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U.S. GOVERNMENT
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3-10-83
Vol. 48 No. 48
Pages 10035-10290

federal register

Thursday
March 10, 1983

Selected Subjects

Accounting
Customs Service
Securities and Exchange Commission

Administrative Practice and Procedure
Internal Revenue Service

Agricultural Commodities
Animal and Plant Health Inspection Service

Air Pollution Control
Environmental Protection Agency

Aviation Safety
Federal Aviation Administration

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Indians—Education
Education Department

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Civil Aeronautics Board

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Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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

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Food Safety and Inspection Service

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Motor Vehicle Safety
National Highway Traffic Safety Administration

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Comptroller of Currency

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Presidential Documents

Title 3—

The President

Proclamation 5029 of March 8, 1983

Women's History Week, 1983

By the President of the United States of America

A Proclamation

Before the signing of the Declaration of Independence, Abigail Adams, wife of one President and mother of another, wrote a prophetic letter to a delegate to the Continental Congress in Philadelphia. Its recipient was her husband, whom she admonished: ". . . in the new code of laws which I suppose it will be necessary for you to make I desire you would remember the ladies, and be more generous and favourable to them than your ancestors . . . if particular care and attention is not paid to the ladies we are determined to foment a rebellion . . ."

However, until well into the second century after that letter was written, barriers existed for women in educational, business and professional opportunities as well as in the law.

Today, American women of every ethnic origin, creed, and race play a vital role in our cultural, military, economic, social and political life. A woman serves as a Supreme Court Justice; there are women serving as university presidents, members of Congress, doctors, lawyers, astronauts, coal miners, corporate executives, members of the President's Cabinet, ranking military officers and leaders in civil rights, the diplomatic corps, cultural endeavors, private sector initiatives, truck drivers, and, very importantly, mothers and homemakers who continually strengthen the foundation of our country's greatness, the family.

During the past two hundred years, women have fought for the causes of abolition, health reform, elimination of child labor, temperance, voting rights, and improvement of industrial labor conditions. Their energy, persistence, and dedication to these causes have enlightened our Nation as to the needs of our society and frequently quickened our country's effort to effect positive change.

This memorable role of women in our Nation's history has been recorded in the written word and has been told as well in music, on canvas, in stone, and through poetry, novels, and the dance. In recognizing the outstanding achievements of America's women, we pay homage to an essential part of our Nation's heritage.

By Senate Joint Resolution 37, the Congress of the United States has authorized and requested the President to proclaim the week which includes March 8, 1983, as "Women's History Week."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning March 6, 1983, as "Women's History Week." Recognizing that the many contributions of American women

have at times been overlooked in the annals of American history, I encourage all citizens to observe this important week by participating in appropriate ceremonies and activities planned by individuals, governmental agencies, and private institutions and associations throughout the country.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of March, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and seventh.

Ronald Reagan

[FR Doc. 83-6411
Filed 3-9-83; 11:16 am]
Billing code 3195-01-M

Rules and Regulations

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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 907

[Navel Orange Reg. 569; Navel Orange Reg. 568, Amdt. 1]

Navel 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 navel oranges that may be shipped to market during the period March 11–17, 1983, and increases the quantity of such oranges that may be so shipped during the period March 4–10, 1983. Such action is needed to provide for orderly marketing of fresh navel oranges for the period specified due to the marketing situation confronting the orange industry.

DATES: This regulation becomes effective March 11, 1983, and the amendment is effective for the period March 4–10, 1983.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202–447–5975.

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the California-Arizona navel orange crop for the benefit of producers and will not substantially affect costs for the directly regulated handlers.

This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel 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 recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy for 1982–83. The marketing policy was recommended by the committee following discussion at a public meeting on September 21, 1982. The committee met again publicly on March 8, 1983 at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified weeks. The committee reports the demand for navel oranges is improving.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of navel oranges. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (navel).

PART 907—[AMENDED]

1. Section 907.869 is added as follows:

§ 907.869 Navel Orange Regulation 569.

The quantities of navel oranges grown in California and Arizona which may be handled during the period March 11, 1983 through March 17, 1983, are established as follows:

(1) District 1: 1,600,000 cartons;
(2) District 2: Unlimited cartons;
(3) District 3: Unlimited cartons;
(4) District 4: Unlimited cartons.

2. Section 907.868 Navel Orange Regulation 568 (48 FR 8987), is hereby amended to read:

§ 907.868 Navel Orange Regulation 568.

* * * * *

(1) District 1: 1,500,000 cartons;
(2) District 2: Unlimited cartons;
(3) District 3: Unlimited cartons;
(4) District 4: Unlimited cartons.

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

Dated: March 9, 1983.

D. S. Kuryloski,

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

[FR Doc. 83-6427 Filed 3-9-83; 12:00 pm]

BILLING CODE 3410-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 615

Funding and Fiscal Affairs

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration ("FCA"), by its Federal Farm Credit Board, adopts and publishes new and amended regulations on funding and fiscal affairs to allow the Farm Credit System ("System") banks to issue consolidated and consolidated Systemwide bonds in definitive rather than book-entry form when approved by the appropriate authorities. These amendments and the new regulation will permit the System to issue bonds in definitive form in special funding activities receiving proper approvals.

EFFECTIVE DATE: April 9, 1983.

FOR FURTHER INFORMATION CONTACT: Larry H. Bacon, Deputy Governor, Office of Administration, 490 L'Enfant Plaza

SW., Washington, DC 20578, (202–755–2181).

SUPPLEMENTARY INFORMATION: Currently, FCA Regulations permit issuance of new consolidated and consolidated Systemwide bonds only in book-entry form. The amendments and additional regulation provide the System with flexibility in its funding activities so as to issue definitive bonds evidenced by certificates for special purposes as determined by the System Finance Committee or subcommittees and approved by the Governor of the FCA. Also, they would allow issuance of definitive bonds to investors currently prevented from purchasing Farm Credit bonds because State law requires them to hold the bonds.

These are technical changes that relieve restrictions on the System funding activities by allowing issuance of bonds in definitive form under certain circumstances and do not affect the rights of current Farm Credit bondholders.

In view of these considerations, the FCA finds it is not necessary to the public interest for this final rule to be subject to the notice and public procedure requirements of 5 U.S.C. 553 which requires general notice of proposed rules to be published in the **Federal Register**. The amendments and new regulation shall not be effective prior to the expiration of 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session as required by § 5.18(b)(1) of the Farm Credit Act of 1971, as amended.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture banks, Banking, Government securities, Investments, Rural areas.

PART 615—FUNDING AND FISCAL AFFAIRS

For the reasons set out in the preamble, Part 615 of Chapter VI, Title 12 of the Code of Federal Regulations is amended as shown.

1. The heading of Subpart O is revised to read as follows:

Subpart O—Issuance of Farm Credit Securities

2. Section 615.5450 is revised to read as follows:

§ 615.5450 Consolidated bonds.

(a) The 12 Federal land banks may issue consolidated bonds, dated on or after January 1, 1978, only in book-entry form, except as authorized under § 615.5453, in denominations of $1,000 or multiples thereof. Consolidated bonds dated before January 1, 1978, will continue to be available in both definitive form in denominations of $1,000, $5,000, $10,000, $50,000, $100,000, and $500,000, or in book-entry form in denominations of $1,000 or multiples thereof.

(b) The 12 Federal intermediate credit banks may issue consolidated bonds, dated on or after January 1, 1978, only in book-entry form, except as authorized under § 615.5453, in denominations of $5,000 or multiples thereof. Consolidated bonds dated before January 1, 1978, will continue to be available in both definitive form in denominations of $5,000, $10,000, $50,000, $100,000, and $500,000, or in book-entry form in denominations of $5,000 or multiples thereof.

(c) The 13 banks for cooperatives may issue consolidated bonds, dated on or after January 1, 1978, only in book-entry form, except as authorized under § 615.5453, in denominations of $5,000 or multiples thereof. Consolidated bonds dated before January 1, 1978, will continue to be available in both definitive form in denominations of $5,000, $10,000, $50,000, $100,000, and $500,000, or in book-entry form in denominations of $5,000 or multiples thereof.

3. Section 615.5452 is revised to read as follows:

§ 615.5452 Consolidated Systemwide bonds.

The 12 Federal land banks, the 12 Federal intermediate credit banks, and the 13 banks for cooperatives may issue consolidated Systemwide bonds only in book-entry form, except as authorized under § 615.5453, in denominations of $1,000 or multiples thereof for issues with an original maturity over 1 year and 1 month and $5,000 or multiples thereof for issues with an original maturity of under 1 year and 1 month.

§ 615.5453 [Redesignated as § 615.5454]

4. Section 615.5453 is redesignated as § 615.5454.

5. A new § 615.5453 is added to read as follows:

§ 615.5453 Definitive bonds.

Consolidated and consolidated Systemwide bonds may be issued in definitive form as determined to be appropriate by the Finance Committees or their subcommittees and as approved and executed by the Governor of the Farm Credit Administration.

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

Kenneth J. Auberger,

Acting Governor.

[FR Doc. 83-6217 Filed 3-9-83; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 83-ASO-10]

Redesignation of Control Zones, Savannah, Georgia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment will revise the coordinates of Savannah Municipal Airport and establish two separate control zones in the vicinity of Savannah, Georgia, to encompass that airspace presently designated as the Savannah control zone. This action will not involve the taking of any additional airspace but will provide separate control zones for the two major airports at Savannah.

DATES: Effective 0901 G.m.t., June 9, 1983.

Comments must be received on or before April 30, 1983.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 625, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves revising geographical coordinates and reassigning airspace so that there are two separate control zones in the Savannah area rather than one and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends,

the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to revise the coordinates of Savannah Municipal Airport to reflect current information on its geographic coordinates and to reassign that airspace presently designated as the Savannah, Georgia, control zone. At the present time, the Savannah control zone is described as that airspace within a 5-mile radius of Savannah Municipal Airport and within a 5-mile radius of Hunter Army Air Field. The containment of two airports in a control zone, both with operating airport traffic control towers and weather reporting service, results in confusion when the weather at one airport is significantly different from the other airport. The airports are approximately nine miles apart and when the weather at Savannah Municipal is below basic Visual Flight Rule (VFR) minimums, restrictions to aeronautical operations incurred at Municipal are also applicable to operations at Hunter. By redesignating the airspace so there is a control zone at each airport, weather conditions at a specific airport will only affect operating conditions at that airport. Thus, the two airports may be permitted to operate more independently of each other which results in a more efficient utilization of airspace. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3A dated January 3, 1983. Under the circumstances presented, the FAA concludes that there is a need to redesignate the Savannah control zone so as to establish two separate zones in the Savannah area. I find that notice or public procedure under 5 U.S.C. 553(b) is unnecessary as there will be no designation of additional airspace and the changes are minor in nature.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Control zone.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) is further amended, effective 0901 G.m.t., June 9, 1983, as follows:

Savannah Municipal Airport, GA—Revised

Within a 5-mile radius of Savannah Municipal Airport (Lat. 32°07'39" N., Long. 81°12'09" W.); within two miles each side of Savannah ILS Runway 36 Localizer south course, extending from the 5-mile radius area to the LOM.

Savannah Hunter AAF, GA—New

Within a 5-mile radius of Hunter AAF (Lat. 31°00'35" N., Long. 81°08'45" W.); excluding that airspace north of latitude 31°02'30" N.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

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

Issued in East Point, Georgia, on February 28, 1983.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 83-6071 Filed 3-9-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 83-AWA-3]

VOR Federal Airway Extension

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The Canadian Government has requested to extend V-318 from Houlton, ME, to St. John, NB, Canada, via the MOWND Intersection. Currently, traffic from St. John, NB, to Montreal, Canada, and Toronto, Canada, requires routing over Houlton, ME, via FRENN Intersection. This amendment will aid flight planning, expedite traffic, and save a significant amount of fuel.

DATES:

Effective Date: June 9, 1983.

Comments must be received on or before April 21, 1983.

ADDRESSES: Send comments on the rule in triplicate to: Director, FAA, New England Region, Attention: Manager, Air Traffic Division, Docket No. 83-AWA-3, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803.

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

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

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Regulations and Obstructions Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves the extension of V-318 from Houlton, ME, to St. John, NB, Canada, only 2 nautical miles of this airway extension are within the United States. This amendment has little impact on U.S. airspace and, thus, was not preceded by notice and public procedure. Comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.123 of Part 71 of the Federal

Aviation Regulations (14 CFR Part 71) is to extend V-318 from Houlton, ME, to St. John, NB, Canada, via the 128°T(149°M) and the St. John 267°T(288°M) radials. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3A dated January 3, 1983.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to extend V-318 in order to expedite this request by the Canadian Government to enhance their air traffic operations. Also, only 2 nautical miles of this airway are within the United States thereby having little impact on the U.S. air traffic system. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary and that good cause exists for making this amendment effective on the next charting date (June 9, 1983).

List of Subjects in 14 CFR Part 71

VOR Federal airway, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t., June 9, 1983, as follows:

V-318 [Amended]

By deleting the words "Houlton, ME." and substituting the words "Houlton, ME, INT Houlton 128° and St John, NB, Canada, 267° radials; St John."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

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

Issued in Washington, D.C., on March 2, 1983.

Harold W. Becker,

Acting Manager, Airspace and Air Traffic Rules Division.

[FR Doc. 83-6069 Filed 3-9-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 82-ASO-27]

Establishment of Jet Routes and Area High Routes; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: An error was noted in the description of Jet Route J-85 between Miami, FL, and Gainesville, FL, as published in the **Federal Register** on February 22, 1983 (48 FR 7437) (Airspace Docket No. 82-ASO-27). This action corrects that error.

EFFECTIVE DATE: April 14, 1983.

FOR FURTHER INFORMATION CONTACT: George Hussey, Airspace Regulations and Obstructions Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 83-4329 (82-ASO-27), published in the **Federal Register** on February 22, 1983, realigned several jet routes in the vicinity of Miami, FL. The description of Jet Route J-85 is not correctly written and this action amends that mistake.

List of Subjects in 14 CFR Part 75

Jet routes, Aviation safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, Federal Register Document 83-4329, as published in the **Federal Register** on February 22, 1983, is corrected as follows:

J-85 [Amended]

By deleting the words "From Biscayne Bay, FL, via INT Biscayne Bay 328° and Lakeland, FL, 140° radials, Lakeland," and substituting for them the words "From Miami, FL, via Gainesville, FL:"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

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

Issued in Washington, D.C., on March 3, 1983.

Harold W. Becker,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 83-6070 Filed 3-9-83; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 436

Disclosure Requirements; Prohibitions Concerning Franchising and Business Opportunity Ventures; Grant of Franchise Rule Exemption Petition for Certain Wholesaler-Sponsored Grocery Chain Affiliation Offers

AGENCY: Federal Trade Commission.

ACTION: Petition granted for franchise rule exemption.

SUMMARY: The Federal Trade Commission has determined that certain distribution arrangements between grocery wholesalers and independent retailers should be exempt from the presale disclosure requirements of the Commission's Franchise Rule. Some of these arrangements, known as "wholesaler-sponsored voluntary chains," are technically covered by the Rule. However, voluntary chain affiliation offers do not have the potential for abuse that warranted the Rule's disclosure requirements for franchises. The exemption, which was requested by the National-American Wholesale Grocers' Association, is intended to make it clear that wholesale grocers who make voluntary chain affiliation offers have no obligation to comply with the Franchise Rule.

EFFECTIVE DATE: March 2, 1983.

ADDRESS: Federal Trade Commission, 6th & Pennsylvania Avenue, NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Craig Tregillus, PC-B-800, Federal Trade Commission, 6th & Pennsylvania Avenue, NW., Washington, D.C. 20580, (202) 376-2805.

SUPPLEMENTARY INFORMATION:

Before the Federal Trade Commission

Commissioners:
James C. Miller III
David A. Clanton
Michael Pertschuk
Patricia P. Bailey
George W. Douglas

In the Matter of: Petition for Exemption from Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" filed by the National-American Wholesale Grocers' Association.

Decision and Order

On October 21, 1979, the National-American Wholesale Grocer's Association (NAWGA) filed a petition on behalf of its members seeking an exemption for wholesaler-sponsored grocery chains from coverage under a Commission trade regulation rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" (the "franchise rule").[1] NAWGA argued in its petition that an exemption is necessary to prevent unjustified coverage of these relationships, known as "voluntary chains," which enable independent grocery retailers to advertise together under common trademarks and service marks owned by their wholesale supplier.

The franchise rule, which took effect on the same day NAWGA's petition was filed, requires franchisors to provide prospective franchisees with pre-sale disclosures in writing which contain information about the franchisor, the franchised business, the terms of the franchise relationship, and substantiation for any earnings claims made. The rule is designed to assure that potential franchise purchasers have the information they need, when they need it, in order to make an informed investment decision.

Section 18(g) of the Federal Trade Commission Act authorizes the Commission to grant exemptions from its trade regulation rules where coverage is "not necessary to prevent the unfair or deceptive act[s] or practice[s] to which the rule relates."[2] Accordingly, the Commission initiated an exemption proceeding pursuant to Section 553 of the Administrative Procedure Act[3] by publishing NAWGA's submissions in the **Federal Register** for public comment.[4] Having reviewed and considered the record in this exemption proceeding, including the comments received during the 30-day comment period, the Commission has determined that the standard prescribed by Section 18(g) of the Act is met, and that an unqualified exemption from franchise rule coverage should be granted.[5]

In considering NAWGA's exemption request, the Commission's principal concern has been to determine whether the acts and practices the franchise rule was designed to prevent would be likely to occur in voluntary chain relationships if an exemption were granted. Accordingly, as in prior franchise rule exemption proceedings,[6] the Commission has examined relevant indicia of the future likelihood of such acts and practices; namely: (1) The past record of wholesaler acts and practices in making voluntary chain affiliation offers to grocery retailers; (2) comments about the need for protection by and on behalf of the grocery retailers who might benefit from franchise rule coverage; (3) the presence of conditions in the industry which could permit the abuses addressed by the franchise rule to occur; and (4) the existence of economic incentives for wholesalers to engage in any of the unfair or deceptive acts or practices to which the franchise rule relates. None of these indicia suggests that franchise rule coverage is necessary to prevent unfair or deceptive acts by wholesalers offering voluntary chain affiliations to grocery retailers.

Evidence of Abuses

We begin with the fact that there is no prior record in the grocery industry of the types of unfair or deceptive acts or practices the franchise rule was designed to prevent. The rulemaking record documenting abuses in franchise sales was devoid of evidence of any similar abuses in offers of voluntary chain affiliation by grocery wholesalers. Consequently, we were persuaded when the rule was promulgated that voluntary chains and similar relationships should be exempted from franchise rule coverage.[7]

No new evidence has since come to our attention to suggest that any of the abuses addressed by the franchise rule have occurred or are occurring in the grocery industry. The public comments received in this exemption proceeding provide a notable case in point. The comments in the record from all parties directly affected endorsed the exemption petition. Wholesale grocers and their trade association were not alone in supporting the exemption. It was also advocated by the voluntary chain affiliates who commented, as well as by two trade associations representing over 40,000 independent retail grocers, some 20,000 of whom are affiliated with voluntary chains. Thus, the very group that franchise rule coverage might benefit has failed to seek the protection the rule would provide.

The record in this proceeding provides two explanations for the apparent lack of prior problems in the grocery industry which persuade us that the likelihood of future abuses is remote: (1) The absence of the conditions that have allowed abuses to occur in franchise sales; and (2) the lack of economic incentives for grocery wholesalers to engage in unfair or deceptive practices.

Conditions Permitting Abuses

As we emphasized in the Statement of Basis and Purpose for the franchise rule, what differentiates a covered franchise from conventional distribution arrangements is the significant degree to which a franchise must rely on the franchisor's knowledge and expertise from the very outset of the relationship.[8] It is this reliance or dependence which promises to reduce the franchisee's risk of failure in a new business, but also creates the conditions which, in the absence of full disclosure as required by the rule, have allowed well-documented abuses to occur in the sale of franchises by unscrupulous promoters.

We have previously identified the factors that contribute to a prospective franchisee's dependence on the franchisor, and the consequent informational imbalance which permits abuses in the sale of franchises: (1) The frequent lack of relevant business experience and sophistication of prospective franchisees; (2) the complexity of franchise agreements and the inadequate time typically provided to review them before a binding commitment is made; and (3) the promises inherent in all franchises covered by the rule that induce reliance on the superior knowledge and expertise of the franchisor.[9] An examination of the record in this proceeding satisfies us that these factors are not characteristic of voluntary chain relationships.

The record shows that applicants seeking voluntary chain affiliation typically have extensive prior experience in the grocery industry, and thus are capable of independently evaluating the risks and benefits of affiliation. We are advised that the typical applicant, in fact, has had pertinent experience in the grocery business, with many having worked as long as five to ten years, whether as owners of an unaffiliated grocery store, managers of a chain store, or in other supervisory positions. Such prior experience is a mandatory requirement for affiliation with some voluntary groups, and the economic self-interest of the wholesalers that do not have a formal requirement makes experience a prerequisite in practice, at least when financial assistance is provided.[10]

The record also indicates that prospective voluntary chain affiliates have ample time to review and consider contractual agreements before signing them; thus, there is no place for high-pressure sales tactics in affiliation offers. The comments indicate that negotiations for affiliation typically require at least one to three months, and that many applicants consult during that time with attorneys, accountants and other business advisors. Negotiations for relationships in which the wholesaler will provide financial assistance to an affiliate are even more protracted, commonly requiring at least six months, and sometimes as long as one to three years.

Thus, the picture that emerges from the record in this proceeding is one of knowledgeable and experienced applicants with adequate time to ask pertinent questions and consult with advisors about the risks and benefits of affiliation. They stand in sharp contrast to the unsophisticated consumers the rule was primarily designed to protect, such as "mom and pop" operators of convenience stores and other franchises.

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[1] 16 C.F.R. 435 et seq. (1980).

[2] 15 U.S.C. 57a(g) (1980).

[3] 5 U.S.C. 553 (1980).

[4] 46 FR 11830 (Feb. 11, 1981).

[5] Accordingly, we need not consider the two amended petitions submitted by NAWGA on February 26 and March 27, 1980, which proposed qualified exemptions based on the prior experience and training of the grocery retailers to whom voluntary chain affiliation is offered.

[6] In re *Exemption Petitions of Automobile Importers of America, et al.*, 45 Fed. Reg. 51763 (Aug. 5, 1980); In re *Exemption Petitions of National Oil Jobbers Council et al.*, 45 FR 51765 (Aug. 5, 1980).

[7] 43 FR 59614, 59704 & n. 61 (Dec. 21, 1978).

[8] 43 FR at 59698–99.

[9] 45 FR at 51764.

[10] The franchise rule does not apply to voluntary chain affiliation offers unless the wholesaler provides some form of financial assistance to the retailer. See the discussion at p. 6, *infra*.

The pronounced differences between voluntary chain affiliations and franchise relationships are highlighted most clearly by the final factor, the lack of dependence of affiliated retailers on the wholesaler sponsoring the chain. In fact, the record shows that so little reliance on the wholesaler is induced by most affiliation offers that the prerequisites to franchise rule coverage are not even met.

Because the franchise rule targets only commercial relationships where a potential for abuse is created when an investment is induced in reliance on promises made by the franchisor, three essential elements must all be present before the rule applies: (1) An offer of the right to use the franchisor's trademark, service mark or other commercial symbol; (2) an offer of either significant assistance in operating the business or significant controls to reduce the risk of failure; and (3) required payments the franchisee must make to the franchisor to obtain the franchise, exclusive of payments made at bona fide wholesale prices for reasonable quantities of goods acquired for resale.[11]

One or more of these coverage prerequisites, which reflect the reliance and risk unique to franchise investments, is absent from almost all of the alternative business options that wholesalers typically present to their potential customers. The record indicates it is only in unique circumstances that the franchise rule ever applies to wholesaler-retailer relationships, as a brief review of the different options will demonstrate.

The first and most basic option is for establishment of an ordinary wholesale supply relationship, to which the franchise rule was never meant to apply.[12] Under this arrangement, the retailer simply contracts to purchase groceries from the wholesaler at wholesale prices, expects and receives no other services or assistance, and operates the retail business in all respects as a truly independent entrepreneur. None of the three prerequisites to franchise rule coverage is present in such a relationship.

The second option typically offered by grocery wholesalers—the opportunity to purchase not only groceries, but a variety of support services, including accounting, inventory control and payroll processing assistance [13]— is not covered either. The trademark prerequisite is not met, and there is no required payment because all the services are strictly optional, with the retailer entirely free to accept or reject each of them.[14]

For the same reason, the rule is inapplicable to the third option, the most common type of voluntary chain affiliation offer. Although the affiliation offer includes the right to operate and advertise under the wholesaler's marks and to purchase support services, the required payment prerequisite to coverage is still not met because the support services continue to be offered on a strictly optional basis.

It is only in rather limited circumstances that all three prerequisites to franchise rule coverage are technically present in voluntary chain affiliation offers. The record shows that the rule may apply when a retailer cannot affiliate unless the wholesaler invests in the business by providing some form of financial assistance. This may include, for example, an agreement to sublease store premises where the lessor demands the security of a prime lease with the wholesaler, an agreement to lease a store owned by the wholesaler, or a loan for inventory, fixtures or equipment. In each of these limited circumstances, the final prerequisite to franchise rule coverage will ordinarily be met by the required rental or loan payments the retailer must make to the wholesaler.[15] Moreover, where financial assistance is offered, required payments for such otherwise optional assistance as payroll, inventory control, accounting, site selection and store planning services may also help satisfy the final coverage prerequisite. These additional payments may be required if the wholesaler seeks to limit its risk in extending financial assistance through the control and oversight gained by providing the services, and requiring retailers who receive financing to purchase them.

We are persuaded that even though all the elements characterizing a covered franchise may technically be found when wholesalers provide financial assistance, the presence of those elements in this context reflects neither the degree of risk nor reliance likely to permit or encourage abuses. On the contrary, in providing financial assistance, the wholesaler assumes a share of the investment risk ordinarily undertaken solely by the retailer, and thus has every incentive to exercise care not to jeopardize the retailer's chances of success, through non-disclosure or otherwise. In contrast, franchisees ordinarily bear the full risk of loss in franchise investments, and franchisors do not necessarily have an incentive to promote the success of the franchise.

Furthermore, the degree of reliance of an affiliating retailer on the wholesaler is significantly less than a franchisee's reliance on a franchisor. The retailer is not induced by an affiliation offer to rely on the wholesaler's assistance, because all of the services and assistance available through affiliation are separately available from a wholesaler without affiliation. Thus, whereas a franchisee is induced to rely on a franchisor by the promise of a complete package of services and assistance not available without the franchise, no comparable reliance on a wholesaler is induced by an affiliation offer.

In addition, when the choice is made to affiliate with a voluntary chain, the retailer who needs no financial assistance is free, unlike a franchisee, to accept or reject all of the optional services offered by the wholesaler. If, on the other hand, financial assistance is sought from the wholesaler, the retailer can scarcely place any greater reliance on the wholesaler than on a bank or other commercial lender which might otherwise provide financing. The fact that the retailer may then be required to subscribe to some normally optional services can hardly be viewed as an inducement for the retailer to rely on the wholesaler to provide these services, or to obtain financial assistance from the wholesaler. If anything, such requirements might be expected to deter retailers from obtaining wholesaler financing.

With the exception of the services required when a wholesaler provides financing, the record shows that wholesalers impose no significant controls over the retailers who affiliate with voluntary chains. In marked contrast to the typical franchise, the retailer can even terminate its affiliation on relatively short notice, such as thirty days, provided its financial obligations to the wholesaler have been met. Moreover, retailers owning multiple stores are free to belong to more than one voluntary chain, and the record indicates that a number of them do, in fact, participate in chains sponsored by more than one wholesaler. By comparision, the ownership of different franchises in the same business is commonly prohibited by the non-competition clauses to be found in most franchise agreements.

Consequently, we conclude that the conditions which permit abuses in franchising are not characteristic of voluntary chain relationships between wholesale grocers and retailers. As we have noted, affiliating retailers typically have prior experience in the business, ample time to review and consider the affiliation offer, and far less exposure to the risk and reliance confronting the franchisees the rule is designed to protect. Even where franchise rule coverage would technically result from required payments that exceed the $500 threshold of the rule's minimum investment exclusion, we think our original conclusion when the franchise rule was promulgated is still valid:

> While similar in many respects to franchising, the wholesaler sponsored voluntary chains differ from franchising in that the retailers associate with the wholesalers voluntarily and with little risk.[16]

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[11] 16 CFR 436.2(a) (1) and (2); *see also* Final Interpretive Guides, 44 FR 49966, 49967 (Aug. 24, 1979).

[12] 43 FR at 59703 n.55.

[13] The record shows that wholesalers may also offer site selection, store planning and related services to retailers desiring assistance in opening a new location.

[14] Optional payments not required as a condition of obtaining a franchise do not satisfy the third coverage prerequisite. 43 FR at 59703 n.53. *See e.g.*, Informal Staff Advisory Opinion to Chrysler Corp., CCH Business Franchise Guide ¶6383 at 9553 (Aug. 10, 1979), *ratified by the Commission*, Oct. 5, 1979. Although some wholesalers charge nominal monthly affiliation and sign rental fees—typically less than $20—such fees do not exceed the $500 threshold of the minimum investment exclusion from coverage. 16 CFR 436.2(a)(3)(iii).

[15] A payment is "required as a condition of obtaining or commencing the franchise operation," 16 CFR 436.2(a)(2), if it is required by the terms of the contract offer or is "in fact necessary to begin operation." 43 FR at 59703 n. 50. All required payments made prior to and within the first six months of franchise operations count toward the $500 threshold of the minimum investment exclusion from coverage. 16 CFR 436.2(a)(3)(iii), and the record shows that even one month's rental or loan payments typically exceed that amount.

[16] 43 FR at 59704 n. 61.

Economic Incentives

Not only are the conditions which permit franchise abuses noteworthy for their absence from the grocery industry, but the structure of economic incentives actively inhibits wholesalers from committing unfair or deceptive acts and practices. Were it not for this, it would be difficult, if not impossible, to conclude that franchise rule coverage is unnecessary where financial assistance is offered.

The primary economic fact of life in the grocery business is intense price competition at the retail level. The record documents the fact that competition holds retailer profit margins at very low levels—typically one percent or less. Success and survival in the business require retailers to minimize costs and maximize sales volumes. Four consequences of this competition act as significant deterrents to wholesaler abuses in voluntary chain relationships.

First, wholesalers are unable to charge large front-end affiliation fees. Affiliating retailers cannot pass such fees on to their customers without risk of pricing themselves out of the market, and their profit margins are not sufficient to absorb them. The record confirms that initial affiliation fees are quite modest as a result—typically less than $100. Thus, there are no quick profits to be made from recruiting new affiliates; consequently, no economic incentive exists for misrepresentations to obtain them. In contrast, the incentive of substantial profits from initial franchise fees has led to well-documented sales abuses by fly-by-night franchise and business opportunity promoters.

Second, wholesalers cannot expect significant profits from continuing affiliation fees. While the record suggests that nominal monthly membership or sign rental fees are relatively common,[17] wholesalers cannot charge large on-going fees, or otherwise seek to profit at the expense of affiliated retailers, without jeopardizing the retailers' competitive position. Instead, wholesalers are constrained by retail competition to make their profit from the usual mark-up on the groceries they supply, while offering other services at cost or close to it. Thus, wholesalers stand to profit most from long-term voluntary chain affiliations, and lack the incentive franchisors can have to make short-term profits at the expense of their franchisees.

Third, unlike franchisors, wholesalers have no particular economic incentive to sell affiliation to retailers or other investors who might finance expansion of the voluntary chain. Since wholesalers profit from long-term supply relationships, rather than affiliation, they lack any significant incentive to employ unfair or deceptive practices to promote voluntary chain membership. Thus, the chain identity that affiliation offers is regarded in the industry as just another optional service provided by the wholesaler.[18] Franchisors, in contrast, typically have every incentive to expand their franchise systems as rapidly as possible, and to entice investors who can supply the necessary expansion capital to become franchisees.

Fourth, wholesalers have direct financial incentives to avoid unfairness or deception in promoting affiliation. When the rule would technically apply because a wholesaler provides financial assistance to an affiliating retailer, the record indicates that the wholesaler's losses from a store's failure can equal or exceed the retailer's. However, an even more important incentive for wholesalers to refrain from any deception that might result in financial injury to an affiliate is the wholesaler's necessary concern for preserving its good business reputation with both the affiliated and unaffiliated local retailers it serves. The loss of even one affiliate attributing a business failure to wholesaler misconduct could jeopardize a number of profitable supply relationships.

Conclusion

For these reasons, we conclude that competition in the grocery industry removes any significant incentive for wholesaler abuses in making affiliation offers. The lack of such an incentive, together with the absence of conditions that could allow abuses to occur, persuades us that there is no realistic likelihood of wholesaler misconduct in the future, just as the lack of evidence of prior abuses or requests for protection from interested parties would suggest. Thus, we conclude that franchise rule coverage of affiliation offers is not necessary to prevent the unfair or deceptive acts and practices addressed by the rule, and that an unqualified exemption from coverage should be granted since the statutory standard is met.

Our determination is unavoidably based, of course, on a forecast of the need for coverage based on the record before us of past and present conditions in the grocery industry. We recognize both that circumstances may change and that there can be no guarantee that abuses will never occur in the future. However, any isolated misconduct will be subject to scrutiny under Section 5 of the FTC Act, and the need for disclosure can be reevaluated if changed conditions ever result in widespread abuses.

Although the record in this proceeding clearly supports an exemption, there is no unanimity in the comments on the variety of proposals advanced for defining the class to whom the exemption should apply. These definitional problems can be traced to the desire of some wholesale grocers who do business as convenience store franchisors to gain an exemption for their franchise sales as well. If such an exemption is appropriate, it is not apparent on this record, which suggests, if anything, that convenience store franchises do not share the unique characteristics that minimize the potential for abuse in offers of voluntary chain affiliation.

We have determined, therefore, that the exemption we grant should apply only to voluntary chain affiliation offers, and not to convenience store franchises. Accordingly, an exemption is hereby granted from the requirements of Part 436 for:

The advertising, offering, licensing, contracting, sale or other promotion by a wholesale grocer of a voluntary chain affiliation to which Part 436 would not apply but for required payments to be made by an affiliating retailer to the wholesaler as a result of the retailer's voluntary election to obtain financial assistance from the wholesaler.

It is so ordered.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 83-6073 Filed 3-9-83; 8:45 am]

BILLING CODE 6750-01-M

[17] *See* note 14, *supra*, at 6.

[18] In fact, as the record reflects, wholesalers first offered the option of voluntary chain affiliation several decades ago in order to help the independent grocers they supplied to compete successfully with major grocery chains.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB-50]

Staff Accounting Bulletin No. 50

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This Staff Accounting Bulletin expresses the staff's views with respect to financial statement and industry guide disclosures required in a filing involving the formation of a bank holding company structure over a bank when the only substantial asset of the holding company is its investment in the bank. It also discusses requirements for subsequently filed reports on Form 10-K for such registrants.

DATE: March 3, 1983.

FOR FURTHER INFORMATION CONTACT: Howard P. Hodges, Jr. or Henry J. Velsor, Division of Corporation Finance (202-272-2553), or Marc D. Oken or Eugene W. Green, Office of the Chief Accountant (202-272-2130), Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The statements in Staff Accounting Bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Dated: March 3, 1983.

George A. Fitzsimmons,

Secretary.

List of Subjects in 17 CFR Part 211

Accounting, Reporting requirements, Securities.

Staff Accounting Bulletin No. 50

The staff herein adds Section F to Topic 1 of the Staff Accounting Bulletin Series. This section discusses the requirements for financial statements and industry guide disclosures in filings involving the formation of a bank holding company structure over a bank and requirements for subsequent filings on Form 10-K.

Topic 1: Financial Statements

* * * * *

F. Financial Statement Requirements in Filings Involving the Formation of a One-Bank Holding Company

Facts: Holding Company A is organized for the purpose of issuing common stock to acquire all of the common stock of Bank A. Under the plan of reorganization, each share of common stock of Bank A will be exchanged for one share of common stock of the holding company. The shares of the holding company to be issued in the transaction will be registered on Form S-14. The holding company will not engage in any operations prior to consummation of the reorganization, and its only significant asset after the transaction will be its investment in the bank. The bank has been furnishing its shareholders with an annual report that includes financial statements that comply with generally accepted accounting principles.

Item 15 of Schedule 14A of the proxy rules[1] provides that financial statements generally are not necessary in proxy material relating only to changes in legal organization, (such as reorganizations involving the issuer and one or more of its totally held subsidiaries).

Question 1: Must the financial statements and the information required by Securities Act Industry Guide ("Guide 3")[2] for Bank A be included in the initial registration statement on Form S-14?

Interpretive Response: No, provided that certain conditions are met. The staff will not take exception to the omission of financial statements and Guide 3 information in the initial registration statement on Form S-14 if all of the following conditions are met:

- There are no anticipated changes in the shareholders' relative equity ownership interest in the underlying bank assets, except for redemption of no more than a nominal number of shares of unaffiliated persons who dissent;
- In the aggregate, only nominal borrowings are to be incurred for such purposes as organizing the holding company, to pay nonaffiliated persons who dissent, or to meet minimum capital requirements;
- There are no new classes of stock authorized other than those corresponding to the stock of Bank A immediately prior to the reorganization;
- There are no plans or arrangements to issue any additional shares to acquire any business other than Bank A; and,
- There has been no material adverse change in the financial condition of the bank since the latest fiscal year end included in the annual report to shareholders.

If at the time of filing the S-14, a letter is furnished to the staff stating that all of these conditions are met, it will not be necessary to request the Division of Corporation Finance to waive the financial statement or Guide 3 requirements of Form S-14.

Although the financial statements may be omitted, the filing should include a section captioned, "Financial Statements," which states either that an annual report containing financial statements for at least the latest fiscal year prepared in conformity with generally accepted accounting principles was previously furnished to shareholders or is being delivered with the prospectus. If financial statements have been previously furnished, it should be indicated that an additional copy of such report for the latest fiscal year will be furnished promptly upon request without charge to shareholders. The name and address of the person to whom the request should be made should be provided. One copy of such annual report should be furnished supplementally with the initial filing for purposes of staff review.

If any nominal amounts are to be borrowed in connection with the formation of the holding company, a statement of capitalization should be included in the filing which shows Bank A on an historical basis, the pro forma adjustments, and the holding company on a pro forma basis. A note should also explain the pro forma effect, in total and per share, which the borrowings would have had on net income for the latest fiscal year if the transaction had occurred at the beginning of the period.

Question 2: Are the financial statements of Bank A required to be audited for purposes of the initial Form S-14 or the subsequent Form 10-K report?

Interpretive Response: The staff will not insist that the financial statements in the annual report to shareholders used to satisfy the requirements of the initial Form S-14 be audited.

The consolidated financial statements of the holding company to be included in the registrant's initial report on Form 10-K should comply with the applicable financial statement requirements in Regulation S-X at the time such annual report is filed. However, the regulations also provide that the staff may allow one or more of the required statements to be unaudited where it is consistent with the protection of investors.[3] Accordingly, the policy of the Division of Corporation Finance is as follows:

- The registrant should file audited balance sheets as of the two most recent fiscal years and audited statements of income and changes in financial position for each of the three latest fiscal years, with appropriate footnotes and schedules as required by Regulation S-X unless the financial statements have not previously been audited for the periods required to be filed. In such cases, the Division will not object if the financial statements in the first annual report on Form 10-K (or the special report filed pursuant to Rule 15d-2)[4] are audited only for the two latest fiscal years.[5] This policy only applies to filings on Form 10-K, and not to any Securities Act filings made after the initial S-14 filing.

The above procedure may be followed without making a specific request of the Division of Corporation Finance for a waiver of the financial statement requirements of Form 10-K.

The information required by Guide 3 should also be provided in the Form 10-K for at least the periods for which audited financial statements are furnished. If some of the statistical information for the two most recent fiscal years for which audited financial statements are included (other than information on nonperforming loans and the summary of loan loss experience) is unavailable and cannot be obtained without unwarranted or undue burden or expense, such data may be omitted provided a brief explanation in support of such representation is included in the

[1] Item 15(c) of Schedule 14A (17 CFR Part 240).

[2] Item 801 of Regulation S-K (17 CFR Part 229).

[3] Rule 3-13 of Regulation S-X (17 CFR Part 210).

[4] Rule 15d-2 (17 CFR Part 240) would be appliable if the annual report furnished with the Form S-14 was not for the registrant's most recent fiscal year. In such a situation, Rule 15d-2 would require the registrant to file a special report within 90 days after the effective date of the Form S-14 furnishing audited financial statements for the most recent fiscal year.

[5] Unaudited statements of income and changes in financial position should be furnished for the earliest period.

report on Form 10–K. In all cases, however, information with respect to nonperforming loans and loan loss experience, or reasonably comparable data, must be furnished for at least the two latest fiscal years in the initial 10–K. Thereafter, for subsequent years in reports on Form 10–K, all of the Guide 3 information is required; Guide 3 information which had been omitted in the initial 10–K in accordance with the above procedure can be excluded in any subsequent 10–K's.

