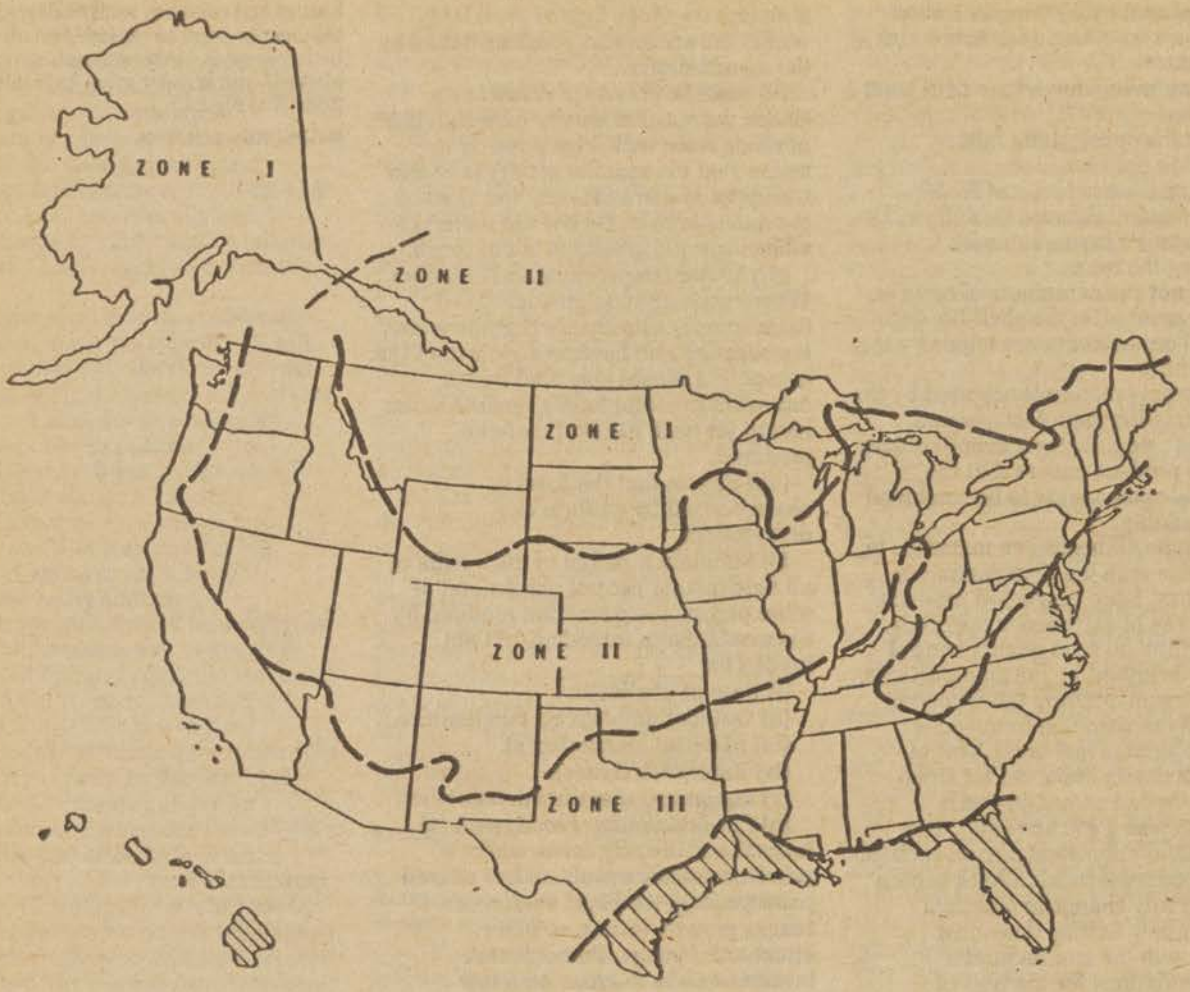

Figure 1. Condensation Zones in the United States

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Note 2.—The above requirements for moisture control are minimum requirements needed to prevent long-term moisture damage. Homes which are characterized by one or more of the following conditions are more likely to experience excessive moisture accumulation which can be corrected by application of a vapor barrier and caulking as described above and/or additional venting of the wall cavity from the exterior or by additional ventilation of the occupied space:

a. Homes with an area of less than 800 sq. ft.

b. Homes with less than 250 sq. ft. per occupant.

c. Homes with tight wall and ceiling construction and weatherstripped windows and doors.

d. Electrically heated homes or homes with a heating system which uses outside combustion air.

A relative humidity indicator may be installed to monitor the humidity level and determine when excessive moisture accumulation is likely to occur.

(4) Examine the material on the indoor side of exterior wall contructions. Ensure that it is gypsum board 12.5 mm (0.5 in) thick or an equivalent fire barrier when tested in accordance with ASTM E 119–76.

Note 3.—Some U–F foam manufacturers do not recommend applying foam directly against certain types of wall coverings. Some wall coverings that should be approached with caution are: knotty pine tongue and groove, wain-scoting, colonial inset board paneling, printed wood paneling, and particle board. Check with the manufacturer prior to installation.

(5) Determine if the structure has dissimilar metals with large surface areas exposed in the same cavity. (Since the foam is wet with mild acidity, rapid electro-chemical corrosion can take place.) An example condition that might lead to electrolytic corrosion following U–F foam insulation installation is an exterior wall cavity enclosing both copper plumbing lines and aluminum electric wiring. Contact the manufacturer to obtain assistance with such application, and follow the manufacturer's recommendations.

(6) Inspect window frames. Identify any windows which contain internal mechanisms such as springs, counterbalance weights, friction strips, etc. in their frames. Follow the manufacturer's specific installation procedures for foaming these areas.

(7) Provide the customer with a statement identifying the effective thermal resistivity of the material to be installed, as determined by the test method in the standard for Urea-Formaldehyde Foamed-in-place Insulation, and a statement containing the safety information contained in § 456.810(D)(11)(ii).

(i) *Installation Procedures.* (1) General.

(i) Do not install insulation unless the pre-installation procedures have been carried out and any defects which were identified have been corrected and their causes eliminated.

(ii) Do not install insulation unless all field quality control and equipment checks required to be performed prior to installation have been completed. Conduct tests as required during the installation.

(iii) Operate all installation equipment in accordance with the equipment manufacturer's instructions.

(iv) Structural damage can be caused by excessive pressure during installation or can result from installing U–F foam insulation in constructions too weak to withstand normal pressures. Assure that installation does not cause the structural failure of the wall construction or its components. Specifically, the following conditions must not result from the installation:

(A) Separation of finish materials from studs

(B) Cracking of materials or opening of joints between boards

(C) Deflection of more than 1/200 of the stud spacing.

(v) Install insulation only in exterior walls between conditioned and unconditioned spaces.

(vi) Open all entry holes with a technique that permits refinishing with little or no change in appearance.

(vii) Do not install insulation in wall cavities which themselves are air ducts for heating, ventilation, and/or cooling systems.

(viii) Do not install insulation when the atmospheric relative humidity, or outdoor ambient temperature, or cavity temperature is not within the acceptable range specified by the manufacturer.

(ix) Install insulation only in cavities which will preclude contact by the insulation with the ground or other sources of water.

(x) U–F foam is a combustible material. Install U–F foam so as to meet the applicable requirements listed below:

(A) If a wall cavity contains recessed lighting fixtures or other heat producing devices, either provide a three inch minimum clearance around the recessed lighting fixtures (including wiring compartments and ballasts) and other heat producing devices not covered in paragraph (B) or do not install U–F foam in the cavity containing such heat producing device(s). Do not cover these devices so as to entrap heat or prevent the free circulation of air, unless they are approved for such purpose.

(B) Provide the minimum clearances around gas fired appliances specified in NFPA–54, the National Fuel Gas Code. Around oil-fired appliances, provide the minimum clearances specified in NFPA–31, Standard for the Installation of Oil Burning Equipment. Around masonry chimneys or masonry enclosing a flue, provide a minimum two-inch clearance from the outside face of the masonry. Around vents, chimney and vent connectors and chimneys other than masonry chimneys, provide the minimum clearances specified in NFPA/211, Standard for Chimneys, Fireplaces, and Vents.

(xi) Remove any foam which is inadvertently sprayed on glass or exterior siding before drying occurs.

(xii) Setting time must be sufficient in duration to permit complete filling of the cavity before setting begins. Setting time cannot be too fast.

(2) *Frame Walls.* Insulate frame construction walls (including masonry veneer construction) by one of the following two procedures:

(i) Method A. Do not foam cavities in excess of 10 ft. in height by this method.

(A) Make an entry hole (fill port) between half and three quarters of the way up the wall. Make the fill port at least ½" larger in diameter than the outside diameter of the hose to allow air relief and maneuvering of the hose.

(B) Probe the cavity for blockages and make additional fill ports as necessary to ensure complete filling of the cavity. For a typical layout of fill ports, see Figure 2.

(C) Insert the applicating hose into the cavity within approximately 2 to 4 inches from the bottom (see Figure 3, Position "A").

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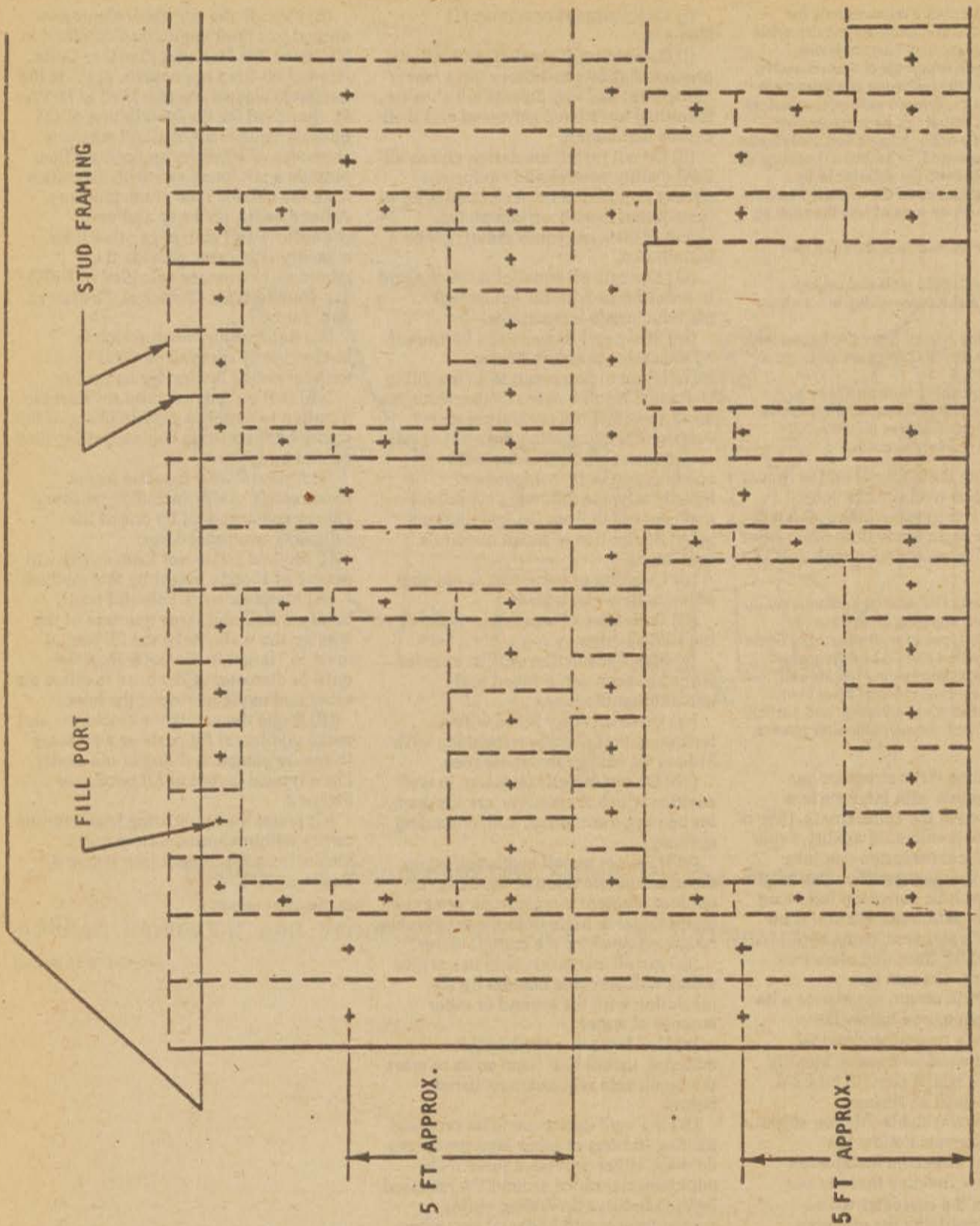
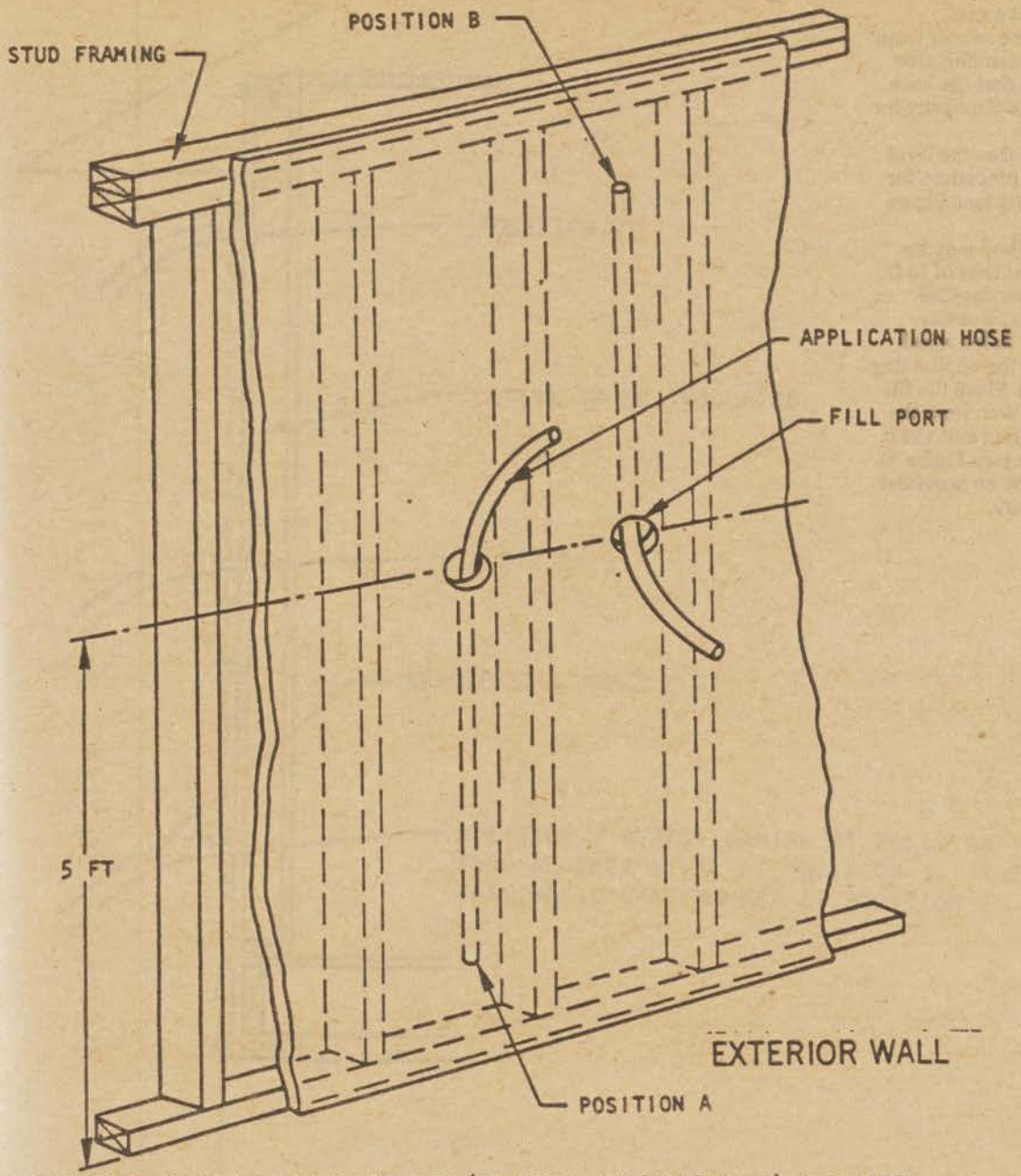