Question 3: Can organization costs incurred to register securities issued for the formation of one-bank holding companies be capitalized?

Interpretive Response: The staff will not object if organizational costs such as legal, printing and other related costs are capitalized and amortized against income over a period not to exceed 5 years. Any such organization costs should be shown in the balance sheet as an asset, and not as a reduction of shareholders' equity.

Audit fees incurred would not be deemed to be organizational costs and should be expensed.

[FR Doc. 83-6187 Filed 3-9-83; 8:45 am]
BILLING CODE 8010-01-M

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17 CFR Part 231

[Release No. 33-6455]

Interpretive Release on Regulation D

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Interpretations.

SUMMARY: The Commission has authorized the issuance of this release setting forth the views of its Division of Corporation Finance on various interpretive questions regarding the rules contained in Regulation D under the Securities Act of 1933. These views are being published to answer frequently raised questions with respect to the regulation.

FOR FURTHER INFORMATION, CONTACT: David B. H. Martin, Jr., Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549, (202) 272–2573.

SUPPLEMENTARY INFORMATION: In Release No. 33–6389 (March 8, 1982) (47 FR 11251), the Commission adopted Regulation D (17 CFR 230.501–.506) which provides three exemptions from the registration requirements of the Securities Act of 1933 (the "Securities Act" or the "Act") (15 U.S.C. 77a–77bbbb (1976 & Supp. IV 1980), as amended by the Bus Regulatory Reform Act of 1982, Pub. L. No. 97–261 section 19(d), 96 Stat. 1121 (1982)).[1] Regulation D became effective on April 15, 1982.

In the course of administering the regulation, the staff of the Division of Corporation Finance has answered numerous oral and written requests for interpretation of the new provisions. This release is intended to assist those persons who wish to make offerings in reliance on the exemptions in Regulation D by presenting the staff's views on frequently raised questions. As indicated in Preliminary Note 3 to the regulation, Regulation D is intended to be a basic element in a uniform system of federal-state exemptions. As such, aspects of Regulation D have been incorporated in many state statutes and regulations. The interpretations set forth in this release relate only to the federal provisions.

Regulation D is composed of six rules, Rules 501–506. The first three rules set forth general terms and conditions that apply in whole or in part to the exemptions. The questions arising under Rules 501–503 fall into four general categories: definitions, disclosure requirements, operational conditions, and notice of sale requirements. The exemptions of Regulation D are set forth in Rules 504–506. Questions concerning those rules usually raise issues pertaining to more than one exemption. This release, an outline of which follows, is organized so as to reflect this pattern of inquiries.

I. Definitions—Rule 501
A. Accredited Investor—Rule 501(a) (Questions 1–30)
1. General
2. Certain Institutional Investors—Rules 501(a)(1)–(3)
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4. $150,000 Purchasers—Rule 501(a)(5)
a. $150,000 Purchase
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5. Natural Persons—Rules 501(a)(6)–(7)
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7. Trusts as Accredited Investors
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1. Non-reporting Issuers—Rule 502(b)(2)(i)
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III. Operational Conditions
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C. Questions Relating to Rules 504 and 505 (Questions 67–71)
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E. Questions Relating to Rules 504–506 (Questions 74–80)
V. Notice of Sale—Form D (Questions 81–92)

I. Definitions—Rule 501

A. Accredited Investor—Rule 501(a)

Defined in Rule 501(a), the term "accredited investor" is significant to the operation of Regulation D.[2] Under Rule 501(e), for instance, accredited investors are not included in computing the number of purchasers in offerings conducted in reliance on Rules 505 and 506. Also, if accredited investors are the only purchasers in offerings under Rules 505 and 506, Regulation D does not require delivery of specific disclosure as a condition of the exemptions. Finally, in an offering under Rule 506, the issuer's obligation to ensure the sophistication of purchasers applies to investors that are not accredited. *See* Rule 506(b)(2)(ii).

The definition sets forth eigth categories of investor that may be accredited. The following questions and answers cover certain issues under various of those categories. Given the frequency of questions regarding the application of the definition to trusts, however, there is a separate section addressing that area.

1. *General.* The definition of "accredited investor" includes any person who comes within or "who the issuer reasonably believes" comes within one of the enumerated categories "at the time of the sale of the securities to that person." What constitutes "reasonable" belief will depend on the facts of each particular case. For this reason, the staff generally will not be in

[1] Prior releases leading to the adoption of Regulation D included Release No. 33–6274 (December 23, 1980) (46 FR 2631) in which the Commission considered and requested comments on various exemptions under the Securities Act and Release No. 33–6339 (August 7, 1981) (46 FR 41791) in which the Commission published proposed Regulation D for comment.

[2] The term also is essential to the operation of section 4(6) of the Securities Act which exempts certain transactions involving sales solely to accredited investors. The definition of accredited investor for section 4(6) is found at section 2(15) of the Securities Act and Rule 215 (17 CFR 230.321). Rule 501(a) combines and repeats those provisions. As a result, interpretations regarding the definition of "accredited investor" in Regulation D also apply to the definition of that term under section 4(6).

a position to express views or otherwise endorse any one method for ascertaining whether an investor is accredited.

(1) *Question:* A director of a corporate issuer purchases securities offered under Rule 505. Two weeks after the purchase, and prior to completion of the offering, the director resigns due to a sudden illness. Is the former director an accredited investor?

Answer: Yes. The preliminary language to Rule 501(a) provides that an investor is accredited if he falls into one of the enumerated categories "at the time of the sale of securities to that person." One such category includes directors of the issuer. *See* Rule 501(a)(4). The investor in this case had that status at the time of the sale to him.[3]

2. *Certain Institutional Investors—Rules 501(a)(1)–(3).* (2) *Question:* A national bank purchases $100,000 of securities from a Regulation D issuer and distributes the securities equally among ten trust accounts for which it acts as trustee. Is the bank an accredited investor?

Answer: Yes. Rule 501(a)(1) accredits a bank acting in a fiduciary capacity.[4]

(3) *Question:* An ERISA employee benefit plan will purchase $200,000 of the securities being offered. The plan has less than $5,000,000 in total assets and its investment decisions are made by a plan trustee who is not a bank, insurance company, or registered investment adviser. Does the plan qualify as an accredited investor?

Answer: Not under Rule 501(a)(1). Rule 501(a)(1) accredits an ERISA plan that has a plan fiduciary which is a bank, insurance company, or registered investment adviser or that has total assets in excess of $5,000,000. The plan, however, may be an accredited investor under Rule 501(a)(5), which accredits certain persons who purchase at least $150,000 of the securities being offered.

(4) *Question:* A state run, not-for-profit hospital has total assets in excess of $5,000,000. Because it is a state agency, the hospital is exempt from federal income taxation. Rule 501(a)(3) accredits any organization described in section 501(c)(3) of the Internal Revenue Code that has total assets in excess of $5,000,000. Is the hospital accredited under Rule 501(a)(3)?

Answer: Yes. This category does not require that the investor has received a ruling on tax status under section 501(c)(3) of the Internal Revenue Code. Rather, Rule 501(a)(3) accredits an investor that falls within the substantive description in that section.[5]

(5) *Question:* A not-for-profit, tax exempt hospital with total assets of $3,000,000 is purchasing $100,000 of securities in a Regulation D offering. The hospital controls a subsidiary with total assets of $3,000,000. Under generally accepted accounting principles, the hospital may combine its financial statements with that of its subsidiary. Is the hospital accredited?

Answer: Yes, under Rule 501(a)(3). Where the financial statements of the subsidiary may be combined with those of the investor, the assets of the subsidiary may be added to those of the investor in computing total assets for purposes of Rule 501(a)(3).[6]

3. Insiders—Rule 501(a)(4). (6) *Question:* The executive officer of a parent of the corporate general partner of the issuer is investing in the Regulation D offering. Is that individual an accredited investor?

Answer: Rule 501(a)(4) accredits only the directors and executive officers of the general partner itself. Unless the executive officer of the parent can be deemed an executive officer of the subsidiary,[7] that individual is not an accredited investor.

4. $150,000 Purchasers—Rule 501(a)(5). This provision accredits any person [8] who satisfies two separate tests. To be accredited under Rule 501(a)(5), an investor must purchase at least $150,000 of the securities being offered, by one or a combination of four specific methods: cash, marketable securities, an unconditional obligation to pay cash or marketable securities over not more than five years, and cancellation of indebtedness. The rule also requires that "the total purchase price" may not exceed 20 percent of the purchaser's net worth. The two tests under Rule 501(a)(5) must be considered separately. Thus, for instance, in computing the "total purchase price" for the 20 percent of net worth limitation, the investor may have to include amounts that could not be included toward the $150,000 purchase test.

a. $150,000 Purchase. (7) *Question:* Two issuers, a general partner and its limited partnership, are selling their securities simultaneously as units consisting of common stock and limited partnership interests. The issues are part of a plan of financing made for the same general purpose. If an investor purchases $150,000 of these units, would it satisfy the $150,000 purchase element of Rule 501(a)(5)?

Answer: Yes. The issuers are affiliated and the simultaneous sale of their separate securities as units for a single plan of financing would be deemed one integrated offering. Rule 501(a)(5) applies to a purchase "of the securities being offered." The rule thus applies not to the securites of a particular issuer, but to the securities of a particular offering[9]

(8) *Question:* An investor will purchase securities in cash installments. Each installment payment will include amounts due on the principal as well as interest. If the total of all payments is $150,000, will the investor have purchased "at least $150,000 of the securities being offered" for purposes of Rule 501(a)(5)?

Answer: No. Under Rule 501(a)(5), any amount constituting interest due on the unpaid purchase price is not payment for the "securities being offered."

(9) *Question:* The installment payments for interests in a limited partnership that will develop commercial real estate will be conditioned upon completion of certain phases of the project. Will the obligation to make those payments be deemed "an unconditional obligation to pay" for purposes of Rule 501(a)(5)?

Answer: Yes, as long as the only conditions relate to completion of successive stages of the development project.

(10) *Question:* An investor will purchase securities in a Regulation D offering by delivering $75,000 in cash and a letter of credit for $75,000. Will such a purchase satisfy the $150,000 element of Rule 501(a)(5)?

Answer: No. Because there is no assurance that the letter of credit will ever be drawn against, the staff does not deem it to be an unconditional obligation to pay.

(11) *Question:* In connection with the sale of limited partnership interests in an oil and gas drilling program, an investor in a Regulation D offering commits to pay subsequent assessments

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[3] Preliminary Note 6 to Regulation D would support a different analysis if it could be shown that the director's appointment or resignation was "part of a plan or scheme to evade the registration provisions of the Act."

[4] Rule 501(a)(1) refers to "[a]ny bank as defined in section 3(a)(2) of the Act." Section 3(a)(2) provides that the term "bank" includes "any national bank." Section 3(a)(2) also provides that where a common or collective trust fund is involved, the term "bank" has the same meaning as in the Investment Company Act of 1940 (the "Investment Company Act") (15 U.S.C. 80a–1–80a–65 (1976 & Supp. IV 1980)). Section 2(a)(5) of the Investment Company Act defines "bank."

[5] *See* letter re *Voluntary Hospitals of America, Inc.* dated November 30, 1982.

[6] *See* letter re *Voluntary Hospitals of America, Inc.* dated September 10, 1982.

[7] *See* Question 37.

[8] Section 2(2) of the Securities Act includes corporations and partnerships within the definition of "person."

[9] *See* letter re *Intuit Telecom Inc.* dated March 24, 1982.

that are mandatory, non-contingent, and for which the investor will be personally liable. Will the commitment to pay the assessments constitute an "unconditional obligation to pay" under Rule 501(a)(5)?

Answer: Yes. The assessments are essentially installment payments for which the investor makes the investment decision at the time the limited partnership interest originally is purchased.[10]

(12) *Question:* If the assessments in Question 11 are voluntary, contingent and non-recourse, can they be included in determining whether or not the investor has purchased $150,000 of the securities being offered?

Answer: No. Voluntary assessments of this nature are not deemed to constitute an unconditional obligation to pay.[11]

(13) *Question:* A purchaser of interests in a limited partnership makes a partial down payment and commits unconditionally to pay the balance over five years. Formation of the partnership is conditioned upon the sale of a specified number of interests. Under Rule 501(a)(5), when must the five year period for installment payments begin to run?

Answer: Rule 501(a)(5) provides that the unconditional obligation is to be discharged "within five years of the sale of the securities to the purchaser." For ease in the administration of an offering that is conditioned on a certain minimum level of sales, the staff believes it is reasonable to compute the length of installment obligations from the same date for the investors involved in reaching that minimum. Therefore, without any bearing on when the sale of the security actually occurs, the five-year time period of the investor's obligation may be measured from the date such minimum level of sales has been reached.[12]

b. 20 Percent of Net Worth Limitation

(14) *Question:* Where an investor makes installment payments composed of principal and interest, must the interest payments be included in computing the "total purchase price" for purposes of meeting the 20 percent of net worth limitation?

Answer: No. The interest is not part of the total purchase price but rather is an expense associated with financing the total purchase price.

(15) *Question:* A corporate investor will purchase $200,000 of the securities being offered for cash. Additionally, the investor will deliver an irrevocable letter of credit for $50,000 which the issuer will use as collateral in connection with a line of credit it will establish with a lending institution. Must the issuer include the $50,000 letter of credit when determining whether or not the purchaser's total purchase price exceeds 20 percent of its net worth under Rule 501(a)(5)?

Answer: Yes. Since the investor has committed to pay the $50,000 at the election of the issuer, that amount must be included with other forms of consideration in order to measure what percentage of the investor's net worth has been committed in the investment.[13]

(16) *Question:* As part of the purchase of an interest in a sale and lease-back program, the purchaser will deliver "non-recourse" debt where the source of payment for the debt is limited exclusively to the income generated by the security being purchased or the assets of the entity in which the security is being purchased. Must the non-recourse debt be included in the total purchase price for purposes of the 20 percent of net worth limitation under Rule 501(a)(5)?

Answer: No. Because the investor has no personal liability for the non-recourse debt, and because no part of the investor's assets at the time of purchase is available as a source of payment for the debt, the debt should not be included as part of the purchase price.[14]

(17) *Question:* Where the purchaser is a natural person, Rule 501(a)(5) provides that the total purchase price may be measured against the purchaser's net worth combined with that of a spouse. Would property held solely by one spouse be available for calculating the net worth of the other spouse who is making the $150,000 investment?

Answer: Yes.

(18) *Question:* An investment general partnership is purchasing securities in a Regulation D offering. The partnership was not formed for the specific purpose of acquiring the securities being offered. May the issuer consider the aggregate net worth of the general partners in calculating the net worth of the partnership?

Answer: Yes. An investment general partnership is functionally a vehicle in which profits and losses are passed through to general partners and in which the net worths of the general partners are exposed to the risk of partnership investments.[15]

(19) *Question:* A totally held subsidiary[16] makes a cash investment of $200,000 in a Regulation D offering. May that subsidiary use the consolidated net worth of its parent in determining whether or not its total purchase price exceeds 20 percent of its net worth?

Answer: Yes.[17]

5. *Natural Persons—Rules 501(a) (6)–(7).* Rules 501(a) (6) and (7) apply only to natural persons. Paragraph (6) accredits any natural person with a net worth at the time of purchase in excess of $1,000,000. If the investor is married, the rule permits the use of joint net worth of the couple. Paragraph (7) accredits any natural person whose income has exceeded $200,000 in each of the two most recent years and is reasonably expected to exceed $200,000 in the year of the investment.

(20) *Question:* A corporation with a net worth of $2,000,000 purchases securities in a Regulation D offering. Is the corporation an accredited investor under Rule 501(a)(6)?

Answer: No. Rule 501(a)(6) is limited to "natural" persons.

(21) *Question:* In calculating net worth for purposes of Rule 501(a)(6), may the investor include the estimated fair market value of his principal residence as an asset?

Answer: Yes. Rule 501(a)(6) does not exclude any of the purchaser's assets from the net worth needed to qualify as an accredited investor.

(22) *Question:* May a purchaser take into account income of a spouse in determining possible accreditation under Rule 501(a)(7)?

Answer: No. Rule 501(a)(7) requires "individual income" over $200,000 in order to qualify as an accredited investor.

(23) *Question:* May a purchaser include unrealized capital appreciation in calculating income for purposes of Rule 501(a)(7)?

Answer: Generally, no.

6. Entities Owned by Accredited Investors—Rule 501(a)(8). Any entity in which each equity owner is an accredited investor under any of the qualifying categories, except that of the $150,000 purchaser, is accredited under Rule 501(a)(8).

(24) *Question:* All but one of the shareholders of a corporation are

[10] *See* letter to *Kim R. Clark, Esq.* dated November 8, 1982.

[11] *See* letter to *Kim R. Clark, Esq.* dated November 8, 1982.

[12] *See* letter re *Winthrop Financial Co., Inc.* dated May 25, 1982.

[13] Note that this $50,000 is not deemed to be "an unconditional obligation to pay" and cannot be included in calculating whether or not the investor meets the $150,000 purchase test of Rule 501(a)(5). *See* Question 10.

[14] *See* letter to *Lola M. Hale, Esq.* dated July 1, 1982.

[15] *See* letter re *Smith Barney, Harris Upham & Co.* dated July 14, 1982.

[16] *See* CFR 230.405 for the difinition of "totally held subsidiary."

[17] *See* letter re *Federated Financial Corporation* dated May 13, 1982.

accredited investors by virtue of net worth or income. The unaccredited shareholder is a director who bought one share of stock in order to comply with a requirement that all directors be shareholders of the corporation. Is the corporation an accredited investor under Rule 501(a)(8)?

Answer: No. Rule 501(a)(8) requires "all of the equity owners" to be accredited investors. The director is an equity owner and is not accredited. Note that the director cannot be accredited under Rule 501(a)(4). That provision extends accreditation to a director of the issuer, not of the investor.

(25) *Question:* Who are the equity owners of a limited partnership?

Answer: The limited partners.

7. Trusts as Accredited Investors.

(26) *Question:* May a trust qualify as an accredited investor under Rule 501(a)(1)?

Answer: Only in directly. Although a trust standing alone cannot be accredited under Rule 501(a)(1), if a bank is its trustee and makes the investment on behalf of the trust, the trust will in effect be accredited by virtue of the provision in Rule 501(a)(1) that accredits a bank acting in a fiduciary capacity.

(27) *Question:* May a trust qualify as an accredited investor under Rule 501(a)(5)?

Answer: Yes. The Division interprets "person" in Rule 501(a)(5) to include any trust.[18]

(28) *Question:* In qualifying a trust as an accredited investor under Rule 501(a)(5), whose net worth should be considered in determining whether the total purchase price meets the 20 percent of net worth limitation test?

Answer: The net worth of the trust.

(29) *Question:* A trustee of a trust has a net worth of $1,500,000. Is the trustee's purchase of securities for the trust that of an accredited investor under Rule 501(a)(6)?

Answer: No. Except where a bank is a trustee, the trust is deemed the purchaser, not the trustee. The trust is not a "natural" person.

(30) *Question:* May a trust be accredited under Rule 501(a)(8) if all of its beneficiaries are accredited investors?

Answer: Generally, no. Rule 501(a)(8) accredits any entity if all of its "equity owners" are accredited investors. The staff does not interpret this provision to apply to the beneficiaries of a conventional trust. The result may be different, however, in the case of certain non-conventional trusts where, as a result of powers retained by the grantors, a trust as a legal entity would be deemed not to exist.[19] Thus, where the grantors of a revocable trust are accredited investors under Rule 501(a)(6) (*i.e.* net worth exceeds $1,000,000) and the trust may be amended or revoked at any time by the grantors, the trust is accredited because the grantors will be deemed the equity owners of the trust's assets.[20] Similarly, where the purchase of Regulation D securities is made by an Individual Retirement Account and the participant is an accredited investor, the account would be accredited under Rule 501(a)(8).

B. Aggregate Offering Price—Rule 501(c)

The "aggregate offering price," defined in Rule 501(c), is the sum of all proceeds received by the issuer for issuance of its securities. The term is important to the operation of Rules 504 and 505, both of which impose a limitation on the aggregate offering price as a specific condition to the availability of the exemption.[21]

(31) *Question:* The sole general partner of a real estate limited partnership contributes property to the program. Must that property be valued and included in the overall proceeds of the offering as part of the aggregate offering price?

Answer: No, assuming the property is contributed in exchange for a general partnership interest.

(32) *Question:* An owner of a mining or oil and gas property is selling interests in the property to investors for cash. The owner will retain a royalty interest in the property. Must any subsequent royalty payments be included in the aggregate offering price of the property interests?

Answer: No. Royalty payments to the seller of the property are treated as operating expenses, rather than capitalized costs for the property. As such, the royalty payments are not part of the consideration received by the issuer for issuance of the securities.

(33) *Question:* Where the investors pay for their securities in installments and these payments include an interest component, must the issuer include interest payments in the "aggregate offering price?"

Answer: No. The interest payments are not deemed to be consideration for the issuance of the securities.[22]

(34) *Question:* An offering of interests in an oil and gas limited partnership provides for additional voluntary assessments. These assessments, undermined at the time of the offering, may be called at the general partner's discretion for developmental drilling activities. Must the assessments be included in the aggregate offering price, and if so, in what amount?

Answer: Because it is unclear that the assessments will ever be called, and because if they are called, it is unclear at what level, the issuer is not required to include the assessments in the aggregate offering price. In fact, the assessments will be consideration received for the issuance of additional securities in the limited partnership. This issuance will need to be considered along with the original issuance for possible integration, or, if not integrated, must find its own exemption from registration.

(35) *Question:* In purchasing interests in an oil and gas partnership, investors agree to pay mandatory assessments. The assessments, essentially installment payments, are non-contingent and investors will be personally liable for their payment. Must the issuer include the assessments in the aggregate offering price?

Answer: Yes.[23]

(36) *Question:* As part of their purchase of securities, investors deliver irrevocable letters of credit. Must the letters of credit be included in the aggregate offering price?

Answer: If these letters of credit were drawn against, the amounts involved would be considered part of the aggregate offering price. For this reason, in planning the transaction, the issuer should consider the full amount of the letters of credit in calculating the aggregate offering price.

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[18] Section 2(2) of the Securities Act includes "a trust" within the definition of "person" but limits that inclusion to "a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security." The Division does not view that limitation as being necessary in the context of a trust as a purchaser of securities under Rule 501(a)(5).

[19] The result would also be different in the case of a business trust, a real estate investment trust, or other similar entities.

[20] *See* letter re *Rule 501(a)(8) of Regulation D* dated July 16, 1982.

[21] The basis for a limitation on the aggregate offering price derives from section 3(b) of the Securities Act. Section 3(b) accords authority to the Commission to adopt rules exempting any class of securities as long as no issue of securities is exempted "where the aggregate amount at which such issue is offered to the public exceeds $5,000,000." *See also* section 4(6) which exempts a transaction involving offers and sales solely to one or more accredited investors "if the aggregate offering price of an issue" does not exceed the amount allowed under section 3(b).

[22] This presumes that the payments are in fact for interest. *See* Preliminary Note 6 to Regulation D.

[23] *See* letter to *Kim R. Clark, Esq.* dated November 8, 1982.

C. Executive Officer—Rule 501(f)

The definition of executive officer in Rule 501(f) is the same as that in Rule 405 of Regulation C (17 CFR 230.405).

(37) *Question:* The executive officer of the parent of the Regulation D issuer performs a policy making function for its subsidiary. May that individual be deemed an "executive officer" of the subsidiary?

Answer: Yes.

D. Purchaser Representative—Rule 501(h)

A purchaser representative is any person who satisfies, or who the issuer reasonably believes statisfies, four conditions enumerated in Rule 501(h). Beyond the obligations imposed by that rule, any person acting as a purchaser representative must consider whether or not he is required to register as a broker-dealer under section 15 of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a-78kk (1976 & Supp. IV 1980)) or as an investment adviser under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-1–80b-21 (1976 & Supp. IV 1980)).[24]

(38) *Question:* May the officer of a corporate general partner of the issuer qualify as a purchaser representative under Rule 501(h)?

Answer: Rule 501(h) provides that "an affiliate, director, officer or other employee of the issuer" may not be a purchaser representative unless the purchaser has one of three enumerated relationships with the representative. The staff is of the view that an officer or director of a corporate general partner comes within the scope of "affiliate, director, officer or other employee of the issuer."

(39) *Question:* May the issuer in a Regulation D offering pay the fees of the purchaser representative?

Answer: Yes. Nothing in Regulation D prohibits the payment by the issuer of the purchaser representative's fees. Rule 501(h)(4), however, requires disclosure of this fact.[25]

II. Disclosure Requirements—Rule 502(b)

A. When Required

Rule 502(b)(1) sets forth the circumstances when disclosure of the kind specified in the regulation must be delivered to investors. The regulation requires the delivery of certain information "during the course of the offering and prior to sale" if the offering is conducted in reliance on Rule 505 or 506 and if there are unaccredited investors. If the offering is conducted in compliance with Rule 504 or if securities are sold only to accredited investors, Regulation D does not specify the information that must be disclosed to investors.[26]

(40) *Question:* An issuer furnishes potential investors a short form offering memorandum in anticipation of actual selling activities and the delivery of an expanded disclosure document. Does Regulation D permit the delivery of disclosure in two installments?

Answer: So long as all the information is delivered prior to sale, the use of a fair and adequate summary followed by a complete disclosure document is not prohibited under Regulation D. Disclosure in such a manner, however, should not obscure material information.

(41) *Question:* An issuer commences an offering in reliance on Rule 505 in which the issuer intends to make sales only to accredited investors. The issuer delivers those investors an abbreviated disclosure document. Before the completion of the offering, the issuer changes its intentions and proposes to make sales to non-accredited investors. Would the requirement that the issuer deliver the specified information to all purchasers prior to sale if any sales are made to non-accredited investors preclude application of Rule 505 to the earlier sales to the accredited investors?

Answer: No. If the issuer delivers a complete disclosure document to the accredited investors and agrees to return their funds promptly unless they should elect to remain in the program, the issuer would not be precluded from relying on Rule 505.

B. What Required

Regulation D divides disclosure into two categories: that to be furnished by non-reporting companies and that required for reporting companies. In either case, the specified disclosure is required to the extent material to an understanding of the issuer, its business and the securities being offered.

1. Non-Reporting Issuers—Rule 502(b)(2)(i). If the issuer is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act,[27] it must furnish the specified information "to the extent material to an understanding of the issuer, its business and the securities being offered." For offerings up to $5,000,000, the issuer should furnish the "same kind of information" as would be contained in Part I of Form S–18,[28] except that only the most recent year's financial statements need be certified. For offerings over $5,000,000, the issuer should furnish "the same kind of information" as would be required in Part I of an available registration statement.[29]

(42) *Question:* When an issuer is required to deliver specific disclosure, must that disclosure be in written form?

Answer: Yes.

(43) *Question:* Form S–18 requires the issuer's audited balance sheet as of the end of its most recently completed fiscal year or within 135 days if the issuer has been in existence for a shorter time. With a limited partnership that has been formed with minimal capitalization immediately prior to a Regulation D offering, must the Regulation D disclosure document contain an audited balance sheet for the issuer?

Answer: In analyzing this or any other disclosure question under Regulation D, the issuer starts with the general rule that it is obligated to furnish the specified information "to the extent material to an understanding of the issuer, its business, and the securities being offered." Thus, in this particular case, if an audited balance sheet is not material to the investor's understanding,

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[24] *See* letters to *Winstead, McGuire, Sechrest & Trimble* dated February 21 and 25, 1975 and re *Kenisa Oil Company* dated April 6, 1982. Questions regarding registration as a broker-dealer should be directed to the Office of Chief Counsel, Divison of Market Regulation, (202) 272–2844. Questions regarding registration as an investment adviser should be directed to the Office of Chief Counsel, Division of Investment Management, (202) 272–2030.

[25] Note 3 to Rule 501(h) points out that disclosure of a material relationship between the purchaser representative and the issuer will not relieve the purchaser representative of the obligation to act in the interest of the purchaser.

[26] As noted in Preliminary Note 1, Regulation D transactions are exempt from the registration requirements of the Securities Act, not the antifraud provisions. Thus, nothing in Regulation D states that an issuer need not give disclosure to an investor. Rather, the regulation provides that in certain instances the exemptions from registration will not be conditioned on a particular content, format or method of disclosure.

[27] An issuer is subject to section 13 reporting obligations if it has a class of securities registered under section 12 of the Exchange Act. An issuer is subject to section 15(d) reporting obligations if it has had a Securities Act registration statement go effective, or if in any year after the year of effectiveness, it has at least 300 holders of the class of securities to which the registration statement applied. In the latter instance, however, even if the issuer has 300 or more shareholders, it may not be subject to section 15(d) reporting obligations if it has had less than 500 shareholders and less than $3,000,000 in assets during the last three years. *See* Rule 15d–6 (17 CFR 240.15d–6) under the Exchange Act.

[28] *See* 17 CFR 239.28. Form S–18 is an abbreviated registration form for certain offerings not exceeding $5,000,000. The form is not available to issuers that report under the Exchange Act.

[29] Rules 502(b)(2)(i)(C) and 502(b)(2)(ii)(D) contain special provisions for foreign issuers recently adopted by the Commission. *See* Release No. 33–6437 (November 19, 1982) (47 FR 54764).

then the issuer may elect to present an alternative to its audited balance sheet.

(44) *Question:* Is Securities Act Industry Guide 5 [30] applicable in a $4,000,000 Regulation D offering of interests in a real estate limited partnership?

Answer: Rule 502(b)(2)(i)(A) requires the issuer to provide the same kind of information as that required in Part I of Form S–18.[31]

Form S–18 directs the issuer's attention to the Industry Guides noting that such guides "represent Division practices with respect to the disclosure to be provided by the affected industries in registration statements." In preparing its Regulation D offering material, therefore, an issuer of interests in a real estate limited partnership should consider Guide 5 in determining the disclosure that will be material to the investor's understanding of the issuer, its business and the securities being offered.

(45) *Question:* In a $4,000,000 Regulation D offering of interests in an oil and gas limited partnership, what are the issuer's disclosure obligations with respect to financial statements of the general partner?

Answer: Item 21(h) of Form S–18 provides that the issuer should furnish the audited balance sheet as of the end of the most recent fiscal year of any corporation or partnership that is a general partner of the issuer. For any general partner that is a natural person, in lieu of an audited balance sheet, the issuer may furnish a statement of that individual's net worth in the text of the disclosure document, where assets and liabilities are estimated at fair market value with provisions for estimated income taxes on unrealized gains.[32]

(46) *Question:* The issuer in a $3,000,000 Regulation D offering is a limited partnership that will acquire certain real estate operations with the offering proceeds. What is the appropriate consideration for disclosure of the operating history of these operations?

Answer: Item 21(g) of Form S–18, which provides special guidance for such disclosure, calls for the audited income statements of the operations, with certain exclusions, for the two most recent fiscal years. If the issuer can meet certain conditions, however, the instruction reduces that requirement to only one year of audited income statements.[33]

Under Regulation D, Rule 502(b)(2)(i)(A) provides that only the financial statements for the issuer's most recent fiscal year must be certified in an offering not in excess of $5,000,000. The staff is of the view that this provision applies to all financial statements in the disclosure document. Thus, in the Regulation D offering described, the following considerations apply. If the issuer can meet the conditions in Item 21(g) of Form S–18, it may present one year of audited income statements on the operations to be acquired. If the issuer cannot meet the conditions in Form S–18, then it should present two years of income statements, only one of which must be audited.

(47) *Question:* If the issuer in Question 46 cannot obtain the financial statements on the operations to be acquired without unreasonable effort or expense, what further considerations are applicable under Regulation D?

Answer: Rule 502(b)(2)(i)(A) provides that "[i]f the issuer is a limited partnership and cannot obtain the required financial statements without unreasonable effort or expense, it may furnish financial statements that have been prepared on the basis of federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant." The staff interprets this provision to apply to all financial statements that the issuer presents in the offering document. Thus, the issuer described above may present tax basis operating statements on the operations to be acquired.[34]

(48) *Question:* Has the Commission defined or will the staff issue interpretations on the term "unreasonable effort or expense?"

Answer: No. The meaning of "unreasonable effort or expense" depends on the particular facts and circumstances attending each case. Only the issuer will know the facts and circumstances and be able to evaluate them with respect to the requirements of the rule.

(49) *Question:* The issuer in a Regulation D offering of $7,000,000 is a corporation. That corporation is acquiring a business. The issuer is unable to obtain the financial statements for that business without unreasonable effort or expense.[35] What are the relevant considerations under Regulation D?

Answer: Rule 502(b)(2)(i)(B) provides that if the issuer is not a limited partnership and "cannot obtain audited financial statements without unreasonable effort or expense, then only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited." The staff has interpreted this provision in the context of Rule 3–05 of Regulation S–X to apply to the financial statements of the business being acquired. Thus, if the business being acquired is other than a limited partnership, and if the issuer cannot obtain audited financial statements of that business without unreasonable effort or expense, then the issuer may provide the relevant financial statements for the business being acquired on and unaudited basis so long as it also provides an audited balance sheet for that business dated within 120 days of the start of the offering, or, if appropriate, as of the date of acquisition of the business.[36]

2. *Reporting Issuers—Rule 502(b)(2)(ii).* If the issuer is subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, Regulation D sets forth two alternatives for disclosure: the issuer may deliver certain recent Exchange Act reports (the annual report, the definitive proxy statement, and, if requested, the Form 10–K (17 CFR 249.310)) or it may provide a document containing the same information as in the Form 10–K or Form

[30] The Commission adopted 53 Securities Act Guides in 1968 (Release No. 33–4936 (December 9, 1968) (33 FR 18617)) and 10 additional ones subsequently. The Guides served as an expression of the policies and practices of the Division of Corporation Finance. Most of those Guides have been incorporated into Regulation C (17 CFR 230.400–.494) and Regulation S–K (17 CFR 229.10–.802) (*see* Release No. 33–6383 (March 3, 1982) (47 FR 11380)) and thus were rescinded (*see* Release No. 33–6384 (March 3, 1982) (47 FR 11476)). Five of the Guides applicable to specific industries were not rescinded, however, and were redesignated. Guide 5, which was Guide 60, applies to the preparation of registration statements relating to interests in real estate limited partnerships. Guide 5 was revised in Release No. 33–6405 (June 3, 1982) (47 FR 25140).

[31] Form S–18 has been amended recently to permit its use by limited partnerships. Release No. 33–6406 (June 4, 1982) (47 FR 25126).

[32] The same general rule would be applicable to an offering in excess of $5,000,000. *See* Release No. SAB–40, Topic 6.D.3.d. (January 23, 1981).

[33] The parallel to this instruction under other forms of registration is Rule 3–14 of Regulation S–X (17 CFR 210.3–14). Rule 3–14 requires income statements for the three most recent fiscal years, unless the issuer meets certain conditions, in which case the issuer need present only one year of audited income statements.

[34] *See* letter re *Winthrop Financial Co., Inc.* dated May 25, 1982. In response to inquiries regarding the appropriateness of tax basis financial statements, issuers should refer to Statement on Auditing Standards No. 14, *Special Reports*, American Institute of Certified Public Accountants, December 1976.

[35] The issuer should refer to Rule 3–05 of Regulation S–X (17 CFR 210.3–05) for the disclosure guidelines on businesses to be acquired. If the offering were for less than $5,000,000 and the issuer were thus referring to Form S–18, Item 21(d) of that form provides a parallel rule on businesses to be acquired.

[36] *See* letter re *Walnut Valley Special Cable TV Fund* dated May 13, 1982.

10 (17 CFR 249.210) under the Exchange Act or in a registration statement under the Securities Act. In either case the rule also calls for the delivery of certain supplemental information.

(50) *Question:* Rule 502(b)(2)(ii)(B) refers to the information contained "in a registration statement on Form S–1." Does this requirement envision delivery of Parts I and II of the Form S–1?

Answer: No. Rule 502(b)(2)(ii)(B) should construed to mean Part I of Form S–1.

(51) *Question:* A reporting company with a fiscal year ending on December 31 is making a Regulation D offering in February. It does not have an annual report to shareholders, an associated definitive proxy statement, or a Form 10–K for its most recently completed fiscal year. The issuer's last registration statement was filed more than two years ago. What is the appropriate disclosure under Regulation D?

Answer: The issuer may base its disclosure on the most recently completed fiscal year for which an annual report to shareholders on Form 10–K was timely distributed or filed. The issuer should supplement the information in the report used with the information contained in any reports or documents required to be filed under sections 13(a), 14(a), 14(c) and 15(d) of the Exchange Act since the distribution or filing of that report and with a brief description of the securities being offered, the use of the proceeds from the offering, and any material changes in the issuer's affairs that are not disclosed in the documents furnished. *See* Rule 502(b)(2)(ii)(C).

C. General

Rule 502(b)(2) also contains four general provisions applicable to all classes of issuer in all offerings where specified disclosure is required. These provisions govern exhibits, disclosure of additional information to non-accredited investors, the opportunity for further investor inquiries, and disclosure of certain additional information in business combinations.

(52) *Question:* In a Rule 505 or 506 offering of interests in a limited partnership where certain purchasers are not accredited investors, must the issuer obtain an opinion of counsel regarding the legality of the securities being issued or an opinion regarding the tax consequences of an investment in the offering?

Answer: Rule 502(b)(2)(iii) provides that the issuer is not required to furnish the exhibits that would accompany the form of registration or report governing the issuer's disclosure document if the issuer identifies the contents of those exhibits and makes them available to purchasers upon written request prior to purchase.[37] Any form of registration to which the issuer refers in preparing its disclosure document under Regulation D requires that the issuer furnish the exhibits required by Item 601 of Regulation S–K. Item 601 requires that the issuer furnish, among other exhibits, an opinion of counsel as to the legality of the securities being issued. Thus, under Rule 502(b)(2)(iii), the issuer should identify the contents of this opinion of counsel and make it available to purchasers upon written request. Item 601 also sets forth certain requirements for an opinion as to tax matters. Such an opinion is required to support any representations in a prospectus as to material tax consequences. Thus, assuming the Regulation D issuer will make representations in the disclosure document as to material tax consequences of investing in a limited partnership, the issuer should identify the contents of and make available upon request an opinion supporting that discussion.[38]

III. Operational Conditions

A. Integration—Rule 502(a)

Rule 502(a) achieves two purposes. First, it explicitly incorporates the doctrine of integration into Regulation D. Second, it establishes an exception to the operation of that doctrine.

Integration operates to identify the scope of a particular offering by considering the relationship between multiple transactions. It is premised on the concept that the Securities Act addresses discrete offerings and on the recognition that not every offering is in fact a discrete transaction. The integration doctrine prevents an issuer from circumventing the registration requirements of the Securities Act by claiming a separate exemption for each part of a series of transactions that comprises a single offering. Because the determination of whether transactions should be integrated into one offering is so dependent on particular facts and circumstances, the staff does not issue interpretations in this area.[39] The Note to Rule 502(a), however, does set forth a number of factors that should be considered in making an integration determination.

Rule 502(a) also sets forth an exception to the integration doctrine. It provides that a Regulation D offering will not be integrated with offers or sales that occur more than six months before or after the Regulation D offering. This six month safe harbor rule only applies, however, where there have been no offers or sales (except under an employee benefit plan) of securities similar to those in the Regulation D offering within the applicable six months.[40]

(53) *Question:* An issuer conducts offering (A) under Rule 504 of Regulation D that concludes in January. Seven months later the issuer commences offering (B) under Rule 506. During that seven month period the issuer's only offers or sales of securities are under an employee benefit plan (C). Must the issuer integrate (A) and (B)?

Answer: No. Rule 502(a) specifically provides that (A) and (B) will not be integrated.[41]

B. Calculation of the Number of Purchasers—Rule 501(e)

Rule 501(e) governs the calculation of the number of purchasers in offerings that rely either on Rule 505 or 506. Both of these rules limit the number of non-accredited investors to 35. Rule 501(e) has two parts. The first excludes certain purchasers from the calculation. The second establishes basic principles for counting of corporations, partnerships, or other entities.

(54) *Question:* One purchaser in a Rule 506 offering is an accredited investor. Another is a first cousin of that investor sharing the same principal residence. Each purchaser is making his own investment decision. How must the issuer count these purchasers for purposes of meeting the 35 purchaser limitation?

Answer: The issuer is not required to count either investor. The accredited investor may be excluded under Rule 501(e)(1)(iv), and the first cousin may then be excluded under Rule 501(e)(1)(i).[42]

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[37] This provision is similar to that found in former Rule 146 at paragraph (e)(1)(ii)(c).

[38] *See* letters to *Hecker & Phillips* dated December 22, 1982 and *Hopper, Kanouff, Smith and Peryam* dated September 10, 1982.

[39] *See* Release No. 33–6253 (October 28, 1980) (45 FR 72044); letters re *Security Bancorp, Inc.* dated January 21, 1980 and *Kearney Plaza Company* dated March 8, 1979.