Figure 2. Typical Layout of Fill Ports



START FOAMING AT BOTTOM OF CAVITY (AS SHOWN IN POSITION A) AND KEEP WITHDRAWING HOSE SLOWLY AS CAVITY FILLS UP. WHEN FOAM STARTS FLOWING OUT OF THE FILL PORT, REVERSE THE HOSE AS SHOWN IN POSITION B AND PROCEED AS BEFORE. CHECK CAVITIES FOR OBSTRUCTIONS (I.E., FIRE STOPS, BLOCKAGES, ETC.) AND DRILL ADDITIONAL FILL PORTS IF NECESSARY.

Figure 3. Insulating Closed Cavities
Method A

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(D) Retrieve the hose at a rate approximately equal to the rate of foam dispensation unless the manufacturer specifically recommends that the hose remain at the extremity of the cavity for the total filling time.

(E) When the foam reaches the level of the fill port repeat the procedure for the upper part of the cavity (see Figure 3, Position "B").

(ii) Method B. This method may be used to foam cavities in excess of 10 ft. in height as well as shorter cavities.

(A) For each unobstructed cavity, make at least three entry holes which correspond to the size of the applicating hose (or adaptor, if used). Place the fill ports at approximately 1½ ft. from the bottom, 4 ft. from the bottom and 1½ ft. from the top of the cavity (see Figure 4). An air relief hole may also be provided at the very top of the cavity.

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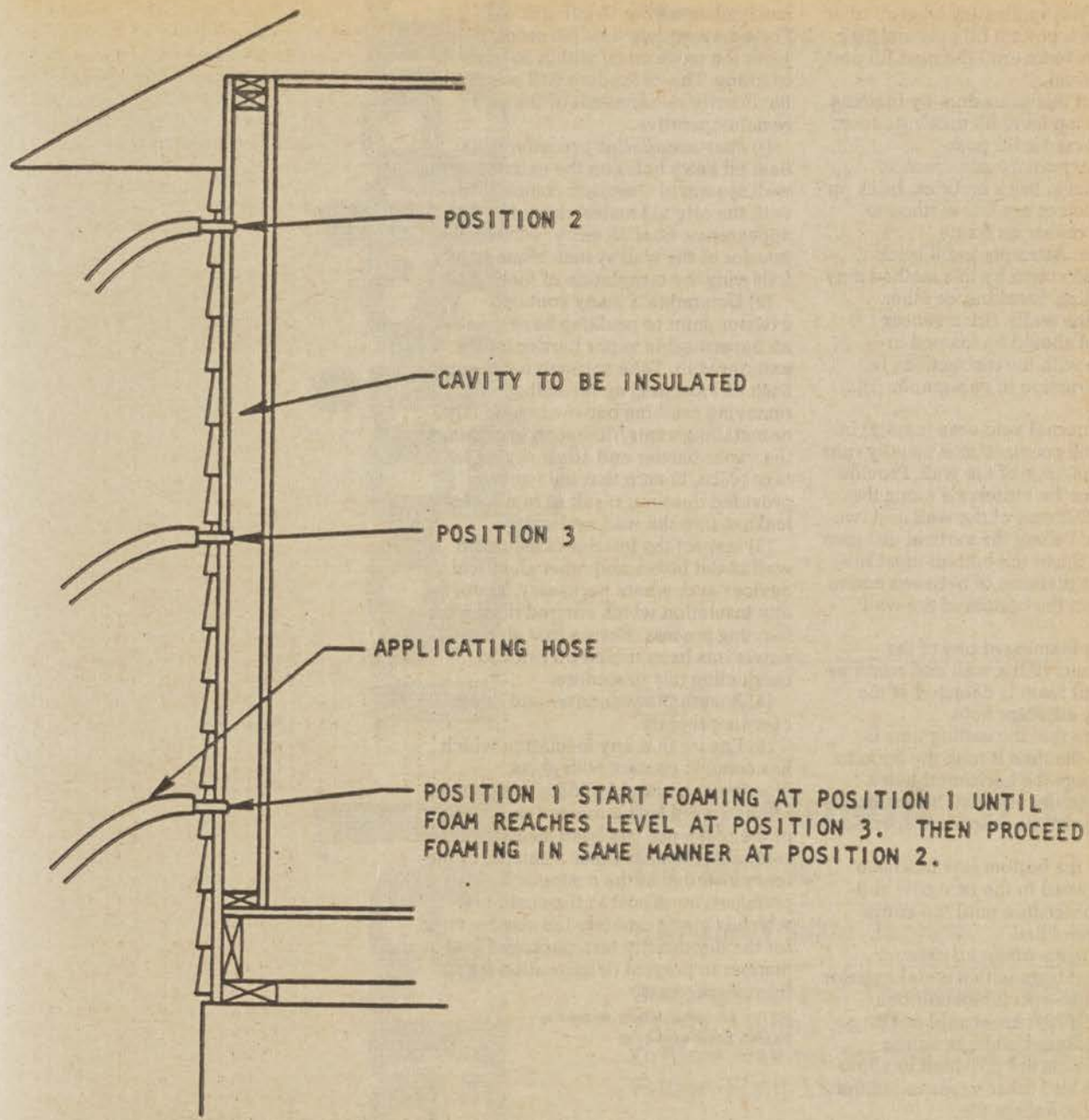

Figure 4. Insulating Closed Cavities
Method B

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(B) Place the applicating hose up to or just inside the bottom fill port and dispense the foam until the next fill port level is reached.

(C) Repeat this procedure by foaming through the top level fill port until foam reaches the center fill port.

(3) *Masonry cavity construction* (concrete block, brick on brick, brick on block). (i) Do not use this method to foam brick veneer on frame construction. Attempts to fill brick veneer construction by this method may cause buckling, breaking, or other damage to the walls. Brick veneer construction should be foamed in accordance with the instructions for frame construction in paragraphs (i)(2)(i) and (ii).

(ii) The internal void area (cavity) in masonry wall constructions usually runs the entire distance of the wall. Provide holes at three foot intervals along the horizontal distance of the wall and two foot intervals along the vertical distance of the wall. Begin the bottom-most row of holes at a distance of between one to two feet from the bottom of the wall cavity.

(iii) Begin foaming at one of the bottom corners of the wall and continue foaming until foam is detected at the horizontally adjacent hole.

(iv) Ensure that the setting time is longer than the time it took the foam to travel between the horizontal holes.

(v) Move to the adjacent horizontal hole and repeat the procedure specified above.

(vi) After the bottom row has been foamed, proceed to the next row and repeat the procedure until the entire wall has been filled.

(4) *Buildings with metal exterior surfaces.* Buildings with a metal exterior surface require special installation techniques. U–F foam should not be installed in these buildings unless adequate means are provided to allow for moisture and other vapor to escape to the outside. Follow the manufacturer's instructions for application to these types of structures.

(5) *Window-Door Frames.* (i) Do not apply U–F foam to the frames until after the walls have been insulated.

(ii) Drill entry holes which correspond to the size of the applicating hose (or adaptor, if used) into the void areas around the frames. Drill holes into the fascia of the frame wherever possible.

(iii) Foam each entry hole until foam appears at the adjacent hole or until foam emerges from cracks in and around the moldings.

(iv) If the window has any moving parts within the space to be insulated, work the mechanism of the closure. For a fast setting time (10 seconds) work the mechanism within 15 minutes of filling. For a slow setting time (60 seconds) work the mechanism within 30 minutes of filling. This procedure will ensure that the interior mechanisms of the unit remain operative.

(j) *Post-installation procedures.* (1) Seal all entry holes on the exterior of the wall system in a manner compatible with the original materials and appearance. Seal all entry holes on the interior of the wall system immediately following the completion of foaming.

(2) Determine if many coats of exterior paint or caulking have created an impermeable vapor barrier on the exterior wall. Take corrective measures, such as loosening up the siding, removing caulking between wood laps, or installing vents/diffusers, to eliminate the vapor barrier and allow drying to take place. Ensure that the venting provided does not result in rain water leakage into the wall system.

(3) Inspect the interior of electrical wall outlet boxes and other electrical devices and, where necessary, remove any insulation which entered during the foaming process. Ensure that electrical power has been turned off prior to conducting this procedure.

(4) Ensure that windows and doors operate properly.

(5) Ensure that any insulation which has come in contact with glass, aluminum, or vinyl building components or has otherwise permeated the interior of the residence has been cleaned off.

(6) Offer the customer a sample of the foam installed at the customer's premises, at no cost to the customer, which is approximately the size required for the dry density test, packaged in a manner to prevent deterioration for at least three years.

[FR Doc. 80-29586 Filed 9-24-80; 8:45 am]

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federal register

Thursday
September 25, 1980

Part V

Department of the Interior

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Listing as Threatened With Critical Habitat for the Coachella Valley Fringe-Toed Lizard

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Listing as Threatened with Critical Habitat for the Coachella Valley Fringe-Toed Lizard

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Coachella Valley fringe-toed Lizard (*Uma inornata*) to be a Threatened species and determines the Critical Habitat of the species. The Lizard occurs only on windblown sand deposits in the Coachella Valley of Riverside County, California. This action is being taken because the species is continuing to decline because of habitat destruction for agricultural and developmental purposes. For these reasons, the State of California has also recently added this species as endangered to the list of State protected species. The rule provided the full protection of the Endangered Species Act of 1973, as amended, to this species.

DATES: The rule becomes effective on October 27, 1980.

ADDRESS: Questions concerning this action may be addressed to Director (OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials relating to the rule are available for public inspection by appointment during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 N. Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240 (703/235-2771).

SUPPLEMENTARY INFORMATION:

Background

On November 3, 1977, the Fish and Wildlife Service published a notice in the **Federal Register** (42 FR 57492) to the effect that a review of the status of ten reptiles was being conducted. The Coachella Valley fringe-toed lizard was included as part of that review. Based on information received from the California Department of Fish and Game, the California State Office of the Bureau of Land Management and eight professional biologists, a proposal was published in the **Federal Register** (43 FR 44806-08) to list the Coachella Valley fringe-toed lizard as Threatened and to designate its Critical Habitat. Before final action could be taken Congress passed the Endangered Species Act Amendments of 1978 (Pub. L. 95-632; 92 Stat. 3751). These amendments substantially modified the procedures the Service must follow when designating Criticial Habitat. In order to comply with the new requirements the Critical Habitat portion of the proposed rule was withdrawn March 6, 1979 (44 FR 12382-84).

On May 28, 1980, the Service reproposed a revised Critical Habitat based on information received since the original proposal (see the **Federal Register**, 45 FR 36038-36041, for details of the revised boundaries of Critical Habitat). On June 27, 1980, this species was listed as endangered by the California Department of Fish and Game because of continuing habitat destruction in the Coachella Valley.

In conjunction with the reproposal for Critical Habitat, the Service held a public meeting in Palm Springs, California, on June 20, 1980, to explain the proposal, answer public questions, and to solicit additional information on the biology of the lizard and the economic effects of a Critical Habitat designation on Federally authorized and funded projects in the area. In addition, a public hearing was held on July 7, 1980, at Palm Springs, California, to take testimony on the designation of Critical Habitat. That testimony is part of the public record and has been carefully considered in the drafting of this final rule.

All public comment periods were closed on July 28, 1980.

The following section provides a brief introduction to the biology of the Coachella Valley fringe-toed lizard. More information may be obtained by consulting the references cited at the end of this section.

The Coachella Valley fringe-toed lizard is known only from the Coachella Valley, Riverside County, California. Like other members of the genus *Uma*, it is adapted for living in fine wind-blown sand, and it is restricted to areas where this habitat occurs in the floor of the Coachella Valley.

England and Nelson (1976) estimated the historical (pre-settlement) range of the Coachella Valley fringe-toed lizard to be 324 square miles but did not estimate the amount of suitable habitat within this range. By 1975, the historical range was reduced to 236 square miles with 120 square miles of suitable habitat remaining.

A comparison of historical locality records for the Coachella Valley fringe-toed lizard with a 1928 Coachella Valley soil survey indicates that the amount of historical habitat available was approximately 200 square miles (England, pers. comm. to John Brode). Aerial photographs taken in 1955 and 1979 by the U.S. Army Corps of Engineers and the ground surveys conducted by England and Nelson (1976) in 1975 were used to determine habitat loss. From this information, England (pers. comm.) calculated that only 99 square miles of blow-sand habitat are now available to this species, a reduction of 51 percent of the original pre-settlement habitat.

Little information is available concerning population densities of the Coachella Valley fringe-toed lizard. However, Turner *et al.* (1979) estimated the density of the Coachella Valley fringe-toed lizard in a study plot located within the PCH (section 36) to be about four lizards per acre. England and Nelson (1976) reported that track densities ranged from 0 to 52 on 43 1 x 100 meter study plots. The track densities indicated that the numbers of fringe-toed lizards varied widely among different sites, and that damage to the habitat, especially plant damage, could reduce the track densities. Dr. Wilbur W. Mayhew (pers. comm.) indicated that the densities of Coachella Valley fringe-toed lizards appeared greater during 1950-60 than in 1978-79. These reductions in densities were most apparent in areas of human activity.

In addition, field work by Dr. F. B. Turner, concluded on June 20, 1980, had demonstrated the importance of blow sand to the lizard and the effects of wind barriers on their distribution (letter dated July 14, 1980, to Coachella Valley Fringe-toed Lizard Advisory Committee). Turner found that the density of lizards on the downwind side of windbreaks ranged from 0 to 0.4 per hectare, whereas on the upwind side the densities ranged from 4.4 to 45.0 per hectare. These are especially important figures since the effect of such a windshadow can extend for miles.

Summary of Comments and Recommendations

Section 4(b)(1)(C) of the Act requires that a summary of all comments and recommendations received be published in the **Federal Register** prior to adding any species to the list of Endangered and Threatened Wildlife and Plants. In the September 28, 1978, **Federal Register** (43 FR 44806-44808) the Service proposed to list the Coachella Valley fringe-toed lizard (*Uma inornata*) as Threatened with Critical Habitat. The Critical Habitat portion of this proposal was withdrawn on March 6, 1979 (44 FR 12382-12384) and reproposed on May 28, 1980 (45 FR 36038-36041).

Comments received thru July 28, 1980, on the proposed listing of this lizard are summarized below. A total of 187 comments were received in response to the original proposal and reproposal of Critical Habitat. Twenty comments were formally presented for the record at the public hearing in Palm Springs; these comments are summarized below with the other comments. In addition, four petitions were submitted which supported the listing of the Coachella Valley fringe-toed lizard; these petitions contained a total of 105 signatures.

For the sake of convenience, the Coachella Valley fringe-toed lizard will be abbreviated to CVFTL in the following summary.

Two comments were received from the California Department of Fish and Game. The first, in response to the request by the Service for information concerning the Critical Habitat of the CVFTL contained in the 1978 proposal, noted that habitat loss had been proceeding faster than recommended protective measures. It said that the Department was reevaluating its former position (in response to the notice of review) of opposing listing. The letter further noted that, in the opinion of the Department, development had and continued to have an impact on where CVFTL occur and that flood control projects and the planting of windbreaks might also be affected. In a later letter (July 1, 1980), the Department stated that the CVFTL qualifies for listing as endangered, not threatened, based on additional surveys conducted by a number of biologists. The letter noted that the only way to protect this species is by the protection of its habitat. Finally, the Department provided a general review of the threats faced by the lizard and noted that on June 27, 1980, the CVFTL was protected as endangered under provisions of State law. At the public hearing in Palm Springs, the Department reviewed the biological status of the lizard as well as its listing history within the Department of Fish and Game, and its desire to see an ecological reserve set up. The Department reaffirmed its support of both the listing of the CVFTL on the Federal list and the designation of its Critical Habitat.

As England (see below) notes, there is still between 50–99 square miles of available habitat for the CVFTL. The development of the land is accelerating and needs to be carefully monitored. At this time, though, the Service does not believe the CVFTL is in danger of extinction throughout all or a significant portion of its range (i.e. "endangered"). The Service will cooperate closely with State officials in the future. Should a change in classification prove warranted as a result of additional studies and monitoring of the habitat, the change will be proposed accordingly.

The Area Director for the Bureau of Indian Affairs did not comment on the status of the CVFTL but recommended deletion of lands within the Agua Caliente Indian Reservation (letter of 11/22/78). These lands are not included in this final rule because the Service believes that more work must be done before their importance to the lizard can be verified. Simply because the Critical Habitat occurs on an Indian Reservation is not justifiable means for excluding it; should future research establish that these areas are of a critical necessity to the survival of the CVFTL, they may be proposed at a later time.

The Administrator for the Soil Conservation Service reported (6/18/79) that SCS did not have any projects which would potentially impact the species. This included projects implemented under Section 216 of Pub. L. 516 (Flood Control Act of 1950). SCS noted that it has windbreak projects in the Coachella Valley but that the impacts must be evaluated on an individual basis. The Service thanks SCS for its comments and notes that the planting of windbreaks may have an adverse impact by preventing blowing sand (see Turner's preliminary work cited above).

The Division Administrator for the California Division of the U.S. Department of Transportation stated that there were no upcoming projects on the Federal-aid system within proposed Critical Habitat but recommended that the boundary of Critical Habitat be drawn to exclude existing transportation corridors. The Service notes that no major transportation corridors occur in this Critical Habitat (see below).

The State office of the Bureau of Land Management in a letter dated 2/15/79 reaffirmed its support of the rule to list the CVFTL as threatened and reviewed briefly the evidence to support the listing. It concluded that "this lizard is in jeopardy unless protective measures are taken soon." In a letter dated 6/23/80 on the reproposal of Critical Habitat, the Director of BLM noted the original letter of support and added that new information would be forwarded, if available; none was received.

The Director of the Office of Environmental Quality of the Department of Housing and Urban Development noted HUD's responsibilities under Section 7 of the Act. He stated that they had asked their Los Angeles Area Office to provide information on impacts and that such information would be forwarded to the Service; none was received.

The Chief of the Engineering Division of the Los Angeles District, U.S. Army Corps of Engineers, forwarded a preliminary literature search on the CVFTL as well as a review of the scope of work for field reconnaissance in connection with the Whitewater River Basin (also see comments below). The Director of the Veterans Administration Office of Environmental Affairs said that since no VA property was located in the Critical Habitat, it is highly improbable that VA activities would have any impact on the CVFTL.

The Southern California Association of Governments replied that the proposal of Critical Habitat had been circulated for comment in accordance with Part II of OMB Circular A–95 and that the proposal had generated no adverse comments from agencies within the regions. The City Council of Indio supported the proposal but stated that sufficient funds must be included to implement recovery and guarantee protection of Critical Habitat.

A total of 51 comments supported placing the CVFTL on the U.S. List of Endangered and Threatened Wildlife and Plants, with the proposed area of Critical Habitat, but made no additional comments of a biological nature. In addition, 49 comments were received which supported the proposal and cited development of the lizard's habitat as the chief cause of concern in addition to the other factors mentioned in the original proposal and reproposal of Critical Habitat. Many of these comments noted that the State of California had recently protected the lizard as endangered.

One commenter supported the proposal and recommended that the Government buy the land for the lizard's protection. The Service notes that money is available for habitat acquisition from the Land and Water Conservation Fund if it should be determined that this would be in the best interests of the species' preservation. Such a program could be developed in a Recovery Plan prepared in cooperation with State and local interests.

Three individual comments recommended the establishment of the "sanctuary" (i.e. Critical Habitat), apparently confusing Critical Habitat with the establishment of a wildlife preserve for the species. The Service notes that there is widespread and erroneous belief that a Critical Habitat designation is somewhat akin to the establishment of a wildlife refuge and automatically closes an area to most human uses. This is not the case. A

designation of Critical Habitat does not involve the Federal takeover of land, nor does it allow the Federal government to dictate local land use. However, Critical Habitat does apply to all Federal agencies and is an official notification to the agencies that their responsibilities under Section 7 of the Endangered Species Act are applicable in a certain area.

Three commenters favored listing and reviewed in various amounts of detail the biological information outlined in the various **Federal Register** documents. One comment favored listing and reviewed the plan of local developers to "save" the lizard. However, this person stated that local developers had been aware of the problem for at least five years and appeals for their assistance in setting up a reserve had been repeatedly made. Yet this individual states that no response to these appeals was received.

One individual supported the proposal but recommended a larger area be incorporated as Critical Habitat. The Service points out that Critical Habitats are those areas of land, water, and air space felt to be critical to the species' long-term survival or recovery. An attempt is made to delimit Critical Habitat areas as carefully as possible. If new information demonstrates additional Critical Habitat areas for a species, they must be the subject of a new **Federal Register** proposal.

At present there are sufficient data available to designate as Critical Habitat only a portion of the remaining blow-sand habitat in the Coachella Valley. The basis for the proposed Critical Habitat (PCH) recommendation was the study of England and Nelson (1976) and, more recently, Turner *et al.* (1978) and Weaver (1978) from which the following information is drawn.

The area of PCH located south of Ramon Road and north of Interstate Highway 10 is the only area that has been studied with sufficient intensity to provide adequate information on the density of fringe-toed lizards, approximately four per acre, and the physical and biological components of the habitat essential for the survival and recovery of the species. The portion of the recommended Critical Habitat generally north/northwest of Ramon Road is an area that has been identified as the source of 50 percent of the wind-blown sand which enters the area from Thousand Palms Canyon, in the northeast portion of the PCH, to the north of Ramon Road. A source of wind-blown sand is essential to maintain the high mesquite dunes and creosote bush sand hummocks south of Ramon Road that constitute the best known habitat of the Coachella Valley fringe-toed lizard.

One commenter gave his feelings concerning the "Friends of the fringe-toed lizard," a group of developers and others united in an effort to prevent this species' listing. He said that these individuals are not friends of the lizard and included newspaper clippings showing pro-development statements by the group's organizers.

One commenter, in supporting the proposal, stated that in his opinion the proposed Whitewater River Basin project would not have an effect on the CVFTL, that the proposed Critical Habitat is large enough to provide depth, and that the "preserve" must be fenced to exclude ORV's which, in his opinion, are more of a threat to the lizard than development. This commenter also suggested a corridor should be established as a cushion to the "preserve" (which he believed should be greater than 10 mi^2 but less than 20 mi^2) and that the "preserve" should be in areas least attractive to developers yet best for the lizard. The Service notes that the designated Critical Habitat is slightly less than 19 mi^2 but that a preserve is not the same as Critical Habitat (see previous comments). Also, the Service believes this area best fulfills the requirements of Critical Habitat as defined by the Act (also see previous comment). The Service agrees that ORV's could pose a major threat to the continued existence of this species.

One commenter reviewed the taxonomic status of this species and stated that there was no doubt in his mind about *U. inornate* not being conspecific with other *Uma* since it differs in nuptial colors, morphological features and behavioral patterns. This person also states:

> I am in accord with the proposal for the 11,920 acre critical habitat as proposed. In fact, because development of the valley proceeds a small patch at a a time, this is essentially the only piece of habitat large enough to protect the species. Other areas are smaller, and already fragmented to various degrees. The need for a critical habitat of the size proposed is crucial. The reason is that the sandy areas of the Coachella Valley are largely covered with small accretion dunes whose water tables on which incubation relies are often transitory. This results in a spotty pattern of successful reproduction on some areas of relatively deep sand interspersed in among the smaller dunes. Thus only a large and rather diverse area can be expected to protect the species. I consider the situation critical, and if the form is to be protected successfully only the proposed action can succeed.

One commenter concurred with the summary of factors affecting the species based on his field experience in the Coachella Valley beginning in 1971. He noted that there have been many significant changes in the populations he has observed because of ORV use, collecting and floodwater wash. However, he stated that he believed the three *Uma* in the Southwest are conspecific based on his electrophoretic work. The Service believes that while the species are related, there are other compelling reasons (see above) for recognizing *U. inornata* as distinct. The populations of *Uma* are allopatric and therefore gene flow would be extremely difficult to demonstrate. Assigning taxonomic allocations solely on biochemical means (using a rather small number of loci), ignores other lines of evidence and should not be used alone to generate classification. To quote from Chambers (1980): "The standard error of each calculated I is another factor that negatively affects the comparative value of genetic identities. Although the average I values at different levels of taxonomic divergence in the *D. willistoni* group are useful standards for evaluating taxonomic divergence between populations of other organisms, taxonomic decisions based solely on such comparisons will often be erroneous." Ryman et al. (1979) also discuss the problem of reproductive isolation with little genetic divergence.