[40] The Note to Rule 502(a) also points out that certain foreign offerings are not integrated with domestic exempt offerings.

[41] Rule 502(a), however, does not provide a safe harbor to the possible integration of offering (C) with either offering (A) or (B). In resolving that question, the issuer should consider the factors listed in the Note to Rule 502(a).

[42] The Note to Rule 501(e) provides that the issuer must satisfy all other conditions of Regulation D with respect to purchasers that have been excluded from the count. Thus, for instance, the issuer would have to ensure the sophistication of the first cousin under Rule 506(b)(2)(ii).

(55) *Question:* An accredited investor in a Rule 506 offering will have the securities she acquires placed in her name and that of her spouse. The spouse will not make an investment decision with respect to the acquisition. How many purchasers will be involved?

Answer: The accredited investor may be excluded from the count under Rule 501(e)(1)(iv) and the spouse may be excluded under Rule 501(e)(1)(i). The issuer may also take the position, however, that the spouse should not be deemed a purchaser at all because he did not make any investment decision, and because the placement of the securities in joint name may simply be a tax or estate planning technique.

(56) *Question:* An offering is conducted in the United States under Rule 505. At the same time certain sales are made overseas. Must the foreign investors be included in calculating the number of purchasers?

Answer: Offers and sales of securities to foreign persons made outside the United States in such a way that the securities come to rest aboard generally do not need to be registered under the Act. This basis for non-registration is separate from Regulation D and offers and sales relying on this interpretation are not required to be integrated with a coincident domestic offering.[43] Thus, assuming the sales in this question rely on this interpretation, foreign investors would not be counted.

(57) *Question:* An investor in a Rule 506 offering is a general partnership that was not organized for the specific purpose of acquiring the securities offered. The partnership has ten partners, five of whom do not qualify as accredited investors. The partnership will make an investment of $100,000. How is the partnership counted and must the issuer make any findings as to the sophistication of the individual partners?

Answer: Rule 501(e)(2) provides that the partnership shall be counted as one purchaser. The issuer is not obligated to consider the sophistication of each individual partner.

(58) *Question:* If the partnership in Question 57 purchases $200,000 of the securities being offered and if that amount does not exceed 20 percent of the partnership's net worth, how should the partnership be counted?

Answer: Rule 501(e)(2), which provides that the partnership shall be counted as one purchaser, operates in tandem with Rule 501(e)(1). Thus, because the partnership is an accredited investor (in this case under Rule 501(a)(5)), the partnership may be exluded from the count under Rule 501(e)(2)(iv).

(59) *Question:* An investor in a Rule 506 offering is an investment partnership that is not accredited under Rule 501(a)(8). Although the partnership was organized two years earlier and has made investments in a number of offerings, not all the partners have participated in each investment. With each proposed investment by the partnership, individual partners have received a copy of the disclosure document and have made a decision whether or not to participate. How do the provisions of Regulation D apply to the partnership as an investor?

Answer: The partnership may not be treated as a single purchaser. Rule 501(e)(2) provides that if the partnership is organized for the specific purpose of acquiring the securities offered, then each beneficial owner of equity interests should be counted as a separate purchaser. Because the individual partners elect whether or not to particpate in each investment, the partnership is deemed to be reorganized for the specific purpose of acquiring the securities in each investment.[44] Thus, the issuer must look through the partnership to the partners participating in the investment. The issuer must satisfy the conditions of Rule 506 as to each partner.

C. Manner of Offering—Rule 502(c)

Rule 502(c) prohibits the issuer or any person acting on the issuer's behalf from offering or selling securities by any form of general solicitation or general advertising. The analysis of facts under Rule 502(c) can be divided into two separate inquiries. First, is the communication in question a general solicitation or general advertisement? Second, if it is, is it being used by the issuer or by someone on the issuer's behalf to offer or sell the securities? If either question can be answered in the negative, then the issuer will not be in violation of Rule 502(c). Questions under Rule 502(c) typically present issues of fact and circumstance that the staff is not in a position to resolve. In several instances, however, the staff has been able to address questions under the rule.

In analyzing what constitutes a general solicitation, the staff considered a solicitation by the general partner of a limited partnership to limited partners in other active programs sponsored by the same general partner. In determining that this did not constitute a general solicitation the Division underscored the existence and substance of the pre-existing business relationship between the general partner and those being solicited. The general partner represented that it believed each of the solicitees had such knowledge and experience in financial and business matters that he or she was capable of evaluating the merits and risks of the prospective investment. *See* letter re *Woodtrails-Seattle, Ltd.* dated July 8, 1982.

In analyzing whether or not an issuer was using a geneal advertisement to offer or sell securities, the staff declined to express an opinion on a proposed tombstone advertisement that would announce the completion of an offering. *See* letter re *Alma Securities Corporation* dated July 2, 1982. Because the requesting letter did not describe the proposed use of the tombstone announcement and because the announcement of the completion of one offering could be an indirect solicitation for a new offering, the staff did not express a view. In a letter re *Tax Investment Information Corporation* dated January 7, 1983, the staff considered whether the publication of a circular analyzing private placement offerings, where the publisher was independent from the issuers and the offerings being analyzed, would violate Rule 502(c). Although Regulation D does not directly prohibit such a third party publication, the staff refused to agree that such a publication would be permitted under Regulation D because of its susceptability to use by participants in an offering. Finally, in the letter re *Aspen Grove* dated November 8, 1982 the staff expressed the view that the proposed distribution of a promotional brochure to the members of the "Thoroughbred Owners and Breeders Association" and at an annual sale for horse owners and the proposed use of a magazine advertisement for an offering of interests in a limited partnership would not comply with Rule 502(c).

(60) *Question:* If a solicitation were limited to accredited investors, would it be deemed in compliance with Rule 502(c)?

Answer: The mere fact that a solicitation is directed only to accredited investors will not mean that the solicitation is in compliance with Rule 502(c). Rule 502(c) relates to the nature of the offering not the nature of the offerees.

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[43] *See* Release No. 33-4708 (July 9, 1964) (29 FR 828), Preliminary Note 7 to Regulation D and Note to Rule 502(a).

[44] *See* letter re *Madison Partners Ltd. 1982-1* dated January 18, 1982. *See also* letter re *Kenai Oil & Gas, Inc.* dated April 27, 1979.

D. Limitations on Resale—Rule 502(d)

Rule 502(d) makes it clear that Regulation D securities have limitations on transferability and requires that the issuer take certain precautions to restrict the transferability of the securities.

(61) *Question:* An investor in a Regulation D offering wishes to resell his securities within a year after the offering. The issuer has agreed to register the securites for resale. Will the proposed resale under the registration statement violate Rule 502(d)?

Answer: No. The function of Rule 502(d) is to restrict the unregistered resale of securities. Where the resale will be registered, however, such restrictions are unnecessary.

IV. Exemptions

A. Rule 504

Rule 504 is an exemption under section 3(b) of the Securities Act available to non-reporting and non-investment [45] companies for offerings not in excess of $500,000.

(62) *Question:* A foreign issuer proposes to use Rule 504. The issuer is not subject to section 15(d) and its securities are exempt from registration under Rule 12g3–2 (17 CFR 240.12g3–2). May this issuer use Rule 504?

Answer: Yes.

(63) *Question:* An issuer proposes to make an offering under Rule 504 in two states. The offering will be registered in one state and the issuer will deliver a disclosure document pursuant to the state's requirements. The offering will be made pursuant to an exemption from registration in the second state. Must the offering satisfy the limitations on the manner of offering and on resale in paragraphs (c) and (d) of Rule 502?

Answer: Yes. An offering under Rule 504 is exempted from the manner of sale and resale limitations only if it is registered in *each* state in which it is conducted and only if a disclosure document is required by state law.

(64) *Question:* The state in which the offering will take place provides for "qualification" of any offer or sale of securities. The state statute also provides that the securities commissioner may condition qualification of an offering on the delivery of a disclosure document prior to sale. Would the issuer be making its offering in a state that "provides for registration of the securities and requires the delivery of a disclosure document before sale" if its offering were qualified in this state on the condition that it deliver a disclosure document before sale to each investor?

Answer: Yes.[46]

(65) *Question:* If an issuer is registering securities at the state level, are there any specific requirements as to resales outside of that state if the issuer is attempting to come within the provision in Rule 504 that waives the limitations on the manner of offering and on resale in Rules 502 (c) and (d)?

Answer: No.[47] The issuer, however, must intend to use Rule 504 to make bona fide sales in that state and not to evade the policy of Rule 504 by using sales in one state as a conduit for sales into another state. *See* Preliminary Note 6 to Regulation D.

B. Rule 505

Rule 505 provides an exemption under section 3(b) of the Securities Act for non-investment companies for offerings not in excess of $5,000,000.

(66) *Question:* An issuer is a broker that was censured pursuant to a Commission order. Does the censure bar the issuer from using Rule 505?

Answer: No. Rule 505 is not available to any issuer who falls within the disqualifications for the use of Regulation A (17 CFR 230.251–.264). *See* Rule 505(b)(2)(iii). One such disqualification occurs when the issuer is subject to a Commission order under section 15(b) of the Exchange Act. A censure has no continuing force and thus the issuer is not subject to an order of the Commission.

C. Questions Relating to Rules 504 and 505

Both Rules 504(b)(2)(i) and 505(b)(2)(i) require that the offering not exceed a specified aggregate offering price. The allowed aggregate offering price, however, is reduced by the aggregate offering price for all securities sold within the last twelve months in reliance on section 3(b) or in violation of section 5(a) of the Securities Act.

(67) *Question:* An issuer preparing to conduct an offering of equity securities under Rule 505 raised $2,000,000 from the sale of debt instruments under Rule 505 eight months earlier. How much may the issuer raise in the proposed equity offering?

Answer: $3,000,000. A specific condition to the availability to Rule 505 for the proposed offering is that its aggregate offering price not exceed $5,000,000 less the proceeds for *all* securities sold under section 3(b) within the last 12 months.

(68) *Question:* An issuer is planning a Rule 505 offering. Ten months earlier the issuer conducted a Rule 506 offering. Must the issuer consider the previous Rule 506 offering when calculating the allowable aggregate offering price for the proposed Rule 505 offering?

Answer: No. The Commission issued Rule 506 under section 4(2), and Rule 505(b)(2)(i) requires that the aggregate offering price be reduced by previous sales under section 3(b).[48]

(69) *Question:* Seven months before a proposed Rule 504 offering the issuer conducted a rescission offer under Rule 504. The rescission offer was for securities that were sold in violation of section 5 more than 12 months before the proposed Rule 504 offering. Must the aggregate offering price for the proposed Rule 504 offering be reduced either by the amount of the rescission offer or the earlier offering in violation of section 5?

Answer: No. The offering in violation of section 5 took place more than 12 months earlier and thus is not required to be included when satisfying the limitation in Rule 504(b)(2)(i). The staff is of the view that the rescission offer relates back to the earlier offering and therefore should not be included as an adjustment to the aggregate offering price for the proposed Rule 504 offering.

(70). *Question:* Rules 504 and 505 contain examples as to the calculation of the allowed aggregate offering price for a particular offering. Do these examples contemplate integration of the offerings described?

Answer: No. The examples have been provided to demonstrate the operation of the limitation on the aggregate offering price in the absence of any integration questions.

(71) *Question:* Note 2 to Rule 504 is not restated in Rule 505. Does the principle of the note apply to Rule 505?

Answer: Yes. Note 2 to Rule 504 sets forth a general principle to the operation of the rule on limiting the aggregate offering price which is the same for both Rules 504 and 505. It provides that if, as a result of one offering, an issuer exceeds the allowed aggregate offering price in a subsequent unintegrated offering, the exemption for the first offering will not be affected.

[45] The Division is of the view that the provision in Rules 504 and 505 that bars an investment company from using the exemptions should be construed to mean an investment company as that term is defined in section 3 of the Investment Company Act.

[46] *See* letter to *Geraldine D. Green* dated November 22, 1982.

[47] *See* letter re *Freeport Resources, Inc.* dated December 9, 1982.

[48] Note that under Rule 502(a) these offerings may not have to be integrated because they are separated by six months.

D. Rule 506

(72) *Question:* May an issuer of securities with a projected aggregate offering price of $3,000,000 rely Rule 506?

Answer: Yes. The availability of Rule 506 is not dependent on the dollar size of an offering.

(73) *Question:* Rule 506 requires that the issuer shall reasonably believe that each purchaser who is not an accredited investor either alone or with a purchaser representative has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospectve investment. Former Rule 146 required the issuer to make a similar determination with respect to each offeree. Rule 506 is not an exclusive basis for satisfying the requirements of the private offering exemption in section 4(2). *See* Preliminary Note 3 to Regulation D. What is the Commission's view of the relevance of the nature of the offerees in an offering that relies exclusively on section 4(2) as its basis for exemption from registration?

Answer: Clearly, in an offering relying exclusively on section 4(2) for an exemption from registration, all offerees who purchase must possess the requisite level of sophistication. The sophistication of each of those to whom the securities are offered who do not purchase is not a fact that in and of itself should determine mechanically the availability of the exemption; the number and the nature of the offerees, however, are relevant in determining whether an issure has engaged in a general solicitation or general advertising that would preclude reliance on the exemption in section 4(2).

E. Questions Relating to Rules 504–506

(74) *Question:* If an issuer relies on one exemption, but later realizes that exemption may not have been made available, may it rely on another exemption after the fact?

Answer: Yes, assuming the offering met the conditions of the new exemption. No one exemption is exclusive of another.

(75) *Question:* May foreign issuers use Regulation D?

Answer: Yes. Recent amendments to Regulation D have clarified the disclosure requirements for foreign issuers.[49]

(76) *Question:* Is Regulation D available to an underwriter for the sale of securities acquired in a firm commitment offering?

Answer: No. As Preliminary Note 4 indicates, Regulation D is available only to the issuer of the securities and not to any affiliate of that issuer or to any other person for resales of the issuer's securities. *See also* Rule 502(d) which limits the resale of Regulation D securities.

(77) *Question:* Regulation T (12 CFR 220.1–.8) of the Federal Reserve Board imposes certain restrictions on brokers and dealers for the use of credit in the purchase of securities. Regulation T provides an exemption from those provisions for the arrangement of credit in a sale of securities that is exempt from the registration requirements of the Securities Act under section 4(2). *See* 12 CFR 220.7(g). What is the applicability of this provision to offerings conducted under Regulation D?

Answer: Regulation T is interpreted by the Federal Reserve Board which has expressed the view that the exemption from Regulation T in 12 CFR 220.7(a) is available for offerings conducted in reliance on Rules 505 and 506,[50] but not for those under 504.[51]

(78) *Question:* A corporation proposes to implement an employee stock option plan for key employees. Can the issuer rely on Regulation D for an exemption from registration for the issuance of securities under the plan?

Answer: The corporation may use Regulation D for the sale of its securities under the plan to the extent that such offering complies with Regulation D. In a typical plan, the grant of the options will not be deemed a sale of a security for purposes of the Securities Act. The issuer, therefore, will be seeking an exemption for the issuance of the stock underlying the options. The offering of this stock generally will commence when the options become exercisable and will continue until the options are exercised or otherwise terminated. Where the key employees involved are directors or executive officers, such individuals will be accredited investors under Rule 501(a)(4) if they purchase securities through the exercise of their options. Other key employees may be accredited as a result of net worth or income under Rules 501(a)(6) or (a)(7).

(79) *Question:* In an "all or none" or minimum-maximum Regulation D offering of interests in a limited partnership, the general partner proposes, if necessary, to purchase enough interests for the issuer to sell a specified level of interests by the specified expiration date of the offering. What disclosure and other considerations are relevant?

Answer: The staff is of the view that pursuant to Rule 10b–9 under the Exchange Act, the issuer must disclose the possibility that the general partner may make purchases of the limited partnership interests in order to meet the specified minimum. In addition, the issuer should disclose the maximum amount of the possible purchases. Finally, these purchases must be for investment and not resale. Questions regarding these views should be directed to the Division of Market Regulation, Office of Trading Practices, (202) 272–2874.

(80) *Question:* An issuer will conduct a Regulation D offering on an "all or none" basis within a specified time. What considerations are there for the issuer if it wishes to extend the offering beyond the specified time in order to sell the specified amount of securities?

Answer: The staff is of the view that an offering may be extended beyond the specified time without resulting in a violation of Rule 10b–9 under the Exchange Act or, in the case of an offering in which a broker-dealer is a participant, Rule 15c2–4 under the Exchange Act, under the following conditions:

a. Prior to the specified expiration date, a reconfirmation offer must be made to all subscribers that discloses the extension of the offering and any other material information necessary to update previously provided disclosure.

b. The reconfirmation offer must be structured so that the subscriber affirmatively elects to continue his investment and so that those subscribers who take no affirmative action will have their funds returned to them.

c. The reconfirmation offer must be made far enough in advance of the specified expiration date so that any subscriber who does not elect to continue his investment will have his funds returned to him promptly after the specified expiration date.

Questions regarding these views should be directed to the Division of Market Regulation, Office of Trading Practices, (202) 272–2874.

V. Notice of Sale—Form D

Rule 503 requires the issuer to file a notice of sale on Form D. The notice must be filed not later than 15 days after the first sale, every six months

[49] *See* Release No. 33–6437 (November 19, 1982) (47 FR 54764).

[50] Letters from Laura Homer, Securities Credit Officer, Board of Governors of the Federal Reserve System to Ardith Eymann, Esq., Chief Counsel, Division of Market Regulation, Securities and Exchange Commission (April 10, 1982) and to Mrs. Mary E.T. Beach, Associate Director, Securities and Exchange Commission (January 8, 1982).

[51] Letter from Laura Homer, Securities Credit Officer, Board of Governors of the Federal Reserve System to Alan G. Rosenberg, Esq. (May 20, 1982).

thereafter, and no later than 30 days after the last sale.[52]

(81) *Question:* Where can an issuer obtain copies of Form D and where must the form be filed?

Answer: Form D is available through the Public Reference Branch of the Commission's main office, 450 5th Street, NW., Washington, D.C. 20549, (202) 272-7460, or any of its regional or branch offices. The form should be filed at the Commission's main office. There is no filing fee.

(82) *Question:* In a minimum-maximum offering where subscription funds are held in escrow pending receipt of minimum subscriptions, when is the first Form D required to be filed?

Answer: In the context of Rule 503, the first sale takes place upon receipt of the first subscription agreement and the deposit of the first funds into escrow. The issuer, therefore, should file its first Form D not later than 15 days after the receipt of the first subscription agreement.

(83) *Question:* An issuer conducting a minimum-maximum offering has received subscriptions for the minimum number of interests needed to form the limited partnership. Subsequent to closing and formation of the partnership, the issuer continues to offer interests. After two months in which no sales take place, the issuer decides to terminate the offering. Because more than 30 days have elapsed since the last sale, how can the issuer comply with Rule 503 in the filing of its final Form D?

Answer: The staff is of the view that a final Form D may be filed not later than 30 days after the last sale or after the termination of the offering, whichever occurs later.

(84) *Question:* In an employee stock option plan, when would the first and last Form D be filed?

Answer: The first Form D should be filed not later than 15 days after the exercise of the first option. The final Form D would be due not later than 30 days after the exercise or expiration of the last outstanding option, whichever occurs later.

(85) *Question:* An issuer commences a Regulation D offering and files an original Form D not later than 15 days after the first sale. Subsequently, because no further sales are made, the issuer returns the money to the one investor and terminates the offering. How should the issuer reflect the unsuccessful offering on its Form D?

Answer: The issuer should file a final Form D indicating zero sales, investors, and proceeds.

(86) *Question:* If the issuer is a limited partnership, who would be considered the chief executive officer for purposes of Form D questions?

Answer: The chief executive officer of a limited partnership is that individual who fulfills the function of chief executive officer. That individual may be the chief executive officer of a corporate general partner.

(87) *Question:* What is a Standard Industrial Classification ("SIC") and where is it obtained?

Answer: The SIC is a code associated with a particular economic activity. The SIC system, developed by the Bureau of the Census under the auspices of the Office of Management and Budget, is used in classification of establishments by the type of activities in which they are engaged. An issuer's SIC can be found in the Standard Industrial Classification Manual, a publication of the U.S. Government that may be obtained from the Superintendent of Documents and is generallly available in public and university libraries.

(88) *Question:* Question 8 of Part A asks for the issuer's CUSIP number. What is a CUSIP number?

Answer: CUSIP [53] is the trademark for a system that identifies specific security issuers and their classes of securities. Under the CUSIP plan, a CUSIP number is permanently assigned to each class and will identify that class and no other. Generally, a CUSIP number will be assigned only to a class for which there is a secondary trading market. The operation of the CUSIP numbering system is controlled by the CUSIP Board of Trustees which awarded a contract to Standard & Poor's Corporation to function as the CUSIP Service Bureau, the operational arm of the system. Issuers relying on Regulation D that do not have a class of securities with a secondary trading market and thus do not have a CUSIP number should answer Question 8 in the negative.

(89) *Question:* Part B of Form D requests statistical information about the issuer. In an offering of interests in a limited partnership to be formed, how should this part be answered?

Answer: The answers to Part B should be with respect to the partnership to be formed and will be zero or "not applicable." This will reflect the statistical profile of a start-up issuer.

(90) *Question:* Question 2 to Part C requests certain information as to the number of accredited and non-accredited investors in a Rule 505 or 506 offering. Must an issuer make a finding as to accredited investors even if the issuer is not relying on the accredited investor concept in its offering?

Answer: No. Where an issuer under Rule 505 or 506 is not relying on the accredited investor concept for all or certain investors, it should treat those investors as non-accredited for purposes of this question.

(91) *Question:* Questions 5 and 6 to Part C request certain information regarding the offering expenses and the use of proceeds. May the issuer attach a separate schedule listing expenses and use of proceeds in lieu of completing these questions?

Answer: No. The Form D has been formulated for keypunching and entry of the information into an automatic data storage system. Failure to complete the questions on the form in the space provided frustrates the objectives of the form.

(92) *Question:* May the Form D be signed by the issuer's attorney?

Answer: Form D may be signed on behalf of the issuer by anyone who is duly authorized.

Text of Amendment

List of Subjects in 17 CFR Part 231

Reporting requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows:

PART 231—INTERPRETIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER.

1. Part 231 is amended by adding this Release No. 33-6455 (March 3, 1983) to the list of interpretive releases.

By the Commission.

George A. Fitzsimmons,

Secretary

March 3, 1983.

[FR Doc. 83-6220 Filed 3-9-83; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[Dept. Reg. 108.829]

Issuance of Nonimmigrant Visas—Procedures

AGENCY: Department of State.

[52] A Form D is also required to be filed in connection with an offering conducted pursuant to section 4(6). *See* 17 CFR 239.500.

[53] The acronym "CUSIP" derives from the title of the American Banker's Association committee that developed the CUSIP system—Committee on Uniform Security Identification Procedures.

ACTION: Final rule.

SUMMARY: The Department is amending section 41.124(e)(1) of its regulations to authorize all Foreign Service posts to use the word "Bearer(s)" in lieu of the name of the alien and names of accompanying family members, if any, included in the alien's passport, in nonimmigrant visas issued in approved passports or other travel documents fulfilling the requirements of a passport as defined in section 101(a)(30) of the Immigration and Nationality Act. This action is intended to expedite the processing of non-immigrant visas.

EFFECTIVE DATE: March 1, 1983.

FOR FURTHER INFORMATION CONTACT: Gerald M. Brown, Chief, Legislation and Regulations Division, Visa Services. (202) 632–1900.

SUPPLEMENTARY INFORMATION: Paragraph (e)(1) of § 41.124 presently states that Foreign Service posts may be individually authorized by the Department, after consultation with the Immigration and Naturalization Service, to use the "Bearer(s)" insert when issuing visas to nationals of countries as designated by the Department. The Department, with the concurrence of the Immigration and Naturalization Service, is now authorizing all Foreign Service posts to use the "Bearer(s)" insert when visaing approved passports. The insert may also be used in Certificate of Identity and Liassez Passer travel documents issued by countries whose passports have been approved, provided such documents fulfill the requirements of a "passport" as defined in section 101(a)(30) of the Immigration and Nationality Act. The bearer of the approved passport or other travel document need not be a national of the issuing country; however, the travel document must show the nationality, if any, of the bearer. The expanded use of the "Bearer(s)" insert is intended to expedite the processing of nonimmigrant visas and improve office efficiency. Compliance with 5 U.S.C. 553 of the Administrative Procedure Act, as to notice of proposed rulemaking and delayed effective date, is not necessary in this instance because the amendments involved in this order are technical and administrative in nature.

List of Subjects in 22 CFR Part 41

Aliens, Passports and visas, Students.

PART 41—[AMENDED]

Accordingly, paragraph (e)(1) of § 41.124 is amended to read:

§ 41.124 Procedures in issuing visas.

* * * * *

(e) *Insertion of name; petition and derivative status notation.* (1) Except as otherwise provided in this paragraph, the name or names of the alien or aliens to whom a nonimmigrant visa is issued shall be shown on the visa insert just after the word "to". Consular officers may, in their discretion, show the word "Bearer(s)" in lieu of the name of the alien and in lieu of the names of accompanying family members, if any, who are included in the alien's passport, in visas issued in passports or other travel documents meeting the requirements of section 101(a)(30) of the Immigration and Nationality Act, which have been designated by the Department as approved for this purpose. This procedure may not be applied in the case of aliens who are the beneficiaries of waivers granted under section 212(d)(3) of the Act.

* * * * *

(Sec. 104, 66 Stat. 174; 8 U.S.C 1104; Sec. 109(b)(1), 91 Stat. 847)

Dated: February 16, 1983.

J. Donald Blevins,

Acting, Assistant Secretary for Consular Affairs.

[FR Doc. 83-6221 Filed 3-9-83; 8:45 am]

BILLING CODE 4710-06-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 201

[AID Regulation 1]

Revision of Geographic Code Summaries

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The Agency for International Development (A.I.D.) has revised the description of AID Geographic Code 941 "Special Free World", one of the principal codes used to specify the authorized source countries for A.I.D.-financed procurement, to reflect the change in eligibility status of several countries. Algeria is now included in Code 941 and is an eligible source country when Code 941 is authorized. Angola, Bahrain, Gabon, Mozambique, Singapore, and Syria are now excluded from Code 941. Regulation 1 is being amended to reflect these changes. Also, editorial changes are made in the summaries of Code 000 and Code 899 "Free World". There have been no changes in eligibility status under either of these codes.

EFFECTIVE DATE: March 10, 1983.

FOR FURTHER INFORMATION CONTACT: Kathleen O'Hara, Office of Commodity Management, Agency for International Development, Washington, D.C. 20523, 703–235–2173.

SUPPLEMENTARY INFORMATION: The Agency has determined that this rule will not have a significant economic impact on a substantial number of small organizational units and small government jurisdictions.

This rule is not a major rule for purposes of Executive Order 12291 and has been submitted to OMB in accordance with the Executive Order.

List of Subjects in 22 CFR Part 201

Commodity procurement, Foreign A.I.D., Grant programs—Foreign relations, Loan programs—Foreign relations.

PART 201—RULES AND PROCEDURES APPLICABLE TO COMMODITY TRANSACTIONS FINANCED BY A.I.D.

22 CFR Part 201 is amended as follows:

1. The authority citation for Part 201 reads as follows:

Authority: Sec. 621, Foreign Assistance Act of 1961, as amended, 75 Stat. 424 (22 U.S.C. 2381) 22 CFR 201.85.

Subpart B—Conditions Governing the Eligibility of Procurement Transactions for A.I.D. Financing

2. In § 201.11, paragraph (b)(4) is revised as follows:

§ 201.11 Eligibility of Commodities.

(b) * * *

(4) *Identification of principal geographic code numbers.* The A.I.D. Geographic Code Book sets forth the official description of all geographic codes used by A.I.D. to designate the authorized source for procurement. Following are summaries of the principal codes:

Code 000—"The United States": The states of the United States, the District of Columbia, and areas of U.S. associated sovereignty, including the trust territories.

Code 899—"Free World": Any area or country, except the cooperating country itself and the following countries: Albania, Bulgaria, Cambodia, Cuba, Czechoslovakia, German Democratic Republic, Hungary, Laos, Mongolia, North Korea, People's Republic of China, Poland, Romania, Union of Soviet Socialist Republics (USSR), and Vietnam.

Code 935—"Special Free World": Any area or country in the Free World, including the cooperating country.

Code 941—"Selected Free World": The United States and any independent country in the Free World, except the cooperating country itself and the following: Afghanistan, Andorra, Angola, Australia, Austria, Bahrain, Belgium, Canada, Cyprus, Denmark, Federal Republic of Germany, Finland, France, Gabon, Greece, Hong Kong, Iceland, Iran, Iraq, Ireland, Italy, Japan, Kuwait, Libya, Liechenstein, Luxembourg, Malta, Monaco, Mozambique, Netherlands, New Zealand, Norway, Portugal, Qatar, Saudi Arabia, San Marino, Singapore, South Africa, Spain, Sweden, Switzerland, Syria, United Arab Emirates, United Kingdom, Vatican City, South Yemen, and Yugoslavia.

* * * * *

Dated: February 3, 1983.

John F. Owens,

Associate Assistant to the Administrator for Management.

[FR Doc. 83-6216 Filed 3-9-83; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Ch. I

[FHWA Docket No. 83-4, Notice No. 2]

Truck Size and Weight: Policy Statement; Supplementary Statement

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Supplementary statement to policy statement.

SUMMARY: This notice provides an explanation of the FHWA policy statement on Truck Size and Weight, published on February 3, 1983 (48 FR 5210), requesting each State to provide three lists of highways. The purpose of these lists was to provide the information indicating what routes were available to truckers under the provisions of the Surface Transportation Assistance Act of 1982 and the Department of Transportation Appropriations Act of 1982. Some confusion has resulted because of the limited system originally designated by the statement.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Skinner, Office of Traffic Operations, (202) 426-1993, or Mr. David C. Oliver, Office of the Chief Counsel, (202) 426-0825, Federal Highway Administration, 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: The FHWA notice of policy statement on Truck Size and Weight, published on February 3, 1983, requested each State to provide three lists of highways. The purpose of these lists was to provide the information indicating what routes were available to truckers under the provisions of the Surface Transportation Assistance Act of 1982 (Pub. L. 97-424, 96 Stat. 2097) (STAA) and the Department of Transportation Appropriations Act of 1982 (Pub. L. 97-369). Some confusion has resulted because of the limited system originally designated by the statement. The original designation was a concededly restricted portion of Primary System highways, designed to immediately implement the law.

Some States have indicated that they would prefer to designate the entire Primary System, and/or other highways as available to vehicles described in the statement. However, the compilation of such a list would be so cumbersome that the States are considering adopting only those highways set forth in the policy statement.

As we intend to utilize submitted information to provide descriptive material for use by the industry and public, we would like to simplify the compilation of materials and expedite the submission of this material. Therefore, States wishing to designate all, or substantially all, Primary System and/or other roads under lists 1 or 2 in the policy statement may in following the policy statement have two additional options:

Option 1. Designate all Primary System and/or other roads and submit a statement to that effect.

Option 2. Designate all Primary System and/or other roads, but with specific exceptions, which would then be submitted in a categorized list.

Finally some confusion has arisen over the relationship between list (1) (qualifying highways) and list (3) (exclusions) in the February 3 policy statement. States should not identify in list (1) (qualifying highways) those highways placed in list (3) (exclusions). List (1) should identify only qualifying highways on which large trucks may operate.

Issued on: March 2, 1983.

R. A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 83-6134 Filed 3-9-83; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 10 and 15

[Docket No. N-83-1213]

Announcement of Effective Dates

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of announcement of effective dates for certain recent final rules.

SUMMARY: This notice announces the effective dates for certain recently published final rules. Thirty calendar days of continuous session of Congress have expired in the present Congress since these rules were published.

EFFECTIVE DATES: March 10, 1983.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10278, 451 7th Street, SW., Washington, D.C. 20410, telephone No. (202) 755-7055. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The effective date provision of the published rules stated that the rules would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced that future notice of the rules' effectiveness would be published in the **Federal Register.** Thirty calendar days of continuous session of Congress have expired in the present Congress since these rules were published.

Accordingly, the purpose of this notice is to announce effective dates for the rules listed below:

24 CFR Part 10:

Rulemaking: Policy and Procedures, Final rule published December 20, 1982, (47 FR 56624), Docket No. R-82-1064.

Effective Date: March 10, 1983.

24 CFR Part 15:

Production or Disclosure of Material or Information, Final rule published December 13, 1982 (47 FR 55669), Docket No. R-82-1061.

Effective Date: March 10, 1983.

Dated: March 3, 1983.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 83-5906 Filed 3-9-83; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Part 50

[Docket No. R-82-744]

Protection and Enhancement of Environmental Quality; Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of announcement of effective date for interim rule and Correction.

SUMMARY: This notice announces the effective date for the interim rule published in the **Federal Register** on December 15, 1982 (47 FR 56266) that identified the environmental review procedures that apply to all HUD programs (except those authorized by Title I of the Housing and Community Development Act of 1974, as amended) and complied with the National Environmental Policy Act (NEPA) Regulations issued by the Council on Environmental Quality. There are also certain non-substantive technical corrections to §§ 50.17 and 50.20 of the interim rule that are being addressed in this notice.

EFFECTIVE DATE: March 10, 1983.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10278, 451 7th Street, SW., Washington, D.C. 20410, telephone No. (202) 755-7055. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The effective date provision of the published interim rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, subject to waiver, and announced that future notice of the rule's effectiveness would be published in the **Federal Register**. Thirty calendar days of continuous session of Congress have expired in the present Congress since this rule was published.

However, §§ 50.17 and 50.20 contain certain non-substantive technical corrections that are being corrected as set forth below.

Accordingly, this document announces the effective date for and makes technical corrections to an interim rule published on December 15, 1982 (47 FR 56266).

PART 50—[AMENDED]

1. On page 56270, in the middle of column three "§ 50.17 Projects", the introductory paragraph and paragraph (a) are corrected to read:

§ 50.17 Projects.

An EA and FONSI or EIS for individual projects shall be completed before the applicable program decision points below for projects not meeting the criteria of § 50.20 and shall be reevaluated and updated as required by § 50.37.

(a) *New Construction.* (1) Subdivisions: Issuance of HUD Environmental Review Letter and Form 92256;

(2) Multifamily project mortgage insurance, including Title X, nursing homes, hospitals, group practice facilities, manufactured and mobile homes and parks: Issuance of SAMA Letter or equivalent indication of HUD approval, whichever comes first;

(3) Public Housing: Notification of tentative site approval (1977 procedures) or PHA proposal approval (1980 procedures);

(4) Section 8 HAP Program: Notification of selection of preliminary proposal.

* * * * *

2. On page 56271 in the middle of column one "§ 50.20 *Categorical exclusions*", the introductory paragraph is corrected to read:

§ 50.20 Categorical exclusions.

The following actions, activities and programs are categorically excluded from the NEPA requirements of this part. These actions, activities and programs, however, are not excluded from individual compliance requirements of other environmental statutes, Executive Orders and HUD standards listed in § 50.4 where appropriate. The format to be used by HUD in documenting compliance for projects is contained in Appendix B of this part. Where the responsible official determines that any action, activity or program identified in this section may have an environmental effect because of extraordinary circumstances, the requirements of NEPA shall apply.

* * * * *

(Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)))

Dated: March 3, 1983.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 83-5685 Filed 3-9-83; 8:45 am]

BILLING CODE 4210-29-M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 115

[Docket No. R-83-984]

Recognition of Substantially Equivalent Laws; Announcement of Effective Date

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of announcement of effective date for final rule.

SUMMARY: This notice announces the effective date for the final rule published in the **Federal Register** on January 11, 1983 (48 FR 1190) that amended 24 CFR Part 115 which provides for recognition by the Department of those State and local fair housing laws which provide rights and remedies substantially equivalent to those provided by Title VIII of the Civil Rights Act of 1968. The effective date provision of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced that future notice of the effectiveness of the rule would be published in the **Federal Register**.

Thirty calendar days of continuous session of Congress have expired since the rule was published.

DATE: The effective date for the final rule published January 11, 1983 (48 FR 1190), is March 10, 1983.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10278, 451 7th Street, SW., Washington, D.C. 20410, telephone No. (202) 755-7055. (This is not a toll-free number.).

Dated: March 3, 1983.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 83-5903 Filed 3-9-83; 8:45 am]

BILLING CODE 4210-28-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 200, 201, 235, 880, 881, 888, 890, and 3280

[Docket No. N-83-1212]

Announcement of Effective Dates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of announcement of effective dates for certain recent interim and final rules.

SUMMARY: This notice announces the effective dates for certain recently published interim and final rules. Thirty calendar days of continuous session of Congress have expired in the present Congress since these rules were published. For an explanation of subject matter on these interim and final rules see **"SUPPLEMENTARY INFORMATION".**

DATES: For effective dates see "Supplementary Information".

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10278, 451 7th Street, SW., Washington, D.C. 20410, telephone No. (202) 755–7055. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The effective date provision of the published rules stated that the rules would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, subject to waiver, and announced that future notice of the rules' effectiveness would be published in the **Federal Register.** Thirty calendar days of continuous session of Congress have expired in the present Congress since these rules were published.

Accordingly, the purpose of this notice is to announce effective dates for the rules listed below:

24 CFR Part 200: Method of Computing Interest on Defaulted Loans, Final rule published January 11, 1983, (48 FR 1192), Docket No. R–82–962. Effective Date: March 10, 1983.

24 CFR Part 201: Property Improvement Loans, Final rule published December 30, 1982, (47 FR 58240), Docket No. R–82–970. Effective Date: April 1, 1983.

24 CFR Part 235: Recapture of Assistance Payments Under the Section 235 Program, Final rule published December 3, 1982, (47 FR 54430), Docket No. R–82–1052. Effective Date: March 10, 1983.

24 CFR Parts 880 and 881: Section 8 Housing Assistance Payments Programs for New Construction and Substantial Rehabilitation; Technical Processing and Selection of Proposals, Final rule published November 30, 1982, (47 FR 53849), Docket No. R–82–1032. Effective Date: March 10, 1983.

24 CFR Part 888: Section 8 Housing Assistance Payments Program Fair Market Rent Schedules, Existing Housing, Interim rule published December 15, 1982, (47 FR 56133), Docket No. R–82–1028. Effective Date: March 10, 1983.

24 CFR Part 890: Annual Contributions for Operating Subsidy; Performance Funding System, Final rule published December 3, 1982, (47 FR 54431), Docket No. R–82–1000. Effective Date: March 10, 1983.

24 CFR Part 3280: Manufactured Home Construction and Safety Standards, Final rule published November 1, 1982, (47 FR 49383), Docket No. R–82–1017. Effective Date: March 10, 1983

Dated: March 3, 1983.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 83-5902 Filed 3-9-83; 8:45 am]

BILLING CODE 4210-27-M

Government National Mortgage Association

24 CFR Part 300

[Docket No. R–82–1062]

List of Attorneys-in-Fact; Announcement of Effective Date

AGENCY: Government National Mortgage Association, HUD.

ACTION: Notice of announcement of effective date for final rule.

SUMMARY: This notice announces the effective date for the final rule published in the **Federal Register** on December 13, 1982 (47 FR 55669) that updated the current list of attorneys-in-fact by amending paragraph (c) of 24 CFR 300.11. The effective date provision of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced that future notice of the effectiveness of the rule would be published in the **Federal Register.**

Thirty calendar days of continuous session of Congress have expired since the rule was published.

DATE: The effective date for the final rule published December 13, 1982 (47 FR 55669), is March 10, 1983.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10278, 451 7th Street, SW., Washington, D.C. 20410, telephone No. (202) 755–7055. (This is not a toll-free number.)

Dated: March 3, 1983.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 83-5904 Filed 3-9-83; 8:45 am]

BILLING CODE 4210-01-M

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R–82–1038]

Deregulate Urgent Needs Fund and Inequities Fund; Announcement of Effective Date

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of announcement of effective date for final rule.

SUMMARY: This notice announces the effective date for the final rule published in the **Federal Register** on October 18, 1982 (47 FR 46273) that removed the provisions relating to the Urgent Needs Fund and the Inequities Fund, because HUD no longer has statutory authority to receive applications for these programs. The effective date provision of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced that future notice of the effectiveness of the rule would be published in the **Federal Register.**

Thirty calendar days of continuous session of Congress have expired since the rule was published.

DATE: The effective date for the final rule published October 18, 1982 (47 FR 46273), is March 10, 1983.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10278, 451 7th Street, SW., Washington, D.C. 20410, telephone No. (202) 755–7055. (This is not a toll-free number.)

Dated: March 3, 1983.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 83-5905 Filed 3-9-83; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 7874]

Procedure and Administration; Service of Notice of Levy by Mail

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final Regulations.

SUMMARY: This document provides final regulations under section 6331 of the Internal Revenue Code of 1954 relating to the authority of the Service to serve notice of levy by mail. These regulations will provide the public with the guidance needed to comply with the law and will affect persons upon whom notices of levy are served.