One commenter supported the listing because of development threats but noted that the Critical Habitat was based on lizard distribution and excluded sand sources which must be included to preserve the habitat. This person also noted the stabilizing effects of Russian thistle and the behavioral differences of the CVFTL population northeast of Indio Hills. These lizards use mammal burrows for escape instead of sand swimming. The Service notes that this letter was written prior to the reproposed Critical Habitat which now includes the blow sand sources. The same person wrote another letter (in 1980) again supporting listing but recommending a comprehensive program of research be instituted on habitat requirements, carrying capacity, and population dynamics. He believed listing per se may not satisfactorily protect the CVFTL because of continuing development (increased building rates, the Corps of Engineers flood control projects, and the Southern California Edison 500 KV transmission line). He believed that an annual status review should be conducted to determine if the lizard is endangered, not threatened. The Service acknowledges the need for continued research on this species; if data are presented which show that this species is continuing to decline and/or lose

habitat, a change in its status will be proposed accordingly.

Another commenter noted that additional Critical Habitat may be warranted depending on future research and he reviewed his past work on the CVFTL with regard to amount of habitat lost in recent years as well as development projections. He concluded:

> It is important to note that the remaining 99 square miles include marginal and degraded habitats (eg., by ORV use or windbreak construction) as well as prime habitat. It is my opinion that a detailed determination of habitat 'quality' would reveal that only 50–70 miles of optimal habitat remain.

One commenter extensively discussed the uniqueness of the population on the northeast edge of the Indio Hills. In addition, he discussed how Critical Habitat is much misunderstood by the public and strongly recommended inclusion of the sand source. He recommended consolidation of Critical Habitat to as few areas as possible to reduce opposition. One commenter reviewed the report of A. S. England with regard to habitat loss and reviewed past attempts to establish a reserve for the CVFTL. He discussed the proposed improvement district which he felt would lead to more habitat destruction. The taxonomic question was reviewed and this individual concluded that it is a valid species.

One comment expressed general concern as a property owner that if the land were taken for a reserve, then he should get full market value. He said he was not sure what the designation would mean although he did not necessarily oppose it. The Service points out that a designation of Critical Habitat applies only to Federally authorized or funded projects; it does not restrict the activities of private landowners on their lands. If land acquisition became desirable on this individual's property, a price would have to be agreed to by the owner at a fair marketable value set by mutual agreement. Land acquisition may be desirable as a way to preserve this species. However, it should best be done only under mutually favorable terms.

There were 26 comments in general opposition to the proposal and/or designation of Critical Habitat for the CVFTL; many of these comments stated that people are more important than lizards, that there should be more growth and development, that the government should concentrate on flood control, or that there should be no "sanctuary." The Service points out that the only place on earth the CVFTL occurs is in the Coachella Valley and it believes that ways must be found to preserve the native Coachella Valley ecosystem.

There were 8 comments which opposed listing and recommended that the Service listen to the "Friends of the fringe-toed lizard" and not make "a hasty bureaucratic decision." The Service points out that the status of this species has been under review since 1977 and that all proposals have been based on the best biological and commercial data available as required for listing under provisions of the Act. The decision to list this species is not hasty and is neither arbitrary nor "bureaucratic" since Congress clearly meant for species qualifying as biologically threatened to be listed under provisions of the Act.

Prior to the reproposal for Critical Habitat in 1980, there were 8 telegrams and four letters requesting that a public hearing be held to receive local input on what were perceived to be adverse economic impacts. As noted in the "Background" section, a public meeting was held June 20, 1980, and a public hearing on July 7, 1980, both in Palm Springs, California.

There were five comments which stated that a "sanctuary" should be found in a place other than the area designated as Critical Habitat. Concern was expressed about possible effects of such a designation on flood control projects and there were protests about "the great deal of land set aside." The Service has pointed out that Critical Habitat is not a sanctuary (see also Schreiner, 1976). The Service also noted that the Los Angeles District of the U.S. Army Corps of Engineers is presently investigating potential flood prevention measures in the Whitewater River Basin as authorized by Congress in the Flood Control Act of 1937 and by resolution adopted on May 10, 1977 by the Committee on Public Works and Transportation of the U.S. House of Representatives. This study will culminate in the preparation of a survey report in mid-1981.

Flood control alternatives considered have included flood plan management (nonstructural); construction of a channel from Windy Point to the Salton Sea (the tentatively selected EQ plan); construction of a flood control dam at Windy Point and "snow fences" to retard blowsand; and construction of two flood control dams and "snow fences."

Because of the nature of the source of blowsand in the Coachella Valley, the area proposed for designation as Critical Habitat will not be affected by the alternatives under consideration.

Two commenters stated that CVFTL also occurs in the Algodones dunes and Kelso dunes and therefore the land does not qualify as Critical Habitat in the Coachella Valley. The Service points out that this is not correct. The commenters are confusing *Uma inornata* with the fringe-toed lizards *Uma notata* and *Uma scoparia*.

The Rancho Mirage and Coachella Chambers of Commerce submitted identical comments and stated:

1. The construction of the sewer line to serve 1000 Palms will be cancelled.
2. The construction of the 500 KV transmission line now in planning will have to be cancelled or re-routed.
3. Expansion of 1000 Palms to the east will be blocked by a cut-off of development funds (VA–FHA, etc.).
4. Planned agricultural expansion facilitated by the projected northward construction of a branch of the Coachella Canal will be barred.
5. Flood control options open to the Army Corps of Engineers to protect their property will be restricted.

The Service replies that the sewer line is not being constructed with Federal funds. Therefore, no impact or consultation will result from the designation of Critical Habitat. Only a small portion of the Critical Habitat would be affected by the 500 KV transmission line. It is not anticipated that the existence of the transmission line would be detrimental to the species. Neither VA nor FHA guarantees loans for large parcels of land. However, VA will consider loan guarantees on mobile homes and mobile home lots as well as regular homes. Generally, land sales are so brisk in this area that sellers demand and receive cash payment in full. Virtually no land is sold with VA/FHA-guaranteed loans. Most developments sell out within the first week of sales. Even if a seller were willing to sell via a FHA/VA loan, the buyer's cash deposit does not hold the property unlike real estate transactions in other areas. By the time the buyer qualifies for the VA/FHA loan, the seller quite possibly will have sold the property to a buyer with cash. Hence, the economic impact of determining Critical Habitat has a negligible impact on VA/FHA loans.

The Service is not aware of any planned construction of a northward branch of the Coachella canal. And again, the Service points out that no flood control options are automatically closed or halted. Should a project be termed to have an impact on the CVFTL after it is listed, the Service will work in close cooperation with any agency to minimize impacts of the rules on activities in the Coachella Valley area. No automatic limitations are imposed by a designation of Critical Habitat. It does, however, assist Federal agencies in

insuring that their actions are not likely to jeopardize the continued existence of the species (Schreiner, 1976) or appreciably diminish the value of that habitat for the species, 50 CFR 402.02.

There were 7 comments which stated a belief that the preliminary economic analysis by the Service was incomplete and does not address secondary impacts of residential, commercial and industrial development.

A preliminary economic analysis considers all relevant information which the Service is able to gather from response to the letters sent out requesting such data and from field investigation. At the public meeting it was hoped that any data inadvertently overlooked would be brought forward. In the case of the fringe-toed lizard no substantial new data suggested that an area of economic impact was overlooked. In almost all cases the economic impact is limited to the loss of federal funds, not to the issuance of federal permits which would limit prohibition of development. See discussion below.

Two comments stated that while there is sufficient information to list the CVFTL biologically, there is not in "regulatory" terms. The Service points out that species must be listed on the basis of the best available biological or commercial data. It is unclear what is meant by saying there is not enough regulatory data on which to list the lizard.

While opposing the listing, one comment reviewed the ways in which the Riverside Planning Department is involved in protection of the CVFTL, that is, by either accepting or rejecting a project. It was implied that there would be no alternatives. The Service points out that rarely would an "all or none" situation exist and, as stated previously, it will cooperate with all parties to minimize impacts. One comment stated that an ecological reserve managed by a government agency has a great deal of merit.

Three comments reviewed flooding problems in the Coachella Valley and proposed measures to stop it. They opposed Critical Habitat since they felt it would adversely affect these projects. Also, they stated that blow sand must be controlled. See the Service's previous comments.

Six comments reviewed in very general terms a land exchange idea for a preserve with the Bureau of Land Management and said that the government was pressing an arbitrary deadline with regard to the listing. The Service points out that Congress set a two year deadline from the time of proposal till listing or else the species must be withdrawn. This deadline is September 28, 1980 for the CVFTL. Since all the biological data, including new data received since the original proposal, point to the precarious status of the species, the Service has decided to proceed with the listing at this time. The Service welcomes the local initiative to acquire land for a preserve for the CVFTL, but points out this is only one step in the recovery of this species. One comment expressed a general desire to keep the Federal bureaucracy out of the Coachella Valley.

Two comments stated that a designation of Critical Habitat is a "red herring" since Federal agencies may not be involved in anything that endangers the species. One comment stated that the law per se won't prohibit development and that the only way is by the establishment of a preserve. It is acknowledged that because the primary threat to the lizard is urbanization and agriculture, and that because virtually all of its potential habitat is in private ownership and developable, the listing per se of the CVFTL would in no way assure adequate protection of the habitat.

The Endangered Species Act does not prohibit development which uses private, local or State funding, and does not require consultation for the use of such funds unless a Federal permit would normally be required. The best way to insure the survival of the lizard is to insure the protection of its habitat and necessary blow sand sources. Two comments supported a preserve should one be developed, although one of these still opposed listing the species as threatened.

Two comments opposed the listing stating that no population study or count had been made. The Service notes that an exact population count is not a prerequisite for listing. The loss of habitat and the continuing pressure to develop the species' remaining habitat (as outlined in the "Background" section and references contained in the literature cited section) adequately justify the listing of this species as Threatened. Two comments stated that there is no discussion of how much territory is needed to preserve the lizard and that the goal of the Act is to preserve the species, not protect the habitat in toto. Therefore, the species should not be listed. The Service points out that only roughly 19 square miles of the best habitat have been designated as Critical Habitat out of a total of perhaps 99 square miles of available habitat. Since no preserve is involved, virtually all the land inhabited by this species is still not protected. The purpose of the Act is stated in its preamble: "The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section."

The Service also points out that since the Coachella Valley is being developed at a rapid rate, it is conceivable that in subsequent years the Critical Habitat may contain the only sizable block of contiguous land which is suitable as CVFTL habitat. Reserves and other natural habitats are frequently regarded as resembling islands in that they will eventually become small isolated fragments of formerly much larger continuous natural habitat (Wilcox 1980). Island biogeography theory indicates that the smaller the area, the higher will be the extinction rate (Diamond 1975). Additionally, in small populations gene frequencies will change from one generation to the next, eventually leading to an increase in homozygosity which, if unchecked, can result in fixation of loci with a resultant loss of genetic variability (Franklin 1980). What this means is that with a reduction in genetic heterozygosity, there will be a concomitant decline in survival of offspring and a decrease in parental fecundity (Senner 1980). In short, it would be biolotically unsound at this time to make a determination as to the minimum amount of habitat necessary to ensure this species' survival.

One comment stated that since Proposition 13 cut off funds, the local governments will want Federal funds to control water and that a designation of Critical Habitat will prevent this. The Service points out that this is not necessarily true (see previous discussion). One commenter provided a general comment about how Critical Habitat bisects "a piece of property currently under study for a specific plan". This person did not provide any elaboration.

One comment stated that the CVFTL is neither Threatened nor Endangered and does not qualify for listing. The Service replies that the evidence provided by A.S. England, other researchers, and the California Department of Fish and Game, clearly refutes this statement (see references and discussion in "Background" section). One comment stated that an E.I.S. should be prepared. The Service

does not believe that an E.I.S. is called for in this case.

One comment stated that there has been no study of the adaptability of the CVFTL and that the Act is being used to freeze evolution. The Service replies that a lack of understanding of evolutionary processes is shown by this statement. Evolution is the slow gradual change of gene frequencies in response to a complex set of environmental, biological, and physiological selection pressures. The CVFTL is the result of these processes; evolution in this case has produced a lizard uniquely adapted to aeolian conditions. The species will not suddenly alter its morphological and behavioral adaptations when its habitat is destroyed. By preserving this lizard, evolution will be allowed to continue instead of freezing (or ending) it by the process of extinction. This person also presented a position paper outlining the goals of the "Friends of the fringe-toed lizard."

The Army Corps of Engineers, at the public hearing, reviewed possible flood and blow sand control measures and stated that alternatives under consideration will not affect the CVFTL nor is the designation of Critical Habitat expected to require consultation under Section 7 of the Act. However, they believe that the main project will be impacted by the listing since it would reduce blow sand. They also believe that the preliminary economic analysis is inadequate; they suggested that the economic analysis address land exchange. Finally, they said "the Corps of Engineers is not adverse to the protection and recovery of endangered species" but "is concerned that all impacts of such actions be accurately identified . . ." The Service disagrees with the Corps' statement concerning the adequacy of the economic analysis (see discussion above). The Service also disagrees that land exchange should be discussed in an economic analysis at this time. Service lands are not involved and the exchange being offered BLM does not include even 50 percent of the designated Critical Habitat (and excludes the main blow sand sources). No monetary assessment of these lands is as yet available. Because of deadlines for listing, the Service does not believe that it is prudent or biologically justified to delay the listing until they are assessed. As stated previously, the Service will fully cooperate to mitigate listing impacts once these have been adequatley identified. More detailed information is needed before this can be done.

Concern was expressed by some local governments that the designation of Critical Habitat will limit ability to maintain, rehabilitate and/or upgrade general plan roads when the need for such action arises. Also, they were concerned that the designation may make these roads forever ineligible for Federal funding through the F.A.S., S.O.S., Disaster Aid, and other FHWA programs. This could seriously disrupt the traffic circulation system in the Thousand Palms/Indio Hills area.

The Service replies that the designation of Critical Habitat is not expected to disrupt Riverside County's general plan for the local area. Expansion of that system with Federal funds may require consultation. The designation does not make these roads ineligible for F.A.S, S.O.S., Disaster Aid and other FHWA programs.

Concern was expressed by several individuals that oil or gas production might be affected. The Service notes that there is no oil or gas production within the Critical Habitat. There is no indication of any current exploratory or developmental drilling within its boundaries or elsewhere in the Coachella Valley.

Concern was expressed by a few commenters that natural gas pipelines crossing the Critical Habitat might be affected.

The proposed rule notes that a natural gas pipeline crosses the northern part of the Critical Habitat. Examination of available maps indicates that Southern California Gas Company operates two 30-inch diameter pipelines across the area. These are intrastate pipelines which are not within the jurisdiction of FERC. The continued operation of these existing pipelines should not be affected by the Critical Habitat designation.

There are no currently proposed interstate pipelines that would be routed across the proposed Critical Habitat. Since the precise routes of any future natural gas pipelines cannot be predicted, it is impossible to completely rule out possible conflicts between the Critical Habitat and future projects before the Commission. However, the activities associated with pipeline construction and operation could probably be carried out so as not to significantly affect the Critical Habitat. Therefore, it is doubtful that natural gas pipelines would have to be precluded from the Critical Habitat.

Finally, concern was expressed that geothermal and solar development would be inhibited by the declaration of Critical Habitat.

The Service replies that while the possibility exists for solar and geothermal development in the Critical Habitat, the probability of this occurring is small considering that adjacent areas not selected for Critical Habitat designation possess reasonably identical solar and geothermal potential. The Federal Energy Regulatory Commission pointed out its responsibilities under PURPA to encourage small power production and cogeneration facilities and to carefully evaluate all applications made for such facilities, regardless of their proposed location. The Fish and Wildlife Service was assured that during such evaluations the Commission will comply with appropriate consultation requirements of the Endangered Species Act should the proposed facilities conflict with Endangered species or designated Critical Habitats.

Development of solar facilities would not be expected to be compatible with the habitat requirement of most animal or plant species, regardless of mitigative measures taken. Geothermal development, although requiring less area than solar per megawatt of capacity, would probably cause adverse effects on habitat within a reasonably large area around the geothermal site, however these effects would be amenable to mitigation. The Federal Energy Regulatory rules are not expected to be a major incentive for developing solar or geothermal facilities in the Pacific region of the U.S. These two energy resources *are* abundant in the area in or around the habitat of the CVFTL.

After a thorough review and consideration of all the information available, the Director has determined that (1) the Coachella Valley fringe-toed lizard is likely to become an Endangered species throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act, as specified in the reproposal of May 28, 1980 (45 FR 36038–36041), and reprinted in this listing document (see below) and (2) listing this species as Threatened with the specific Critical Habitat will, with appropriate measures undertaken by the State of California, provide it with necessary protections to ensure its survival.

The summary of factors affecting the species, as required by Section 4(a) of the Act and published in the Federal Register of May 28, 1980 (45 FR 36038–36041) are reprinted below. These factors are as follows:

1. *The present or threatened destruction, modification or curtailment of its habitat or range.*—The historical range of the Coachella Valley fringe-toed lizard was approximately 324 square miles, which probably included about 200 miles square of suitable habitat. The results of a study funded by the California Department of Fish and

Game indicated that by 1975 the historical range of this species had been reduced by 27 percent to 236 square miles. Further, suitable habitat, including marginal areas, comprised only 120 square miles or a reduction of 40 percent. Aerial photographs taken by the U.S. Army Corps of Engineers in 1979, and ground survey conducted in 1975, indicate further loss of suitable habitat. According to these surveys, A. S. England estimated that some 99 square miles of suitable habitat still remained as of 1979. These losses have occurred as a result of rapid urban and agricultural growth in the Valley since 1945, and this trend is expected to continue at an even greater pace in the future.

In 1940, the human population in the Coachella Valley was 12,000. By 1970, it had risen to over 100,000, and has been projected to reach 139,500 to 164,000 by 1990. Population projections made for the early 1970's already have proven to be too low. These predictions were only for permanent populations, and in 1971, seasonal residents represented an additional 40 percent of the total population. At the present time, none of the lizard's habitat has been permanently preserved. An analysis of city and county general plans and county zoning has shown that all remaining habitat could eventually be developed.

Much of the habitat in the southern and eastern part of the Valley is being invaded by dense stands of Russian thistle (*Salsola iberica*), a noxious weed introduced from Europe. This is a recent phenomenon and may be having a detrimental impact on the blow-sand habitat of the fringe-toed lizard by causing stabilization, and thus allowing other plants to invade. Tamarisk (*Tamarix aphylla*) windbreaks have been planted throughout the Valley to protect agricultural and urban developments. A row of 40 foot trees can create a windshadow up to 1,200 feet wide on the leeward side of the windbreak, causing changes in soil movement patterns. The potential effects of these plantings on fringe-toed lizard populations are not known.

There is heavy off-road vehicle use in parts of the Valley. Studies in other areas show that this activity can have significant negative effects on densities and biomass of vertebrate populations.

2. *Utilization for commercial, sporting, scientific or educational purpose.*—Although existing State regulations prohibit collecting fringe-toed lizards without a special permit, collecting for the pet trade may be continuing. This is due primarily to a sharp increase in prices paid for reptiles. During the spring of 1978, several violations involving the Coachella Valley fringe-toed lizard were issued for over-collecting without a license. The extent of this problem is not known.

3. *Disease or predation.* Not applicable.

4. *The inadequacy of existing regulatory mechanisms.*—To the present, nothing has been done to prevent the continued loss of Coachella Valley fringe-toed lizard habitat through conversion to urban and agricultural land uses. Although a county ordinance restricts the use of off-road vehicles on private lands without possession of written permission from the landowner, heavy use continues in certain areas and habitat conditions have deteriorated.

5. *Other natural or man-made factors affecting its continued existence.* Not applicable.

Critical Habitat

The Act defines "Critical Habitat" as (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of Section 4 of this Act, on which are found those physical or biological features:

(I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by the species at the time it is listed in accordance with the provisions of Section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

At present there are sufficient data available to propose as Critical Habitat only a portion of the remaining blow-sand habitat in the Coachella Valley. The basis for the Critical Habitat (CH) recommendation is the study in England and Nelson (1976) and, more recently, Turner *et al.* (1978) and Weaver (1978) from which the following information is drawn.

The area of CH located south of Ramon Road and north of Interstate Highway 10 is the only area that has been studied with sufficient intensity to provide adequate information on the density of fringe-toed lizards, approximately four per acre, and the physical and biological components of the habitat essential for the survival and recovery of the species. The portion of the recommended Critical Habitat generally north/northwest of Ramon Road is an area that has been identified as the source of 50 percent of the wind-blown sand for the area to the south of Ramon Road. The remaining 50 percent of the wind-blown sand enters the area from Thousand Palms Canyon, in the notheast portion of the CH, to the north of Ramon Road. A source of wind-blown sand is essential to maintain the high mesquite dunes and creosote bush sand hummocks south of Ramon Road that constitute the best known habitat of the Coachella Valley fringe-toed lizard.

The main sources of blow-sand in the Coachella Valley are the Whitewater River and Thousand Palms Canyon. The predominant winds, which sometimes reach 90 mph, blow from the northwest and move the fine sand down the valley towards the southeast.

Three general types of blow-sand deposits occur in a mosaic pattern across the Coachella Valley: sandy plains, sand hummocks, and mesquite dunes. The Coachella Valley fringe-toed lizard is restricted to these habitats. Sand hummocks (small and deposits two to five feet high), which form on the leeward side of bushes, are the most common type of blow-sand deposits in the Coachella Valley comprising about 80 percent of the fringe-toed lizard habitat (England and Nelson 1976).

Army Corps of Engineers proposals for flood control structures in the U.S. Whitewater River also would facilitate urban expansion in the valley. With or without these developments, however, agriculture and urbanization are continuing to eliminate more fringe-toed lizard habitat each year and there are no reasons to believe that these processes will stop until all private land is the Coachella Valley has been developed. The Service therefore believes that the physical and biological features of this habitat are such as to require special management considerations and protection.

Section 4(b)(4) of the Act requires the Service to consider economic and other impacts of specifying a particular area as critical habitat. The Service has prepared an impact analysis and believes that economic and other impacts of this action are not significant in the foreseeable future. The Service is notifying Federal agencies that may have jurisdiction over the land and water under consideration in this action.

Effects of this Rule

Section 7(a) of the Act provides, in part:

"(1) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the

conservation of the endangered species and threatened species listed pursuant to Section 4 of this Act.

"(2) Each Federal agency shall, inconsulation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an 'agency action') is not likely to jeopardize the continued existance of any endangered or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available."

Provisions for Interagency Cooperation are codified at 50 CFR Part 402. This rule now requires Federal agencies not only to insure that activities they authorize, fund, or carry out, are not likely to jeopardize the continued existence of the Coachella Valley fringe-toed lizard, but also to insure that their actions do not result in the destruction or adverse modification of this critical habitat.

Section 4(f)(4) of the Act requires, to the maximum extent practicable that any rule which determines critical habitat be accompanied by a brief description and evaluation of those activities which, in the opinion of the Director, may adversely modify such habitat if undertaken, or may be impacted by such designation. Such activities are identified below for this species.

Several activities involving Federal agencies are presently known which may have an impact on the habitat of the Coachella Valley fringe-toed lizard. These include construction of a sewer line if Department of Housing and Urban Development support is involved, construction of a 500 KV transmission line if additional Federal licenses and permits are required by the Federal Energy Regulatory Commission and the Bureau of Land Management, and possible sale of lots, homes and mobile homes using FHA/VA guaranteed loans. Outside the proposed Critical Habitat area, but in fringe-toed lizard habitat, there is a proposed northward extension of the Coachella Canal that threatens to expand greatly agricultural developments in the Valley.

The U.S. Army Corps of Engineers is investigating potential flood hazards and the feasibility of various flood control alternatives on the Whitewater River in the northwest portion of the Valley. Such control would facilitate urban expansion in the Valley. No other Federal activities are known that may impact the habitat of the Coachella Valley fringe-toed lizard.

It should be emphasized that Critical Habitat designation may not affect any of the Federal activities previously mentioned. If appropriate, the impacts will be addressed during conferral or consultation with the Service as required by Section 7 of the Endangered Species Act, as amended. Modification, and not curtailment, of the affected Federal activity has traditionally been the result of Section 7 consultations. Discussion of each of the mentioned projects is presented in the response to comments above.

Endangered species regulations already published in title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered species. The regulations referred to above, which pertain to threatened species, are found at Section 17.31 of title 50, and are summarized below.

With respect to the Coachella Valley fringe-toed lizard, all prohibitions of Section 9(a)(1) of the Act, as implemented by 50 CFR 17.31, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Regulations published in the Federal Register of September 26, 1975 (40 FR 44412), codified at 50 CFR 17.22 and 17.23, provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened species under certain circumstances. Such permits involving Endangered species are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

National Environmental Policy Act

A final environmental assessment has been prepared and is on file in the Service's Office of Endangered Species. This assessment is the basis for a decision that this rule is not a major Federal action that significantly affects the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969.

The primary authors of this rule are Dr. C. Kenneth Dodd, Jr. and Dr. Ray Stanton, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975) and Dr. Kathleen Franzreb, Sacramento Area Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Sacramento, CA. 95825 (916/484–4106).

Note.—The Department of the Interior has determined that this is not a significant rule and does not require preparation of a regulatory analysis under Executive Order 12044 and 43 CFR part 14.

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Regulations Promulgation

Accordingly, part 17, Subparts B and I, Title 50 of the Code of Federal Regulations are amended as set forth below:

1. Section 17.11 is amended by adding, in alphabetical order under "REPTILES," the following to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Lizard, Coachella Valley fringe-toed.	*Uma inornata*	U.S.A. (CA)	Entire	T		17.95(c)	NA

2. Section 17.95(c) is amended by adding the following Critical Habitat description after the Critical Habitat description for the Mona ground iguana

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(c) Reptiles.

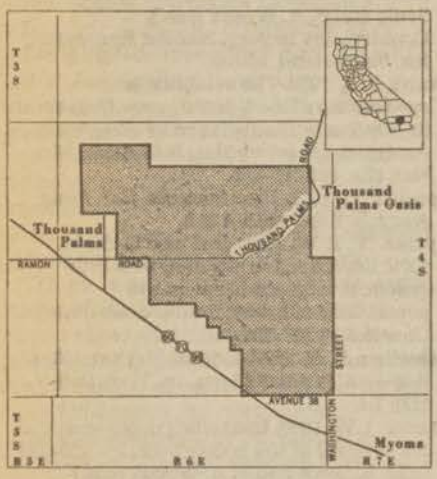
COACHELLA VALLEY FRINGE-TOED LIZARD

(Uma inornata)

California. Riverside County. S½ Section 5; SE¼ Section 6, E½ Section 7, all of sections 8 through 11, W½ Section 12, W½ Section 13, all of sections 14 through 16, E½ Section 17, E½NW¼ Section 17, E½SW¼ Section 17, all of sections 21 through 26, E½NW¼, NW¼SE¼, E½SE¼, NE¼ Section 27, all of sections 35 and 36, T4S R6E.

Coachella Valley Fringe-Toed Lizard

Riverside County, Calif.