EFFECTIVE DATE: The amendments of § 301.6331-1 are effective for levies made after March 10, 1983.

FOR FURTHER INFORMATION CONTACT: Annie R. Alexander of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3287), not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On Friday, February 26, 1982, the **Federal Register** published proposed amendments to Regulations under Part 301, Procedure and Administration, under section 6331 of the Internal Revenue Code of 1954 (Code) (47 FR 8378).

This document contains final regulations under section 6331 of the Code relating to the authority of the Service to seize property by levy. Under section 6331 of the Code the term "levy" includes the power of distraint and seizure by any means. Regulation § 301.6331-1(a)(1) provides that a levy may be made by serving a notice of levy on any person in possession of, or obligated with respect to, property or rights to property subject to levy.

In order to conserve resources, the Service has increased the number of notices of levy served by mail in accordance with law and longstanding administrative practice. Some persons upon whom notices for levy are served have expressed concern that the Service's longstanding practice has not been explicitly set forth in the regulations. Consequently, the Department of the Treasury has decided to amend the regulations to specify the procedures to be followed by the Service in serving a notice of levy by mail. The amendment will also permit persons having more than one office within an Internal Revenue district to choose one office to which notices of levy are to be mailed.

A public hearing was not requested. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Summary of Public Comments and Final Regulations

The proposed regulations authorized service of notice of levy by mail and stated that the date the notice is delivered to the person served is the date the levy is made. A number of comments were received objecting to service by regular mail and suggesting service by certified mail return receipt requested on the ground that there is no way to establish the date that regular mail is received and this creates problems in determining priorities of levies. Even if the recipient of the notice is required to establish through normal business records the date of delivery, accurate compliance is difficult. Commentators stated that this area was ripe for factual dispute where delivery is made on a Saturday or local legal holiday and the notice is not processed until the next business day because substantial withdrawals could have occurred on Saturday and Sunday through automatic teller machines. Commentators stated that delivery by certified mail return receipt requested would eliminate this problem, because there would be no delivery on Saturday or Sunday. The date on the receipt would establish the date of delivery, and the Internal Revenue Service would have a verifiable effective date in all cases.

While the Service recognizes the problems that may arise as a result of service of levy by regular mail, the Service has concluded that most of these problems can be avoided if there is a presumption that the time and date noted on the notice of levy by a person having authority to act on behalf of the person served is the date and time the levy is made. The Service retains the authority to use certified mail return receipt requested when necessary. However, a requirement of certified mail in all cases would be too costly to the Service and has not been adopted.

Most commentators objected to the rule in the proposed regulations which allowed delivery of a notice of levy to any branch office if a person has more than one office within the Internal Revenue district. Commentators stated a variety of reasons for their objection such as:

(1) The rule does not comport with decisional substantive law relating to private creditors,

(2) Many banks with significant branch networks do not have a central file which can be accessed with name, address and social security number of the taxpayer, so compliance with the proposed amendments is operationally impossible, and

(3) The rule would impose an undue cost, and administrative burden on an innocent third party.

The final regulations deleted this sentence because the issue raised by the language is unrelated to the Service's authority to serve notices of levy by mail. Thus, this deletion should not be construed as a change of the Internal Revenue Service's position that a levy on a branch bank may be effective at other branches. The question turns on the facts and circumstances of each case. *See Digitrex Inc. v. Johnson* 491 F. Supp. 66 (1980); *Therm-X-Chemical & Oil Corp. v. Extebank*, 84 A.D. 2d 787, 444 N.Y.S. 2d 26 (1981).

Some commentators expressed concern about the language in the proposed regulation which required the concurrence of the district director in order for a person to designate an office upon which the mailed notice would be served. Because the option to designate a particular office was added for the convenience of the person levied upon, the final regulation has eliminated the requirement that the district director concur with a person's designation of the office to which the notices shall be mailed.

One commenter objected to the proposed regulations' containing no guidelines on what taxpayer identification information the notice should contain. The commentator stated that the account data system could not locate the taxpayer's assets if only the taxpayer's name and social security number were given. It was suggested that the Internal Revenue Service be required to include the taxpayer's account number. This comment was not incorporated into the regulations because in many instances the Service does not have access to the taxpayer's account number.

Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Although this regulation was published as a notice of proposed rulemaking that solicited public comment, the Internal Revenue Service concluded when the notice was published that the regulations were interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Consequently, these regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these regulations is Annie R. Alexander of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Adoption of amendments to regulations

Accordingly, 26 CFR Part 301 is amended as follows:

PART 301—[AMENDED]

Paragraph. A new paragraph (c) is added to § 301.6331–1 to read as follows:

§ 301.6331–1 Levy and Distraint.

* * * * *

(c) *Service of notice of levy by mail.* A notice of levy may be served by mailing the notice to the person upon whom the service of a notice of levy is authorized under paragraph (a)(1) of this section. In such a case the date and time the notice is delivered to the person to be served is the date and time the levy is made. If the notice is sent by certificated mail, return receipt requested, the date of delivery on the receipt is treated as the date the levy is made. If, after receipt of a notice of levy, an officer or other person authorized to act on behalf of the person served signs and notes the date and time of receipt on the notice of levy, the date and time so noted will be presumed to be, in the absence of proof to the contrary, the date and time of delivery.

Any person may, upon written notice to the district director having audit jurisdiction over such person, have all notices of levy by mail sent to one designated office. After such a notice is received by the district director, notices of levy by mail will be sent to the designated office until a written notice withdrawing the request or a written notice designating a different office is received by the district director.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: February 28, 1983.

John E. Chapoton,
Assistant Secretary of the Treasury.

[FR Doc. 83-6214 Filed 3-9-83; 8:45 am]
BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 803

Disposition of Personal Property

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule

SUMMARY: The Department of the Air Force is amending its administrative regulations by removing Part 803, Disposition of Personal Property of Chapter VII, Title 32. The source document, Air Force Regulation (AFR) 143–6, has been revised. It is intended for internal guidance and has no applicability to the general public. This action is a result of departmental review in an effort to insure that only regulations which substantially affect the public are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: March 10, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Beauchemin, Air Force Manpower and Personnel Center, MPCCM, Randolph AFB, TX 78150.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 803

Military personnel, Federal employees, Prisoners of war.

PART 803—[REMOVED]

Accordingly, 32 CFR is amended by removing Part 803.

Authority: 10 U.S.C. 8012.

Winnibel F. Holmes,
Air Force Federal Register Liaison Officer.

[FR Doc. 83-6219 Filed 3-9-83; 8:45 am]
BILLING CODE 3910-01-M

Corps of Engineers, Department of the Army

33 CFR Part 207

Use, Administration and Navigation of the Canal and Locks; Willamette River, Oregon

AGENCY: Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is amending the regulations which govern the use, administration and navigation of the canal and locks on the Willamette River, Willamette Falls, Oregon. This amendment is necessary to reflect only address changes and the addition of other means to request lockage.

EFFECTIVE DATE: April 25, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Edward E. Ashley at (503) 221–6066, Mr. Ralph T. Eppard at (202) 272–0200 or write to: Office of the Chief of Engineers, ATTN: DAEN–CWO–N, Washington, D.C. 20314.

SUPPLEMENTARY INFORMATION: The Corps of Engineers is amending 33 CFR 207.680 (a)(1) and (b)(7) to reflect a change in the address of the Portland District Engineer. Paragraph (b)(2) is also amended to show that lockages may be obtained by contacting the lockmaster by VHF–FM Channel 14 radio or by telephone.

The Department of the Army has determined that notice of proposed rulemaking and public procedures are unnecessary in the promulgation of these amendments due to the editorial nature of the changes. A local public notice announcing these changes is also being distributed by the Portland District Engineer.

Note.—The Chief of Engineers has determined that this document does not contain a major rule requiring a regulatory impact analysis under Executive Order 12291 because it will not result in an annual effect on the economy of $100 million or more and it will not result in a major increase in costs or prices. The Chief of Engineers has also determined that this rule will not have a significant economic impact on a substantial number of entities and thus does not require the preparation of a regulatory flexibility analysis.

List of Subjects in 33 CFR Part 207

Navigation (water).

Accordingly, the regulations in 33 CFR 207.680 (a)(1), (b)(2) and (b)(7) are revised as set forth below.

Dated: February 23, 1983.

Approved:
William R. Gianelli,
Assistant Secretary of the Army (Civil Works).

PART 207—[AMENDED]

§ 207.680 Williamette River, Oreg.; use, administration and navigation of canal and locks at Willamette Falls, Oreg.

(a) *Administration. (1) Administrative jurisdiction.* The canal and locks and all appurtenances shall be in the charge of the District Engineer, Portland District, Corps of Engineers, Department of the Army, 319 S.W. Pine Street, Portland, Oregon 97208. The representative of the District Engineer at the locality shall be the lockmaster, who shall receive his orders and instructions from the district engineer. In case of emergency, however, the lockmaster shall have authority to take such steps as may be immediately necessary without waiting for instruction from the district engineer.

* * * * *

(b) *Use and navigation.*—(1) *Authority of lockmaster.* * * *

(2) *Signals.* All vessels desiring lockage shall signal the same by one long and one short blast of the whistle, delivered at a distance of approximately 1,000 feet from the locks. Requests for lockage may also be made by contacting the lockmaster on VHF–FM radio on channel 14, at WUJ 363, Willamette Falls Locks or by telephone or otherwise notifying the lockmaster's office. Notice to vessels desiring lockage will be given by red and green traffic lights. Vessels may enter locks on green lights, but must await green signal when lights are red. Permission to leave the lock will be given in the same manner. In the event a failure occurs and the referenced lights cannot be operated, the lockmaster will indicate by voice or by hand or lantern signals when vessels may enter or leave the locks.

* * * * *

(7) *Use of canal locks.* No person, unless authorized by the lockmaster or his assistants, shall open or close any bridge, lock gate, wicket gate, or operate any lock machinery, or in any way interfere with any mechanism or appliance connected with the operation of the locks, nor shall anyone interfere with the employees in the discharge of their duties. The lockmaster or his assistants may call for aid from the persons in charge of any craft, vessel, or raft using the lock should such aid be necessary. Persons rendering such assistance shall be strictly under the orders of the lockmaster. The Government reserves the right to refuse lockage to any vessel, craft or raft when the persons in charge thereof refuse to give such assistance when it is requested. The persons in charge of vessels with tows or rafts, barges and other craft must provide sufficient personnel, lines and towing equipment of sufficient power to insure at all times full control of such tows, rafts, barges and other craft while moving into and through the locks, unless otherwise prearranged with the lockmaster. A copy of these regulations shall be kept on board each vessel regularly engaged in navigating the locks. Copies may be obtained without charge from the lockmaster or from the District Engineer, Corps of Engineers, Department of the Army, 319 S.W. Pine Street, Post Office Box 2946, Portland, Oregon 97208.

(40 Stat. 266; 33 U.S.C. 1)

[FR Doc. 83-6114 Filed 3-9-83; 8:45 am]
BILLING CODE 3710-92-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-7-FRL 2272-7]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of final rule.

SUMMARY: On June 15, 1982, the State of Kansas submitted revisions of its State Implementation Plan (SIP) to EPA. Part of these revisions were submitted in order to satisfy conditions on the state's Part D plan (46 FR 20164, April 3, 1981). Other SIP revisions not required by the conditions were submitted at the same time. The regulations required by the April 3, 1981, conditions are to control volatile organic compound emissions from tank trucks serving petroleum bulk terminals and to revise the new source regulations requiring that the owner or operator of a proposed new source demonstrate that all major sources owned or operated by the applicant be in compliance with all applicable state and federal emission limits or standards. The remainder of the submittal included changes to the new source permit requirements for nonattainment areas. On September 1, 1982 (47 FR 38531), EPA approved these revisions to the Kansas plan without prior proposal. EPA received notice that adverse or critical comments will be submitted on this plan revision. Consequently, EPA is taking action to withdraw approval of the Kansas SIP revision. Elsewhere in today's **Federal Register**, EPA is proposing to approve portions of the Kansas SIP revision and is providing an opportunity for public comment on its approval.

DATE: This action is effective on March 10, 1983.

ADDRESSES: Copies of this SIP revision are available for review at the following addresses:

Environmental Protection Agency, Region VII, Air Branch, Room 1415, 324 East 11th Street, Kansas City, Missouri 64106;

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460;

Kansas Department of Health and Environment, Bureau of Air Quality and Occupational Health, Forbes Field, Topeka, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Robert J. Chanslor at the EPA, Region VII address above or call (816) 374–3791 (FTS 758–3791).

SUPPLEMENTARY INFORMATION: On June 15, 1982, the State of Kansas submitted a revision of the state's SIP. Part of the submittal was to satisfy conditions placed on the Part D SIP on April 3, 1981, (46 FR 20164), but the remainder was not required by the conditions. The former regulations require control of VOC emissions from tank trucks serving bulk petroleum terminals and that owners or operators of a source wishing to locate in a nonattainment area demonstrate that all sources in the state under the control of the applicant are in compliance or on a schedule for compliance with all applicable emission limits or standards. The revisions not required by the April 3, 1981, conditions included definition changes. Among the revised definitions were changes in the stationary source definition and deletion of the term reconstruction. These revisions were made to be consistent with EPA's October 14, 1981, regulatory changes (46 FR 50766).

A notice of receipt of these revisions was published in the **Federal Register** on March 26, 1982 (47 FR 12965). A final rulemaking was published in the **Federal Register** on September 1, 1982, (47 FR 3853) following the special procedures described at 46 FR 44477 (September 4, 1981). The EPA advised the public that the effective date of the approval would be deferred for 60 days (until November 1, 1982). EPA announced that, if within 30 days of publication of the approval notice was received that someone wished to submit adverse or critical comment, the approval would be withdrawn and a new rulemaking procedure would be initiated by proposing the action and establishing a 30 day comment period.

EPA has received notice that a member of the public wishes to make an adverse or critical comment on the approval of the Kansas SIP revision. Therefore, EPA is withdrawing the September 1, 1982, approval in accordance with the procedures described above.

Elsewhere in today's **Federal Register**, EPA is proposing to approve the Kansas June 15, 1982 SIP submittal except for the regulations defining stationary source and governing review of reconstructed sources. The rationale for deferring action on the source definition is discussed in the proposal.

EPA is withdrawing the original approval without providing prior notice and opportunity for comment because it finds there is good cause within the meaning of 5 U.S.C. 553(b) to do so. Notice and comment would be impractical because EPA needs to withdraw its approval quickly in order to consider the comment the public wishes to submit. Further, additional notice is not necessary because EPA has already informed the public that it would follow this procedure, if a request was received to comment on the procedure (46 FR 44477 and 47 FR 38531). For the same reasons, EPA finds it has good cause under 5 U.S.C. 553(d) to make this withdrawal immediately effective.

Note.—Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant impact on a substantial number of small entities because this action imposes no new regulatory requirements, and any regulatory impact would only result because of future actions by EPA. Those future actions will require that EPA make a separate determination of the applicability of 5 U.S.C. 605(b).

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

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

(Secs. 110 and 301 of the Act as amended (42 U.S.C. 7410 and 7601))

Dated: February 28, 1983.

Anne M. Burford,

Administrator.

PART 52—[AMENDED]

§ 52.870 [Amended]

Accordingly, 40 CFR Part 52 is amended by removing paragraph (c)(14) of § 52.870 and restoring paragraph (a) of § 52.875 as follows:

§ 52.875 General requirements.

(a) *Conditional Approval.* The following portions of the Kansas SIP developed pursuant to Part D of the 1977 CAA contain deficiencies which must be corrected within the time limit indicated for EPA to approve the Part D submission:

(1) To satisfy the requirements to section 172(b)(10), Enforceability of the Regulations, the state must adopt and submit a permanent regulation covering leaks from tank trucks serving bulk petroleum terminals and vapor recovery system by May 1, 1982.

(2) The new source permit review regulation is deficient regarding compliance with the requirements of section 173(3) of the CAA. The state must pass the necessary legislation to allow the regulation to be revised. By July 1, 1981, the state must file the revised regulation with the Revisor of Statutes; so that, the legislature can consider it for permanent adoption during the 1982 session. The revised regulation must be adopted as a permanent amendment to the Kansas air quality regulations by May 1, 1982.

(3) To comply with section 172(b)(2), Reasonably Available Control Measures, Kansas must take the following actions:

(i) Adopt and submit a regulation covering leaks from gasoline tank trucks serving bulk petroleum terminals and vapor recovery system by May 1, 1982. EPA requires the state to file the regulation with the Revisor of Statutes by July 1, 1981, so that, the legislature can consider it for permanent adoption by May 1, 1982.

(ii) Submit additional information by September 1, 1981 on the state's determination that the TSP sources without control equipment which are listed in Appendix DK of the Kansas City TSP plan are applying RACT. With this submission, the state must include a compliance schedule for completing the actions necessary to bring the uncontrolled sources to RACT as recommended by the additional RACT determination study. The compliance schedule should facilitate Kansas City attaining the TSP primary standard by the December 31, 1982 deadline.

(Secs. 110, 172, 173, and 301 of the Clean Air Act as amended (42 U.S.C. 7410 and 7601(a)))

[FR Doc. 83-6118 Filed 3-9-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

Hazardous Materials Regulations; Alcoholic Beverages; Interpretation; Cross Reference

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration.

ACTION: Interpretation.

SUMMARY: Appearing in the Notices section of today's **Federal Register** is a withdrawal by the MTB of a letter of interpretation (which was not published in the **Federal Register**) concerning § 173.118(c) of the Hazardous Materials Regulations and the use therein of the term "alcoholic beverages."

FOR FURTHER INFORMATION CONTACT: Alan I. Roberts, Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau, 400 Seventh Street SW., Washington, D.C. 20590.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 83-6191 Filed 3-9-83; 8:45 am]

BILLING CODE 4910-60-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1307

[Ex Parte No. MC-98; Sub-1]

Investigation Into Motor Carrier Classification

AGENCY: Interstate Commerce Commission.

ACTION: Final Policy Statement.

SUMMARY: The Interstate Commerce Commission finds that the National Motor Freight Classification (NMFC) must be revised. The Commission further concludes that tentative findings, concerning the NMFC, set forth in an interim decision (decided April 27, 1981, and printed at 364 I.C.C. 906), should be modified.

DATES: Where different TL and LTL ratings for the same classification commodity are in effect, the National

Classification Committee (NCC) shall make all the necessary adjustments in compliance with our decision by September 6, 1983. The NCC shall have until April 25, 1983, to comply with all other modifications to the NMFC which we have mandated. This decision shall be effective on April 11, 1983.

ADDRESSES: To purchase copies of the full decision contact: T. S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call toll free (800) 424–5403.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275–7278.

SUPPLEMENTARY INFORMATION: In an interim decision decided April 27, 1981 (46 FR 27732, May 21, 1981) the Commission found that the NMFC needed revision. Numerous comments were received in response to the interim decision. On review of the comments, the Commission reaffirms the interim decision's findings in part, but concludes that certain findings must be modified.

The Commission's final decision delineates the factors which are to be considered in the NMFC. Those factors are: (1) Density; (2) stowability, which includes excessive weight or excessive length; (3) ease or difficulty of handling, which includes special care or attention necessary to handle the goods; and (4) liability, which includes value per pound, susceptibility to theft, liability to damage, perishability, propensity to damage other commodities with which transported, and propensity to spontaneous combustion or explosion. Certain characteristics which in the past have customarily been used in the NMFC are not relevant, namely, trade conditions, value of service, and competition with other commodities; these characteristics reflect the degree to which a commodity may bear transportation charges and have no significance as a transportation related quality of a commodity.

The Commission also finds that reduction of the NMFC to a single rating number is more acceptable than the alternatives considered. Both shippers and carriers have generally affirmed their basic belief in the desirability of the NMFC rating system.

Finally, the Commission's decision concludes that it is generally unreasonable for the NMFC to publish different ratings for an article dependent on whether it is truckload (TL), less-than-truckload (LTL), or traditionally designated any quantity (AQ). Minimum weight factors are also eliminated. The focus of the classifier must be solely on the applicable transportation characteristics. To the extent the NCC's classification ratings represent or reflect volume discounts, they are outside the proper scope of classification.

This action does not significantly affect either the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10101(a), 10701, 10704, 10706, 11701, and 5 U.S.C. 553)

Decided: February 25, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre, Simmons, and Gradison. Commissioner Gradison dissented in part with a separate expression. Commissioner Andre dissented.

Agatha L. Mergenovich,

Secretary.

Commissioner Gradison, Dissenting in part:

I agree with the outcome of this decision, which abandons the Commission's ill-advised proposal to replace the National Motor Freight Classification with an inefficient and unworkable "information based system" in which individual rate bureaus, and perhaps even individual carriers, would have published separate classifications. The decision properly reflects the chaos and needless confusion that this proposal would have visited upon the shipping public. The decision retains the essential elements of the National Motor Freight Classification, while removing from it the vestiges of the collective ratemaking system.

However, I believe the majority made unnecessary changes to the classification system in two areas. First, the majority condemns any consideration of trade conditions, value of service or competition with other commodities. I would have permitted the occasional, carefully defined use of these classification factors. The record indicates that these factors are used infrequently to make adjustments to ratings in situations in which the ratings otherwise would discourage the commodities in question from moving under class rates. If classifiers are not allowed to make such occasional, common sense adjustments the result can only be the filing of unnecessary exceptions to the National Motor Freight Classification. This results in needless paperwork for carriers and shippers, and it makes the National Motor Freight Classification a less useful tool in contravention of the preference specifically expressed by Congress.

Second, the majority does not go far enough in disavowing the discussion in the interim decision in which the Commission undertook to rank order the importance of the various transportation characteristics. The majority continues to offer observations that are not supported by the record concerning the relative importance of certain transportation characteristics. I would have had the decision state that there is no rational basis for us to limit or expand the importance of any particular transportation factor since the relative importance of each factor varies with the commodity being classified.

Finally, I do not subscribe to the tone of the decision adopted by the majority, which treats the National Motor Freight Classification as some sort of necessary evil that we must reluctantly allow to exist. In fact, the Classification is the useful product of many decades of careful work. It helps both carriers and shippers to do their work more efficiently. The Congress has recognized this and has found that the Classification will be as useful under a system in which carriers make individual rates as it was under the system in which carriers made collective rate decisions. It assists new entrants into the motor carrier industry to make rational rate decisions, and it promotes the cost-based rate system mandated by the Motor Carrier Act of 1980.

[FR Doc. 83-6128 Filed 3-9-83; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 48, No. 48
Thursday, March 10, 1983

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 80-054P]

Trichina Control Requirements

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal meat inspection regulations require manufacturers to subject pork muscle tissue to a treatment which will kill any possible live trichinae, when that tissue or the product in which it is used may not be well cooked before consumption. Trichinae are microscopic parasites which cause a serious and sometimes fatal disease, known as trichinosis, in humans. Several treatment methods (heating, freezing, salting, and drying) are prescribed for trichina destruction. This proposal would permit additional treatment methods by providing alternate combinations of time, temperature, and salt content which are equally effective in destroying trichinae. This would provide the industry with greater flexibility in meeting the requirements for trichina control.

DATE: Comments must be received on or before May 9, 1983.

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

FOR FURTHER INFORMATION CONTACT: Mr. Bill F. Dennis, Director, Processed Products Division, Meat and Poultry Inspection Technical Service, Food Safety and Inspection Services, U.S. Department of Agriculture, Washington, DC 20250, (202) 477-3840.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator, Food Safety and Inspection Service (FSIS), has made an initial determination that this proposed rule is not a major rule under Executive Order 12291. This proposed rule would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

The Administrator, FSIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). If promulgated, it would allow more flexibility for the industry in meeting FSIS requirements for trichinae control without imposing any additional burdens, costs or requirements on small entities.

Comments

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

Background

Trichinosis is a disease affecting human beings that is caused by microscopic threadlike worms called trichinae *(Trichinella spiralis)*, which live in muscles of hogs. Humans contract trichinosis by eating pork or pork product which has not been cooked sufficiently to destroy the trichinae. The number of live trichinae in the pork or pork product that is eaten usually determines the seriousness of the disease. Of those who contract proven cases of trichinosis, about 2 percent die. Most patients, even those who are severely infected, eventually recover. However, in many severe cases, the symptoms become chronic, with the infected persons experiencing substantial pain and discomfort for years.

Live trichinae are not detectable in swine or pork or pork product by the unaided eye or by any other routine meat inspection procedures. (Microscopic and serological techniques for the detection of trichinae are available, but they are either too costly or not yet developed to the point where they can be used during routine inspection.) However, means are available to destroy the live trichinae in the pork or pork product. These means include heating, curing (salting), or freezing. The Federal meat inspection regulations currently require that pork products that are ordinarily not well cooked before consumption, or the pork muscle tissue used as an ingredient in such products, undergo one of these treatment methods to destroy possible live trichinae. Fresh pork and such other pork products as bacon, which are customarily well cooked in the home or elsewhere before eating, have been exempt for many years from treatment at the packing plant to destroy the trichinae.

Proposal

The Department has conducted a thorough review of the trichina treatment requirements for pork and pork products and has determined that certain revisions would permit greater flexibility in freezing and curing methods while continuing to assure the destruction of trichinae.

This proposal also responds to a December 21, 1981, petition from the Livestock Conservation Institute to review the requirements for treating raw pork used in manufacturing of dry sausages for possible live trichinae.

The Department is proposing regulations which would continue to ensure that pork and pork products are free of live trichinae while permitting processors to use a greater variety of time, temperature, and salt combinations than those in the present regulations. For example, one of the present methods for curing ham requires that, after the salt has been added, the hams shall be dried or smoked not less than 10 days at a temperature not lower than 95° F. There is no variation allowed in the present regulations (9 CFR

318.10(c)(3)(iv)) from this time and temperature. However, it has been scientifically determined that there are a number of salt content, time and temperature combinations that would be equally effective at destroying live trichinae in ham (e.g., drying or smoking the ham at a temperature of 85° F. for a period of 18 days). The proposed regulations would, accordingly, incorporate into the present regulations a greater variety of methods for the treatment of pork and pork products to destroy trichinae. All of the current treatment methods would be retained as available options.

The proposed regulations would principally affect the trichinae treatment methods by (1) providing alternate times and temperatures for the controlled freezing of pork and pork products, (2) providing alternate combinations of salt content, time and temperature for the processing of sausage, and (3) providing alternate combinations of time and temperature for the processing of hams and pork shoulders.

Specifically, the proposed amendments to the present Federal meat inspection regulations would:

1. Revise the current freezing requirement by replacing the −30° F. requirement with a time-temperature schedule which is based on USDA experimental data. In the proposed method, the term "controlled freezing" would be used in lieu of the current term "refrigeration" since freezing is a more technically correct description of the process.

2. Add a new method to be known as "Method No. 6" to the five approved methods for curing sausage. The new method would provide basic time and sausage diameter ratios, with adjustments based on reductions in salt content plus the time and temperature of the fermentation or smoking process.

3. Add a new method to be known as "Method No. 3" to the present trichinae treatment procedures for hams and pork shoulders. This proposed method would provide basic salt curing times and temperatures with optional drying times based on the holding temperature or smoking and holding temperature.

The treatment methods set in the present and the proposed regulations for freezing time and temperature, drying time, size of sausages, amount of salt, etc., were derived from studies using pork from swine experimentally infected with live trichinae. The data used in the present, as well as the proposed, regulations were compiled over a number of years by USDA, university and industry scientists. A listing of published material is provided.[1]

After careful evaluation of the present regulations, technological development in the industry, and the reliability of the procedures and data supporting this proposal, the Department is proposing to revise Part 318 of the Federal meat inspection regulations (9 CRF Part 318) regarding treatment methods for destroying trichinae in pork and pork products.

List of Subjects in 9 CFR Part 318

Meat inspection, Preparation of products.

PART 318—[AMENDED]

1. The authority citation for Part 318 reads as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254.

2. Paragraph (c) of § 318.10 of the Federal meat inspection regulations (9 CFR 318.10(c)) would be amended by revising paragraph (c)(2)(iv) to expand refrigeration time and temperature ranges; by adding to paragraph (c)(3)(i) a new method for curing sausage to be designated Method No. 6; and by adding to paragraph (c)(3)(iv) a new method for curing ham and pork shoulder picnics to be designated Method No. 3, to read as follows:

§ 318.10 Prescribed treatment of pork and products containing pork to destroy trichinae.

* * * * *

(c) * * *

(2) * * *

(iv) In lieu of the methods prescribed in Table 1, the treatment may consist of commercial freeze drying or controlled freezing, at the center of the meat pieces, in accordance with the times and temperatures specified in Table 2.

TABLE 2.—Alternate Periods of Freezing at Temperatures Indicated

Temperature (minimum degrees fahrenheit)	Time (minimum hours)
0	106
−5	82
−10	63
−15	48
−20	35
−25	22
−30	6
−35	½

* * * * *

(3) * * *

(i) * * *

Method No. 6. (a) Drying Room Schedule. The meat shall be ground or chopped into pieces not exceeding three-fourths of an inch in diameter. A dry-curing mixture containing not less than 3⅓ pounds of salt to each hundredweight of the unstuffed sausage shall be thoroughly mixed with the ground or chopped meat. After the curing mixture has been added, the sausage shall be held in a stuffed or unstuffed state for a period of not less than 48 hours at a temperature not lower than 35° F. The sausage shall then be held for the remainder of the curing period in a drying room at a temperature not lower than 50° F. for the period given in the schedule contained in Table 3a.

Trichinae Treatment of Sausage by Method No. 6

TABLE 3A.—Drying Room Schedule

Diameter of casing at time of stuffing (inches)	Days in drying room
Up to:	
1	14
1½	15
2	16
2½	19
3	20
3½	23
4	25
4½	30
5	35
5½	43
6	50

(b) Fermentation or Smoking Schedule. While the product is being held for 48 hours at a temperature not lower than 35° F. (after adding curing materials), it may be smoked or fermented in a stuffed or unstuffed state. If, during the smoking or fermentation process, the temperature of the room is increased to 70° F. or higher,

[1] References for Trichinae Control:

(1) Low Temperature Treatment for Pork. Effect of Certain Low Temperatures on Viability of Trichinae Larvae, by S. E. Gould and Laurin J. Kaasa. American Journal of Hygiene, Vol. 49 (1949).

(2) Salt and Aging Time Effect on the Viability of Trichinae Spiralis in Heavy Dry Cured Hams and Shoulders, by John D. Crouse and James D. Kemp, Journal of Food Science, Vol. 34 (1969).

(3) The Effect of Various Salt Concentrations on Encysted Trichinella Spiralis Larvae, by Rex Allen, MS and Aaron Goldberg, Ph.D., American Journal of Veterinary Research, May 1962.

(4) Salt Cure and Drying and Temperature Effects on Viability of Trichinella Spiralis in Dry Cured Hams, by W. J. Zimmermann, Journal of Food Science, Vol. 36 (1971).

(5) Report of the Richmond Study on Dry Curing of Hams, by Dr. D. E. Zinter—Pathology Branch—USDA, August 1967.

(6) Effects of Salt Cure and Processing Time and Temperature on the Viability of Trichinella Spiralis in Country Cured Hams and Shoulders, by John Charles Olson, A Thesis for Master of Science, Iowa State University, 1972.

(7) USDA Bulletin N. 880 Professional Paper, Effects of Pork Curing Processes on Trichinae, by B. H. Ransom, B. Swartz and H. B. Raffensferger, Sept. 1920.

the subsequent drying room times prescribed for this method may be reduced according to the schedule contained in Table 3b.

Trichinae Treatment of Sausage by Method No. 6

TABLE 3B.—FERMENTATION OR SMOKING SCHEDULE

(Percentage reduction in drying room time (table 3a) permitted by smokehouse or fermentation room times and temperatures.[1])

Minimum time (hours)	Minimum temperature (percent)					
	70° F.	80° F.	90° F.	100° F.	110° F.	120° F.
24	4	8	15	37	90	(–)[2]
48	9	18	35	88	(–)[2]	(–)[2]
72	14	28	55	(–)[2]	(–)[2]	(–)[2]
96	19	38	75	(–)[2]	(–)[2]	(–)[2]
120	24	48	95	(–)[2]	(–)[2]	(–)[2]

[1] In computing the days to be deducted, the number with any fraction shall be rounded to the next lower whole number and shall be deducted from the required total drying time. Example: Sausage stuffed in 3" diameter casing requires 20 days in the drying room (from Drying Room Schedule). If allowed to ferment after addition of curing materials at 80° F. for 48 hours, the 20 day drying time may be reduced 18% (from Fermentation or Smoking Schedule). Eighteen percent of 20 days equals 3.6 days. Twenty days minus 3 days equals 17 days. The total drying time required in the drying room, therefore, will be 17 days.

[2] Trichinae will be destroyed during fermentation or smoking at the temperature and length of time indicated. Therefore, no drying room period is required for products so treated.

(c) Reduced Salt Content—Drying Room Schedule. Salt content of less than 3½ pounds for each hundredweight of sausage may be permitted provided the drying room temperature is not lower than 50° F. and the drying time is increased according to the schedule contained in Table 4.

Trichinae Treatment of Sausage by Method No. 6

TABLE 4.—REDUCED SALT CONTENT—DRYING ROOM SCHEDULE

(Required percentage increase in drying room time (table 3a) for salt content of less than 3½ pounds per hundredweight of sausage)

Minimum pounds of salt added to sausage	Increase in drying room time percent[1]
3.0	10
2.5	25
2.0	40

[1] In computing the days to be added to the required total drying time, fractions shall be rounded to the next higher whole number and added to the required total drying time. Example: Sausage stuffed in 3½ inch diameter casing requires 23 days in the drying room (from Drying Room Schedule). If the quantity of salt added per hundredweight of sausage is 2 pounds instead of 3½ pounds, the drying room time must be increased by 40 percent (from Salt Content-Drying Room Schedule), or 9.2 days. The 9.2 is rounded up to 10 days and is added to the 23 days to equal 33 days. The total drying time required in the drying room, therefore, will be 33 days.

* * * * *

(iv) * * *

Method No. 3. Hams and pork shoulders (whether whole shoulder or part) weighing 20 pounds or under shall be cured by a dry salt process for not less than 40 days at a temperature not lower than 35° F. during which the product is covered with salt. For hams and pork shoulders weighing more than 20 pounds, the time in salt shall be 40 days plus 2 additional days, covered by salt, for each pound in excess of 20 pounds. Time in an equalization phase may substitute for time in salt; however, such substitution may not account for more than 10 days. (The term "equalization," as used here, is the process of salt diffusion through the meat after any excess salt has been removed from the surface of the product.) The hams and pork shoulders shall be placed in a quantity of salt sufficient to cover each piece. Additional salt shal be applied thoroughly to the lean meat side of each piece. At least once during the curing process, the hams and pork shoulders shall be turned over and covered with fresh salt. When placed in cure, if desired, the product may be pumped with a brine solution of not less than 100° strength (salometer). After completion of the salting and equalization process, the hams and port shoulders may be washed or sprayed to remove the surface salt, but they shall not be subjected to any other treatment designed to remove salt from the meat. After curing, the hams and pork shouders shall then be dried or smoked, or both, according to the applicable time-temperature schedule contained in Table 5 or in Table 6.

Trichinae Treatment of Unsmoked Hams and Pork Shoulders

TABLE 5.—DRYING SCHEDULE

Minimum temperature of drying room	Minimum days in drying room after curing
130° F	1½
125° F	2
120° F	3
115° F	4
110° F	5
105° F	6
100° F	7
95° F	9
90° F	11
85° F	18
80° F	25
75° F	35
70° F	40
65° F	53
60° F	65
55° F	78
50° F	90
45° F	100
40° F	130
35° F	160

Trichinae Treatment of Smoked Hams and Pork Shoulders

TABLE 6.—SMOKING AND DRYING SCHEDULE

Minimum days (1 day=24 Hours) smoking time after curing (at minimum smokehouse temperature)	Minimum days drying time after smoking (at minimum drying room Fahrenheit temperature)										
	85°	80°	75°	70°	65°	60°	55°	50°	45°	40°	35°
130° F:											
½	12	17	24	27	36	44	52	60	67	84	94
1	6	9	12	14	18	21	26	30	35	42	47
1½	0	0	0	0	0	0	0	0	0	0	0
120° F:											
1	12	17	24	27	36	44	52	60	67	84	94
2	6	9	12	14	18	21	26	30	35	42	47
3	0	0	0	0	0	0	0	0	0	0	0
110° F:											
1	15	20	28	32	43	52	63	72	80	100	112
2	11	15	21	24	32	39	47	54	60	75	80
3	7	10	14	16	21	26	31	36	40	50	56
4	4	5	7	8	11	13	16	18	20	25	28
5	0	0	0	0	0	0	0	0	0	0	0
100° F:											
1	16	22	30	35	46	56	67	77	86	107	120
2	13	18	25	29	38	47	56	65	72	90	100
3	11	15	20	23	31	38	45	52	58	72	80
4	8	11	15	18	23	28	34	39	43	54	60
5	6	8	10	12	16	19	23	26	29	36	40
6	3	4	5	6	8	10	12	13	15	18	20

TABLE 6.—SMOKING AND DRYING SCHEDULE—Continued

Minimum days (1 day = 24 Hours) smoking time after curing (at minimum smokehouse temperature)	Minimum days drying time after smoking (at minimum drying room Fahrenheit temperature)										
	85°	80°	75°	70°	65°	60°	55°	50°	45°	40°	35°
7	0	0	0	0	0	0	0	0	0	0	0
90° F:											
1	17	23	32	37	49	59	71	82	91	114	128
2	15	21	29	33	44	54	64	74	82	100	115
3	13	19	26	30	39	48	57	66	73	91	102
4	12	16	23	26	34	42	50	58	64	80	89
5	10	14	20	22	29	36	43	50	55	69	77
6	9	12	16	19	25	30	35	41	46	57	64
7	7	9	13	15	20	24	29	33	37	46	51
8	5	7	10	11	15	18	22	25	28	35	39
9	4	5	7	8	10	12	15	17	19	23	26
10	2	3	4	4	5	6	8	9	10	12	13
11	0	0	0	0	0	0	0	0	0	0	0
80° F:											
1	17	24	34	39	51	63	75	87	96	120	135
2	17	23	33	37	49	60	72	83	92	115	129
3	16	22	31	36	47	50	69	80	88	110	124
4	16	21	30	34	45	55	66	76	84	105	118
5	15	20	28	32	43	53	63	72	80	100	112
6	14	19	27	31	41	50	60	69	76	95	107
7	13	18	26	29	39	47	57	65	72	90	101
8	13	17	24	28	36	45	54	62	68	85	96
9	12	16	23	26	34	42	50	58	64	80	90
10	11	15	21	24	32	39	47	54	60	75	84
11	10	14	20	23	30	37	44	51	56	70	79
12	10	13	19	21	28	34	41	47	52	65	73
13	9	12	17	20	26	32	38	44	48	60	68
14	8	11	16	18	24	29	35	40	44	55	62
15	8	10	14	16	22	26	32	36	40	50	56
16	7	9	13	15	19	24	28	33	36	45	51
17	6	8	12	13	17	21	25	29	32	40	45
18	5	7	10	12	15	19	22	26	28	35	40
19	5	6	9	10	13	16	19	22	24	30	34
20	4	5	7	8	11	13	16	18	20	25	28
21	3	4	6	7	9	11	13	15	16	20	23
22	3	3	5	5	7	8	10	11	12	15	17
23	2	2	3	4	5	6	7	8	9	10	12
24	1	1	2	2	3	3	4	4	4	5	6
25	0	0	0	0	0	0	0	0	0	0	0

Done at Washington, D.C., on: February 24, 1983.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 83-6186 Filed 3-9-83; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 7

[Docket No. 83-13]

Real Estate Lending by National Banks

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) proposes to amend or remove interpretive rulings regarding real estate lending by national banks. This action will implement statutory changes contained in the Garn-St Germain Depository Institutions Act of 1982. This proposal would generally eliminate real estate lending limitations and restrictions. The intended effect of this proposal is to enhance the ability of national banks to develop real estate lending products.

DATE: Comments must be received by April 11, 1983.

ADDRESS: Comments should be directed to: Docket No. [83-13], Communications Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East SW., 3rd floor, Washington, D.C. 20219, Attention: C. Christine Jones, Telephone (202) 447-1768.

Comments will be available for inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Robert Sihler, National Bank Examiner, Commercial Examinations Division (202) 447-1165; or Francis S. Rath or Jerome Edelstein, Attorneys, Legal Advisory Services Division (202) 447-1880, Office of the Comptroller of the Currency, Washington, D.C. 20219.

SUPPLEMENTARY INFORMATION:

Background

The Garn-St Germain Depository Institutions Act of 1982 (Act) (Pub. L. 97-320), Section 403, amends 12 U.S.C. 371. The Act removes statutory restrictions on real estate lending by national banks. The Act authorizes national banks to make, purchase, arrange or sell loans or extensions of credit secured by liens on interests in real estate subject to terms, conditions and limitations that the Comptroller of the Currency may prescribe.

Due to this statutory change the OTC is reviewing existing real estate interpretive rulings.