Dated: September 19, 1980.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

[FR Doc. 80-29712 Filed 9-24-80; 8:45 am]

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Thursday
September 25, 1980

Part VI

Department of Energy

Office of Conservation and Solar Energy

Municipal Waste Energy Price Support Loan Program; Proposed Rulemaking and Notice of Public Hearing

DEPARTMENT OF ENERGY

Office of Conservation and Solar Energy

10 CFR Part 485

[Docket No. CAS-RM-80-121]

Municipal Waste Energy Price Support Loan Program; Proposed Rulemaking and Notice of Public Hearing

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) proposes to establish a new Part 485 for program rules for the Municipal Waste Energy Price Support Loan Program under Title II, Subpart B of the Energy Security Act (ESA), Pub. L. 96-294. Today's notice is to comply with the statutory requirements for three specific rules to be promulgated within 90 days of enactment of ESA. These rules establish necessary comonents for determining the maximum amount of price support loans. These components are the "standard support price" and "the manner of determining the fuel displaced * * * and the price of the fuel displaced." DOE expects to publish in the near future another notice proposing program rules covering remaining components of the price support loan program.

DATES: Written comments must be received by October 20, 1980, 4:30 p.m., e.d.t. A public hearing will be held on October 14, 1980 beginning at 9:30 a.m., local time. Request to speak at the public hearing must be received on or before September 29, 1980.

ADDRESSES: Written comments and requests to speak should be addressed to Carol Snipes, Department of Energy, Hearings and Dockets, Mail Stop 6B-025, 1000 Independence Avenue SW., Washington, D.C. 20585, Telephone: (202) 252-9319. The hearing will be held in Room 3000A, 12th and Pennsylvania Avenue NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Donald K. Walter or Charlotte Rines, Office of Conservation and Solar Energy, Room 1E276, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-9393.

Neal J. Strauss, Office of The General Counsel, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-9507.

Carol A. Snipes, Office of Conservation and Solar Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-9319.

SUPPLEMENTARY INFORMATION:

I. Background
II. General Description of Price Support Loans
III. Determining the Amount of the Price Support Loan
A. Standard Support Price
B. Amount of Fuel Displaced
C. Cost of Fuel Displaced
IV. National Environmental Policy Act Review
V. Determinations Under Executive Order 12044
VI. Comment Procedures
A. Written Comments
B. Public Hearing

I. Background

The Department of Energy (DOE) today begins the rulemaking process to implement the Municipal Waste Energy Price Support Loan Program under Title II, Subtitle B, of the Energy Security Act (ESA), (Pub. L. 96-294). Title II, Subtitle B, authorizes DOE to provide construction loans, loan guarantees, price support loans, and price guarantees. DOE proposes to establish a new Part 485 for price support loan rules under the ESA. Today's notice deals with the rules required under section 234(d) of the ESA to determine certain factors in the amount of a price support loan. These factors are the "standard support price" and "the manner of determining the fuel displaced . . . and the price of fuel displaced." DOE anticipates publishing, as soon as possible, another notice proposing program rules covering remaining components of the price support loan program.

The Municipal Waste Energy Price Support Loan Program is separate from the municipal waste reprocessing demonstration program under section 237 of the ESA and Section 20 of the Federal Nonnuclear Energy Research and Development Act of 1974 (Nonnuclear Act), as amended, 42 U.S.C. § 5919-5920. Section 20 of the Nonnuclear Act and Section 237 of ESA authorized price supports for projects, which have not been demonstrated at a commercial scale, to obtain technical, economic, and other information about innovative or underutilized technologies. Section 234 of ESA supports waste-to-energy projects which have been demonstrated at a commercial scale and is intended to accelerate displacement of conventional fossil fuels.

The scope of the program is governed in part by the definition of "municipal waste" in Section 203(14) of the ESA which excludes "hazardous waste," as determined by the Secretary. In amplifying the definition of "municipal waste" in proposed section 485.02, DOE is proposing to exclude, as hazardous, the hazardous wastes specifically listed by the Environmental Protection Agency in 40 CFR, Part 26] under the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580), as well as other waste deemed hazardous by DOE on a case-by-case basis.

II. General Description of Price Support Loans

A price support loan is a lending device which enables a "municipal waste energy project" to borrow against revenue increase anticipated in future years. The loan payments can be used to offset annual operating costs including debt service and operation and maintenance. By improving the early year project economics, price support loans encourage projects which increase production and sales of waste derived energy over current levels. Inasmuch as the amount of the loan is based on the amount of waste derived energy produced and sold or used, and the type and cost of fuel displaced, the price support loan is a device which rewards displacement of fossil fuels.

Under section 234 of the ESA, loan funds are disbursed on an annual basis for a maximum term of five consecutive years for "existing municipal waste energy projects" and for a maximum term of seven consecutive years for "new municipal waste energy projects." Repayment commences a year after receipt of the last price support loan payment.

III. Determining the Maximum Amount of a Price Support Loan

The maximum amount of the loan payment (i.e., financial assistance disbursed) in the first year is based on the amount of waste derived energy produced and sold or used by a project, as measured in millions of British Thermal Units (MMBtu's). This amount of energy is multiplied by the value of the price support per MMBtu i.e., unit value of support. A particular unit value of support is set for each project and is calculated as the difference between the standard support price, established pursuant to Section 234(d)(4) of the ESA, and the cost of the conventional fossil fuel which is displaced by the waste derived energy. However, under Section 234 (a)(3)(A)(1) the maximum unit value of support may not exceed $2.00 per MMBtu's. After the first year, the maximum amount of loan payment declines in each succeeding year. Each successive year the amount of the loan is calculated by multiplying the product of the unit value of support times the amount of fuel displaced by a fraction whose denominator is the number of years in the loan term, and the

numerator is the number of years in the loan term minus the number of years which have elapsed since the date of the first year's payment.

Where No. 6 fuel oil or a higher grade of pertroleum is displaced by waste derived energy, the maximum amount of the price support payment attributable to the displaced oil will be increased by 25 percent. The adjustment will be based on the proportion of oil in the fuel mix that is displaced by waste derived energy.

A. Establishing the Standard Support Price

Section 234(d)(4)(A) of the ESA defines the term "standard support price" as "the average price (per million Btu's) for No. 6 fuel oil imported into the United States on the date of enactment of this Act." The ESA was enacted June 30, 1980. The method employed for arriving at an appropriate "standard support price" is not specified in the ESA. Because reported price data come from various souces and are not usually stated on a per million Btu basis, DOE decided to identify the per barrel price from the most suitable source of price data and to determine the equivalent price per million Btu's. DOE considered numerous sources of data regarding the price of imported No. 6 fuel oil.

Data Sources. (1) The first source of petroleum price data considered was the DOE Energy Information Administration (EIA), Office of Oil and Gas Statistics, Petroleum Marketing and Pricing Statistics Division. EIA prepares a number of documents which contain price and quality data on various fuels.

(a) One such document, the "Weekly Petroleum Status Report", provides only *weekly* spot market prices of No. 6 fuel oil. Moreover, it is limited to 1% sulfur content fuel. The prices are compiled from the "Oil Buyers Guide", an industry weekly oil production report. These prices do not include import duties and State or Federal taxes. The lack of specificity as to daily price and quality of the fuel made these data unsuitable.

(b) Another EIA publication, the "Monthly Energy Review", provides average retail and wholesale prices for No. 6 residual fuel oil with a range of sulfur contents. However, it does not differentiate between domestic and imported oil; furthermore, the June 30, 1980, data will not be published for at least 90 days from June 30. Therefore, it is not timely for use in preparing this proposed rule.

(c) EIA also collects and publishes information obtained monthly from major electric plants. This monthly report, entitled, "Cost and Quality of Fuels for Electric Utility Plants", contains quality, price, and volume data on certain types of fuel purchased by electric utilities. Some data are specific for No. 6 fuel oil, while other information is reported for residual fuel oil, of which approximately 95% is No. 6. However, here again, June 30, 1980 data will not be published for at least 90 days from June 30, and the report could not be used to determine a price for No. 6 fuel oil on June 30, 1980 for this proposal.

(2) Another source considered was data compiled by the Bureau of the Census, Foreign Trade Division, Trade Information Branch Publication No. FT 900–ADV–(80)–5 May, 1980. The Bureau's data could not be utilized because they do not give separate prices for No. 6 imported fuel oil.

All the above-mentioned data sources were rejected because they have one or more features which make them unacceptable under the terms of the ESA.

(3) The most suitable source of data considered was the price data published in "Platt's Oilgram Price Report," Vol. 58, No. 127, p. 6–A, July 1, 1980. These data best satisfies the statutory requirements. The July 1, 1980 "Platt's Oilgram Price Report," Which reports June 30, 1980 data, sets forth the estimated spot and contract cargo prices of No. 6 fuel oil with various grades of sulfur content. Platt's was the only timely data source, of which DOE was aware, which reported prices of No. 6 imported fuel oil on a daily basis. In addition, Platt's supplies separate data for spot and contract prices.

Platt's reports a variety of prices for No. 6 imported fuel oil. In deciding which prices to use for today's proposal, DOE made the following choices which are intended to achieve the general statutory purpose to stimulate production of "municipal waste energy" and displace use of conventional fossil fuels.

DOE proposes to base the "standard support price" on the average price of No. 6 imported fuel oil with a sulfur content of 0.3 percent. The sulfur content of municipal waste energy ranges from 0.2 to 0.5 percent, with an average sulfur content of 0.3 percent. Environmental standards in many areas of the country require the use of low-sulfur fuels which are more expensive than high-sulfur fuels. *See* the Environmental Assessment for the Urban Waste Technology Program announced in 44 FR 42110 (July 18, 1979). Municipal waste, because of its low sulfur content, can be substituted for these more expensive low sulfur fuels and, therefore, should be priced accordingly. To base the "standard support price" on less expensive, high sulfur fuel would reduce the incentive of a price support loan in those areas of the United States where use of more expensive, low sulfur fuels is required.

DOE also proposes to base the "standard support price" on contract rather than spot market prices. In general, contract prices are more stable and less susceptible to fluctuation as a result of marketplace anomalies. Contract prices are also reported without distortion of adjustments for entitlement benefits. The entitlements program serves as an equalizer for the cost of crude oil and was promulgated to alleviate the impact of the price differential between price controlled and free market prices of crude oil. The entitlements program is set forth in DOE's regulations at 10 CFR 211.67.

Btu Content of No. 6 Fuel. Section 234(d)(4)(A) of the Act and the conference report on the Act, at page 259, specify that the "standard support price" must be stated in a price per MMBtu's. DOE proposes to set the Btu content of one barrel of No. 6, imported fuel oil of 0.3 percent sulfur content at 6.11 MMBtu's. This figure was developed from data published by EIA.

As noticed above, EIA publishes a monthly report, entitled, "Cost and Quality of Fuels for Electric Utility Plants," which contains quality, price and volume data for fuel delivered to steam-electric plants. To derive a Btu per barrel figure, DOE used the EIA-reported data for January–March 1980, on the average price per barrel and per MMBtu of *all* fuel oil and the following standard formula for determining the average Btu's per barrel:

$$\text{Average Btu's per barrel} = \frac{\text{Average price (\$/bbl)} \times 10^3}{\text{Average price (\$/MMBtu's)}}$$

It appears that approximately 97% of fuel oil deliveries during January–March 1980 (upon which these price data were based) was No. 6 fuel oil. It also appears that the Btu content of a barrel of oil does not vary to a very significant degree over time. Therefore, DOE believes that the average Btu's per barrel of No. 6 fuel oil with 0.3% sulfur content (if it could be isolated in the data) would not vary significantly from the average Btu content of a barrel of fuel oil during January–March 1980. That average was 6.11 million Btu's per barrel.

Conclusions: The price range reported by Platt's for June 30, 1980, for imported No. 6 fuel oil with 0.3% sulfur content was $32.75–$32.83 per barrel. The average price in this range is $32.79 per barrel. Given a Btu content of 6.11 million Btu's per barrel of 0.3% sulfur oil, the "standard support price", where the fuel displaced is not oil, is computed by dividing $32.79 by 6.11 which equals $5.37. If the fuel displaced is only oil, the standard support price is increased 25% to $6.71. If the fuel displaced is a mixture including oil, only the portion of the standard support price attributable to oil is increased by 25%. These conslusions are set forth in proposed § 485.21.

B. Establishing the Amount of Fuel Displaced by the Sale of Waste Derived Energy

Section 234(d)(7) of the ESA requires that "not later than 90 days after the date of the enactment of this Act, the Secretary shall prescribe by rule, the manner of determining the fuel displaced by the sale of any biomass energy . . ." Section 234(d)(6) further provides that "any biomass energy produced by a municipal waste energy project which may be retained for use by the owner or operator of such project shall be considered to be sold * * *" Section 234(d)(b) applies to waste-derived energy which is used to supply the internal energy requirements of the municipal waste energy facility. These requirements typically involve the use of steam or electric power to drive pumps, fans, and other process machinery which is integral to the operation of the facility and to supply housekeeping functions such as lighting and space heating needs. These energy requirements would have to be supplied with externally purchased energy if waste-derived energy were not used for this purpose. For reasons of plant economy and efficiency and resource conservation, the use of waste-derived energy for these purposes should be encouraged. The internal energy requirements of a waste energy facility have not been reported to exceed 20 percent of the energy output of existing waste energy facilities in this country and are typically less than 5 percent of total energy output.

For purposes of this rule, displaced fuels are oil, natural gas and coal because the intent of the ESA is to encourage alternative fuels production. Under Section 235(a)(1)(B), DOE is required to give preference to projects which displace oil and natural gas. Consistent with the ESA, DOE rules for the Municipal Waste Energy Price Support Loan Program will not provide for assistance to projects which displace fuels other than oil, natural gas, and coal, and will disfavor projects which displace coal consumption.

Waste derived energy can be produced in a variety of forms. It can be produced as solid, liquid, or gaseous fuel for firing in boilers. Alternatively, direct combustion of municipal waste or waste derived fuel in a boiler can produce waste derived energy, such as steam, to generate electricity which is then sold to end users or used internally in the operation of the municipal waste energy facility.