Existing Requirements

The following requirements are currently imposed. These requirements are based upon 12 U.S.C. 371 and Interpretive Rulings 12 CFR 7.2000 through 7.2700.

A. Loan-to-Value Ratios

A loan on unimproved real estate shall not exceed 66⅔% of the appraised value. 12 CFR 7.2010(a).

A loan on real estate improved with offsite improvements such as streets, water, sewers or other utilities shall not exceed 75% of the appraised value. Real property whose value is enhanced because it is located in a rapidly developing area is also considered to be improved real estate. 12 CFR 7.2010(b).

A loan on real estate in the process of being improved by a building(s) shall not exceed 75% of the appraised value. The disbursement of loan proceeds must be made proportionately to the development of the project. 12 CFR 7.2010(c).

A loan or real estate improved by a building(s) may not exceed 90% of the appraised value of the real estate. 12 CFR 7.2010(d). Under 12 CFR 7.2010(c) and (d), building is defined as "a permanent structure contributing substantially to the value of the property." This includes conventional buildings, well-developed commercial recreation areas, trailer parks with numerous sites with facilities for sewage, running water, and electricity, and farmland, which past or present use demonstrates is useful for agricultural purposes. 12 CFR 7.2010(d).

In defining loan-to-value ratios, the regulations provide that in calculating the maximum permissible loan, the machinery and equipment in a building which are adapted to the use being made of the land and building, and which are intended to be permanent additions thereto, may be taken into account in determining the value of the real estate. 12 CFR 7.2000(d).

The regulations also provide that loan-to-value limitations on land acquisition and development loans may be based upon the appraised value of the final project. 12 CFR 7.2015. Similarly, loan-to-value ratios on property with buildings under construction may be based on the value of the completed buildings; however, prudent banking requires that the disbursement of loan proceeds be made proportionately to the development of the project. 12 CFR 7.2010(c).

B. Amortization, Maturity Requirements

Loans of amounts greater than 75% of the appraised value of the real estate, loans on property improved with one-to-four family dwellings, and loans secured by leaseholds, must provide for installment payments which are sufficient to amortize the entire principal of the loan within 30 years. 12 CFR 7.2125(b) and (c), 7.2200(d). Amortization requires a regular schedule of payments which reduce the principal of the debt during the life of the loan. Deviation from a regular schedule of payments must be based on prudent banking judgement. The period between payments cannot exceed one year. 12 CFR 7.2125(a).

C. Aggregate Limitations on Real Estate Loans

A national bank may not make or purchase real estate loans in excess of the amount of either its unimpaired capital plus its unimpaired surplus fund, or its time and savings deposits, whichever is greater. 12 CFR 7.2155.

Amounts unpaid on real estate loans secured by other than first liens, when added to unpaid prior mortgages, liens, and encumbrances, shall not exceed 20% of the bank's capital stock paid in and unimpaired plus 20% of the unimpaired surplus fund. 12 U.S.C. 371(a)(3).

D. Loans on Leaseholds

Loans secured by leaseholds can be made only if the leasehold does not expire for at least 10 years beyond the loan maturity date. 12 CFR 7.2200(c). Further, (1) the lease covenants and restrictions which provide for forfeiture or reversion in the event of a breach must not be more onerous or burdensome on the lessee than those contained in leases in general use in the area where the loan is made; (2) the lease should permit acquisition of the leasehold by the lending bank by voluntary conveyance or assignment by the lessee, and acquisition and sale under judicial process, without being subject to restrictions which would jeopardize recovery of the security value of the leasehold. 12 CFR 7.2200(a). Amortization of leashehold loans is required. 12 CFR 7.2200(d).

E. Limitations on Forest Tract Loans

1. *Loan-to-Value Ratio.* The amount of loans secured by forest tracts, when added to the amount unpaid on any prior mortgages, liens, and encumbrances, shall not exceed 66⅔% of the appraised fair market value of the growing timber, lands, and improvements thereon offered as security.

Loan terms and conditions must assure that the loan balance, when added to the amount unpaid upon prior mortgages, liens, and encumbrances, if any, at no time exceeds 66⅔% of the original appraised total value of the property then remaining. 12 U.S.C. 371(b).

2. *Maturity and Amortization.* Unamortized forest tract loans shall be made for no longer than three years.

Amortized forest tract loans may be made for no longer than 15 years and must be amortized at a rate of at least 6⅔% per year. 12 U.S.C. 371(b).

3. *Aggregate Limits.* Forest tract loans are included in the aggregate limits for total real estate loans; and further, forest tract loans may not be made by a national bank in an aggregate sum in excess of 50% of its capital stock paid in and unimpaired plus 50% of its unimpaired surplus fund. 12 U.S.C. 371(b).

F. Construction Loans

Loans made to finance the construction of a building(s) and having maturities not to exceed 60 months, where there is a valid and binding commitment entered into by a financially responsible lender or other party to advance the full amount of the bank's loan upon completion of the buildings, may be considered real etate loans or commercial loans. Likewise, loans made to finance the construction of a residential or farm building(s) and having maturities not in excess of 60 months, may be considered as either commercial or real estate loans.

Loans considered commercial loans may not, in the aggregate, exceed 100% of the bank's paid-in antl unimpaired capital plus 100% of its unimpaired surplus fund. 12 U.S.C. 371(c).

G. Loans made under 12 U.S.C. 24 Seventh

Certain loans are made by national banks under authority of 12 U.S.C. 24 Seventh and are not subject to the limitations imposed by 12 U.S.C. 371 as defined by the statute and interpretive rulings. These are loans:

1. Insured under the provisions of the National Housing Act. 12 U.S.C. 371(a)(2)(A).

2. Insured by the Secretary of Agriculture pursuant to Title I of the Bankhead-Jones Farm Tenant Act, or the Act of August 28, 1937, as amended, or Title V of the Housing Act of 1949, as amended. 12 U.S.C. 371(a)(2)(B).

3. Guaranteed by the Secretary of Housing and Urban Development, for the payment of obligations of which the full faith and credit of the United States is pledged; fully guaranteed or insured by a State, any agency or instrumentality of a State, or by a State authority for the payment of obligations of which the faith and credit of the State is pledged, if under the terms of the guaranty or insurance agreement the association will be assured of repayment in accordance with the terms of the loan. 12 U.S.C. 371(c)(2)(C).

4. At least 20% guaranteed under Chapter 37, Title 38 of the United States Code. 12 U.S.C. 371(a)(2).

5. Guaranteed under section 802 of the Housing and Community Development Act of 1974. 12 U.S.C. 371(a)(2).

6. Made to any borrower where the association looks for repayment by relying primarily on the borrower's general credit standing and forecast of income. 12 U.S.C. 371(e)(i).

7. Secured by assignment of rents under a lease. 12 U.S.C. 371(e)(ii).

8. In which the Small Business Administration cooperates through agreements to participate on an immediate or deferred or guaranteed basis under the Small Business Act. 12 U.S.C. 371(e).

9. Subject to a firm commitment to insure by a Government insuring agency. A firm commitment is a commitment in which a specific mortgagor is named. 12 CFR 7.2160.

10. Secured by the pledge or assignment of another real estate mortgage. 12 CFR 7.2005.

11. Granted substantially on the insurance or guaranty of a governmental agency. 12 CFR 7.2000(a), 7.2145(a).

12. Made in substantial reliance upon private company mortgage insurance or guaranty, but only to the extent of the guaranty. 12 CFR 7.2145(c).

13. Secured by a valid chattel mortgage on timber, in states which permit such mortgages. 12 U.S.C. 371(b).

14. Secured by real estate mortgages, where there is valid and binding commitment by a financially responsible third party to purchase the loan within 60 months of making the loan. 12 CFR 7.2000(g).

15. Previously made where a real estate mortgage is taken in good faith as security. 12 CFR 7.2000(b).

16. Made in reliance upon the security of a mobile home. 12 CFR 7.2000(e).

17. Made in substantial reliance on insurance or a guaranty, other collateral, or the creditworthiness of the borrower, and the loan is also secured by real estate. 12 U.S.C. 371 and 12 CFR 7.2145(d).

Regulatory Options Under the Amended Law

In complying with the Act there are several regulatory options which OCC is considering. These are:

A. Adopt a Regulation Which Reaffirms the Limitations Presently Embodied in 12 U.S.C. 371

In the opinion of OCC, the present limitations of 12 U.S.C. 371 were designed to:

1. Assure collateral value;

2. Assure borrower equity in the property;

3. Limit speculation;

4. Establish a maximum period for repayment;

5. Require the establishment of schedules for principal repayment;

6. Promote diversification of asset holdings; and,

7. Reduce the possibility of concentrations. Concentrations involve one borrower, an affiliated group of borrowers or borrowers engaged in or dependent on one industry.

The present limitations may be necessary to assure national bank safety and soundness in regard to real estate lending activities.

B. Adopt a Regulation Which Modifies the Limitations Presently Embodied in 12 U.S.C. 371

Safety and soundness considerations may warrant retention or modification of the current limitations and requirements. Some of the limitations and requirements that could be retained or modified are:

1. *Aggregate limits.* Limit the magnitude of a bank's exposure to risk yet provide banks with maximum flexibility in establishing loan terms.

2. *Amortization requirements.* Require that maturity and amortization be stipulated in the loan agreement. This permits a bank and its borrowers to match terms to circumstances yet provides a degree of certainty that the loan will be repaid in an orderly manner.

3. *Limitation on negative amortization.* Limits certain risks to the bank (e.g., collateral value and repayment) and protects the borrower from unlimited increases in debt.

If limitations are adopted, OCC may continue to exempt a percentage of a bank's real estate loans from the limitations.

C. Adopt a Regulation Which Imposes no Limitations, and Rescind Current Regulations Which Impose Limitations

Limitations may be unnecessary to assure safety and soundness in regard to real estate lending activities. The following arguments are posed:

1. Limitations are anticompetitive;

2. Other forms of lending by national banks are not specifically regulated;

3. Limitations potentially reduce the availability of mortgage money; and,

4. Limitations inhibit flexibility in designing loan terms.

If regulations should be warranted in the future or for specific mortgage instruments (e.g., shared appreciation, reverse annuity, graduated payment, growing equity mortgages, etc.), they would be developed.

Proposal

OCC proposes to adopt a regulation which imposes no limitations, and to rescind current regulations under 12 U.S.C. 371 which do impose limitations. The regulation would provide:

A. General permission to engage in real estate lending, including a clarification of types of property considered to be real estate.

B. A clarification of loans not considered real estate loans. National banks may make these loans under 12 U.S.C. 24 Seventh.

C. Preemption, for national banks, of state laws regulating real estate loans including nonpurchase money loans secured by real estate.

D. An advisory that banks must comply with other regulations, including those pertaining to disclosure.

This action is being taken for the reasons discussed under the Options section. Further, OCC can reasonably assure safety and soundness of national banks' real estate lending activities without imposing specific limitations to regulate these activities. OCC holds senior bank management responsible for each bank's operations and places emphasis on strategic planning and the formulation of policies, including lending policies. The composition, loan terms and collateral requirements of the mortgage portfolio, like other segments of the bank's loan portfolio, are responsibilities of the board of directors and senior management in their policy making function and of the lending staff in its implementation of bank policy.

Additionally, OCC evaluates all types of loans, including real estate loans, lending practices and management for prudence, quality, concentrations, policy adherence and other areas of supervisory concern.

By proposing to rescind restrictions on real estate lending the OCC is not taking the position that all real estate loans with terms which were previously prohibited comport with safe and sound banking practices.

Effects of Proposal on Certain Interpretive Rulings

In addition to rescinding the restrictions previously discussed, the proposal would rescind other Interpretive Rulings currently included in 12 CFR 7.2000 through 7.2700.

A. Interpretive Rulings Pertaining to Types of Real Estate Loans

12 U.S.C. 371 defines real estate loans as all loans secured by liens on real

property. The proposal clarifies that the following loans are considered real estate loans.

1. *Leaseholds, Land Sales Contracts, Condominium and Construction Loans.* Under the proposal, 12 CFR 7.2200, loans secured by leaseholds; 12 CFR 7.2000(c), land sales contracts; 12 CFR 7.2195, condominium loans; and 12 CFR 7.2400, 7.2405 and 7.2410, construction loans, will be rescinded. In their place OCC has included a statement in the proposed regulation that these loans continue to be real estate loans within the meaning of 12 U.S.C. 371.

2. *Loans on Cooperatives.* OCC also clarifies under the proposal that loans secured by interests in cooperatively owned real estate are real estate loans within the meaning of 12 U.S.C. 371.

OCC will continue to view loans the proceeds of which are used to substantially renovate, remodel or rehabilitate existing residential or commercial structures as construction loans.

B. Irrelevant Interpretive Rulings

Rescission of real estate lending limitations would render irrelevant certain interpretive rulings. OCC proposes to rescind the following:

1. *12 CFR 7.2150.* This ruling provides that real estate loans excessive in relation to the appraised value of the real estate violate 12 U.S.C. 371 to the extent that the value of other security or guaranty is less than the amount that the loan exceeds the appraised value. This ruling is irrelevant with the removal of loan-to-value restrictions.

2. *12 CFR 7.2410.* This ruling provides that construction loans held by a bank for a period exceeding the permitted 60 months and which are secured by liens on realty are real estate loans under 12 U.S.C. 371. This provision is irrelevant since the maximum maturity is no longer regulated.

3. *12 CFR 7.2700.* This ruling provides that ten percent of a national bank's permissible real estate loans need not comply with the limitations of 12 U.S.C. 371. This provision is irrelevant because, under the proposal, there are no limitations.

4. *12 CFR 7.2405.* This ruling provides that national banks may make combined construction and permanent financing loans for periods up to 30 years and 60 months. This provision is irrelevant since the maximum maturities of these types of financing are no longer regulated.

5. *12 CFR 7.2400(a).* This ruling provides that loans made to finance the construction of buildings which are primarily intended for residential purposes are considered loans to finance residential buildings even though some commercial use will be made of the building. This provision is irrelevant because under the proposal no distinction between types of buildings being financed is made.

6. *12 CFR 7.2040(a)–(e).* This ruling defines first liens and its provisions are irrelevant because under the proposal no distinction in made between loans secured by first liens and loans secured by subsequent liens.

7. *12 CFR 7.2040(f).* This ruling provides that in cover-all or open-end mortgages, the amount of all loans made in primary reliance upon the security of real estate, no matter what the purpose of the loan, must be aggregated to determine if the requirements of 12 U.S.C. 371 have been met. This provision is irrelevant because limitations are no longer imposed.

C. Unnecessary Interpretive Rulings

OCC is proposing to rescind interpretive rulings which expand, rather than restrict the authority of national banks to engage in real estate lending. In taking this action, OCC is not taking the position that these types of loans are impermissible. Rather, the interpretive rulings are being rescinded because the ability of national banks to engage in these activities is clear. Other interpretive rulings are being rescinded because they are redundant or because no interpretive ruling is necessary. These are:

1. *12 CFR 7.2120.* This ruling provides that national banks may participate in making real estate loans and may purchase or sell participations if the participation interests of the bank are adequately protected by the terms of the participation agreement. No ruling is necessary for banks to exercise this power.

2. *12 CFR 7.2148.* This ruling provides that a national bank may purchase real estate mortgage errors and omissions insurance to protect itself in the transactions. No ruling is necessary for banks to exercise this power.

3. *12 CFR 7.2190.* This ruling provides for real estate loans to be made on demand. No ruling is necessary for banks to exercise this power.

4. *12 CFR 7.2040.* This ruling provides that loans for which the mortgagor does not have personal liability are real estate loans under 12 U.S.C. 371. No ruling is necessary because these loans are clearly within the meaning of the statute.

5. *12 CFR 7.2120.* This ruling provides that the authority of national banks to purchase real estate bonds is governed by 12 CFR Part 1. This ruling is redundant and therefore not necessary.

Request for Comments

OCC requests any comments relevant to the regulation of real estate lending by national banks. In addition, OCC requests comments specifically addressing:

1. Loan-to-value ratios;

2. Amortization, including negative amortization;

3. Maturity requirements;

4. Aggregate limitations on real estate loans;

5. Loans on leaseholds;

6. Limitations on forest tract loans; and

7. Construction loans.

8. The preemption of state laws regarding loans secured by real estate, particularly nonpurchase money loans.

A final determination regarding the regulation of real estate lending will be made following consideration of the recommendations and issues raised by the comments received.

Special Studies

The Secretary of the Treasury has certified that this regulation will not have a "significant impact on a substantial number of small businesses," as that phrase is used in the Regulatory Flexibility Act; therefore, no regulatory flexibility analysis has been prepared. The proposed amendments would ease the burden of existing regulations. The effect of the amendments is expected to be beneficial rather than adverse, and small entities are generally expected to share the benefits of the amendments with larger institutions.

A Regulatory Impact Analysis is not required because the OCC has determined that the proposal is not a "major rule" as defined by Executive Order 12291. The proposal will not have an annual effect on the economy of $100 million or more, will not result in a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions, nor will it have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

List of Subjects in 12 CFR Part 7

National bank, Real estate lending.

PART 7—[AMENDED]

Accordingly, the Office proposes to amend 12 CFR Part 7 as follows.

1. The authority citation for 12 CFR Part 7 reads as follows:

Authority: R.S. 324 et seq., as amended; 12 U.S.C. 1 et seq., unless otherwise noted.

2. Section 7.2000 is revised to read as follows:

§ 7.2000 Real estate loans.

(a) *General.* Any national bank may make, arrange, purchase or sell loans or extensions of credit secured by liens on interests in real estate, subject to such terms, conditions and limitations as may be prescribed, from time to time, by the Comptroller of the Currency by order, rule or regulation. For the purposes of 12 U.S.C. 371, real estate includes condominiums, leaseholds, cooperatives, land sales contracts, and construction projects.

(b) *Preemption of State law.* National banks may proceed pursuant to 12 U.S.C. 371 and this section notwithstanding any contrary law or judicial decisions of any State, the District of Columbia, Puerto Rico, the Virgin Islands, the Trust Territory of the Pacific Islands, and Guam. These laws and judicial decisions are hereby expressly preempted.

(c) *Disclosure.* National banks, in making real estate loans pursuant to this section, must comply with all applicable laws and regulations, including those pertaining to disclosure.

(Sec. 403, Pub. L. 97-320, 96 Stat. 1510-11, 12 U.S.C. 371)

3. Section 7.2005 is revised to read as follows:

§ 7.2005 Loans not constituting real estate loans within 12 U.S.C. 371

The loans listed below are not real estate loans for the purposes of 12 U.S.C. 371. National banks have the authority to make these loans pursuant to 12 U.S.C. 24 Seventh.

(a) Insured or Guaranteed Loans. (1) When the bank relies substantially on the insurance or guaranty of a governmental agency in making a loan. This includes loans which are:

(i) Insured under the provisions of the National Housing Act;

(ii) Insured by the Secretary of Agriculture pursuant to Title I of the Bankhead-Jones Farm Tenant Act, or the Act of August 28, 1937, as amended, or Title V of the Housing Act of 1949, as amended;

(iii) Guaranteed by the Secretary of Housing and Urban Development, for the payment of obligations of which the full faith and credit of the United States is pledged;

(iv) Fully guaranteed or insured by a State, any agency or instrumentality of a State, or by a State authority for the payment of obligations of which the faith and credit of the State is pledged, if under the terms of the guaranty or insurance agreement the association will be assured of repayment in accordance with the terms of the loan;

(v) At least 20% guaranteed under Chapter 37, Title 38 of the United States Code;

(vi) Guaranted under section 802 of the Housing and Community Development Act of 1974;

(vii) Loans in which the Small Business Administration cooperates through agreements to participate on an immediate or deferred or guaranteed basis under the Small Business Act; and,

(viii) Subject to a firm commitment to insure by a Government insuring agency. A firm commitment is a commitment in which a specific mortgagor is named.

(2) When the bank relies substantially upon private company mortgage insurance or guaranty, but only to the extent of the guaranty.

(b) Loans made to any borrower where the association looks for repayment by relying primarily on the borrower's general credit standing and forecast of income.

(c) Loans secured by an assignment of rents under a lease.

(d) Loans secured by the pledge or assignment of another real estate mortgage.

(e) Loans secured by a valid chattle mortgage on timber, in states which permit such mortgages.

(f) Loans previously made where a real estate mortgage subsequently is taken in good faith.

(g) Loans made in reliance upon the security of a mobile home.

(h) Loans secured by real estate mortgages, where there is a valid and binding commitment by a financially responsible third party to purchase the loan at or prior to the date of maturity of the loan.

(i) Loans made in substantial reliance on the insurance or guaranty of a governmental agency, private company mortgage insurance or guaranty, the creditworthiness of the borrower, or collateral other than real estate, secured by real estate as only a matter of prudent banking practice or because such security is required by the insurer or guarantor.

4. Sections 7.2010, 7.2015, 7.2040, 7.2120, 7.2125, 7.2145, 7.2146, 7.2148, 7.2150, 7.2155, 7.2160, 7.2190, 7.2195, 7.2200, 7.2400, 7.2405, 7.2410, 7.2600, and 7.2700 are removed.

Dated: February 4, 1983.

C. T. Conover,

Comptroller of the Currency.

[FR Doc. 83-6116 Filed 3-9-83; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 83-ASO-12]

Proposed Designation of Control Zone, Naples, Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a control zone in the vicinity of Naples Municipal Airport, Naples, Florida. This action will lower the base of controlled airspace in the vicinity of the airport from 700 feet above the surface to the surface. This will provide controlled airspace for protection of aircraft operating to and from the airport during Instrument Flight Rule weather conditions.

DATE: Comments must be received on or before: May 1, 1983.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following

statement is made: "Comments to Airspace Docket No.———." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future 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 § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that will designate a control zone in the vicinity of Naples Municipal Airport, Florida. This action will lower the base of controlled airspace from 700 feet above the surface down to the surface. The additional controlled airspace will provide an increased level of safety to aircraft executing instrument operations at the airport. The airport presently supports more than 36 daily commercial flights and in excess of 70,000 annual general aviation operations. Fort Myers Airport Traffic Control Tower, which provides air traffic control service for Naples Municipal Airport, is able to communicate with aircraft on the ground at Naples. Provincetown-Boston Airlines will provide weather observation and reporting service during the hours the control zone is effective. It is anticipated the control zone will be effective from 0700 to 2300 hours, local time, daily from November to April and from 0700 to 2200 hours during the remainder of the year. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3A dated January 3, 1983.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Control zone.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Naples Municipal Airport, FL—New

Within a 5-mile radius of Naples Municipal Airport (Lat. 26°09'08" N., Long. 81°46'32" W; within 3.5 miles each side of Collier County VOR/DME 052° and 218° radials, extending from the 5-mile radius area to 8.5 miles northeast and southwest of the VOR/DME; excluding that airspace within a one-mile radius of Wing South Airpark (lat. 26°06'59" N., Long. 81°42'12" W.). This control zone is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and time will thereafter by continuously published in the Airport/Facility Directory.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(a), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65)

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

Issued in East Point, Georgia, on February 25, 1983.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 83-6072 Filed 3-9-83; 8:45 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Parts 205, 294, and 298

[Economic Regulation Docket 37531; EDR-395C]

Aircraft Accident Liability Coverage, Canadian Charter Air Taxi Operators, and Classification and Exemption of Air Taxi Operators

AGENCY: Civil Aeronautics Board.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: By this notice, the CAB is asking for further comment on its proposal to revise the insurance requirements for noncommuter and Canadian charter air taxi operators. That proposal presented three alternatives: (1) increase the per-person minimum from $75,000 to $150,000 and the third-party per-occurrence minimum from $400,000 to $2,000,000; (2) retain the present minimums, eliminating safety-related exclusions; or (3) eliminate insurance minimums. This notice adds another alternative: increase the per-person minimum to $100,000, as required by the State of Alaska. The notice asks for additional facts upon which the Board can base its decision.

DATES: Comments by May 17, 1983.

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: March 28, 1983.

The Docket Section prepares the Services List and sends it to each person listed on it, who then serves comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 37531, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT: For specific information on compliance, for U.S. air taxi operators, Patricia Szrom, Chief, Special Authorities Division (202-673-5088), or for Canadian charter air taxi operators, Richard Loughlin, Chief, Regulatory Affairs Division (202-673-5828); for general information, Joseph A. Brooks, Attorney-Advisor, Office of the General Counsel (202-673-5442), Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUPPLEMENTARY INFORMATION: Comments in this rulemaking were received in response to a supplemental notice of proposed rulemaking (EDR-395B, 46 FR 52585, October 27, 1981). That notice proposed that the insurance requirements for noncommuter and Canadian charter air taxi operators be changed to correspond to those in 14 CFR Part 205, which states general requirements for all other carriers, but that the per-person level of coverage be

set at $150,000. As in Part 205, third-party coverage would be $2,000,000 per occurrence, which is the current level for Canadian air taxi operators. Two alternatives to the proposal were also included in the notice. Alternative A would have eliminated required insurance coverage for these carriers and would have substituted a notice to the passengers to that effect. Alternative B would have retained present U.S. air taxi coverage amounts including the per-person minimum coverage at $75,000, while prohibiting safety-related exclusions.

Comments on those proposals were received from: G.M. Blaisdell, Jr. (an air taxi owner/operator), Cannon Creek Air Charter, Crow, Inc., Eastern North Carolina Air Taxi, Ketchum Air Charters, National Air Transportation Association, North Dakota Aeronautics Commission, Seagreen Air Transport, Ltd., Virgin Air, and Westside Air Park.

The commenters were divided among the three options proposed. Some recommended that the Board eliminate insurance requirements for on-demand air taxi operators. They argued that most operators now carry more insurance than would be required, and that for others, any increase, combined with elimination of the present safety exclusions, would greatly increase their insurance premiums. One operator stated that the proposed minimum would increase the carrier's premium by 24 percent, while another stated that it could result in a tripling of premiums.

Since insurance is usually the highest indirect operating cost for these operators, they argued, if insurance premiums were raised they would lead to higher costs for passengers and could threaten the existence of many such operators, thus jeopardizing needed air service in rural areas and in the isolated areas of Alaska.

One commenter took this argument a step further and recommended that insurance requirements be eliminated for all small carriers providing on-demand or charter service, under any authority. This commenter stated that "small carrier" should be defined in terms of operating revenue rather than equipment size.

The National Air Transportation Association stated that a poll of its membership (on-demand air taxi operators and fixed-base operators) showed that awards and settlements of air taxi accident average approximately $100,000 per person. The figures were not broken down, however, between fatalities and injuries. NATA concluded that the current requirements (75,000 per person) may not be adequate and that the $150,000 limit appeared reasonable. It argued against elimination of insurance requirements, stating that this would permit marginal operators to avoid financial responsibility for accidents and eliminate the availability of even minimal compensation for public losses.

One commenter, a commuter carrier, argued that commuters and on-demand air taxi operators compete for the same passengers in certain locations and should be required to maintain the same insurance. The commuter further argued that all passengers should receive the same protection whether travelling in scheduled or on-demand service.

Since issuing EDR-395 and reviewing the comments in response, the Board has become concerned about the lack of information about the cost impact of its proposals on noncommuter air taxi operators, especially those in Alaska. This is particularly so in view of the small number of comments received and the fact that none were received from insurers.

At its meeting on December 16, 1982, the Board voted to increase the minimum per-person insurance coverage for noncommuter air taxi operators and Canadian Charter air taxi operators from $75,000 to $150,000, to increase the third-party per occurrence minimum from $400,000 to $2,000,000 (this is the current level for Canadian air taxi operators), and to eliminate the present authority allowing policies to include certain safety-related exclusions. On January 27, the Board rescinded that action.

In its place, the Board is re-issuing EDR-395B. In addition to the normal service list, the Board will send this notice to those insurers who commented in response to earlier rulemakings on the subject of insurance.

The Board in this notice is also asking for comment on other alternatives: raising the per-person minimum amount to $100,000 as is now required by the State of Alaska for intra-Alaska operators for all air taxi operators; or raising the limit to that amount just for Alaska, while setting a different amount for non-Alaskan operations. In this alternative, the third-party per-occurrence minimum would be set at $2,000,000 and safety-related exclusions would be prohibited.

The Board would like factual information on the following:

(1) Whether minimums that apply to Alaska should be different from those for other areas;

(2) What would be the impact on premiums of each alternative proposal, especially for those operators in Alaska;

(3) Whether there would be a substantial difference in costs for those operators in Alaska as opposed to those in other areas, and why;

(4) What is the cost impact of (a) increasing the per-person minimum, (b) increasing the third-party per-occurrence minimum, and (c) eliminating the safety-related exclusions;

(5) What are the average settlements and awards for personal injury and death for these carriers, and how these figures have changed since 1969; and

(6) At present, who are the providers of liability insurance to noncommuter operators in the State of Alaska, and in what dollar increments is this insurance usually issued.

Initial Regulatory Flexibility Analysis

The same analysis applies as in EDR-395B.

List of Subjects in 14 CFR Parts 205, 294, and 298

Air carriers, Air taxis, Aircraft, Antitrust, Canada, Charter flights, Consumer protection, Freight, Insurance, Reporting and recordkeeping requirements, and Trade names.

For the convenience of interested persons, the preamble discussion of EDR-395B is repeated below.

EDR-395B

In Notice of Proposed Rulemaking EDR-395 (45 FR 7566, February 4, 1980), the Board proposed to revise and update its insurance requirements for all direct U.S. and foreign air carriers, and to put them in a new consolidated part of its regulations (14 CFR Part 205). The proposal would have made the present insurance requirements for on-demand air taxi operators (14 CFR Part 298) the same as those poroposed for all U.S. carriers. There would have been no exception for Canadian charter air taxi operators registered under new Part 294. It would thus have increased the minimm required per-person amounts for U.S. air taxi operators from $75,000 to $300,000 for both passenger and third-party coverage. The minimum per-occurrence amounts would have been changed. The requirements would have prohibited most of the coverage exclusions now permitted in U.S. air taxi operator policies, primarily those that are safety related. The rule (ER-1253), with many technical revisions, was adopted contemporaneously with this proposal essentially as proposed, except that it does not apply to on-demand air taxi operators. Canadian charter air taxi operators must maintain the same per-person amounts of coverage as U.S. on-demand air taxi operators. A list of the commenters is attached to the preamble of the rule adopted today (This list was

attached to the original issuance of EDR-395B).

In their comments, on-demand U.S. air taxis objected to being required to have the same minimum amounts and to follow the same rules for liability coverage as larger, scheduled airlines. They argued that their service is distinguishable from the others based on the type of service, the type and number of passengers served, and the type of equipment operated. On-demand air taxis argued that while larger, scheduled airlines must accept passengers and cargo under the terms of their schedules or tariffs, on-demand air taxis negotiate a separate contract with each passenger for each flight and settle on mutually agreeable terms and conditions. These contracts can, and often do, include liability coverage additional to that now required by the Board. Further, on-demand air taxis tend to use small, single-engine aircraft as compared to the multi-engine and turbo-prop aircraft operated by commuter and certificated carriers. Therefore, they contend, while damage awards and settlements well in excess of the current minimum requirements may be the rule with regard to cases involving large carriers, claims, awards and settlements in those accidents involving on-demand air taxis average approximately $100,000, based on a recent National Air Transportation Association study. Those arguments would apply as well to Canadian charter air taxi operators.

While a few of these commenters conceded that some increase in required amounts might be justifiable, even those commenters stated that the amount of the proposed increase is unreasonable. On the whole, the on-demand air taxi commenters stated that the proposed increase in the minimum amounts of coverage and changes in the exclusions would impose a severe economic burden on them and would result in a decrease in readily available on-demand air transportation, especially in rural areas, because they could not afford to continue operations with the added costs of such coverage. According to those commenters, the cost of insurance is second only to that of fuel in an on-demand air taxi operator's fixed costs. If the proposed changes in the Board's rules were adopted, the on-demand air taxis estimate that the cost of their insurance coverage would increase from 14 to 200 percent. This cost increase, they contend, would force many small carriers out of business, affecting primarily service to small communities.

In view of such comments, the Board is proposing to require that on-demand air taxi operators and Canadian charter air taxi operators follow the same liability coverage rules as other carriers, except that the minimum amount would be set at $150,000 per-person for bodily injury. All other amounts and coverage would be the same as for those carriers now covered by Part 205. As with coverage required for other carriers, safety-related exclusions from coverage would be prohibited. In considering liability coverage rules for all carriers, one of the most difficult issues faced by the Board is what to do about exclusions from coverage. The present exclusion allowed for U.S. air taxi operators remove the liability coverage in cases where the air taxi has violated safety requirements, has operated aircraft illegally, or has violated any geographic restriction on its operations. There are no similar exclusions allowed in new Part 294 for Canadian charter air taxi operators. Nor were they allowed for charter and all-cargo carriers before Part 205 was adopted. Such exclusions have the effect of denying an injured person a recovery if the airline's assets are not sufficient to pay the damages. Under today's pro-competitive and deregulatory policy, the only reason to require such a minimum source of compensation for damages is to provide a sure source for possible compensation if the air taxi is found liable in an aircraft accident. In the case of on-demand air taxi operators, if this source of compensation is removed for such a reason whenever an air taxi violates a safety requirement that results in an accident, the insurance requirement is not adequately protecting the public.

As the Board stated in adopting such a rule for other air carriers, the cost of such coverage could be reduced by negotiating with an insurer to provide catastrophic coverage, where the insurance would only pay if the net assets of the air taxi have been expended. We would particularly like to have costs estimates from the supporters of continued required coverage at this level, with the conditions set forth in Part 205 of the Board's regulations.

If insurance regulation is continued for on-demand air taxi operators, the filing of certificates or other evidence of coverage would be the same as proposed in EDR-395, but as changed and adopted in Part 205. All other terms and conditions and requirements would also be the same as in Part 205.

In the context of on-demand air taxi service, those commenters stated that a deregulatory, free-market environment assumes that carriers and passengers are fully capable of negotiating conditions of carriage, including insurance coverage, to meet their respective needs. The carrier and the passenger are better able to assess the amount of insurance necessary to protect their interests than is the government.

For U.S. air taxi operators and their counterparts, registered Canadian charter air taxi operators, providing only on-demand service, the Board is therefore further asking for comments on eliminating all insurance requirements. A simple requirement for disclosure of the existence or absence of insurance, as now required for domestic cargo carriers in 14 CFR 205.8, would be required for on-demand U.S. air taxi operators and for Canadian charter air taxi operators instead of required standard coverage.

As the commenters stated, on-demand air taxi service appears to be different from other forms of air transportation. The customer and the operator deal on an equal basis, each knowing the risks and the costs, unlike the somewhat remote relationship between passenger and carrier in larger, scheduled operations. For this reason, insurance regulation of these small carriers might no longer serve a purpose sufficient to warrant a governmental presence.

The Board also requests comment on whether the present standards, except for safety-related exclusions, should be retained for on-demand air taxi and for Canadian air taxi operators. That is, the minimum amounts of per-person coverage would remain at $75,000, and other amounts would remain as now in Part 298.

Essential Air Service

If the Board adopts the second alternative proposed, to eliminate insurance requirements for on-demand air taxis, then those air taxis that are not commuters and that provide essential air service would not be required by the government to carry a specific amount of insurance. The Board would like to have comments on whether all carriers, regardless of type or size, should be required to carry some amount of aircraft accident liability insurance. If they are so required, the Board would like comments on the amount of coverage that would be necessary as a minumum source of compensation if the carrier is found liable.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act, Pub. L. 96-534, took effect on January 1, 1981. The Act is designed to ensure that agencies consider flexible approaches to the regulation of small businesses and other small entities defined in the Act. It

requires regulatory flexibility analyses for rules that, if adopted, will have a "significant economic impact on a substantial number of small entities." Such analyses are only required to be done for notices of proposed rulemaking issued after January 1, 1981. EDR-395 was issued before that date. No analysis was included in that notice of proposed rulemaking. This case, because of the effect of its supplemental proposal on on-demand air taxi operators, most of which are small businesses, and the possible secondary effects on the many small businesses and communities that rely on these air carriers, requires an intial regulatory flexibility analysis.

The analysis is required to describe the need, objectives, legal basis for, and flexible alternatives to the action proposed here. The first three requirements are met by the discussion in this supplemental notice of proposed rulemaking and in EDR-395. The impact of this proposal would be to decrease insurance costs and to remove standard insurance protection for passengers and third parties. The proposal attempts to minimize the cost to small air taxi operators by reducing the required minimum amount of coverage from the earlier proposal in EDR-395. Since the first alternative to the existing rules is designed to eliminate completely the accident liability insurance requirements for on-demand air taxi operators and substitute a simple disclosure statement, there are no alternatives to that change that would "minimize any significant impact of the proposed rule on small entities." The last alternative would retain much of the status quo, and thus keep the impact on small entities low. There are no Federal rules that duplicate, overlap, or conflict with the proposed rule.

Proposed Rule

Accordingly, the Civil Aeronautics Board proposes the following from EDR-359B and the additional Alternative C in this notice:

$150,000/$2,000,000/No Exclusions

PART 298—[AMENDED]

1. Section 298.41 of Part 298 would be amended by removing paragraphs (a), (b), (c), and (d), and by revising the section to read:

§ 298.41 Basic requirements.

No air taxi operator shall engage in air transportation unless such carrier has and maintains in effect aircraft accident liability coverage that meets the requirements of Part 205 of this chapter.

§§ 298.37, 298.42, 298.43, 298.44, 298.45 [Removed] and § 298.3 [Amended]

Sections 298.37, 298.42, 298.43, 298.44, and 298.45, and paragraph (a)(4) of § 298.3, would be removed and reserved.

PART 205—[AMENDED]

3. Section 205.2 would be revised to read:

§ 205.2 Applicability.

These rules apply to all U.S. and foreign direct air carriers that provide air transportation.

4. Section 205.5 would be amended by revising paragraph (f) to read:

§ 205.5 Minimum coverage.

* * * * *

(f) Notwithstanding paragraphs (b) and (c) of this section, air taxi operators providing air transportation under Part 298 of this chapter that are not commuters by virtue of their scheduled service, and Canadian charter operators registered under Part 294, shall maintain the following coverage:

(1) Air taxi operators and Canadian charter air taxi operators in air transportation under this paragraph shall maintain third-party aircraft accident liability coverage for bodily injury to or death of persons, including nonemployee cargo attendants, other than passengers, and for damage to property, with a minimum coverage of $150,000 for any one person in any one occurrence, and a total of $2,000,000 per involved aircraft for each occurrence, except that such carriers operating aircraft of more than 60 seats or 18,000 pounds maximum payload capacity shall maintain coverage for those aircraft of $20,000,000 per involved aircraft for each occurrence.

(2) Air taxi operators and Canadian charter air taxi operators in air transportation under this paragraph shall in addition to the coverage required in paragraph (f)(1) of this section maintain aircraft accident liability coverage for bodily injury to or death of aircraft passengers, with a minimum coverage of $150,000 for any one passenger and a total per involved aircraft for each occurrence of $150,000 times 75 percent of the number of passenger seats installed in the aircraft.

(3) Coverage under this paragraph may be obtained with a combined single limit as specified in paragraph (d) of this section, applying the amounts of coverage stated in this paragraph.

No Minimums/No Exclusions

PART 298—[AMENDED]

Alternative A

Subpart E—[Reserved]

§ 298.3 [Amended]

1. Part 298 would be amended by removing and reserving Subpart E—*Liability Insurance Requirements*, and paragraph (a)(4) of § 298.3.

2. Section 298.37 would be revised to read:

§ 298.37 Prohibition of services not covered by insurance.

No air taxi operator classified as a commuter by virtue of its scheduled service under § 298.2(f)(1) shall engage in air transportation unless such commuter has and maintains in effect aircraft accident liability coverage that meets the requirements of Part 205 of this chapter.

3. The Table of Contents of Part 298 would be amended accordingly.

PART 294—[AMENDED]

Subpart E—[Reserved]

§ 294.3 [Amended]

4. Part 294 would be amended by removing and reserving Subpart E—Insurance Requirements, and paragraph (c) of § 294.3.

PART 205—[AMENDED]

5. Section 205.5 would be amended by revising paragraph (f) to read:

§ 205.5 Minimum coverage.

* * * * *

(f) Notwithstanding paragraphs (b) and (c) of this section, air taxi operators providing air transportation under Part 298 of this chapter that are not commuters by virtue of their scheduled service, and Canadian charter air taxi operators under Part 294, shall give notice in writing to any passenger of the existence or absence of bodily injury liability accident insurance. The notice shall be clearly and conspicuously included on or attached to all fare listings and passenger contracts.

$75,000/$400,000/No Exclusions

Alternative B

Section 205.5 would be amended by revising paragraph (f) to read:

§ 205.5 Minimum coverage.

* * * * *

(f) Notwithstanding paragraphs (b) and (c) of this section, air taxi operators providing air transportation under Part

298 of this chapter that are not commuters by virtue of their scheduled service, and Canadian charter air taxi operators registered under Part 294, shall maintain the following coverage:

(1) Air taxi operators and Canadian charter air taxi operators in air transportation under this paragraph shall maintain third-party aircraft accident liability coverage for bodily injury to or death of persons other than passengers, and for damage to property, with a minimum coverage of $75,000 for any one person in any one occurrence, and a total of $300,000 per involved aircraft for bodily injury, and $100,000 for property damage each occurrence.