The proposed procedures will provide for calculation of the energy equivalent fossil fuel value for all types of waste derived energy. The relevant criteria used in deciding upon the procedures proposed in the rule include the following:

- The procedures should not favor any particular technology, and as such should convert any form of waste derived energy into a standard fuel equivalent value.
- The procedures must permit accounting for waste derived energy used in the internal operations of the facility as well as that which is sold, and as such, must accommodate the measurement of total energy produced and used, as well as sales data.
- The procedures proposed should be as simple and accurate as possible.
- The methods chosen should be consistent with standard engineering practices and procedures.

There are two separate methods for calculating the amount of conventional fossil fuel displaced by waste derived energy. The first method is used when a waste derived *fuel* displaces conventional fossil fuel. The second method is used when energy or steam (produced by the direct combustion of municipal waste or waste derived fuel) displaces conventional fossil fuels used to generate electricity, mechanical power, or industrial process heat.

Waste Derived Fuel. Municipal waste can be processed into various grades of solid, liquid, or gaseous fuels.

The purchaser of this waste derived fuel can fire it in a boiler designed specifically for that fuel or cofire it with other fuels in a conventional boiler. The heat content of the waste derived fuel is measured in Btu's per lb for solid fuel, Btu's per gal for liquid fuel, and Btu's per cubic foot for gaseous fuel. As stated in proposed § 485.22, the number of units of waste derived fuel sold or used is multiplied by the MMBtu's per unit to determine the amount of fossil fuel displaced, i.e.,

Fuel Displaced = (MMBtu's/unit) × (units sold or used internally)

Proposed § 485.22(b)(1) provides for two alternatives in determining the MMBtu's per unit of a specific waste derived fuel. Each alternative permits a different sampling and testing procedure. Sampling and testing is necessary because the municipal waste supply from which waste derived fuel is produced can vary in its chemical and physical properties over time, and thus, affect the quality of the waste derived fuel product. Periodic sampling and testing allows a statistically valid measure of MMBtu's per unit. The price support loan agreement between DOE and the project will specify one of the two alternatives.

Under the first alternative an applicant could propose the sampling and testing procedure specified in the project's waste derived fuel sales contract. However, the validity of this approach must be questioned because the contractually specified procedures may not reflect representative values. Under the second alternative DOE would determine the sampling and testing procedure, which could involve a sampling and testing procedure which is unique to the project or one which is recognized by a standard setting organization such as the American Society for Testing and Materials (ASTM). ASTM is in the process of developing a standard sampling and testing procedure.

Other Waste Derived Energy. If the waste derived energy sold or used is energy or steam produced from the direct combustion of municipal waste or waste derived fuel, and used to generate electricity, mechanical power or industrial process heat, proposed section 485.22(c) of the rule proposes a different method for estimating the amount of displaced fuel. This method converts these forms of waste derived energy into the Btu equivalent of the conventional fossil fuel input which would otherwise have been used. The procedure accounts for conversion losses when any fuel is fired in a boiler to produce a higher quality energy form such as steam. These conversion losses are estimated by taking into account the

efficiency of the boiler in converting Btu's of fuel input into Btu's of energy output. Typically, fossil fuel-fired boilers will operate in an efficiency range of 80 to 90 percent. Next, a given Btu fuel input will yield an output, in Btu's, of 80 to 90 percent of the Btu fuel input. DOE has selected 85 percent as a representative fossil fuel boiler efficiency. DOE believes that this value represents the average of the range of efficiencies at which well-maintained fossil fuel-fired boilers should operate.

It is necessary to set an efficiency value which is representative of fossil fuel-fired boilers because the actual efficiency of the refuse-fired boiler which produces the waste derived energy may be significantly below the range of fossil-fuel fired boiler efficiencies. This lower efficiency results from the properties of waste which make it a lower quality fuel than oil or gas, for example. It would be incorrect to use the lower operating efficiency of the refuse-fired boiler because this would result in a calculated figure showing a higher fossil fuel input value than should actually have been required to obtain the same energy output from a fossil fuel-fired boiler.

In calculating the amount of displaced fuel, it is also necessary to establish the energy content in MMBtu's of the waste derived energy product. Despite the difference in end products, there is a single point, common to all processes involving the direct combustion of waste or waste-derived fuel, at which the specific quantity of energy produced can be measured.

In all direct combustion processes, the energy content of a working fluid in a boiler (either steam or hot water), is raised by increasing its temperature and pressure and, thereby, its ability to do useful work. The fluid can be sold directly or converted into a product such as electricity for sale. In all cases, the temperature and pressure of the boiler fluid determines its enthalpy or energy content. For each combination of temperature, pressure, and working fluid, there is a unique enthalpy value, in Btu's per pound or Btu's per gallon, which can be determined by applying standard engineering practices. The change in enthalpy, determined by the difference in the temperature and pressure of the boiler fluid at entry and exit from the boiler, indicates the energy obtained from the combustion of fuel in the boiler.

The amount of waste derived energy from direct combustion is then calculated as the product of the change in enthalpy of the boiler fluid multiplied by either the pounds of steam or gallons of hot water generated by the boiler. Given this quantity, the amount of fossil fuel displaced can be calculated by taking into account the efficiency of a boiler in converting fossil fuel input into steam or hot water. This is done by using the assumed 85 percent efficiency of a conventional boiler in the following equation:

$$\text{Amount of Fuel Displaced} = \frac{(\text{Quantity of Working Fluid})(h)}{.85}$$

Where h is the change in enthalpy.

There is one further adjustment needed to account for refuse-fired boilers which employ conventional fossil fuel input during startup or to maintain product quality and emissions control. In this instance, the Btu output must be reduced by the heating value of the fossil fuel consumed for those purposes. The equation is modified as follows:

$$\text{Amount of Fuel Displaced} = \frac{(\text{Quantity of working fluid})(h)}{.85} - (\text{Quantity of fossil fuel used})(\text{MMBtu's/unit}),$$

Where MMBtu's/unit is the higher heating value measured in MMBtu's per pound, MMBtu's per gallon or MMBtu's per cubic foot, as appropriate for the fossil fuel used.

The quantity of fluid produced and the change in enthalpy is to be calculated from the metered records of boiler operation.

C. Establishing the Cost of Fuel Displaced

Section 234(d)(5) of the ESA defines "the cost of fuel displaced" as "the cost of the fuel (per MMBtu's) which the purchaser of biomass energy would have purchased if the biomass energy had not been available for sale to that purchaser." Section 234(d)(7) of the ESA provides that "the Secretary shall prescribe by rule the manner of determining . . . the price of the fuel displaced."

In developing this part of the proposed rule, the following factors were considered:

- The point or points in time at which the price of displaced fuel should be measured; and
- The procedure to be followed in calculating the price.

The point in time at which the price of displaced fuel is set affects the maximum amount of price support loan, because the maximum loan amount is based on the differential between the standard support price and the cost of fuel displaced. DOE believes that it is appropriate to establish the cost of fuel displaced at a point where actual cost figures are known because the incentive value of a price support loan is dependent on precise identification of the revenue stream, which might otherwise be a key uncertainty dissuading lenders from financing a project.

The proposed rule specifies a "base period" during which the cost of fuel displaced will be measured. That base period cost remains unchanged thereafter. DOE proposes to set the base period, during which the cost of fuel displaced is fixed, as any consecutive 12

months during the 18 month period that precedes a commitment to make a price support loan for a new municipal waste energy project.

A different time interval is proposed for an existing municipal waste energy project. In this case, the 12 months between July 1, 1979, and June 30, 1980, is the base period during which the cost of displaced fuel is determined. This interval was chosen because its terminal point is the date the value of the Standard Support Price was established under the ESA. It, therefore, bases the amount of price support assistance on the differential that existed between the standard support price and the cost of fuel displaced in the 12 months immediately prior to the enactment of the ESA.

The final issue addressed in this section is the proposed procedure for calculating the cost of fuel displaced.

There were two options considered in proposing this rule. Option 2 was ultimately selected.

Option 1. In this option the cost of the fuel displaced would be that cost specified in the waste derived energy sales contract. This approach would assume that the price paid for waste derived energy is related to the cost of purchasing a conventional fossil fuel alternative which the buyer would otherwise have had to pay. In fact, some existing sales contracts establish a base price of waste derived energy that reflects the prevailing price of a fossil fuel which the buyer would otherwise have used, and then provide for escalation of that base price over time as a function of the rate of escalation in the market price of the fossil fuel displaced.

One difficulty with this procedure is lack of comprehensiveness. It is not always true that the base price for waste derived energy specified in a sales contract references a particular fossil fuel. The contract could, for example, specify a base price as a dollar per million Btu value which would escalate as a function of an index, such as the Consumer Price Index, which is not fuel specific. This may occur, for example, in situations where a buyer uses multiple fuels, several of which would be displaced by waste derived energy.

A further difficulty with the Option 1 approach is that it could affect negotiations of the waste derived energy sales contract and result in a contract which has an artificially low cost of fuel displaced. DOE does not believe price support loans should have any influence on negotiations to establish the price of waste derived energy in sales contracts.

For the above reasons, the Option 1 approach was rejected.

Option 2. Option 2 defines the cost of fuel displaced for a single conventional fossil fuel as the total cost per unit of that fuel to the energy buyer or user divided by the MMBtu's per unit of that fuel. Option 2 defines the cost of fuel displaced for a mix of conventional fossil fuels as the weighted average cost per MMBtu's of the mix of the fuels used by the energy buyer or user during the "base period" to supply the energy requirements which are or will be supplied with waste derived energy. The cost of the fuel displaced is the weighted average cost, in dollars per MMBtu's, of the fuel mix. Costs will be established from the energy buyer's or user's accounting records for fossil fuel purchases during the "base period." If the waste derived energy purchaser or user cannot provide 12 months of historical accounting data for the base period, the cost of fuel displaced will be determined as the weighted average price of industrial boiler fuel used in the region of the buyer's or user's facility. DOE requests comments regarding sources of such data. In contrast with Option 1, this approach permits an objective determination, on the basis of historical records, of both the cost and the identity of the displaced fuel. Another advantage of this option is that it permits a potential applicant to estimate, prior to applying to DOE for price support assistance, the maximum amount of possible price support assistance. A potential applicant would then have a basis for deciding whether to apply for such assistance.

In accordance with Section 235(a)(6)(D), DOE intends to seek comment on how to limit financial assistance to an amount which is no greater than necessary to promote energy recovery from municipal waste. As proposed, the price support loan payments could exceed project requirements in a case where energy revenues increase faster than expected; DOE plans to propose an approach to deal with this issue in the notice of proposed rulemaking which will cover the remaining components of the Municipal Waste Energy Price Support Loan Program.

IV. National Environmental Policy Act Review

DOE published a notice of availability of an environmental assessment (EA) (DOE/EA–0095) and negative declaration in the **Federal Register** on July 18, 1979 (44 FR 42110) stating that the Department's overall urban waste program (covering municipal waste other than industrial waste) would not constitute a "major Federal action significantly affecting the quality of the human environment" within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* DOE has reviewed this EA and negative declaration and has concluded that the analyis in the EA and the negative declaration (i.e., the finding of no significant impact) are applicable to this rulemaking.

Industrial waste, which is included in the ESA's definition of municipal waste, is not covered by the urban waste EA. Therefore, DOE is preparing a separate industrial waste EA, which is expected to support (1) a finding of no significant impact (FONSI) as to certain industrial waste processess and (2) a determination that, as to other industrial waste processes, environmental impacts could be significant and, therefore, that a programmatic EIS would be required. Consequently, in the near term, price support loans would be available only for those technologies with impacts that are environmentally not significant under NEPA, as determined by the final EA and a FONSI. (These technologies may include those using waste wood, waste paper and food process waste which do not constitute agricultural or forest wastes.) Following completion of a programmatic environmental impact statement (EIS) concerning industrial waste, DOE may amend the rule to permit issuance of price support loans for additional technologies covered in the EIS. Should the EA not support a FONSI for any industrial waste processes, all price support loans for industrial waste processes would be deferred until EIS completion. However, since there could be site-specific environmental impacts of concern, site-specific environmental information will be required from the applicant, and the preparation of formal site-specific environmental assessments or environmental impact statements may be required, where appropriate. DOE will determine the nature and extent of any additional environmental review required by NEPA for individual applicants prior to issuing a price support loan for a municipal waste energy project. In addition to the environmental analyses referred to above, DOE will, of course, evaluate (and point score) the environmental aspects of each proposal.

V. Review Under Executive Order 12044 and OMB Circular A–116

Today's proposal was reviewed under Executive Order 12044, 43 FR 12661, implementing DOE directives thereunder and OMB Circular A–116. DOE has determined that the rule will be

"significant" because of its widespread impact. However, DOE has concluded that it will not be "major" because it will not have the kind or degree of effects which, under Executive Order 12044, necessitate a regulatory analysis. For the same reason, an urban and community impact analysis under OMB Circular A–116 is not necessary.

VI. Period for Public Comment

In light of the 90-day statutory deadline for issuing rules under section 234(d) of the ESA, DOE has determined that it would be inappropriate to delay final issuance of this rulemaking any longer than is absolutely required to allow a minimally adequate period for public comment. Accordingly, a 30-day comment period rather than the usual 60-day period is being provided for public review and comment on this proposed rulemaking.

VII. Comment and Hearings Procedures

A. Written Comments

Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to today's proposed rule. Comments must be submitted by (30 days from date of publication), to the address indicated in the beginning of this preamble. Comments should be identified on the outside of the envelope and on documents submitted to DOE with the designtion—Price Support Loan Proposed Rule (Docket No. CAS–RM–80–121)." Fifteen copies should be submitted. All comments received will be available for public inspection in the DOE Reading Room, Room 5B–180 Forrestal Building, 1000 Independence Avenue, SW., between 8:00 a.m. and 4:00 p.m., Monday through Friday.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy, and fifteen copies from which information claimed to be confidential has been deleted. In accordance with the procedures established in 10 CFR 1004.11, DOE shall make its own determination with regard to any claim that information submitted be exempt from public disclosure.