(2) Air taxi operators and Canadian charter air taxi operators in air transportation under this paragraph shall in addition to the coverage required in paragraph (f)(1) of this section maintain aircraft accident liability coverage for bodily injury to or death of aircraft passengers or nonemployee cargo attendants with a minimum coverage of $75,000 times 75 percent of the number of passenger seats installed in the aircraft.

(3) Coverage under this paragraph may be obtained with a combined single limit as specified in paragraph (d) of this section, applying the amounts of coverage stated in this paragraph.

$100,000/$2,000,000/No Exclusions

Alternative C

Section 205.5 would be amended by revising paragraph (f) to read:

§ 205.5 Minimum coverage.

* * * * *

(f) Notwithstanding paragraphs (b) and (c) of this section, air taxi operators providing air transportation under Part 298 of this chapter than are not commuters by virtue of their scheduled service, and Canadian charter air taxi operators registered under Part 294, shall maintain the following coverage:

(1) Air taxi operators and Canadian charter air taxi operators in air transportation under this paragraph shall maintain third-party aircraft accident liability coverage for bodily injury to or death of persons other than passengers, and for damage to property, with a minimum coverage of $100,000 for any one person in any one occurrence, and a total of $2,000,000 per involved aircraft for each occurrence, except that such carriers operating aircraft of more than 60 seats or 18,000 pounds maximum payload capacity shall maintain coverage for those aircraft of $20,000,000 per involved aircraft for each occurrence.

(2) Air taxi operators and Canadian charter air taxi operators in air transportation under this paragraph shall in addition to the coverage required in paragraph (f)(1) of this section maintain aircraft accident liability coverage for bodily injury to or death of aircraft passengers or nonemployee cargo attendants with a minimum coverage of $100,000 times 75 percent of the number of passenger seats installed in the aircraft.

(3) Coverage under this paragraph may be obtained with a combined single limit as specified paragraph (d) of this section, applying the amounts of coverage stated in this paragraph.

(Secs. 204, 401, 402, 407, 416, 418, Pub. L. 85-726, as amended, 743, 754, 757, 766, 771, 91 Stat. 1284; 49 U.S.C. 1324, 1371, 1372, 1377, 1386, 1388)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-6059 Filed 3-9-83; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 24 and 113

Proposed Customs Regulations Amendments To Establish Interest Charges on Certain Delinquent Accounts

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to establish interest charges for the last payment of supplemental duty bills (bills for additional duties ascertained upon liquidation), reimbursable services, and miscellaneous bills issued by Customs to organizations outside the U.S. Government, including sureties.

Customs and the Treasury Department believe that charging interest on delinquent accounts will provide an incentive for prompt payment and, if accounts are not paid timely, provide for reimbursement of interest costs resulting from Government borrowing.

DATE: Comments must be received on or before May 9, 1983.

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Accounting and Policy Aspects: Robert B. Hamilton, Accounting Division, (202-566-2596); Bond Text Aspects: William Rosoff, Carriers, Drawback and Bonds Division, (202-566-5856); U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

In a report from the Comptroller General to Congress dated August 21, 1978, the General Accounting Office recommended that Customs charge interest on all supplemental duty accounts 30 days past due as part of an effort for the U.S. Government to maximize its use of Customs collections to decrease Government borrowings. That report states that in the Customs Regions of Boston, Chicago, Los Angeles, and New York, accounts receivable for supplemental duties averaged $8.5 million each month from April 1973 to March 1977 and that approximately 38 percent of that amount was over 90 days past due.

Section 306 of Pub. L. 96-304 (94 Stat. 928, July 8, 1980), requires that an agency improve the collection of overdue debts owed to the United States within the jurisdiction of that agency and bill interest on delinquent debts as required by the Federal Claims Collection Standards.

Chapter II of Title 4, CFR, "Federal Claims Collection Standards" provides in § 102.1 (4 CFR 102.1), that the head of an agency or his designee shall take aggressive action, on a timely basis with effective followup, to collect all claims of the United States for money or property arising out of the activities of, or referred to, his agency in accordance with the standards set forth in that chapter. Also, 4 CFR 102.11 provides that in the absence of a different rule prescribed by statute, contract, or regulation, interest should be charged on delinquent debts and debts being paid in installments in conformity with the Treasury Fiscal Requirements Manual ("TFRM").

House Report 97-21, on Customs authorization bill for Fiscal Year 1982 at pages 6 and 7, expressed the clear intent that Customs charge interest on overdue duties and fees.

Courts have held that interest may be charged on overdue accounts without express statutory authority when the Government's position is primarily that of a creditor collecting from a debtor, *Billings* v. *United States* 232 U.S. 261, 284-88 (1914); *McGrath* v. *Manufacturers Trust Co.*, 338 U.S. 241 (1949); *Rodgers* v. *United States*, 332

U.S. 371 (1947). Thus, interest may be assessed pursuant to statutes having no express reference to the collection of interest where the obligation accrues to the Government upon contractual indebtedness or indebtedness arising out of taxes. In particular, interest has been collected by the Government for unpaid overdue Customs duties, *United States* v. *Mexican International Railway Co.*, 154 Fed. 519 (1907).

In an effort to improve cash management practices, the Treasury Department has issued requirements prescribing cash management related procedures, including the necessity for interest charges on overdue receivable accounts. Part 6, Chapter 8020.20, TFRM, provides that a late charge will be collected at a percentage rate based on the current value of funds to the Treasury for overdue payments owed to the U.S. Government. It is noted that the Debt Collection Act of 1982, Pub. L. 97–365, changes the method by which the Secretary of the Treasury assesses interest charges for outstanding debts on claims owed the Government. Furthermore, in light of Section 8(e) of Pub. L. 97–365, it appears that Customs is not covered by major portions of this recent law because except as noted therein, the law does not apply to claims or indebtedness arising under the "tariff laws of the United States." However, because the Government also would be recovering its costs in matters relating to Customs, Customs intends to use the applicable percentage rate of interest based upon the current value of funds to the Treasury which is published in TFRM bulletins. In most instances in which a debtor fails to pay its debts to the Customs Service on a timely basis, the inherent authority identified in Federal Court opinions fully supports the adoption and use of an interest rate that covers the cost of money to the United States. Customs specifically invites the public to submit comments on this point.

Present Customs collection policy is to (1) issue a bill which indicates that it is due and payable upon receipt, (2) pursue collection in accordance with the Federal Claims Collection Act, and (3) if a surety is jointly liable, to make a formal demand on the surety for payment if the bill remains unpaid. Importers are required to post a bond along with each Customs entry to guarantee the payment of increased or additional duties and satisfy other Customs requirements.

Currently, there is no provision for collection of an amount exceeding the principal amount, regardless of the time period of delinquency or additional administrative costs to the U.S. Government incurred as the result of special collection efforts. In Fiscal Year 1979, for instance, the percentage of the number of Customs supplemental duty and reimbursable services bills issued during that fiscal year and paid within 30 days was 57 percent. Another 30 percent of these bills were paid within 60 days, and only the remaining 13 percent of the bills were paid more than 60 days after the date of the bill. Customs and the Treasury Department believe that charging interest on delinquent accounts will provide an incentive for prompt payment and, if accounts are not paid timely, provide for reimbursement of interest costs resulting from unnecessary Treasury borrowing. Customs believes that a majority of those bills which are now paid within 31 and 60 days after the date of billing will be paid within 30 days with the added incentive of interest charges. This mean that approximately 13 percent of the bills issued would result in action by Customs to charge interest.

The proposed regulations provide that interest charges would apply to late payments of supplemental duty bills (bills for additional duties ascertained upon liquidation), reimbursable services (such as provided for in §§ 24.16 and 24.17, Customs Regulations (19 CFR 24.16, 24.17)), and miscellaneous bills (bills other than duties, taxes, reimbursable services, liquidated damages, fines, and penalties) issued by Customs to organizations outside the U.S. Government, including sureties.

If payment for an above-mentioned bill is not received by Customs within 25 days after the due date of the bill, interest charges would be assessed upon the delinquent principal amount of the bill, and calculated from the due date of the bill. The applicable interest rate would appear on the bill. Interest on an overdue bill would be assessed on the delinquent principal amount by 30-day periods. The full 30-day interest charge would be assessed for each additional 30-day period or portion thereof that payment is delayed. The current interest rate charged will be published in the **Federal Register** and TFRM bulletin by the Bureau of Government Financial Operations, Department of the Treasury, prior to each calendar quarter beginning on January 1, April 1, July 1, and October 1. The interest rate also would be available from any Customs regional financial management office after it is published. The rate of interest that will be in effect for the period beginning on January 1, 1983, and ending on March 31, 1983, is 13.00 percent.

If the proposal were adopted, applicable Customs bonds would be amended to provide for the joint and several liability of the principal and surety for interest charges assessed on bills for supplemental duties, reimbursable services, and miscellaneous amounts if such bills are not paid in a timely manner.

As the surety bond would now cover both the principal amount and the interest for late payment of duty, we note that the surety is also subject to an additional amount of 6 percent per year on only the amount of duty due pursuant to the Act of March 2, 1799, c. 22, section 65, 1 Stat. 676 (19 U.S.C. 580).

It is the position of the U.S. Customs Service that section 580 is not an interest charge for the use of funds, but an exaction aimed at motivating apparently recalcitrant debtor sureties to pay rather than force the Government to sue to collect. The retroactive nature of the exaction exposes a nonpaying surety to potential liability far out of proportion to the liability of a surety that pays the day before it is sued. In effect, a delay in payment of a period as short as a single day may carry liability for months or years of "interest". Thus, it appears that the six percent charge is not a charge for the use of funds, nor should it be viewed as an alternative to the imposition of such a charge. The views of the public on this question will, of course, be welcomed.

Both the principal (i.e., the importer of record or party in interest) and the surety would be individually notified, at the time of the initial billing for interest and every 30 days thereafter, of the following factors: (i) the amount due, (ii) the accrual of interest charges if payment is not received within 25 days after the due date of the bill, (iii) the applicable TFRM interest rate, and (iv) the joint and several liability of the principal and the surety.

Effective Date

The regulations, if adopted, would become effective 180 days after the date of publication of a final rule as a Treasury Decision in the Federal Register and apply:

(1) With respect to overdue bills for supplemental duties, to all entries filed on or after the effective date.

(2) With respect to overdue bills for reimbursable services and miscellaneous amounts, to all actions giving rise to such bills on or after the effective date.

During the period of the delayed effective date, a bond rider would be executed and attached to applicable Customs bonds already on file to

provide for the joint and several liability of the principal and surety for interest charges on overdue bills for supplemental duties, reimbursable services, and miscellaneous amounts. In accordance with § 113.26(a), Customs Regulations (19 CFR 113.26(a)), this action would be completed at least 60 days before the delayed effective date. The bond rider also would be attached to, or printed on, all applicable bonds that are executed and filed after the delayed effective date. Use of the rider would eliminate the need for new bond forms at this time.

Bond Rider

It is proposed that a bond rider in the following form shall be executed and attached to applicable Customs bonds:

Rider

(To be attached to all applicable bonds)

If the U.S. Customs Service does not receive payment of any bill for supplemental duty, reimbursable services, or a miscellaneous amount within 25 days after the due date of the bill, the obligors agree to pay a late charge on that bill in an amount and on terms as provided by regulation for each 30-day period or part thereof that the bill remains unpaid.

Authority

These amendments are proposed under the authority of R.S. 251, as amended (19 U.S.C. 66), sec. 1, 19 Stat. 247 (19 U.S.C. 197), sec. 1, 36 Stat. 965, as amended (19 U.S.C. 198), sec. 484, 46 Stat. 722, as amended (19 U.S.C. 1484), sec. 500, 46 Stat. 729, as amended (19 U.S.C. (500), sec. 505, 46 Stat. 732, as U.S.C. 1505), sec. 623, 46 Stat. 759, as amended, (19 U.S.C. 1623), sec. 624, 46 Stat. 759, (19 U.S.C. 1624), sec. 501, 65 Stat. 290 (31 U.S.C. 483a).

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington D.C. 20229.

The Regulatory Flexibility Act

This document is subject to the "Regulatory Flexibility Act" (Act), Pub. L. 96–354, approved on September 19, 1980. However, it has been determined that the proposed amendments do not require a regulatory flexibility analysis under the provisions of sections 603 and 604 of Title 5, United States Code (as added by section 3 of the Act). It is certified that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The bulk of the delinquent amounts outstanding tend to be from large importers, not small importers and other small entities. Indeed, neither small nor large entities are likely to be affected unless they are delinquent in their payments.

Inapplicability of E.O. 12291

It has been determined that these proposed amendments do not meet the criteria for a "major rule" specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared for this regulatory project.

Related Court Decision

The U.S. Court of International Trade in *Heraeus-Amersil, Inc.*, v. *United States*, 2 CIT———, 515 F. Supp. 770 (1981), held that any liquidated duties, charges, or exactions are not due and payable at liquidation, but rather at the time of filing of the action or at the expiration of the statute of limitations if no action is filed. In *United States* v. *Heraeus-Amersil, Inc.*, Appeal No. 81–19 (February 18, 1982), the U.S. Court of Customs and Patent Appeals affirmed this decision. In light of this holding, Customs has published a final rule document in the **Federal Register** (T.D. 83–14, 48 FR 1186, January 11, 1983) amending section 24.3(e), Customs Regulations (19 CFR 24.3(e)), to clarify the due date of Customs bills.

Drafting Information

The principal author of this document was Charles D. Ressin, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects

19 CFR Part 24

Accounting.

19 CFR Part 113

Surety bonds.

Proposed Amendments

It is proposed to amend parts 24 and 113, Customs Regulations (19 CFR Parts 24, 113), in the following manner:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

It is proposed to amend Part 24 by adding a new § 24.3a after § 24.3 to read as follows:

§ 24.3a Interest charges on certain bills; notice to principal and surety.

(a) Customs bills for supplemental duties (additional duties assessed upon liquidation), reimbursable services (such as provided for in §§ 24.16 and 24.17), and miscellaneous amounts (bills other than duties, taxes, reimbursable services, liquidated damages, fines, and penalties) shall be due as provided for in § 24.3(e). If payment isnot received by Customs within 25 days after the due date of the bill, interest charges will be assessed upon the delinquent principal amount of the bill, and calculated from the due date of the bill.

(b) (1) The percentage rate of interest to be charged on such bills will be based on the current value of funds to the Treasury Department, as provided by Part 6 of the Treasury Fiscal Requirements Manual. The current interest rate may be obtained from any Customs regional financial management office shortly after it is available to Customs.

(2) The percentage rate of interest applied to an overdue bill will remain in effect for that bill until complete payment is received.

(3) Interest on overdue bills will be assessed on the delinquent principal amount by 30-day periods. The full 30-day interest charge will also be assessed for additional periods of less than 30 days (e.g., if payment is received by Customs 38 days after the due of the bill, interest will be charged for a full 60-day period).

(4) In the case of any late payment, the payment received will first be applied to the interest charge on the delinquent principal amount and then to payment of the delinquent principal amount.

(5) The date to be used in crediting the payment is the date on which the payment is received by Customs.

(c) Both the principal (i.e., the importer of record or party in interest) and the surety shall be individually notified on the bill, at the time of the initial billing for interest and every 30 days thereafter, of the following factors:

(1) The amount due,

(2) The accrual of interest charges if payment is not received within 25 days after the due date of bill,

(3) The applicable Treasury Fiscal Requirements Manual interest rate, and

(4) The joint and several liability of the principal and the surety.

PART 113—CUSTOMS BONDS

It is proposed to amend Part 113 by adding a new § 113.4 to read as follows:

§ 113.4 Liability or principals and sureties for interest charges.

The surety and the principal (i.e., importer of record or party in interest) are jointly and severally liable for interest charges on overdue bills for supplemental duties, reimbursable services, and miscellaneous amounts (see 19 CFR 24.3a). All references in Chapter 1 of this title to bills for supplemental duties, reimbursable services, and miscellaneous amounts will be construed to include interest charges as provided for under 19 CFR 24.3a in the event that these bills are delinquent.

Approved: February 17, 1983.

William von Raab,

Commissioner of Customs.

John M. Walker, Jr.,

Assistant Secretary of the Treasury

[FR Doc. 83-6174 Filed 3-9-83; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 13-83-06]

Seattle Opening Day Yacht Parade and Crew Race

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: This notice establishes a restricted zone in the areas of Union Bay, Portage Bay and Lake Washington on May 7, 1983, from 0800 until 1500. This action is required to permit the conducting of an approved marine event. It is intended to restrict general navigation in the area for the safety of the spectators and participants in the event.

DATE: Comments must be received on or before April 7, 1983.

ADDRESSES: Comments should be mailed to Commander, U.S. Coast Guard Group, 1519 Alaskan Way, South, Seattle, WA 98134. The comments will be available for inspection and coping at Coast Guard Group Operations Office, Room 104, 1519 Alaskan Way, South, (Pier 36) Seattle. Normal office hours are between 7:30 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ens. S. M. Pollock, Operations, (206) 442-1874.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 13-83-06), and the specific section of the proposal to which their comments apply, and give the reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. Notification was not received early enough to provide for a longer comment period.

Drafting Information

The drafters of this notice are Ens. S. M. Pollock, USCG, Project Officer, USCG Group Seattle, Operations Office, and CDR. Thomas F. McGrath, USCG, Project Attorney, CCGD13 Legal Office.

Discussion of Proposed Regulation

The annual yachting season Opening Day Yacht Parade sponsored by the Seattle Yacht Club is scheduled to be held on May 7, 1983, in the Lake Washington Ship Canal between Portage Bay and Webster Point beginning at about 0800 and ending at about 1500 Pacific Daylight Savings Time. A collegiate crew race will also be conducted in this area between 1100 and 1200 PDST. As a result of these two events, traffic in the area will be congested. The congestion, in Portage Bay, and the narrow width of Portage Cut (also known as Montlake Cut) and Bay Reach inhibits vessel maneuverability. For this reason it is proposed that participating sailing vessels in the restricted zone maneuver by propelling machinery. Maneuvering with the assistance of a spinnaker will be allowed if it does not interfere with the sailing vessel's ability to maneuver. The primary concern is for the safety of participants and spectators in an area which is narrow and known for unpredictable winds.

By the authority contained in Title 46, U.S.C. 454, as implemented by Title 33, Part 100, U.S. Code of Federal Regulations, a Special Local Regulation controlling navigation on the waters described is promulgated. By the same authority, the waters involved will be patrolled by vessels of the U.S. Coast Guard. Coast Guard Officers and/or Petty Officers will enforce the regulation and cite persons and vessels in violation.

Economic Assessment and Certification

These proposed regulations are considered to be nonsignificant in accordance with DOT Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5). Its economic impact is expected to be minimal since no major shipping industry or trade will be interfered with. Based upon this assessment it is certified in accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, the regulation has been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal Regulation and has been determined not to be a major rule under the terms of that order.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulation

PART 100—[AMENDED]

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33 Code of Federal Regulations, by adding § 100.1306 to read as follows:

§ 100-1306 Lake Washington/Portage Bay/Union Bay/opening day crew race and yacht parade.

(a) This event will take place on May 7, 1983, between the hours of 0800 PDST and 1500 PDST.

(b) The patrol of the described areas will be under the direction of a designated Coast Guard Patrol Commander who is empowered to forbid and control movement of vessels on the parade course and in the adjoining water areas immediately prior to, during and after the parade for such time as he finds it necessary for the safe and orderly conduct of the program. Portage Cut will be closed to all traffic except crew shells and vessels in the parade from 1030 PDST until the termination of the yacht parade.

(c) All sailing vessels in the restricted zone participating in the parade shall use propelling machinery for maneuvering. Spinnakers may be used,

in addition to propelling machinery, to the extent that control of the vessel is not impaired.

(d) Specific areas restricted to general navigation or anchorage from 0800 PDST until termination of the yacht parade are:

(1) The waters of Portage Bay Southeast of a line running from the Western corner of the pier (Showboat) 70 yards South of 47°39' N, 122°18'40"W, 425 yards South-West across Portage Bay to the North-West corner of the "L" shaped moorage (at the foot of East Shelby St.) at 47°39'52", N, 122°18'52"W.

(2) All waters of Portage Cut (also known as Montlake Cut), to Union Bay Channel Buoy 27 and Union Bay Channel Buoy 28.

(3) All waters between an East and West line connecting Union Bay Channel Buoy 27, Union Bay Channel Buoy 29 and Union Bay Channel Buoy 31 and Webster Point Light 33 and an East and West line connecting Union Bay Channel Buoy 28, Union Bay Channel Buoy 30, 470 yards East of Union Bay Channel Buoy 30 to a point 80 yards South of Webster Point Light 33.

(4) The waters between the judging and reviewing vessels and the Southern edge of the channel described above. This area is generally the area South of Union Bay Channel Buoy 28 and North of Foster Island. The judging and reviewing vessels will be identified by appropriate signs showing over their sides.

(e) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signalled shall stop and shall comply with the orders of the patrol vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(Sec. 1, 35 Stat. 69, as amended, 46 U.S.C. 454; sec. 6(b)(1), 80 Stat. 938 (49 U.S.C. 1655(b)(1); 33 CFR 100.35; 49 CFR 1.46(b))

C. F. DeWolf,

Rear Admiral, U.S. Coast Guard.

February 22, 1983.

[FR Doc. 83-6173 Filed 3-9-83; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA No. 866 A-7-FRL #2272-7a]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The EPA is proposing to approve regulations submitted by the State of Kansas to satisfy conditions placed on that state's Part D plan revision (46 FR 20164, April 3, 1981). These regulations were submitted in draft form on October 9, 1981, and a notice of receipt was published in the **Federal Register** on March 26, 1982 (47 FR 12965). Final regulations to satisfy these conditions: (1) To make certain revisions to the new source permitting regulations and (2) to adopt a regulation controlling volatile organic compound (VOC) emissions from tank trucks serving bulk terminals were submitted on June 15, 1982. The submittal contained other revisions not required by the conditions.

On September 1, 1982, (47 FR 38531), EPA published an approval of the Kansas June 15, 1982 submittal under special procedures explained in the **Federal Register** on September 4, 1981 (46 FR 44477). Elsewhere in today's **Federal Register**, EPA is withdrawing the September 1, 1982, approval.

The purpose of todays action is to propose approval of a portion of the Kansas June 15, 1982, submittal so that the conditions on their Part D SIP may be removed. EPA also proposes to approve certain other portions of the Kansas amendments to the regulations and to defer action on several amendments.

DATE: Comments must be received by April 11, 1983.

ADDRESSES: Copies of the state submission are available during normal business hours at the following locations:

Environmental Protection Agency, Region VII, Air Branch, Room 1415, 324 East 11th Street, Kansas City, Missouri 64106;

Kansas Department of Health and Environment, Bureau of Air Quality and Occupational Health, Forbes Field, Topeka, Kansas 66101.

Written comments should be sent to: Robert J. Chanslor, Environmental Protection Agency, Region VII, Air Branch, 324 East 11th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Robert J. Chanslor at the above address or telephone (816) 374-3791 (FTS 758-3791).

SUPPLEMENTARY INFORMATION: On April 3, 1981, EPA conditionally approved certain portions of the Kansas SIP with regard to the requirements of Part D of the Clean Air Act, as amended. The conditions were specific regarding Section 172(b)(2), Section 172(b)(10), and Section 173(3). A detailed discussion of that action may be found in the **Federal Register** published on that date (46 FR 20164). Today's proposal would remove the remaining conditions arising from that action and found at 40 CFR 52.875.

To comply with one of the conditions, the state was to adopt statutory amendments to revise its new source permitting regulations to comply with Section 173(3) of the Act by April 30, 1981; file the revised regulations as temporary amendments with the Revisor of Statutes by July 1, 1981; and adopt the revised regulations as permanent amendments to the Kansas air quality regulations by May 1, 1982.

In order to comply with two other conditions, the state was to adopt and file with the Revisor of Statutes a regulation controlling volatile organic compound (VOC) emissions from tank trucks serving bulk petroleum terminals by July 1, 1981, and adopt the revised regulations as permanent amendments to the Kansas air quality regulations by May 1, 1982.

The Kansas Department of Health and Environment submitted draft revisions to the state regulations on October 9, 1981, to satisfy these conditions. Other revisions not required by the conditions were submitted at the same time.

EPA published a notice in the **Federal Register** on March 26, 1982 (47 FR 12965), that regulations had been adopted after a public hearing on November 18, 1981, and that regulations to satisfy the SIP conditions were submitted to the Revisor of Statutes on December 23, 1981, and to the Kansas Legislature in January 1982. These new regulations and regulatory changes became permanent regulations effective May 1, 1982, and were submitted to EPA on June 15, 1982.

The regulations submitted in addition to those required by April 3, 1982, conditions are 28-19-16, certain definitions in 28-19-16a, 28-19-16b, 18-19-16c, 28-19-16f, 28-19-16g, 28-19-16h, and 28-19-16i. These regulations contain new source permit requirements for nonattainment areas. Regulation 28-19-16a contains definitions which includes a definition of source that is consistent with the EPA definition found at 46 FR 50766 (October 14, 1981).

EPA has received notice that a member of the public wishes to submit adverse or critical comment on the rulemaking including the approval of the source definition and the deletion of the definition of "reconstruction". Therefore, elsewhere in today's **Federal Register**, EPA is withdrawing the September 1, 1982, approval of the June 15, 1982, SIP submittal. In this notice,

EPA proposes to approve the Part D plan revisions submitted to satisfy conditions found at 40 CFR 52.875. EPA also proposes to approve the remaining Kansas regulatory revisions not relating to the source definition.

EPA proposes to defer action on the following regulation revisions affecting new source review:

1. Regulation 28–19–16a(d) which defines "Building, Structure, Facility or Installation";

2. Deletion of Regulation 28–19–16a(v) "Reconstruction";

3. Deletion of the term reconstruction in Regulations 28–19–16, 28–19–16b, 28–19–16c, 28–19–16f, 28–19–16h, and 28–19–16i; and

4. Deletion of Regulation 28–19–16a(o) which defines "Installation".

The language of Regulation 28–19–16a(x), defining "Stationary Source", has not been explicitly revised, but the definition of "Installation" has been revised by deleting the old definition at 28–19–16a(o) and adding this term to Regulation 28–19–16a(d). Because the terms "Building, Structure, Facility or Installation", are used in the definition of "Stationary Source", the effect is to alter the Kansas source definition for new source review.

EPA believes that action should be deferred on the Kansas regulations discussed above in light of the Courts ruling in *NRDC v. Gorsuch*, No. 81–2208 (D.C. Cir., decided August 17, 1982). The Kansas revisions are substantially similar to the EPA revisions which eliminated the dual source definition (see 40 CFR 51.18(j)(1) (i) and (ii)). The EPA revision was vacated in the above decision.

The revision to Regulation 28–19–16a(g) changes the definition of contemporaneous to be consistent with the EPA approved definition in the comparable Missouri regulations.

Other changes appear at 28–19–16a(a), 28–19–16a(b), 28–19–16a(c), 28–19–16a(d) 28–19–16a(e), 28–19–16a(k), and 28–19–16a(o). These changes were made for the purpose of clarification and style.

The definition subsections have been renumbered from 28–19–16a(o) through 28–19–16a(x). The title of 28–19–16g is changed, old paragraph (a) is deleted and new paragraphs (a) through (c) are added. Regulation 28–19–51 regarding fugitive dust emissions was revoked by the state because it was found to be ineffective.

EPA is proposing to approve regulation 28–19–70 and 28–19–62 applicable to VOC emissions from tank trucks and regulation 28–19–61h applicable to new source permits as revisions to the Kansas Part D SIP. Regulation 28–19–61h requires permit applicants who own or operate other sources in the state to certify compliance or be on a schedule of compliance with all applicable emission limits before a permit may be issued for a new or modified source in a nonattainment area.

Interested persons are invited to submit pertinent comments on this proposed approval in writing. EPA will consider all such comments received 30 days from publication.

Under 5 U.S.C. Section 605(b), I certify this action, if promulgated, would not have a significant economic impact on a substantial number of small entities. It imposes no new regulatory requirements.

Under Executive Order 12291, today's action is not "major". It has been submitted to the Office of Management and Budget for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

(Sec. 110 of the Clean Air Act, as amended (42 U.S.C. 7401)).

Dated: December 6, 1982.

William W. Rice,

Acting Regional Administrator.

[FR Doc. 83–6119 Filed 3–9–83; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[FCC 83–46; Docket Nos. 20521, 20548, BC Docket No. 78–239, and MM Docket No. 83–46; RM–3653; RM–3695; RM–4045]

Corporate Ownership Reporting and Disclosure by Broadcast Licensees and; Amendment of the Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations and CATV Systems and; Reexamination of the Rules Regarding the Attribution of Ownership Interests in Broadcast, Cable Television and Newspaper Entities

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rule Making initiates a proceeding aimed at comprehensively reviewing the Commission's ownership attribution rules. This action is necessary to consolidate a number of related, pending proceedings and to ensure that our attribution rules do not unnecessarily restrict capital investment in FCC-licensed facilities.

This rule making proposes to increase the level of cognizable ownership interests up to a level of 5 to 20 percent. In addition, a number of ancillary proposals are made to revise the Commission's ownership reporting requirements, eliminate the existing distinction between ownership interests in closely-held and widely-held corporations and reduce the effect of the attribution rules on officers and directors of corporate licensees.

DATES: Comments must be submitted by April 25, 1983, and reply comments by May 10, 1983.

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

FOR FURTHER INFORMATION CONTACT: Randy W. Thomas, Office of the General Counsel, (202) 632–6990.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 73

Radio broadcast, Television.

47 CFR 76

Cable television.

Adopted: January 27, 1983.

Released: February 15, 1983.

By the Commission: Commissioner Quello concurring in the result; Commissioners Fogarty and Rivera concurring and issuing a joint statement; Commissioner Jones concurring and issuing a statement.

I. Introduction

1. This Notice of Proposed Rule Making commences a proceeding aimed at comprehensively revising the standards for attributing interests in broadcast, cable television and newspaper properties for the purpose of applying the multiple ownership rules. The goal of the Commission's multiple ownership rules is to promote economic competition in telecommunications and to provide a diversity of voices in the marketplace of ideas by ensuring that control of the broadcast media is not concentrated in only a few hands:

> Simply stated, the fundamental purpose * * * of the multiple ownership rules is to promote diversification of ownership in order to maximize diversification of program and service viewpoints as well as to prevent undue concentration of economic power contrary to the public interest.

Amendment of Multiple Ownership Rules, Docket No. 8967, 18 FCC 288, 291–292 (1953). *See also Notice of Proposed Rulemaking*, Docket No. 14711, FCC 62–

747, 27 FR 6486 (1962). The attribution portion of the rules is the mechanism by which the multiple ownership rules are given practical effect. That is, the attribution rules define what constitutes a "cognizable interest" for the purpose of applying the multiple ownership rules to specific situations.

2. It has been almost three decades since the Commission first addressed the issue of what constitutes a "cognizable interest" for purposes of operation of its multiple ownership proscriptions. During that period, a number of significant developments have taken place in the investment community and the telecommunications marketplace that warrant revisiting the attribution rules. In addition, there currently are pending several proceedings involving our ownership rules: three related dockets,[1] three undocketed proceedings [2] and several waiver requests.[3] These related proceedings have ben pending from between one to eight years. It is our intention that the present proceeding be wide-ranging and, to the extent practicable, dispositive of these interrelated proceedings. We intend to resolve the outstanding proceedings that have been consolidated into this docket in subsequent *Report and Orders*, as Commission resources permit.[4]

[1]The docketed ownership proceedings that are still pending are as follows: *Notice of Proposed Rule Making* in Docket 20521, issued June 11, 1975, regarding corporate ownership disclosure; *Further Notice of Proposed Rule Making* in Docket 20548, issued March 9, 1977, regarding a ten percent cognizable ownership benchmark for all multiple ownership purposes, except the seven station rule; and BC Docket 78-239, issued July 27, 1978, regarding voting trusts and other non-voting interests.

[2]The undocketed ownership proceedings that are before the Commission are as follows: RM-3653, filed April 21, 1980 by the First Manhattan Company, regarding a rule amendment to establish a 5% cognizable ownership benchmark for investment advisors; RM-3695, filed June 5, 1980, by the Investment Company Institute, regarding a rule amendment to increase the cognizable ownership benchmark to 10% and RM-4045, filed January 27, 1982, by the Centennial Fund, regarding a rule change to allow self-administered pension funds to be subject to a 5% ownership benchmark.

[3]Several waiver requests have been filed with the Commission. For example, the Ford Foundation is currently seeking a waiver to grant it a 5% benchmark for both closely-held and widely-held corporate licensees; and the Commission recently granted a waiver to permit the New York State Teachers' Retirement System to have a 5% benchmark for its self-administered pension fund. *Harry L. Drubin, Jr., Esq.*, FCC-83-16, (adopted January 20, 1983, released January 24, 1983).

[4]It is not the Commission's intention in this proceeding to evaluate the underlying premises of the individual multiple ownership rules; it is only to determine to whom and how those rules should be applied.

II. Discussion

A. Multiple Ownership Rules and Policies

3. Collectively, the media multiple ownership rules consist of three broad types of geographic proscriptions: national, regional and local. The national rules are: (1) the "seven station" rule, which establishes an absolute limit on an individual entity's broadcast station ownership. No entity may own, operate, control or have any interest in more than seven AM, seven FM and seven television (of which no more than five may be VHF) stations, 47 CFR 73.35(b)(1), 73.240(a)(2) and 73.636(a)(2); and (2) the "network/cable cross-ownership" rule, which prohibits an entity from owing, operating, controlling or having an interest in both a national television network and a cable television system. 47 CFR 76.501(a)(1).[5]

4. The "regional concentration of control" rule proscribes common ownership, operation or control of three or more broadcast stations (in any service) where any two are within 100 miles of the third and there is primary service contour overlap of any of the stations' signals. 47 CFR 73.35(b)(1), 73.240(a)(2) and 73.636(a)(2).

5. The local multiple ownership rules consist of: (1) the "duopoly" rule, which prohibits any party from owning, operating or controlling two or more broadcast stations in the same service if there is overlap of the stations' signals, 47 CFR 73.35(a)(1), 73.240(a)(1) and 73.636(a)(1); (2) the "one-to-a-market" rule, which essentially limits common ownership, operation or control of a radio and television station in the same community; *Id.;* (3) the "newspaper/broadcast cross-ownership" rule, which prohibits any entity from owning, operating or controlling a broadcast station and a daily newspaper in the community in which the newspaper is published, *Id.;* and (4) the "broadcast/cable cross-ownership" rule, which applies to the common ownership, control and operation prohibition to co-located broadcast television and cable television system, 47 CFR 76.501(a)(2).

6. Closely related to these rules is the "cross interest policy" that prohibits certain types of interests in two broadcast stations in the same service in the same community. Essentially meant to encourage arms-length transactions, this policy would limit, for example, ownership of one AM radio station in a market by one entity, if at the same time, that entity's principals maintain a signficant employment or managerial role in another AM station in the same market. *See Cleveland Television Corp.*, 52 RR 2d 581, 585 (Rev. Bd. 1982); *Farmville Broadcasting Co.*, 47 FCC 2d 463, 464 (1974); *United Community Enterprises, Inc.*, 37 FCC 2d 953, 960 (Rev. Bd. 1972).

[5]There is currently pending a Notice of Proposed Rule Making that proposes the deletion of the network/cable television cross-ownership rule. *Notice of Proposed Rule Making*, CT Docket No. 82-434, 47 FR 39212 (Sept. 7, 1982).

B. Attribution Rules

7. The attribution rules are the mechanisms by which the multiple ownership rules are implemented and enforced. Ownership interest banchmarks have been set at a point below which the rules are not applied. These ownership benchmarks define the interests in or relations to a Commission licensee, cable system or newspaper that are cognizable for purposes of compliance with the Commission's multiple ownership rules. The benchmarks define the amount of minority ownership that is cognizable under the various provisions of the ownership rules. As the Commission previously noted:

> For corporate broadcast licensees, the decisive factors in detemining whether stock holdings may thwart the purpose of the [ownership] rules are the amount of stock held and the right to vote the stock.

Multiple Ownership of AM, FM and TV Stations (Docket No. 15627), 13 FCC 2d 357, 363 (1968).

8. Simply stated, the attribution rules provide that media interests are imputed following the line of control to an ultimate entity. Thus, media interests of broadcast licensees and cable operators are ascribed to officers, directors, partners, trustees and significant shareholders (vertical attribution upward). Media interests of individual officers, directors, partners, trustees and shareholders of the same entity are not aggregated (no horizontal attribution).[6] An interest that is "significant" or reportable is defined through the various ownership benchmarks.

9. Although administrative interpretation and case law have generated variable standards of permissible minority equity ownership in corporate licensees,[7] the ownership benchmarks generally provide that for corporate licensees with more than fifty shareholders, a cognizable interest is inherent in officers and directors as well

[6]The provisions in the multiple ownership rules limiting "indirect" ownership, operation or control provide the basis for the attribution mechanics.

[7]*Further Notice of Proposed Rule Making*, Docket No. 20548, 63 FCC 2d 832 (1977).

as shareholders with 1% or more of the outstanding voting stock.[8] The holdings of bank trust departments and investment and insurance companies are subject, however, to a 5% benchmark.[9] For closely-held corporations; *i.e.*, those with fewer than fifty shareholders, a cognizable interest is inherent in officers, directors and all shareholders. Any voting partnership or proprietorship interest is congnizable.

C. Historical and Comparative Perspective

10. Multiple ownership restrictions in the broadcast context first became effective in the early 1940's.[10] In 1953, the Commission concluded a five year rule making proceeding on multiple ownership by adopting the seven station rule as well as attribution rules that considered ownership of 1% or more of the voting stock in a corporate licensee with more than 50 shareholders to be a cognizable interest. The Commission reasoned that "owners of 1% of the stock *may* have considerable voice in the control and management" of corporate licensees. *Amendment of Multiple Ownership Rules, supra* at 294 (emphasis added). As early as 1953, the Commission considered an attribution benchmark of at least 5%. *Id.* The 1% attribution rule was upheld by the court of appeals on remand of a case from the Supreme Court that challenged the multiple ownership rules. *Storer Broadcasting Co. v. United States*, 240 F.2d 55, 56 (D.C. Cir. 1956). The court observed, however, that interests of more than one percent do not necessarily constitute control. *Id.*

11. Over the years, the 1% rule has been modified to accommodate the investment objectives of certain institutions presumed to be "passive" investors who were concerned with investment profits and who did not invest for purposes of control or influence over programming. The first modification was made in 1968 when the benchmark for cognizable ownership interests was raised from 1% to 3% for investment companies.[11] *Report and Order, Docket 15627*, 13 FCC 2d 357, 369–70 (1968). The effect of this exception was to permit investment companies to own up to 3% of the voting stock of a broadcast licensee before that interest became cognizable. In 1972, the broadcast multiple ownership rules were amended to raise the benchmark from 1% to 5% for the ownership of broadcast licensee voting stock by bank trust departments. *Report and Order, Docket 18751*, 34 FCC 2d 889 (1972). At that time, the Commission declined to raise to 5% the benchmark for bank trust department holdings in cable systems. *Id.* at 892.

12. A rule making proceeding commenced by the Commission in 1975 culminated in further expanding the modifications to the 1% rule. The Commission adopted 5% as the standard for determining a cognizable interest for insurance companies, bank trust departments and investment companies. *Multiple Ownership and Cross Ownership*, 59 FCC 2d 970, 975 (1976), *aff'd sub nom. National Citizens Committee for Broadcasting v. FCC*, 559 F.2d 187 (D.C. Cir. 1977). Both the broadcast multiple ownership rules and the cable television cross-ownership rules were amended to adopt the 5% benchmark for bank trust departments, insurance companies and investment companies. The Commission found this action to be "in the public interest because it will most likely increase investments in broadcast and cable companies and thus strengthen the economic foundation of the broadcasting and cable industries without creating undue concentration of control." *Id.* at 974–75.

13. As part of the multiple ownership rule making in *Docket No. 20548*, the Commission also proposed the adoption of a uniform 10% attribution rule for the duopoly, one-to-a-market and the regional concentration rules. 54 FCC 2d 331, 335 (1975). The Commission proposed the 10% attribution benchmark with the provision that investors would file a disclaimer of intent to control the licensee or station. This proposal received very little attention in the comments filed in the proceeding. In a *Further Notice of Proposed Rule Making*, the Commission again sought comment on the 10% attribution proposal. 63 FCC 2d 832 (1977). This rule making still is pending.

14. As a point of reference, it may be useful to compare the Commission's current 1% and 5% attribution rules with other federal legal ownership requirements. The alien ownership provisions of the Communications Act provide that aliens may own no more than 20% of the capital stock of a corporate licensee, nor may aliens own or control more than 25% of the capital stock of a controlling corporation whose subsidiary holds a license. 47 U.S.C. 310(b)(3)–(4). Two of the statutes that govern the Securities and Exchange Commission ("SEC") contain provisions that may provide a useful reference point for the present analysis. The Securities and Exchange Act of 1934 provides that any person who acquires more than 5% of certain classes of securities must disclose specified ownership and background information to the issuer, stock exchanges and the SEC. 15 U.S.C. 78m(d)(1). On the other hand, the Investment Company Act of 1940 provides a 25% benchmark for control of a corporation. 15 U.S.C. 80a-2(a)(9). That Act presumptively defines "control" as the direct or indirect beneficial ownership of more than 25% of the voting securities of any company. *Id.* We note that these statutes are referenced only for illustrative purposes; public policy considerations may require the adoption of unique ownership attribution benchmarks for telecommunications.

III. Need for the Notice of Proposed Rule Making

15. One of the statutory mandates of the Commission is "to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide and world-wide wire and radio communication service * * *" 47 U.S.C. 151. Sections 154(i) and 303(r) of the Communications Act grant the Commission broad authority to enact appropriate regulations to further the Commission's statutory purposes. As explained below, we believe the attribution rules may work against the realization of an efficient nationwide radio service by unnecessarily limiting the number and location of broadcast and cable television interests that may be held. Accordingly, it is important that we scrutinize the policies that underlie the rules to ensure that our statutory objectives are being fulfilled by the rules, that the costs and impact are not outweighing their benefits and that those costs imposed upon society are not excessive or creating disproportionate economic inefficiencies.

16. To the extent that our rules are based upon economic concentration considerations, it is appropriate for the Commission to consider whether the attribution rules advance the objectives of the antitrust component of the public interest standard embodied in the Communications Act. The antitrust laws provide guidance for making our public interest determinations in this area. The attribution rules should be scrutinized to insure that they advance antitrust objectives and further the public interest

[8] 47 CFR 73.35, 73.240, 73.636, note 3.

[9] *Id.*, at notes 4 and 5.

[10] The Commission adopted multiple ownership rules for FM broadcasting in 1940, 5 FR 2384 (June 28, 1940); television broadcasting in 1941, 6 FR 2284 (May 6, 1941); and AM broadcasting in 1943, 8 FR 16065 (November 27, 1943).

[11] Investment companies (mutual funds) are defined by Section 80(a)(3) of the Investment Company Act of 1940. 15 U.S.C. 80(A)(3).

in efficiency of operation, investment decisions and consumer welfare.[12] Unnecessarily restrictive attribution rules could hinder the most efficient combination of video distribution resources by erecting ownership standards which proscribe combinations that would not be suspect under the Justice Department's recently revised antitrust and merger guidelines.[13]

17. It is particularly important to determine whether the attribution rules further the Commission's concern for program diversity. The ownership benchmarks may be set at levels that do not reflect ability to control the programming of a licensee. Depending on variable criteria, 1% equity ownership of a corporate licensee may or may not vest power in an entity to control station programming. Nevertheless, the attribution rules implicity make the assumption that such control exists. A benchmark that is not a reasonably tailored proxy for control over programming will not advance diversity concerns yet will curb broadcasting investments. The public interest suffers from such unnecessary government intrusions.

18. We also are concerned that our current attribution rules may create a restraint on the amount of capital that otherwise would flow into broadcast or cable television ventures. Capital resources are difficult to obtain in today's economy.[14] Operators frequently must turn to non-traditional means of financing to obtain needed capital. Such techniques may provide for acquisition of subordinated equity holdings which quickly may bring investors to the ownership limits permissible under the Commission's Rules. Thus, the attribution rules may impose an impediment to increased investment. We may find in reevaluating our rules that the assumptions prevalent at the time of adopting the rules are no longer valid or, even more likely, that certain ownership patterns are not necessarily correlated to the possibility of control over corporate licensees.

19. Telecommunications is one area of the economy that today is showing real signs of positive growth and the concomitant need for investment capital. In addition, recent deregulatory actions of the Commission have increased the need for capital resources. For example, the Commission's deregulation of the subscription television service,[15] authorization of the direct broadcast satellite service,[16] and low power television [17] each will create additional demands for telecommunications investment capital.[18] Since these services (aside from STV) have no formal ownership and attribution rules *per se*, the existence of restrictive broadcast and cable television attribution rules may distort the flow of investment capital into the new unfettered services.

20. An additional public benefit that may be derived from our modifying the attribution rules as a result of this proceeding is that new entrants in general, and minority group entrants in particular, should enjoy additional capital availability. It has been advocated that potential minority group investors are foreclosed from opportunities in telecommunications due to their inability to obtain adequate financial support.[19] Minorities often must seek funds from secondary lenders, such as venture capitalists, Small Business Investment Companies (SBIC) and Minority Enterprise Small Business Investment Companies (MESBIC).[20] Due to the restrictions on ownership established by the Commission's multiple ownership and attribution rules, lenders who acquire equity interests in licensees may have to restrict the number of ventures in which they participate. One of the public interest reasons for seeking to expand the attribution benchmarks in this proceeding may be to facilitate more readily available financing for minority group applicants. A recent report to the Commission indicates that the operation of the Commission's attribution and ownership rules actually may constitute a barrier for minority group entrepreneurs entry into the field of telecommunications.[21] It thus appears that it may be in the public interest for the Commission to lift some of the restrictions on investment created by the attribution rules to increase the opportunity for new entrants and applicants.

IV. Options for Revision of the Commission's Attribution Rules.

21. We intend in this proceeding to conduct a fresh inquiry by examining regulatory options ranging from attribution only for interests over 20% to maintaining the *status quo ante*. We also will inquire, whether, in light of the rapid changes in the services offered by financial institutions, the Commission should change its current position of specifying particular financial institutions subject to the 5% attribution rule in favor of either broad rules or a set or sets of indicia to identify on an *ad hoc* basis, the various entities that should be subject to certain levels of attributable interests due to their potential for licensee control.

22. First, we solicit comment on the broad question of whether the public interest requires attribution of an ownership interest of less than 20%. Under our current statutory scheme, a 20% interest in a licensee is the maximum direct interest that may be held by aliens.[22] The common denominator in both the Commission's multiple ownership rules and the statutory ownership limit is that there is a minimum level at which influence or control is presumed. Given Congressional guidance that a 20% level of interest confers such control, an amount greater than that for purposes of applying the multiple ownership rules does not appear to be appropriate. We seek comment on what probable ownership patterns would emerge under this standard.

23. Comments and data are also requested on the advisability of substituting a definition and set of indicia of control to be applied on a case-by-case basis for the current practice of specifying particular entities subject to certain ownership benchmarks.[23] In this connection,

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[12] *See generally*, Bork, The Antitrust Paradox, Ch. 2. (1978); and Posner, Antitrust Law: An Economic Perspective, Ch. 1. (1976).

[13] 2 Trade Reg. Rep. (CCH) ¶¶ 4501–05.

[14] *Newsweek* magazine recently reported that venture capitalists back only 2 or 3 out of every 100 new proposals that they receive. *Newsweek*, June 14, 1982, p. 19E.

[15] 47 FR 30069 (July 12, 1982) (to be codified at 47 CFR 73.642–643).

[16] *Report and Order, Gen. Docket No. 80–603*, adopted June 23, 1982; released July 14, 1982, FCC 82–285, 47 FR 31555 (July 21, 1982).

[17] *Report and Order, BC Docket No. 78–253*, —— FCC 2d ——, 51 RR 2d 476 (1982).

[18] The potential expansion of the multipoint distribution service to a multi-channel service may, if authorized, create additional demands for capital in the video distribution market. *See* In re Applications for Developmental Authorizations to Construct and Operate a Multichannel Over-the-Air Pay Video Service in the 2 GHz Band, File No. BPEX–8206–02–KH (Aug. 2, 1982).

[19] *See* Strategies for Advancing Minority Ownership Opportunities in Telecommunications, FCC Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications Final Report, (May 1982), at 25–30.

[20] SBICs and MESBICs are licensed, regulated and partially financed by the Small Business Administration. *See* 15 U.S.C. 661 *et seq.* For an overview of the operation of these federally-chartered investment companies, see Turner, *SBICs, MESBICs and Conflicts of Interest*, 36 Fed. Bar J. 185 (1978).

[21] Strategies for Advancing Minority Ownership Opportunities in Telecommunications, *supra* note 19, at 14.

[22] 47 U.S.C. 310(b)(3).

[23] It should be noted that in 1964 the Commission abandoned its previous practice of dealing with multiple ownership problems on an *ad hoc* basis in favor of a "particularized" standard. *1964 Multiple Ownership Rules*, note 7, *supra* at 1479. There may be administrative burdens associated with a case-by-case approach, and we request comments on the possible burdens to applicants and the Commission.

comments are requested on the advisability of establishing a set of presumptions to assist the Commission in making case-by-case judgments. For example, a conclusive presumption could be established that a 20% or greater ownership interest in a licensee portrayed a cognizable interest in the entity. On the other hand, a rebuttable presumption could be established that less than 20% ownership of a licensee does not constitute a cognizable interest. As a starting point, indicia that could be analyzed for making control determinations for less than 20% ownership could include, *inter alia:*

- Potential for management influence and control;[24]
- Size of ownership interests;
- Nature of ownership interests, *i.e.*, type and nature of partnership or other non-corporate interest and the type and quality of corporate ownership interest (voting or non-voting stock);
- Significant holdings of non-voting interests;
- Power to sell or control the sale of securities and the impact such sales would have on other holders of that security;
- Interlocking directorates with other relevant corporations;
- Express disclaimers of control (such as insulation letters executed by bank directors disavowing intent to participate in trust department activities);
- Coextensive federal or state securities and investment regulation;
- Dispersion of stock among shareholders;
- Existence of voting trusts, shareholder agreements or other non-voting equity interests such as preferred stock;
- Redemption, liquidation or convertability rights in stock or other securities;
- Ownership interests of parent or affiliated corporations.

24. In connection with the above indicia of control, an option exists to essentially shift the burden of proof as to whether a particular entity exercises control over a media property. Under this option, an entity would only be attributed with those media interests if it is affirmatively demonstrated by the Commission or others that actual control under the indicia will occur. Comment is sought as to the effectiveness of this approach.

25. Another option upon which we seek comment is the advisability of linking the Commission's attribution rules to other legal or regulatory requirements. For example, should we establish a disclosure requirement for persons or entities that own more than 5% of the voting securities in a corporate licensee as required by the 1934 Securities and Exchange Act? 15 U.S.C. 78m(d)(1). The attribution rules could be modeled after the Commission's 20% alien ownership rules. The advantages of linkage of the attribution rules with other regulatory requirements are that consistency of federal regulations would be enhanced, and the reporting and administrative burden on licensees and investors may be reduced. On the other hand, the underlying public interest considerations in telecommunications may be unique, and we may not necessarily be able to rely upon other standards of regulatory ownership.

26. A final regulatory option is to retain the current attribution levels. Are the current attribution rules set at appropriate levels to prevent influence over licensees and yet ensure adequate availability of capital? Should the attribution benchmarks be raised to some level less than 20%? Given the recommendation of the Commission's Advisory Committee on Alternative Financing, would it be appropriate to maintain the present attribution rule structure and grant a higher benchmark for SBICs and MESBICs to increase the availability of capital for the acquisition of telecommunications facilities by minority entrepreneurs? [25] Specific data and facts should be provided to demonstrate whether the current rule structure is justified. Should the current benchmarks be retained with a revisonary effort directed toward clarifying the explanatory notes? Would the public be served better if the FCC modified the current benchmarks to provide a flat, across-the-board standard?

27. We have sought comment on the issue of how the attribution rules should function in conjunction with the use of voting trusts and the ownership of non-voting preferred stock. [26] These forms of ownership, expressly avoiding control, insulate the holder from attributable ownership interests. [27] In reevaluating the attribution rules, the Commission will take into account comments in BC Docket No. 78-239 (non-voting equity ownership interests in corporate licensees). To the extent that those comments require alteration in light of the higher benchmarks now under consideration, we request that that information be submitted.

28. One issue on which we are especially interested in obtaining comments is the effect that a change in the attribution rules would have on the investment community and entrepreneurs seeking financing for telecommunications ventures. To what extent would minority group members and new entrants have greater access to financing if the restrictions were eased?

29. The Commission is interested in obtaining public comment on the advisability of treating all investors in a similar fashion. For example, should bank trust departments, insurance companies, investment companies, mutual funds, venture capitalists, SBIC/MESBICs, pension funds, investment clubs and others be accorded identical treatment under the attribution rules? Are there policy or legal reasons why a different standard should apply to any particular group of investors? Should different benchmarks be established for active and passive investors; should there be no distinction or should the distinction be framed differently? Should "passive" investment be defined in a different manner than it has in the past? What is the optimal mix of benchmarks for the different investment groups? Should the attribution rules be the same for national, regional and local ownership situations, or are there reasons for delineating specific rules for each? In this connection, should the Commission explicitly link its cross interest policy to the attribution benchmarks? Should the attribution rules vary according to the type of media or with mode of distribution?

30. Apart from the ownership benchmark portion of the attribution rules, we seek to elicit comment on the degree to which indirect interests are attributed. Comments are sought on the appropriate approach for attributing ownership interests in vertical ownership situations. Should the current approach of mechanically determining

[24] At least with respect to larger corporations, there is some debate whether management or owners (*i.e.*, stockholders) control the company. *See e.g.*, F. M. Scherer, Industrial Market Structure and Economic Performance 32-33 (2d ed. 1980). This point is especially relevant to the underlying premise of the multiple ownership rules which assumes that programming decisions are made by, or are the responsibility of, officers, directors and shareholders.

[25] Strategies for Advancing Minority Ownership Opportunities in Telecommunications, *supra* note 19, at 16. *See also*, Petition for Rule Making on Minority Ownership, National Association of Black Owned Broadcasters ("NABOB"), October 1981. The NABOB Petition, *inter alia*, requests the Commission to consider exempting MESBICs from the multiple ownership rules.

[26] The pending *Notice of Inquiry and Proposed Rule Making* in BC Docket No. 78-239, explores various issues related to voting trusts and non-voting stock. 68 FCC 2d 1302 (1978).

[27] *Evening Star Broadcasting Co., Inc.*, 68 FCC 2d 129, 135-36, *reaff'd as modified on other grounds*, 68 FCC 2d 158 (1978); *Bonneville International Corp.*, 43 RR 2d 863, 865 (1977).

whether each level of ownership exceeds the benchmarks be replaced with a more efficacious method of limiting the effect of the attribution benchmarks to only those entities with a reasonable nexus to the licensee? Should a "multiplier" be used to limit the effect of the attribution benchmarks such as that which currently is used in the alien ownership context? [28] For purposes of illustrating the current "chain effect" of the attribution rules in the vertical ownership context, consider the following example: The X Corporation is the licensee of two standard broadcast stations. Twenty percent of X's voting stock is owned by Y Company. In turn, five percent of Y's voting stock is owned by Z Corporation. Under our current attribution rules, to compute ownership for all of the multiple ownership rules, the two stations would be attributed to X, Y and Z, since the chain effect would mean that each owns 1% or more of the voting stock in the company below. Each corporate entity itself has a greater than 1% interest. In addition, officers and directors of Z Corporation would have a cognizable interest in the two stations. Using a multiplier approach, Z's interest in X, the licensee, would be 1% (5% of 20%). Under the current benchmark, that is a cognizable interest. Using a higher benchmark, the interest would not be reportable for multiple ownership purposes.

31. Closely related to the chain effect on voting interests is the issue of imputing those interests to non-shareholder officers, directors, partners and trustees. Commenters are asked to address whether and to what extent these parties should be attributed with media interests of their corporations or non-incorporated associations such as limited partnerships. Assuming a multiplier approach is adopted as a method for establishing a nexus to programming decisions for those entities with ownership interests, what similar types of limiting devices may be used for non-interest owning corporate officers and directors and non-corporate representatives? An option would be to attribute a corporate or non-corporate entity's cognizable media interests to the officers, directors and other representatives except where specific, affirmative insulating mechanisms are employed; *e.g.*, letters abdicating responsibility for an disavowing intent to participate in decisions directly affecting station operation and programming.

32. Another issue requiring comment concerns corporate size and the attribution rules. The concerns of closely-held and widely-held corporations appear to be somewhat different with regard to investment financing. New licensees, particularly minority groups often organize as closely-held corporations. The attribution rules relevant to close corporations require that *any* equity interest be cognizable. On the other hand, the larger widely-held broadcasting and cable television operations have a different concern.[29] Large scale investors may be able to invest in only one or a few of the larger widely-held communications firms because the attributable holdings may run afoul of, *e.g.*, the duopoly or regional concentration rules. Moreover, in combination with the ownership transfer constraints of 47 U.S.C. 310(d), the ownership of a remote attributable interest in a single broadcast property may delay or preclude a takeover bid by another entity. This effect may skew the normal operation of corporate financial affairs.

33. Given these circumstances, we therefore inquire into the distinction the Commission has drawn between closely-held and widely-held corporations. Should the same attribution rules apply to each? Is there a justifiable reason for continuing to define a closely-held corporation as one that has 50 or fewer share-holders? [30] Should a closely-held corporation be redefined in terms of 25 or fewer shareholders,[31] or should the quantitative approach be abandoned in favor of a functional definition? Should the Commission's traditional distinction between closely-held and widely-held corporations be deleted as being unduly discriminatory against the efforts of closely-held corporations to raise capital? Should closely-held corporations be subject to a higher attribution benchmark because a higher proportion of stock ownership may be necessary to influence the corporation? Comment is also sought whether non-corporate associations should be treated in a manner similar to closely-held corporations and to what extent equity interests such as limited partnership interests are equivalent to corporate equity interests for attribution purposes.

34. It has been noted that private pension funds currently control over $400 billion of investment capital.[32] Those assets constitute one of the largest available pools of investment funds. Although pension funds are subject to the 1% ownership rule in all FCC multiple and cross-ownership contexts,[33] we currently have pending an undocketed petition for rule making requesting a 5% cognizable ownership level for pension funds.[34] Should these funds be subject to the same benchmarks as investment and insurance companies and other apparently passive investors?

35. Reporting ownership interests raises questions on which we also seek comment. In terms of cognizable interests, should the Commission continue to monitor ownership activity by requiring the submission of reports on FCC Form 323 pursuant to 47 CFR 73.3615 and FCC Form 325, schedules 3 and 4 pursuant to 47 CFR 76.403? If so, how often should such disclosures be made? Are routine reports necessary or should the Commission address ownership questions only in the context of license assignment and transfer of control situations or only when the ownership benchmarks are exceeded?

36. Finally, an issue also exists with regard to the ability of parties to evade the proscriptions of the multiple ownership rules. Under the current attribution structure, entities may be able to avoid a strict application of the multiple ownership rules by maintaining independent accounts, each of which contains less than a cognizable voting interest in the licensee, but aggregated exceed that amount. For example, Mr. Q may maintain accounts in two separate brokerage houses with 0.5% of the outstanding voting shares of each of the three national television networks in each account. The networks, as licensees, are required to furnish information regarding their shareholders having the right to vote 1% or more of their stock. Although each brokerage house may hold in its "street name" an

[28] *See e.g., Glaser & Fletcher*, 33 R.R. 2d 37, 38 (1975); and Watkins, *Alien Ownership and the Communications Act*, 33 Fed. Comm. L.J. 1, 32 n. 128 (1981). We use the word "multiplier" to describe the reduction of an intermediate investment entity's interest in the licensee.

[29] Even the larger communications concerns are relatively small compared to other domestic corporations. Some of the larger broadcasting firms do not even rank in the *Fortune* 500. B. Compaine, C. Sterling, T. Guback & J. Noble, Who Owns the Media? 327 (2d ed. 1982).

[30] In 1976 the Commission reaffirmed the 50 shareholder cutoff as the distinction between closely and widely-held corporations. *First Report and Order*, Docket No. 20521, 59 FCC 2d 905, 906 (1976).

[31] *See* 26 U.S.C. 1371(a).

[32] American Council of Life Insurance, 1982 Life Insurance Factbook 50 (1982).

[33] A special exception has been carved out for the College Retirement Equities Fund ("CREF"), which provides pension plans for educational institutions. The Commission has treated CREF like an investment company and permits it to take advantage of the 5% benchmark due to its passive investment objectives. *Multiple Ownership and Cross Ownership*, 59 FCC 2d 970, 979 (1976).

[34] RM-4045, filed January 27, 1982, by The Centennial Fund.

aggregated interest greater than 1% of the stock of each network, Mr. Q would not appear as having the right to vote that amount. Hence, our reporting requirements in connection with the benchmarks would not disclose Mr. Q's otherwise cognizable interest in each network. Comment is sought as to whether there is an administratively workable mechanism that would prevent parties from evading our ownership constraints by breaking down their interests into non-cognizable discrete investments.

V. Tentative Recommendations

37. After reviewing the ownership benchmarks, the mechanism for imputing them, their regulatory history and Commission decisions construing these rules, we believe that some of the burdens currently imposed by the attribution rules should be removed. The benchmarks were developed at a time when telecommunications services were not as diverse and dynamic as they are today. Indeed, the underlying facts and assumptions that were prevalent at the time the attribution rules were developed seem no longer to be necessarily valid. Healthy competition exists from both within and between each of the traditional service areas. For example, the Commission has found that sufficient competition exists within broadcasting to permit deletion of many of the ascertainment and commercial guidelines for radio broadcasters [35] and drop many of the subscription television regulations.[36] Cable, broadcast and multipoint distribution service are competing on an unprecedented level to fulfill consumers' video needs. Moreover, the recently authorized low power television [37] and interim DBS service [38] will provide additional competitive stimuli. Given these circumstances, the levels at which the benchmarks are set appear to be overly restrictive.

38. It is our tentative view that the ownership benchmarks should be raised to allow more investment in broadcast and cable facilities so as to improve the flow of capital and open opportunities for increased participation in the media distribution market. We believe that to the extent practicable all of the ownership benchmarks should be uniform and understandable. Thus, we propose that all of the benchmarks be lifted from their current levels to some point between 5% and 20%. We would treat the interests of non-corporate entities in an identical fashion. Interests greater than this benchmark but less than majority control will be subject to a rebuttable presumption that the interest held is controlling.

39. An attribution benchmark in the proposed range does not appear to be an unreasonable level that would constitute a significant ability to control licensee's policies or programming.[39] For example, a mid-point 12% corporate ownership interest constitutes less than one-eight interest in total ownership. As with any administrative decision, if experience proves our recommended benchmark to be too high, it can be scaled back accordingly by further rulemaking. Moreover, the Commission could act upon a showing that an ownership level less than the benchmark does, in fact, constitute control. Rather than hindering the public interest, we believe that increasing the ownership benchmarks will fulfill our statutory mandate to "encourage the larger and more effective use of radio in the public interest," [40] by encouraging new capital investment to invigorate the financial health of licensees and applicants and potentially improving the quality of available programming.

40. We would propose, therefore, to modify our ownership reporting requirements to conform to the attribution benchmark that results from this proceeding.[41] Currently, § 73.3615 of the Rules requires corporate broadcast licensees and permittees with more than 50 shareholders to file an annual report with the Commission that specifies stockholders who have 1% or more of the voting or nonvoting stock of the corporation. 47 CFR 73.3615. Additionally, § 76.403 of the Rules requires cable system operators to submit comprehensive annual ownership data upon request by the Commission. 47 CFR 76.403. We can perceive no reason to continue this inconsistency between the attribution and broadcast and cable reporting rules. Thus, we would propose to modify these rule sections to conform to the proposed attribution benchmark and require such reports only when the attribution benchmark is exceeded. The Commission may, of course, reserve the right to require licensees to report specific ownership information if the need arises.

41. It also appears that the current operation of the attribution benchmarks in the vertical ownership context disserves the public interest by making cognizable, ownership interests that are too far removed from the licensee to have any effect on its policies. To correct this situation, we propose to use a multiplier, described earlier, in vertical ownership situations. We believe that the use of a multiplier will provide a sound means of limiting the attribution benchmarks to those situations where there is a reasonable connection between the investor and the licensee.[42] Moreover, we believe that the cross interest policy should conform to the attribution rules. These changes, we hope will help eliminate uncertainty and encourage more investment in telecommunications facilities.

42. We believe it is in the public interest to delete the existing distinction between closely-held and widely-held corporations. The current rules appear to have an unnecessarily discriminatory impact on the ability of closely-held corporations to raise capital. Therefore, we would propose to apply the same ownership benchmarks to both types of corporations.

43. Moreover, we believe that the ownership restrictions applicable to officers, directors and other representatives such as partners and trustees should be reexamined. In some cases, these officials exercise minimal power and serve in honorary or emeritus positions. We intend to explore whether in some cases it might be possible to create an insulation mechanism for officers, directors and other representatives of corporate and non-corporate entities with cognizable interests who could relinquish all authority over programming.[43]

44. In addition to proposing new attribution benchmarks for the multiple ownership rules, the Commission is, at this time, also proposing to provide exceptions to the proposed benchmark. Although we believe that our proposed benchmark is justifiable and reasonable,

[35] *Radio Deregulation*, 84 FCC 2d 968, *recon. granted in part*, 87 FCC 2d 797, (1981), *appeal docketed*, No. 81-1032 (D.C. Cir. Jan. 14, 1981).

[36] 47 FR 30069 (July 12, 1982) (to be codified at 47 CFR 73.642-643).

[37] *BC Docket No. 78-253, supra*, n. 18.

[38] *Direct Broadcast Satellites, Supra*, n. 17.

[39] Various studies have used the assumption that five, ten or twenty percent ownership of the outstanding voting stock is necessary for control of larger corporations. F. M. Scherer, Industrial Market Structure and Economic Performance 32-33 (2d ed. 1980).

[40] 47 U.S.C. 303(g).

[41] *See generally, Notice of Proposed Rule Making, Docket No. 20521*, 40 FR 26543 (June 11, 1975).

[42] To determine an intermediary investor's interest in a licensee, the multiplier procedure simply requires multiplication of an investor's interest in the licensee by the interest held in that investor and so on up the chain. At the point where the product is less than the benchmark, attribution stops.

[43] *See e.g., Whitcom Investment Company*, FCC 82-582, ——FCC 2d ——, (1983) (released January 6, 1983). In *Whitcom*, the Commission waived the network/cable television cross-ownership rule because, *inter alia*, of a pledge of non-participation and the proposed use of structural insulating mechanisms to "wall-off" a new partner with network ownership interests.

it may not be appropriate in all cases. As in many areas of government regulation, it is difficult to predict with precision every future circumstance in which the attribution benchmark may be applied. In some instances, the benchmark may disserve the public interest by being too expansive or restrictive. Although we do not anticipate granting exceptions on a routine basis, they should be available where the facts of the case indicate that the public interest would be better served by deviating from the "bright line" test that we are now proposing for the attribution benchmarks. We acknowledge that experience with new attribution benchmarks may demonstrate the need for occasional exceptions.

45. It is our intention that this proceeding be, to the extent practicable, dispositive of the issues in the related docketed and undocketed multiple ownership proceedings, as well as any waiver requests that are pending at the time of publication of this *Notice* in the **Federal Register.**[44] Any outstanding proceedings not resolved by this rule making will be resolved as resources permit. We fully intend the disposition of this proceeding to establish a comprehensive policy framework for the attribution rules.

VI. Conclusion

46. By this Notice, we hope to elicit thorough analysis and discussion of the issues that have been raised. We invite concise and thorough legal briefs as well as extensive economic, social and policy analyses. Because it is expected that the staff will have a large number of comments and reply comments to synthesize, we suggest that the comments generally follow the order of discussion of issues in this Notice. The records in the consolidated proceeding should be updated where the record may be stale. Commenters should, however, avoid redundancy.

47. The Commission is particularly interested in the submission of specific, empirical data relating to the proposals set forth herein. We are interested in data that address the probable impact on diversity of ownership and concentration of control of licensees; industry's need for additional capital infusion; the probable increase of capital availability as a result of the proposed rule change; and the potential for anticompetitive practices. In addition, we seek specific comment and the submission of empirical evidence on the public interest impact of our proposed rule changes.

48. *Regulatory Flexibility Act Initial Analysis.* Persuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, the Commission issues the following regulatory flexibility analysis:

I. Reason for Action. This proposal was prompted by the Commission's desire to reexamine its rules and policies that attribute licensed telecommunications ownership interest to certain entities. Through this proceeding, the Commissioner seeks to establish an overall policy to assist in the resolution of several incomplete proceedings in the ownership area.

II(a). Objective. The purpose of this Notice is to initiate a rule making proceeding and seek comment on whether the Commission's current attribution rules, designed to prevent undue concentration of ownership interests, continue to serve the public interest in light of increased competition in the provision of telecommunications services and the difficulty in financing new communications ventures.

II(b). Legal Basis. The legal authority for seeking comment on these policies resides in Sections 1, 4(i), 303(r) and 403 of the Communications Act of 1934, as amended (47 U.S.C. 151, *et. seq.*).

III. Description, Potential Impact and Number of Small Entities Affected. These proposals should benefit all entities seeking telecommunications licenses from the Commission that rely on external financing. Existing and potential FCC license applicants range in size from single individuals and small partnerships to multi-million dollar corporations. This proposal is expected to maintain the Commission's traditional policy of ownership diversity, while enhancing the availability of capital for applicants and licensees. Hence many small entities should find increased capital availability and more open entry into the telecommunications business.

IV. Recording, Record Keeping and Other Compliance Requirements. The ease of filing FCC Form 301 (Application for Commercial Construction Permit), Form 314 (Assignment of Broadcast Station Construction Permit or License), FCC Form 315 (Transfer of Corporate Licensee or Permitee Control) and FCC Form 325—schedules 3 and 4 (Cable Operator Ownership Data) should be substantially improved.

V. Federal Rules Which Overlap, Duplicate or Conflict With These Rules. There are no other federal rules that directly conflict with the Commission's attribution rules.

VI. Any Significant Alternative Minimizing Impact on Small Entities and Consistent with Stated Objectives. None.

49. Written public comments are requested on the Initial Regulatory Flexibility Analysis (IRFA) *supra.* These comments must be filed in accordance with the same filing deadlines as comments on the balance of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall send a copy of this Notice to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*) (1980).

50. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a Public Notice is issued stating a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff that addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally,* 1.1231 of the Commission rules, 47 CFR 1.1231.

51. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested parties may file comments on or before April 25, 1983 and reply comments on or before May 10, 1983.[45] All relevant and timely

[44] The pending ownership proceedings are cited at notes 1 through 3 *supra.*

[45] Due to the Commission's desire to act promptly on this matter and because of the large amount of

aggregated interest greater than 1% of the stock of each network, Mr. Q would not appear as having the right to vote that amount. Hence, our reporting requirements in connection with the benchmarks would not disclose Mr. Q's otherwise cognizable interest in each network. Comment is sought as to whether there is an administratively workable mechanism that would prevent parties from evading our ownership constraints by breaking down their interests into non-cognizable discrete investments.

V. Tentative Recommendations

37. After reviewing the ownership benchmarks, the mechanism for imputing them, their regulatory history and Commission decisions construing these rules, we believe that some of the burdens currently imposed by the attribution rules should be removed. The benchmarks were developed at a time when telecommunications services were not as diverse and dynamic as they are today. Indeed, the underlying facts and assumptions that were prevalent at the time the attribution rules were developed seem no longer to be necessarily valid. Healthy competition exists from both within and between each of the traditional service areas. For example, the Commission has found that sufficient competition exists within broadcasting to permit deletion of many of the ascertainment and commercial guidelines for radio broadcasters [35] and drop many of the subscription television regulations.[36] Cable, broadcast and multipoint distribution service are competing on an unprecedented level to fulfill consumers' video needs. Moreover, the recently authorized low power television [37] and interim DBS service [38] will provide additional competitive stimuli. Given these circumstances, the levels at which the benchmarks are set appear to be overly restrictive.

38. It is our tentative view that the ownership benchmarks should be raised to allow more investment in broadcast and cable facilities so as to improve the flow of capital and open opportunities for increased participation in the media distribution market. We believe that to the extent practicable all of the ownership benchmarks should be uniform and understandable. Thus, we propose that all of the benchmarks be lifted from their current levels to some point between 5% and 20%. We would treat the interests of non-corporate entities in an identical fashion. Interests greater than this benchmark but less than majority control will be subject to a rebuttable presumption that the interest held is controlling.

39. An attribution benchmark in the proposed range does not appear to be an unreasonable level that would constitute a significant ability to control licensee's policies or programming.[39] For example, a mid-point 12% corporate ownership interest constitutes less than one-eight interest in total ownership. As with any administrative decision, if experience proves our recommended benchmark to be too high, it can be scaled back accordingly by further rulemaking. Moreover, the Commission could act upon a showing that an ownership level less than the benchmark does, in fact, constitute control. Rather than hindering the public interest, we believe that increasing the ownership benchmarks will fulfill our statutory mandate to "encourage the larger and more effective use of radio in the public interest," [40] by encouraging new capital investment to invigorate the financial health of licensees and applicants and potentially improving the quality of available programming.

40. We would propose, therefore, to modify our ownership reporting requirements to conform to the attribution benchmark that results from this proceeding.[41] Currently, § 73.3615 of the Rules requires corporate broadcast licensees and permittees with more than 50 shareholders to file an annual report with the Commission that specifies stockholders who have 1% or more of the voting or nonvoting stock of the corporation. 47 CFR 73.3615. Additionally, § 76.403 of the Rules requires cable system operators to submit comprehensive annual ownership data upon request by the Commission. 47 CFR 76.403. We can perceive no reason to continue this inconsistency between the attribution and broadcast and cable reporting rules. Thus, we would propose to modify these rule sections to conform to the proposed attribution benchmark and require such reports only when the attribution benchmark is exceeded. The Commission may, of course, reserve the right to require licensees to report specific ownership information if the need arises.

41. It also appears that the current operation of the attribution benchmarks in the vertical ownership context disserves the public interest by making cognizable, ownership interests that are too far removed from the licensee to have any effect on its policies. To correct this situation, we propose to use a multiplier, described earlier, in vertical ownership situations. We believe that the use of a multiplier will provide a sound means of limiting the attribution benchmarks to those situations where there is a reasonable connection between the investor and the licensee.[42] Moreover, we believe that the cross interest policy should conform to the attribution rules. These changes, we hope will help eliminate uncertainty and encourage more investment in telecommunications facilities.

42. We believe it is in the public interest to delete the existing distinction between closely-held and widely-held corporations. The current rules appear to have an unnecessarily discriminatory impact on the ability of closely-held corporations to raise capital. Therefore, we would propose to apply the same ownership benchmarks to both types of corporations.

43. Moreover, we believe that the ownership restrictions applicable to officers, directors and other representatives such as partners and trustees should be reexamined. In some cases, these officials exercise minimal power and serve in honorary or emeritus positions. We intend to explore whether in some cases it might be possible to create an insulation mechanism for officers, directors and other representatives of corporate and non-corporate entities with cognizable interests who could relinquish all authority over programming.[43]

44. In addition to proposing new attribution benchmarks for the multiple ownership rules, the Commission is, at this time, also proposing to provide exceptions to the proposed benchmark. Although we believe that our proposed benchmark is justifiable and reasonable,

[35] *Radio Deregulation*, 84 FCC 2d 968, *recon. granted in part*, 87 FCC 2d 797, (1981), *appeal docketed*, No. 81-1032 (D.C. Cir. Jan. 14, 1981).

[36] 47 FR 30069 (July 12, 1982) (to be codified at 47 CFR 73.642-643).

[37] *BC Docket No. 78-253, supra*, n. 18.

[38] *Direct Broadcast Satellites, Supra*, n. 17.

[39] Various studies have used the assumption that five, ten or twenty percent ownership of the outstanding voting stock is necessary for control of larger corporations. F. M. Scherer, Industrial Market Structure and Economic Performance 32-33 (2d ed. 1980).

[40] 47 U.S.C. 303(g).

[41] *See generally, Notice of Proposed Rule Making, Docket No. 20521*, 40 FR 26543 (June 11, 1975).

[42] To determine an intermediary investor's interest in a licensee, the multiplier procedure simply requires multiplication of an investor's interest in the licensee by the interest held in that investor and so on up the chain. At the point where the product is less than the benchmark, attribution stops.

[43] *See e.g., Whitcom Investment Company*, FCC 82-582, ——FCC 2d ——, (1983) (released January 6, 1983). In *Whitcom*, the Commission waived the network/cable television cross-ownership rule because, *inter alia*, of a pledge of non-participation and the proposed use of structural insulating mechanisms to "wall-off" a new partner with network ownership interests.

it may not be appropriate in all cases. As in many areas of government regulation, it is difficult to predict with precision every future circumstance in which the attribution benchmark may be applied. In some instances, the benchmark may disserve the public interest by being too expansive or restrictive. Although we do not anticipate granting exceptions on a routine basis, they should be available where the facts of the case indicate that the public interest would be better served by deviating from the "bright line" test that we are now proposing for the attribution benchmarks. We acknowledge that experience with new attribution benchmarks may demonstrate the need for occasional exceptions.

45. It is our intention that this proceeding be, to the extent practicable, dispositive of the issues in the related docketed and undocketed multiple ownership proceedings, as well as any waiver requests that are pending at the time of publication of this *Notice* in the **Federal Register.**[44] Any outstanding proceedings not resolved by this rule making will be resolved as resources permit. We fully intend the disposition of this proceeding to establish a comprehensive policy framework for the attribution rules.

VI. Conclusion

46. By this Notice, we hope to elicit thorough analysis and discussion of the issues that have been raised. We invite concise and thorough legal briefs as well as extensive economic, social and policy analyses. Because it is expected that the staff will have a large number of comments and reply comments to synthesize, we suggest that the comments generally follow the order of discussion of issues in this Notice. The records in the consolidated proceeding should be updated where the record may be stale. Commenters should, however, avoid redundancy.

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II(a). Objective. The purpose of this Notice is to initiate a rule making proceeding and seek comment on whether the Commission's current attribution rules, designed to prevent undue concentration of ownership interests, continue to serve the public interest in light of increased competition in the provision of telecommunications services and the difficulty in financing new communications ventures.

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V. Federal Rules Which Overlap, Duplicate or Conflict With These Rules. There are no other federal rules that directly conflict with the Commission's attribution rules.

VI. Any Significant Alternative Minimizing Impact on Small Entities and Consistent with Stated Objectives. None.

49. Written public comments are requested on the Initial Regulatory Flexibility Analysis (IRFA) *supra.* These comments must be filed in accordance with the same filing deadlines as comments on the balance of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall send a copy of this Notice to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*) (1980).

50. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a Public Notice is issued stating a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff that addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally,* 1.1231 of the Commission rules, 47 CFR 1.1231.

51. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested parties may file comments on or before April 25, 1983 and reply comments on or before May 10, 1983.[45] All relevant and timely

[44] The pending ownership proceedings are cited at notes 1 through 3 *supra.*

[45] Due to the Commission's desire to act promptly on this matter and because of the large amount of

comments and reply comments will be considered by the Commission before further action in this proceeding. The Commission may also consider any other relevant information brought to its attention.

52. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a written summary indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order. In accordance with the provision of § 1.419 of the FCC's Rules and Regulations, an original and 5 copies of all comments, replies or other documents filed in this proceeding shall be furnished to the FCC. Participants filing the required copies who also desire that each Commissioner receive a personal copy of the comments may file an additional 6 copies. Members of the general public who wish to express their interest by participating informally in this proceeding may do so by submitting one copy of their comments, without regard to form, provided that Mass Media Docket No. 83–46 is specified in the heading. Such informal participants who desire that responsible members of the staff receive a personal copy may file an additional five copies. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room (Room 239) at headquarters in Washington, D.C. (1919 M Street, N.W.). Further information concerning this proceeding may be obtained from Randy W. Thomas, Office of General Counsel, 202–632–6990.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Joint Concurring Statement of Commissioners Henry M. Rivera and Joseph R. Fogarty

In Re: Notice of Proposed Rulemaking on Ownership Attribution Rules

We concur in the adoption of this Notice of Proposed Rulemaking (NPRM), but only because we agree that existing ownership attribution benchmarks may be ready for reevaluation and, in some instances, upward adjustment.[46] The tentative recommendations outlined in paragraphs 37–44 of the Notice are not our recommendations, and we strongly disagree with the overall approach to attribution espoused by this NPRM.

As an initial matter, this Notice is ill-advised because it continues this Commission's newfound penchant for piecemeal evaluation of ownership issues. Picking off longstanding ownership rules one by one can only produce disjointed results,[47] and give credence to criticism that this agency has abandoned its interest in promoting diversity of expression through effective structural restraints.

The essential premise of this Notice is also misguided. The NPRM proceeds from a belief that the attribution rules "may work against the realization of an efficient nationwide radio service," paragraph 15, and goes on to argue that the rules must be scrutinized so that the costs they impose on society "are not excessive or [do not] create disproportionate economic inefficiencies." *Id.* The item further observes that the attribution rules operate to restrict combinations permissible under the Justice Department's revised antitrust and merger guidelines, paragraph 16, and implies that such inconsistency alone warrants their amendment.