B. Request Procedures

The time and place of the public hearings are indicated in the dates and addresses section of this preamble. DOE invites any person who has an interest in the proposed rulemaking issued today, or who is representative of a group or class of persons that has an interest in today's proposed rulemaking, to make a written request for an opportunity to make an oral presentation. Such a request should be directed to the address indicated in the addresses section of this preamble, must be received before September 29, 1980 and may be hand-delivered to such address, between the hours of 9:00 a.m. and 4:30 p.m.

The person making the request should briefly describe the interest concerned; if appropriate, state why she or he is a proper representative of a group or class of persons that has such an interest; and give a concise summary of the proposed oral presentation and a telephone number where she or he may be contacted during the day.

DOE will notify each person selected to appear at the hearings before October 6, 1980. Each person selected to be heard should bring 15 copies of his or her statement to the hearing location.

C. Conduct of Hearings

DOE reserves the right to select the persons to be heard at the hearings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated to preside at the hearings. This will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination. At the conclusion of all initial oral statements, each person who has made an oral statement will, if time permits, be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any person who wishes to have a question asked at the hearing may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be asked.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding officer.

A transcript of the hearings will be made, and the entire record of the hearings, including the transcripts, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room, Room 5B180 Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

Authority: Energy Security Act, Pub. L. 95–91.

In consideration of the foregoing, DOE hereby proposes to amend Chapter II of Title 10, Code of Federal Regulations, by establishing Part 485 as set forth below.

Issued in Washington, D.C. September 18, 1980.

Maxine Savitz,

Deputy Assistant Secretary for Conservation, Conservation and Solar Energy.

10 CFR Chapter II is proposed to be amended as follows:

PART 485—MUNICIPAL WASTE ENERGY PRICE SUPPORT LOAN PROGRAM

Subpart A—General

Sec.

485.01 Purpose.
485.02 Definitions.
485.03–485.19 [Reserved].

Subpart B—Formula for Loan Disbursements

485.20 Purpose.
485.21 Standard support price.
485.22 Fuel displaced.
485.23 Cost of fuel displaced.
485.24 Loan term and declining annual disbursements.

Authority: Energy Security Act, Pub. L. 96–294; (42 U.S.C. 8831–8840) Department of Energy Organization Act, Pub. L. 95–91.

Subpart A—General

§ 485.01 Purpose.

This part is established for the program rules authorized for the Municipal Waste Energy Price Support Loan Program under Title II, Subtitle B, of the Energy Security Act.

§ 485.02 Definitions.

As used in this part, the term—

"base period" means any consecutive 12 months during the 18 month period that precedes a commitment to make a price support loan, for a *new* municipal waste energy project, and the 12 consecutive month period between July 1, 1979 and June 30, 1980, for an *existing* municipal waste energy project.

"biomass" means any organic matter which is available on a renewable basis, including agricultural crops and agricultural wastes and residues, wood and wood wastes and residues, animal wastes, municipal wastes, and aquatic plants.

"Btu" means British thermal unit, the quantity of heat required to raise the temperature of one pound of water one degree Fahrenheit at or near 37.2°F.

"displaced fuel" means a conventional fossil fuel i.e., oil, natural gas, or coal, which the purchaser or user of waste derived energy would have otherwise purchased or used to supply energy requirements which are or will be supplied by waste derived energy.

"DOE" means the Secretary of Energy or his designee.

"enthalpy" means the internal energy of a system plus the product of the volume and pressure exerted on the system by its surroundings.

"existing municipal waste energy project" means any municipal waste energy project which is not a new municipal waste project.

"higher heating value" means the heat content of a fuel when all water vapor in combustion-produced gases is condensed.

"MMBtu" means one million British thermal units.

"municipal waste" means any organic matter, including sewage, sewage sludge, and industrial or commercial waste, and mixtures of such matter and inorganic refuse from any publicly or privately operated municipal waste collection or similar disposal system, from similar waste flows (other than such flows which constitute agricultural wastes or residues or wood wastes or residues from wood harvesting activities or production of forest products). Such term does not include any hazardous waste specifically listed in 40 CFR Part 26, or which when utilized in any municipal waste energy project would, in the opinion of DOE, endanger the public health or negatively impact the environment in a significant way.

"municipal waste energy project" means any facility (or portion of a facility) located in the United States primarily for the production of waste-derived fuel (and by-products) from municipal waste or the combustion of municipal waste for the purpose of generating steam including industrial process heat, mechanical power, electricity, (including cogeneration). Such term includes any necessary transportation, preparation, and disposal equipment and machinery for use in or at the site of the facility involved.

"new municipal waste energy project" means any municipal waste energy project which is initially placed in service after June 30, 1980; or if initially placed in service before June 30, 1980, has an increased capacity by reason of additional construction, and as such is placed in service after such date.

"placed in service" means operated at more than 50 percent of the estimated operational capacity at which the facility was designed to operate.

"project" means a municipal waste energy project.

"refuse-fired boiler" means a boiler in which greater than 50 percent of the heat content of the fuel used is supplied by the direct combustion of waste or waste-derived fuel.

"unit value of support" means the lesser of $2.00 per MMBtu's or the standard support price as determined under § 485.24 minus the cost of fuel displaced as determined under § 485.23.

"Waste derived energy" means energy which is waste derived fuel, or energy or steam derived from the direct combustion of municipal waste or waste derived fuel for the generation of electricity, mechanical power, or industrial process heat.

"Waste derived fuel" means any gaseous, liquid, or solid fuel produced solely from municipal waste.

§ 485.03–485.19 [Reserved].

Subpart B—Formula for Loan Disbursements

§ 485.20 Purpose.

The purpose of this subpart is to state the method for determining the maximum amount of price support loan assistance under this part.

§ 485.21 Standard Support Price.

(a) If the conventional fossil fuel displaced is not oil, the "standard support price" is the average price (per MMBtu's) for No. 6 fuel oil imported into the United States on June 30, 1980, which was $5.37 per MMBtu's.

(b) If the conventional fossil fuel displaced is oil, the standard support price is 125% of the price under paragraph (a) of this section which equals $6.71 per MMBtu's.

(c) If the fuel displaced is a mix of conventional fossil fuels including oil, the standard support price is the standard support price under paragraph (a) of this section, increased by 125% in direct proportion to the amount of oil in the conventional fossil fuel mix according to this formula:

$$O] + (.25) \times \frac{\text{Oil}}{\text{Oil+Gas+Coal}} \times \text{Standard Support Price}$$

Where Oil, Gas, and Coal represent the MMBtu's of oil, natural gas, or coal in the fuel mix.

§ 485.22 Fuel Displaced.

(a) The amount of conventional fossil fuel displaced shall be calculated under the method described in:

(1) Paragraph (b) of this section if the end product sold or used from a project is waste derived fuel, or

(2) Paragraph (c) of this section if the end product sold or used is waste derived energy (other than waste derived fuel).

(b) *Fuel Displaced By Waste Derived Fuel.* The amount of fuel displaced, as expressed by the following formula, equals the MMBtu's per unit of waste derived fuel multipled by the number of units of waste derived fuel sold or used:

Fuel Displaced=[MMBtu's/unit X (Units sold or used)].

(1) As determined by DOE, the MMBtu's per unit of waste derived fuel shall be established by one of the following standardized sampling and testing methods:

(i) The sampling and testing method negotiated and established in the fuel purchase agreement between the project seller and the waste derived fuel buyer, or

(ii) An independent sampling and testing method selected by DOE.

(2) The number of units of waste derived fuel sold or used in the operation of the facility (as measured in pounds, gallons, or cubic feet) shall be established by records certified in accordance with the Price Support Loan Agreement which show sales and use for the 12 month period for which the price support loan payments are made.

(c) *Fuel Displaced by Waste Derived Energy (Other Than Waste Derived Fuel).* The amount of fuel displaced, as expressed by the following formula, equals the quantity of boiler fluid sold or used, multiplied by the change in enthalpy, divided by .85, which is the boiler efficiency value. Subtracted from this value are any MMBtu's of fossil fuel used in the refuse fired boiler:

$$\text{Fuel Displaced} - \frac{[(\text{Quantity of boiler fluid sold or used}) \times h)]}{.85}$$

– [(Quantity of fossil fuel used)×(MMBtu's/unit)]

Where:

(1) The quantity of boiler fluid is to be measured in pounds, gallons, or cubic feet.

(2) The MMBtu's/unit is the higher heating value of the fossil fuel used.

(3) Change in enthalpy of the boiler fluid is to be calculated by standard engineering practices.

§ 485.23 Cost of fuel displaced.

(a) If the fuel displaced is a single conventional fossil fuel, the cost of fuel displaced is the average base period cost per unit of that fuel divided by the MMBtu's per unit of that fuel.

(b) If the fuel displaced is a mix of conventional fossil fuels, the cost of fuel displaced is the weighted average base period cost in dollars per MMBtu's of the mix of conventional fossil fuels, as expressed by the following formula:

$$\text{Cost of Fuel Displaced} = \frac{(\text{Oil} \times \$/\text{MMBtu}_{\text{Oil}}) + (\text{Gas} \times \$/\text{MMBtu}_{\text{Gas}}) + (\text{Coal} \times \$/\text{MMBtu}_{\text{Coal}})}{\text{Oil} + \text{Gas} + \text{Coal}}$$

Where:

(1) Oil is units of oil in MMBtu's;

(2) Coal is units of coal in MMBtu's,

(3) Gas is units of gas in MMBtu's.

(c) The applicant shall submit to DOE certified records of each waste derived energy buyer's or user's consumption of each type of fossil fuel fuel for the project's "base period." These records shall identify, for each type of fuel, the average MMBtu's per unit of fuel consumed in the base period. The fuels reported should be limited to those for which requirements are or will be supplied by waste derived energy.

(d) The applicant shall provide certified accounting data for each waste derived energy buyer's or user's average base period cost for each type of conventional fossil fuel. These data shall be used to calculate an average dollars per MMBtu's cost for each fuel.

(e) If a buyer or user of waste derived energy has no "base period" data, the cost of fuel will be calculated as the weighted average price per MMBtu's of industrial boiler fuels for the region in which the consuming facility is located.

(f) If the buyer or user of the waste derived energy is a utility, the cost of fuel displaced shall be calculated for all conventional fossil fuels used in its generating plants.

§ 485.24 Loan term and declining annual disbursements.

(a) The following procedures shall be used for calculating the maximum amount of the annual price support loan payment to a project.

(1) The maximum term which loan payments are made to a project by DOE is:

(i) 5 years where payment is made to an existing municipal waste energy project.

(ii) 7 years where payment is made to a new municipal waste energy project.

(2) The maximum payment for the first year is the unit value of support multiplied by the number of units of waste derived energy sold or used as determined under § 485.22.

(b) For each succeeding year, the maximum amount of the price support payment is the product of the unit value of support (as defined by § 485.02) the number of units of waste derived energy sold or used during the year for which the disbursement is made (as determined under § 485.22), and a fraction in which the numerator is the term of the loan minus the years elapsed and the denominator is the term of the loan, i.e,

Price Support Payment=[Unit value of Support]×[Fuel displaced]

$$\text{Price Support Payment} = [\text{Unit value of Support}] \times [\text{Fuel displaced}] \times \frac{[\text{term of loan} - \text{years elapsed}]}{\text{term of loan}}$$

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
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CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator. Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

Rules Going Into Effect Today

PERSONNEL MANAGEMENT OFFICE

56793 8–26–80 / Pay under other systems

List of Public Laws

Last Listing September 23, 1980

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

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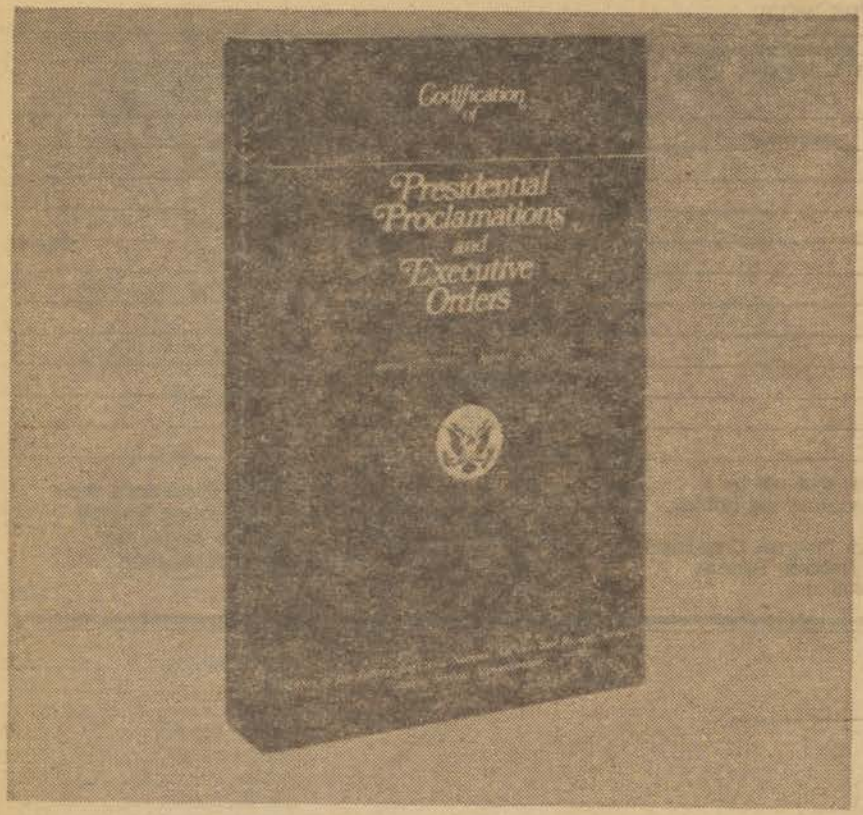

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