By attempting to ground the Commission's ownership attribution benchmarks primarily in principles of "economic efficiency," and proposing their substantial upward amendment in accordance with that reformulation, this Notice advocates a deep and disturbing break with bedrock public policy governing media ownership. At the heart of the existing multiple ownership rules is the Commission's historic policy favoring diversification of ownership and control. The FCC has long emphasized that:

> [T]he fundamental purpose * * * of the multiple ownership rules is to promote diversification of ownership in order to maximize diversification of program and service viewpoints as well as to prevent undue concentration of economic power contrary to the public interest.[48]

The public interest rationale for a dramatic policy shift away from these established principles to the putative virtues of economic efficiency is less than self-evident. The Notice expresses concern that the current benchmark may inhibit capital investment in media industries subject to our regulation, but other than the evidence compiled by the Advisory Committee's Final Report, *See* note 1 *supra*, no evidence—empirical, anecdotal or otherwise—is cited for the proposition that those industries are lacking in needed capital infusions or that the public interest is in any way suffering as a result of the existing attribution rules. Paragraph 26 of the Notice emphasizes that "specific data and facts should be provided to demonstrate whether the current rule structure is justified;" unfortunately, the Notice does not subject its new policy predisposition to the same rigorous test. It is even more unfortunate that this glib shift in the burden of policy persuasion has not been squared with basic First Amendment principles.[49]

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information now on file in the various related dockets, we beleive this time frame is appropriate. We do not intend to grant extensions of time to any commenters in this proceeding except for exceptionally compelling circumstances.

[46] For example, the *Final Report of the Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications* recently recommended that the FCC liberalize the attribution benchmarks applicable to MESBICs and SBICs, which often serve as lenders to prospective minority media owners. Those proposals are highly meritorious and worthy of adoption because of the important policy goal they would further. It is most unfortunate that these recommendations are all but buried in the instant Notice. We hope they will not be overlooked by the commenters, since they were a key element of the Advisory Committee's plan to increase minority participation in telecommunications.

While the Notice prominently cites the hardship that the existing rules work on minorities, and the benefits that radically elevated benchmarks would confer upon them, we note that if the Commission wished specifically to address the financing problems faced by minorities, it could tailor special attribution rules for minority ownership enterprises rather than propose a reflexive opening of the concentration floodgates.

[47] Currently pending before the Commission are other proceedings designed to eliminate existing structural restraints, and several Commissioners have publicly stated their interest in reexamining still other restrictions on ownership. The Commission cannot, however, revise its ownership rules in a coherent manner if it examines each one in isolation. In the cable/network ownership rulemaking, for example, the Commission has proposed a media concentration index to safeguard against excessive domination by any one entity. If adopted, however, the index would perforce conflict with the policy premises of the so-called seven-station rule, leaving at least the impression that the rule had been amended without public comment, let alone agency forethought. Similarly, in the context of this NPRM, if a twenty percent benchmark is adopted and no duty to report ultimate beneficial owners is imposed, an entity could easily defeat existing multiple and cross-ownership restrictions by creating several layers of wholly-owned intermediate companies, each holding less than the operative attribution benchmark.

We are not contending that the Commission cannot make a judment on any of its ownership rules unless it conducts a "massive" omnibus proceeding on ownership; we do submit that the Commission must *at least* expressly acknowledge and analyze the impact of proposed changes on interdependent existing rules and policies, and should time the various proceedings such that we have the information necessary to make intelligent decisions.

[48] *Amendment of Multiple Ownership Rules*, 18 FCC 288, 291–92 (1953); *see also FCC* v. *Nat'l. Citizens Comm. for Broadcasting*, 436 U.S. 775, 780 (1980).

[49] As the Supreme Court has stated: "The 'public interest' standard necessarily invites reference to First Amendment principles * * * and, in particular,

In seeking to identify the level at which investors may *control* programming, rather than the level at which programming *influence* is possible, the Notice further underscores its apparent disinterest in promoting diversity of ownership and viewpoint. In its several prior reexaminations of the attribution benchmarks, the Commission has consistently emphasized that ability to influence should be the focus and concern of FCC ownership rules. In this connection, the Commission has stated:

> The principle of diversification and the realities of the situation require that no distinction be made between a minority non-controlling interest and a full or controlling one. While the holder of a small interest in many instances may have a slight influence on the operation of the station in question, it is also true such a person can exert considerable influence—to an extent clearly within the objectives and purview of the prescribed diversification policy.[50]

In the light of this consistent precedential emphasis on programming influence, the failure of the Notice to explain and justify its shift in focus to programming control makes what might otherwise be perceived as subtle inquiry an obvious exercise in predestination.

The NPRM is also seriously flawed by its impoverished analysis of this refined and complicated area of ownership attribution benchmarks. The superficial approach taken by the Notice not only disserves the commenting parties by forcing them to shadow-box untenable options, but also sells this agency short by creating the unfortunate impression that we have little appreciation of the business environment in which our regulatees operate. Stripped of rule citations and history, open-ended questions, and rhetorical assertions about competition and change, the Notice is little more than two pages of conclusory "tentative recommendations." An expert agency should look like one; we regret having to observe that such expertise is notably lacking here.

Turning to specific weaknesses, the Notice's failure to analyze, even superficially, the characteristics of various common business entities and investment arrangements—for example, the significant differences between closely-held and widely-held corporations—has led it to the unrealistic and unwise tentative recommendation that all investors be subject to identical attribution benchmarks. Can it seriously be arrgued that ten percent holdings in a publicly-traded company and in a closely-held company with a handful of stockholders confer equivalent potential for decision making influence or control? It is equally implausible that an institutional investor, such as a pension fund, no matter how "passive" its intentions, will not dominate with a ten, fifteen or twenty percent interest in a publicly-held media company. The Commission previously took cognizance of these business realities by shaping rules appropriate to particular classes of entities. This rulemaking should have continued that level of analytic sophistication.

The failure of the NPRM to recognize and deal intelligently with basic business realities is more than matched by its cursory analysis of the quantitative benchmark issue. Here, the Notice makes a decisive, if silent, break with past Commission proceedings on attribution of ownership. This lapse of institutional memory is evident from the fact that an outstanding Further NPRM on this identical subject—proposing to raise the benchmark across-the-board to ten percent, except for purposes of the seven-station rule—is barely referenced, and no rationale is supplied for rejecting that approach in this proceeding.

Still more troubling is the unexplained departure of this Notice from the Commission's prior view of the relevance of benchmarks set elsewhere in the Communications Act or other federal statutes to the decision as to when and where our ownership rule restrictions should apply. The Commission previously rejected cross-reference to such other statutory guidelines, stating:

> The Communications Act uses a figure of 20 percent with regard to alien control of a broadcast corporation, and we have noted that the Investment Company Act uses a standard of 25 percent. In other words, under one set of circumstances legislators have agreed on one figure; in different circumstances, on another. Although in other contexts, and for other purposes, other standards might be appropriate, we believe that in the field of broadcasting, where the important public interest consideration of preserving diversity of programming and service viewpoints attaches, special caution is warranted.[51]

Despite this prior interpretation and conclusion, and the absence of any intervening legislation or other congressional declaration, this Notice now blithely suggests that Congress may have intended the alien ownership maximum of Section 310 of the Communications Act to serve as a guide for determining when all other ownership rules should become operative.[52] If any federal standard should serve to inform us on the issue, why not the five percent benchmark specified by the Securities and Exchange Act as the level that confers the potential to affect a company's decisions?[53] Again, a public interest rationale for the preferences of this Notice is less than intuitively obvious.

The tentative recommendation to require ownership dislosure only when the attribution benchmark is exceeded is also highly inappropriate because it poses a significant threat to fundamental interests in robust economic competion and spirited competition in ideas. Not requiring identification of the ultimate beneficial owners of any company holding less

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to the First Amendment goal of achieving 'the *widest possible* dissemination of information from diverse and antagonistic sources.'" *FCC* v. *Nat'l. Citizens Comm. for Broadcasting*, 436 U.S. at 795 (citations omitted, emphasis added). Given these paramount policy guideposts, our media ownership policies should "never be driven by a desire to facilitate a market structure which, short of domination by a few firms, would yield maximum organizational efficiencies." *Report and Order Terminating Docket 18891*, —— FCC 2d —— (1982).

It also bears emphasizing that many of the economic arguments against retention of existing attribution rules apply equally to the FCC's "substantive" ownership restrictions. To the extent this proceeding is designed to rule on the validity of such arguments, it appears specious to maintain that "it is not the Commission's intention * * * to evaluate the underlying premises of individual multiple ownership rules * * *." *See* NPRM at n.4.

[50] *Amendment of Multiple Ownership Rules*, 18 FCC 288, 292–93 (1953).

[51] *Multiple Ownership of AM, FM and TV Stations*, 13 FCC 2d 357, 370 (1968).

[52] The alien ownership restrictions of the Communications Act were fashioned to curb alien activities against the United States in time of war. *See Hearings on H.R. 8301 Before the House Comm. on Interstate and Foreign Commerce*, 73d Cong., 2d Sess. 26 (1934). Those provisions of Section 310 have remained essentially unchanged since 1934.

[53] The Securities and Exchange Act of 1934 provides that a person who acquires more than five percent of certain classes of securities must disclose specific ownership and background information to the issuer, the stock exchanges, and the SEC. 15 U.S.C. 78m(d)(l) (1976). The purpose of this reporting requirement is to protect other investors in those securities and to maintain investor confidence in exchange markets by discouraging insider trading. *See* H. Rep. No. 1383, 73d Cong., 2d Sess. 13 (1934). Originally, the Act provided for disclosure by beneficial owners of more than ten percent of any equity security registered on a national securities exchange. 4 B. Schwartz, *The Economic Regulations of Business and Industry* 2933–34 (1973). However, in 1970, Congress amended the Act to require disclosure of holdings of more than five percent. Pub. L. No. 91–567 (Dec. 22, 1970). This amendment was designed to give extra protection to investors with respect to corporate tender offers and other securities acquisitions. The lower level of five percent was intended to prevent persons from obtaining eight or nine percent of a company's stock to avoid the original disclosure requirement, a practice which Congress believed deprived investors of information necessary to make certain investment decisions. It is significant to our inquiry here that Congress concluded that purchases of over five percent are material to investment decisions because they can lead to important changes in the management or business of a company. *See* H. Rep. No. 1655, 91st Cong., 2d Sess., *reprinted in* 1970 *U.S. Code Cong. and Admin. News* 5025, 5027–28.

than twenty percent of an entity with media interests would enable parties to violate existing local and regional concentration rules in some cases,[54] and to go undetected as media participants in others.[55] Those who have the capacity to use the airwaves and the power to influence public opinion should be known to the public and this Comission. Accordingly, if the Commission decides to raise existing benchmarks, it should require parties to report interests that fall short of the new level and should devise a means to detect violation of remaining ownership limitations.

One might be tempted to take some comfort in the fact that the Notice outlines a fairly broad range of options. A cursory reading of the Notice quickly makes plain, however, that most of the listed options are decorative only. For instance, it is difficult to credit the possibility that the Commission will adopt the *ad hoc* factor analysis described in paragraphs 23–24. That approach would produce nothing short of an administrative and business planning nightmare.[56] The Commission long ago recognized that ineluctable effect, and abandoned the practice of making individualized determinations of multiple ownership issues in favor of hard-and-fast rules on cognizable interests.[57] Furthermore, the suggestion that the FCC or the general public bear the burden of proving "actual control" under an *ad hoc* approach is particularly disingenuous from the standpoint of a continuing Commission commitment to furthering diversity of ownership, given the limited resources and incentives for "outsiders" to make such showings.

Maintenance of the *status quo*, another option identified, is theoretically possible but unlikely as a practical matter given the sanguine but largely rhetorical references of the Notice to the "dynamic," "rapid," "significant," and "competitive" changes that have occurred in telecommunications since the prevailing benchmarks were adopted.[58] However, in view of the paucity of data and analysis proffered to support the "tentative recommendations" of this NPRM, preserving the *status quo* may be the most rational of the posited alternatives.

February 7, 1983.

Concurring Statement of Commissioner Anne P. Jones

In Re: Notice of Proposed Rulemaking on Attribution of Ownership Interests in Broadcast, Cable Television, and Newspaper Entities

There are a number of things about this Notice which trouble me, perhaps most especially the "tentative recommendations" in it, which I am not prepared to endorse. However, I agree that reexamination of these rules and policies may be worthwhile, so I concur in issuance of the Notice.

[FR Doc. 83-6216 Filed 3-9-83; 8:45 am]
BILLING CODE 6712-01-M

[54] For instance, under the approach outlined in the Notice, an entity seeking to control a newspaper and television station serving the same community in violation of the newspaper broadcast cross-ownership ban could easily do so without detection simply by holding either media outlet through six wholly-owned subsidiaries, five owning 19.9 percent each and the sixth owning the remaining .5 percent. The Notice's contention that such circumvention is possible even now completely overlooks the fact that such evasion would be extremely cumbersome, and therefore unlikely with a one percent benchmark. That would not be true if the attribution ceiling were lifted to fifteen or twenty percent.

[55] It is unclear, for example, how the Commission would be able to promote one of its primary broadcast licensing objectives—maximum diffusion of control—in the comparative hearing process if interests that are significant are not required to be reported.

[56] An *ad hoc* approach to attribution would sap our limited agency resources, inevitably produce inconsistent and arbitrary results, and make it virtually impossible for businesses to plan their endeavors with any reasonable degree of advance assurance.

[57] *See Multiple Ownership of Standard, FM and Television Broadcast Stations*, 45 FCC 1476, 1749 (1964); *Multiple Ownership of Standard, FM and Television Broadcast Stations*, 53 RR 2d 85, 89 (1975).

[58] It is "little more than wishful thinking to predicate a finding of 'workable competition' on new technology and services (e.g., DBS, Low Power TV, and fledgling STV and MDS) which are more on the horizon than with us here and now. In the final analysis, this Commission must have more than merely the *assumption* of a 'workably competitive' marketplace as the basis for policy making." Staff Report, FCC, *FCC Policy on Cable Ownership* 1, 1-2 (Nov. 1981) (Concurring Statement of Commissioner Joseph R. Fogarty).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-76; Notice 1]

Transportation of Natural and Other Gas by Pipeline; Monitoring of External Corrosion Control

AGENCY: Materials Transportation Bureau (MTB), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This notice invites comments on the problem of conducting electrical tests of cathodic protection systems and electrical surveys to determine areas of active corrosion. Compliance with current requirements is controversial for pipelines located in areas that are subject to stray electrical currents or beneath continuous paving. Comments received will be considered with a view to proposing specific changes to the existing requirements for monitoring of external corrosion control.

DATE: Interested persons are invited to submit written comments on this notice before June 8, 1983. Late filed comments will be considered so far as practicable. All interested persons must submit as part of their written comments all the supporting material that they consider relevant to any statement of fact made by them.

ADDRESS: Communications should be sent to the Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

All comments and docket materials may be reviewed in the Dockets Branch, Room 8426, between the hours of 8:30 a.m. to 5:00 p.m. each working day.

FOR FURTHER INFORMATION CONTACT: Paul J. Cory, 202–426–2082, regarding the content of this notice, or the Dockets Branch, 202–426–3148, regarding copies of this notice or other information in the docket.

SUPPLEMENTARY INFORMATION:

Statement of the Problem

MTB has reviewed the requirements of § 192.465(a) that each pipeline that is under cathodic protection must be tested at least once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection meets the requirements of § 192.463. A copy of the Regulatory Review Report is in the docket. At issue is the technical feasibility of making the necessary tests on pipelines under cathodic protection, as required by § 192.465(a), in areas where the pipeline is located beneath continuous paving or in areas where electrical stray currents interfere with cathodic protection measurements. The review was conducted in accordance with Executive Order 12291 as a part of MTB's program to review existing regulations and revoke or revise those that are not achieving their intended purpose. Consideration of the difficulties in meeting the requirements of § 192.465(a) also disclosed similar problems in meeting §§ 192.457(b)(3) and 192.465(e). Therefore, this rulemaking action to change § 192.465(a) also considers and seeks answers to related compliance problems associated with these other two sections.

Background

The American Society of Mechanical Engineers (ASME) Gas Piping Standards Committee on February 27, 1976, petitioned the Office of Pipeline Safety Operations (OPSO), predecessor to the Office of Pipeline Safety Regulation (OPSR), (Docket No. Pet. 76–5) to add a new paragraph to § 192.465, External corrosion control: Monitoring, to permit the use of annual leakage surveys, corrosion and leak history studies to verify and monitor the effectiveness of cathodic protection and other corrosion procedures.

The ASME contended that where pipelines are beneath paving, the reference electrode often cannot be placed in intimate electrical contact with the soil and readings taken with contact on the paving surface were often found to be invalid. Similarly, the ASME contended that electrical tests conducted on pipelines located in areas of stray current could not be relied upon as an indicator of the level of cathodic protection.

By a letter of September 15, 1976, OPSO denied that petition because the objective of the monitoring required by § 192.465 is to find and correct faulty cathodic protection in time to prevent corrosion leaks. The denied pointed out that use of the proposed alternatives of leak surveys and leak history studies are weak forms of preventive maintenance since they would be fruitful only after cathodic protection has become so ineffective that leaks are occurring. Particularly in paved areas, such leaks are more likely to be potentially hazardous to the safety of the public. In addition, OPSO was not convinced that electrical testing was impractical or ineffective for the reasons set forth in the petition. In its denial OPSO stated, "According to contract studies performed for this Office, the best indicator of effective corrosion control appears to be frequent monitoring and interpreting of pipe potentials." (Study report, Ferrous Pipeline Corrosion Processes, Detection, and Mitigation, October 1971, DOT–OS–A9–108).

In a meeting of the Technical Pipeline Safety Standards Committee (TPSSC) held in Washington, D.C., on January 17 and 18, 1978, the Committee recommended that OSPO institute rulemaking procedures to amend § 192.465. This proposal would permit the use of annual leakage surveys, and corrosion and leak history studies to verify and monitor the effectiveness of cathodic protection and other corrosion control procedures where it was found that electrical methods for evaluating and monitoring pipeline cathodic protection systems are impractical or are ineffectual. This would provide an alternative method for determining whether cathodic protection meets requirements of § 192.463 where the pipeline is located in areas such as (1) those congested with numerous buried metallic structures, (2) business and commercial areas where roadway and sidewalk paving exists between buildings on each side of the street, (3) where stray current effects are predominant, and (4) in lakes, rivers, and marsh lands.

The Committee gave as a reason for this recommendation that electrical tests will not always be effective in determining whether cathodic protection is effective and other means should be provided.

By a letter of August 28, 1978, OPSR dined this specific recommendation, citing the similarity to the February 27, 1976, petition of the ASME that is previously discussed and giving the same reasons. In reconsidering this recommendation, MTB believes that areas congested with numerous buried metallic structures would normally be included as part of the paved area being reviewed. In addition, MTB has no information to show that lakes, rivers, and marsh lands should be excepted from the requirements of § 192.465(a).

The continuing controversy involved over the requirements of testing the effectiveness of cathodic protection on pipelines under paving and in stray current areas prompted the Department to study the feasibility of applying testing techniques necessary to comply with § 192.465(a) in such areas.

This study, done by the Harco Corporation under Contract DTRS–5680–C–00004, completed in January 1982, was based on making electrical measurements on cathodically protected steel pipelines located in business or commercial areas where roadway and sidewalk paving exist between buildings on each side of the street and other underground metallic structures are buried and in areas where stray current effects are predominant.

In paved areas, four pipelines were selected that had other underground structures present as is considered typical of those found in distribution systems. These included pipelines that were:

1. Effectively coated with galvanic anode cathodic protection, located entirely under concrete paving;

2. Bare with galvanic anode cathodic protection, part under asphaltic macadam and part under asphalt on top of concrete paving;

3. Effectively coated with impressed current cathodic protection, mostly under an asphalt surface over brick and limestone but with a few areas having a concrete paving; and

4. Bare with impressed current cathodic protection, located under asphalt paving.

In all four paved locations, it was found that both asphalt and concrete paving influence the resultant pipe-to-soil measurements and that each material has a different effect. On asphalt, the resistance in the contact between the reference electrode and the paving was found to be the major consideration in obtaining pipe-to-soil voltage readings. On concrete, the effect of contact resistance was negligible, but other conditions introduced errors in the voltage potentials measured as explained below.

Conclusions to the Harco study pointed out that:

1. On all locations having asphalt pavement:

a. Potential measurements were often obtainable at cracks in the paving.

b. Potential measurement with the reference electrode placed on dry, well-sealed asphalt pavement were not possible.

c. With water poured on well-sealed, asphalt pavement, potential measurements were obtainable, but these potentials were obtained only where the water "bridged" the asphalt surface between the location where the reference electrode was placed to a crack in the asphalt or to an unpaved area. Where the water remained "local" on well-seal asphalt, a valid reading was not obtained.

d. When the entire asphalt pavement was wet (such as during or immediately after rain), readings were obtained without difficulty, but the exact meaning of the readings with respect to location of the reference electrode is in doubt.

2. Conclusions to the Harco study pointed out that on concrete pavement:

a. Apparently valid potential measurements taken with the reference electrode placed on concrete pavement were easily obtainable with instruments of high input resistance.

b. However, potentials taken with the reference electrode on concrete differed from those taken with contact to the soil at the same location through a drilled hole or an adjacent unpaved area. In most instances, the potential indicated on the concrete was more negative than the potential in the adjacent soil although the reverse condition was also seen.

c. Despite the error in potential readings introduced by concrete

pavement on piplines with impressed current systems, the changes in potential (delta E) obtained when the rectifier unit was turned "off" and "on," were approximately the same on concrete and in soil at the same locations.

In areas of stray current, two pipelines were selected for study. Both pipelines, one in Pittsburgh, Pennsylvania, and the other in Berkeley, California, were being subjected to stray current resulting from the operation of public transit systems. Both pipelines were well coated. The Pittsburgh pipeline was protected by galvanic anode cathodic protection, and the Berkeley pipeline had an impressed current cathodic protection system. It was found that valid pipe-to-soil potentials could be obtained on both pipelines during nonrush hour periods either by use of a direct reading high resistance voltmeter or by use of a recording voltmeter.

Conclusions to the Harco study pointed out that in areas where stray currents are predominant:

1. Every situation is unique and must be dealt with in a manner which fits the particular condition encountered.

2. It is first necessary to overcome any possible adverse effects generated by that stray current (see 49 CFR 192.473(a)).

3. The fluctuations in pipe-to-soil potential will be proportional to the magnitudes of the stray currents.

4. Because the fluctuations in pipe-to-soil potentials are unpredictable in stray current areas, the only appropriate criterion listed in Appendix D of Part 192 that would be useable for those areas would be a negative voltage of at least 0.85 volts with reference to a saturated copper-copper sulfate half cell rather than using those criteria related to a change of voltage potential. However, these measurements can only be made during time periods when stray currents are minimal.

Review Determination

(a) Paved Locations

Harco's testing of cathodic protection on pipelines under paving verified the ASME contention that pipe-to-soil voltage readings were often not obtainable using surface contact, and when readings were obtained, they were often of little or no value in determiing the level of cathodic protection being provided. The only reliable readings that could be taken were obtained at cracks in the pavement or by boring holes through the pavement to permit contact with the soil.

Contrary to the ASME petition, Harco found that readings which were obtained using surface contact for pipelines under concrete paving were inconsistent and could not have a correction factor applied to obtain meaningful data.

As a result of the above, it is clear that tests required under § 192.465(a) on pipelines that are located where readings are only taken on the paving surface covering the pipeline cannot be relied upon to show compliance with § 192.463.

(b) Stray Current Areas

Testing of cathodic protection on pipelines in stray current areas done by Harco verified the ASME Committee contention that reliable pipe-to-soil voltage readings were often difficult to obtain. However, on the two pipelines tested, it was found that meaningful test data could be obtained if taken during nonrush hour periods when the d.c. transit systems were operating at a minimum level.

To determine the extent of the d.c. transit systems that were likely to effect stray currents, MTB contacted the Urban Mass Transportation Administration who advised that there were only 10 such systems in the major cities of the United States. MTB then determined by telephone calls to the 10 transit systems that six such systems have periods when no trains are operating. The four other systems (Chicago, Newark, New York, and Philadelphia) have late night schedules with sufficient time between trains that in most locations the stray currents due to electric transit systems would be periodically reduced to a level that would permit meaningful electrical tests to be conducted on pipeline cathodic protection systems.

It must be recognized that all stray current areas do not result from subways and electric trains as was the case with the two pipelines tested. There are many different sources of stray currents, including the cathodic protection systems of other pipelines and underground cables, that do not necessarily drop to such low levels as experienced in the Pittsburgh and Berkely tests. Particularly in the crowded subsurface of streets in major cities, there are areas that experience fluctuating stray currents from multiple sources of varying characteristics. The ASME petition states that in these areas it is impossible to obtain meaningful data from the test required by § 192.465(a). This may be true of some pipelines where no action has been taken to comply with § 192.473(a), External corrosion control: Interference currents. However, where stray currents have been appropriately controlled by such steps as isolation or in some cases bonding, effective and meaningful electrical tests usually can be obtained to determine the level of corrosion control.

As a result of the above, MTB believes that § 192.465(a) can be met on most pipelines in areas of stray current where steps have been taken to control the detrimental effects of stray currents as required by § 192.473(a). In order to monitor the effectiveness of steps taken to minimize the adverse effects of stray currents under the program required by § 192.473(a), MTB would propose the use of other measures, such as Beta curves and Beta profiles under § 192.465(a) for this purpose.

In the regulatory review process OPSR concluded that one possible alternative to the present requirements of § 192.465(a) was to permit the use of more frequent leak surveys or corrosion and leak history records to be used to determine the effectiveness of corrosion control systems in lieu of electrical tests. This would only be permitted where an operator demonstrates that electrical tests are not technically or economically practicable for (a) pipelines under paving, or (b) after the steps required to minimize the effects of stray current under § 192.473(a) have been taken, tests are still impracticable.

As pointed out in the Harco study, there are paving inserts available that are now used by some operators at a few selected locations to permit tests to be conducted to evaluate cathodic protection systems. To install such inserts in streets and sidewalks in quantity may be costly from both the original costs and maintenance standpoints. OPSR believes that this would be one of the more appropriate methods of complying with the requirements of §§ 192.465(a) and 192.469 in many areas.

Cathodic protection is widely accepted by the operators of underground metallic systems (including oil, gas, and water pipelines and electric and telephone cables) as the best method available to prevent corrosion and resulting leaks or other damage. The electrical tests required for gas pipelines under § 192.465(a) are similarly accepted for determining that cathodic protection systems are operating satisfactorily on other underground metallic structures. This is a preventive measure designed to keep leaks from occurring. There are many locations where electrical tests cannot be conducted effectively by methods normally used. Due to the extraordinary effort required to obtain proper electrical data from tests on pipelines located under paving and in

some stray current areas, as contended by the ASME and confirmed generally by the Harco study, it is obvious that some alternative method of checking such areas may be needed because of the high cost of compliance.

OPSR Comment

The requirements for testing a cathodic protection system and for conducting an electrical survey to detect areas of active corrosion are generally valid; however, MTB recognizes that their accomplishment may not always be practicable. Impracticability of electrical tests or surveys must be demonstrated with written documentation of test studies, or documented past experience of the operator with electrical surveys for pipelines in the system that have a similar environment.

It seems inappropriate to amend the requirement for monitoring cathodic protection by suggesting ways that do not monitor the effectiveness of cathodic protection except after failure. However, a leak survey and corrosion and leak records often appear to be the only economically practical alternative available. Although a leak survey does not detect the failure of the cathodic protection system, it does detect the leakage which results from corrosion of the unprotected pipeline.

To assist in the selection of an appropriate alternative course of action where testing of cathodic protection and conducting electrical surveys to detect areas of active corrosion have been demonstrated to be invalid, MTB invites interested persons to participate in this rulemaking by responding to the questions which follow and submitting any substantiating information. These questions are intended to apply to both gas transmission and distribution pipelines. If comments are made for only transmission or distribution pipelines, comments should identify which, or if combined so state. Where there are significant differences, data should be submitted separately for transmission or distribution pipelines. In figuring the costs requested, consider all wages, instruments, tools, other equipment and vehicles, and overhead. Do not consider maintenance to the cathodic protection system, except on questions where this is requested. In basing costs on miles of main, also include any related costs resulting from connected service lines. Do not consider the length of services in the miles figure.

1. Describe what you consider must be done to prepare for and conduct an electrical survey to determine areas of active corrosion for the first time on an existing, unprotected gas pipeline. (§§ 192.457(b)(3) and 192.465(e))

2. What is the average annual cost of conducting electrical surveys to determine areas of active corrosion under § 194.465(e):

a. On a gas pipeline with minor or no paving or stray currents:

(i) The first time, when electrical isolation is done, test leads installed, etc.? ($/mile of pipeline)

(ii) Subsequent surveys? ($/mile of pipeline)

b. In paved areas where drilling of pavement is used:

(i) The first time, when electrical isolation is done, test leads installed, etc.? ($/mile of pipeline)

(ii) Subsequent surveys? ($/mile of pipeline)

c. In stray current areas requiring special measures, such as nighttime or weekend field testing and/or use of recording voltmeters? ($/mile of pipeline)

3. Should § 192.465(a) include a reference to the use of Beta curves and Beta profiles as a means of determining the effectiveness of measures taken to mitigate the adverse effects of stray currents during peak periods?

4. Describe how you interpret data from electrical surveys or by other means to determine areas of active corrosion. (§§ 192.457(b) and 192.465(e))

5. When you dig up pipe in areas where active corrosion is indicated by electrical survey and other data, what percent of the instances do you actually find active corrosion? (§§ 192.457(b) and 192.465(e))

6. Under § 192.465(e), in areas where an electrical survey is impractical, what are the methods used to determine areas of active corrosion from study of corrosion and leak history records, leak detection survey, or other means?

a. If there are significant ways such means are applied or interpreted, please explain for each method.

b. Provide pertinent cost data for each. ($/mile of pipeline)

c. What are frequencies for each study, survey, or other method?

7. Describe how you conduct tests under § 192.465(a) to determine whether cathodic protection meets the requirements of § 192.463.

8. What is the annual cost of conducting electrical tests under § 192.465(a) to determine whether the cathodic protection meets the requirements of § 192.463:

a. On a gas pipeline with minor or no paving or stray currents? ($/mile of pipeline)

b. In paved areas where, in the absence of inserts, drilling of pavement is used? ($/mile of pipeline)

c. In stray current areas requiring special measures, such as night time or weekend field testing and/or use of recording voltmeters? ($/mile of pipeline)

d. An anode installations made at corrosion repairs under § 192.483(c) (average $/location); and under the sampling category of § 192.465(a)? ($/mile of pipeline)

9. Under what conditions should monitoring be considered as causing extreme hardship and expense for tests required by § 192.465(a)? Specifically, for installations made under § 192.483(c)?

10. What would be the cost burden of having to keep a written record demonstrating that electrical surveys are impractical on a given pipeline? ($/mile of pipeline) (§§ 192.457(b)(3) and 192.465(e))

11. If recording voltmeters are used, what is their capital cost? ($/unit)

12. What is the cost of installing access to the soil beneath paved areas (pavement inserts, etc.) as needed in areas of continuous paving:

a. For one insert? ($/insert)

b. For the conducting of electrical tests under § 192.465(a)? ($/mile of pipeline)

c. For the conducting of electrical surveys under § 192.465(e)? ($/mile of pipeline)

d. If pavement inserts are not installed, how is access to the soil obtained? ($/location)

13. Where access to the soil beneath paved areas (pavement inserts, etc.) and test stations required by § 192.469 have been installed, what would be the cost of conducting:

a. Electrical tests under § 192.465(a)? ($/mile of pipeline)

b. Electrical surveys under §§ 192.457(b) or 192.465(3)? ($/mile of pipeline)

14. Are there any feasible alternative methods to the use of electrical tests for determining the level of cathodic protection on a pipeline that is located beneath paving other than using leak surveys, corrosion and leak history studies? What are their associated costs? ($/mile of pipeline) (§ 192.465(a))

15. Describe locations, other than paved areas or some stray current areas, where electrical surveys might be considered impractical. (§§ 192.457(b) and 192.465(e))

16. Considering the design life of anodes installed on unisolated segments of pipeline, is 1 year a reasonable time interval between electrical tests at such

anodes from a maintenance and safety cost/benefit basis? If not, what interval should apply? Explain. Please differentiate between urban and rural locations.

17. Should there be a requirement other than § 192.469 for installation of a permanent test station on cathodically protected pipelines at locations where a minimal response to cathodic protection is detected or otherwise believed to exist on cathodically protected pipelines in paved areas and stray current areas? Explain.

18. What is the life expectancy of a test station, and what is the estimated capital costs for test stations? ($/mile of pipeline)

19. What is the average cost of repairing ineffectively operating cathodic protection systems? ($/mile of pipeline)

20. What is the average cost of leak surveys in paved areas? ($/mile of pipeline)

21. How frequently should leak surveys be run to serve as an alternative to annual electrical tests under § 192.465(a)?

22. What is the average cost of repairing leaks in paved areas? ($/repair)

23. If a cathodic protection system is not operating effectively (i.e., active corrosion is present), on average, how long do you think it will be before a corrosion leak occurs? (——— years?)

24. Are there areas where the potential for developing faults in cathodic protection systems are less than normal that would justify a longer interval between tests of the cathodic protection systems than the current requirements? If yes, describe any such areas and state intervals considered appropriate.

25. What percent of the cathodic protection systems tested under § 192.465(a) are found to be operating effectively?

26. At the Technical Pipeline Safety Standards Committee meeting in Washington, D C., on November 17, 1982, one pipeline operator suggested that an operator be permitted to increase the time interval between tests of a cathodic protection system under § 192.465(a) to 2 years if that system has been tested and found to be operating satisfactorily for two consecutive years. Systems found to have failed would have to be repaired and then if subsequently found to be operating effectively for two consecutive years could be placed on a 2-year test interval. What would be the effect of such a program on your system? How would this change your costs per mile of monitoring cathodically protected pipelines? ($/mile of pipeline)

List of Subjects in 49 CFR Part 192

Pipelines.

(49 U.S.C. 1672, Section 203, Pub. L. 96-129, 93 Stat. 1004 (49 U.S.C. 2002); 49 CFR 1.53, Appendix A of Part 1 and Appendix A of Part 106)

Issued in Washington, D.C., on March 2, 1983.

Richard L. Beam,

Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

[FR Doc. 83-5844 Filed 3-9-83; 8:45 am]

BILLING CODE 4910-60-M

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49 CFR Part 571

[Docket No. 83-01; Notice 1]

Evaluation Report on Federal Motor Vehicle Safety Standard No. 105; Hydraulic Brake Systems

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

ACTION: Requests for comments.

SUMMARY: This notice announces the publication by NHTSA of a preliminary Evaluation Report concerning Safety Standard No. 105, Hydraulic Brake Systems. This staff report evaluates the safety effectiveness and costs of two major improvements in the design of passenger car brakes: dual master cylinders and front disc brakes. The report was developed in response to Executive Order 12291, which provides for government-wide review of existing major Federal regulations. The Agency seeks public review and comment on this evaluation. Comments received will be used to complete the review required by Executive Order 12291.

DATE: Comments must be received no later than: May 9, 1983.

ADDRESSES: Interested persons may obtain a copy of the report free of charge by contacting Mr. Robert Hornickle, Office of Management Services, National Highway Traffic Safety Administration, Room 4423, 400 Seventh Street, S.W., Washington, D.C., 20590 (202-426-0874). All comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. (Docket hours, 8:00 a.m.-4:00 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Mr. Frank G. Ephraim, Director, Office of Program Evaluation, Plans and Programs, National Highway Traffic Safety Administration, Room 5212, 400 Seventh Street, SW., Washington, D.C. 20590, (202-426-1574).

SUPPLEMENTARY INFORMATION: Safety Standard No. 105 (49 CFR 571.105) requires that passenger cars have a dual braking system and contains specifications for stopping performance under a variety of normal and adverse conditions. The purpose of a dual braking system is to provide a back-up braking capability in the event of a hydraulic failure. The two most significant changes in brake design of the 1960's and 70's were the introduction of dual master cylinders and front disc brakes. Dual master cylinders are the principal hardware element of a dual braking system. Disc brakes are not required by Standard 105, but they do make it easier for a car to meet the standard's stopping tests simulating brake fade and water immersion; in addition, they improve a car's handling during brake applications.

Pursuant to Executive Order 12291, NHTSA recently conducted an evaluation of dual master cylinders and front disc brakes to determine the effectiveness of the technology selected by the manufacturers in preventing accidents, deaths and injuries and to determine the costs of the technology to consumers. Under the Executive Order, agencies are to review existing regulations to determine whether the regulations are achieving the Order's policy goals, i.e., achieving legislative goals effectively and efficiently and without imposing any unnecessary burdens on those affected. This preliminary evaluation, however, is limited to dual master cylinders and disc brakes and does not deal with other aspects of Standard 105.

The principal findings and conclusions of the report are the following:

- Dual master cylinders are effective in reducing the number of accidents due to defective brakes. They eliminate 40,000 accidents per year, resulting in an estimated reduction of 260 fatalities, 24,000 injuries and $132 million in property damage (in 1982 dollars).
- Dual master cylinders add $17 to the cost of purchasing and operating a car over its lifetime (in 1982 dollars).
- Front disc brakes are effective in reducing the number of accidents due to defective brakes. They eliminate 9,800 accidents per year, resulting in an estimated reduction of 64 fatalities, 5,700

injuries and $32 million in property damage.

• Front disc brakes add $21 to the lifetime cost of a car.

The report was developed from statistical analyses of North Carolina, Texas and Fatal Accident Reporting System data, a review of Indiana in-depth accident analyses, and manufacturing and repair costs analyses for production brake assemblies.

NHTSA welcomes public review of the evaluation report and invites the public to submit comments.

It is requested but not required that 10 copies of comments be submitted.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

(Secs. 103, 112, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1407); delegation of authority at 49 CFR 1.50 and 501.8)

Issued on: March 3, 1983.

Barry Felrice,

Associate Administrator for Plans and Programs.

[FR Doc. 83-5990 Filed 3-9-83; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket No. 81-04; Notice 3]

Federal Motor Vehicle Safety Standards; Glazing Materials

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this notice is to propose an amendment to Safety Standard No. 205, Glazing Materials, to permit the installation of glass-plastic glazing as windshields and windows in motor vehicles and to adopt appropriate performance requirements for such glazing. The existing requirements of the standard do not permit the use of glass-plastic glazing in certain locations on the automobile, principally by operation of the abrasion resistance requirement.

The agency has conducted an extensive evaluation to determine the performance characteristics of glass-plastic glazing in the critical areas of injury reduction, visibility distortion and impact attenuation for occupants in a crash. Research data indicate that such glazing may substantially reduce lacerative injuries when vehicle occupants strike glazing in an accident.

The proposed amendment would establish performance requirements specifically designed to ensure the safety and performance of glass-plastic glazing. This notice implements the agency's granting of a petition for rulemaking by Saint Gobain Vitrage and follows the issuance of an advance notice for proposed rulemaking.

DATES: Comments must be received on or before April 25, 1983. Proposed effective date: Upon publication of a final rule.

ADDRESS: All comments should refer to the docket number and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Docket hours are from 8 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Edward Jettner, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-2264).

SUPPLEMENTARY INFORMATION: Safety Standard No. 205, Glazing Materials (49 CFR 571.205), specifies performance requirements for the types of glazing that may be used in motor vehicles, as well as the vehicle locations in which the various types of glazing may be used. The standard incorporates by reference the American National Standard "Safety Code for Glazing Materials for Glazing Motor Vehicles Operating on Land Highways," § 26.1—1966 (ANS § 26). The requirements in ANS § 26 are specified in terms of performance tests that the various types or "Items" of glazing must pass. There are 13 "Items" of glazing for which requirements are currently specified in the standard. The only current items of glazing that may be used in the windshield of a motor vehicle are Item 1, Safety Glazing Material for Use Anywhere in Motor Vehicle, and Item 10, Bullet Resistant Glass for Use Anywhere in Motor Vehicle.

The windshield in virtually every car in the U.S. today is a "safety" or "High Penetration Resistant" (HPR) windshield whose interior and exterior surfaces are made of Item 1 laminated glass. (ANS § 26 describes laminated glass as two or more sheets of glass held together by an intervening layer or layers of plastic material.) This type of windshield was first provided as standard equipment on motor vehicles over twenty years ago. The layer of plastic in the HPR windshield acts as a barrier to prevent the occupant's head from completely penetrating the windshield when the occupant strikes the glazing during a crash. However, on impact, both the inner and outer glass layers tend to break, leaving edges of broken glass on the inner surface.

To alleviate the problem of lacerative injuries resulting with current HPR windows, Saint Gobain Vitrage (SGV) of France developed an innovative new glazing called Securiflex. The Securiflex windshield is composed of laminated glass to which a layer of polyurethane (plastic) is bonded on the inner side (i.e., the side of the windshield facing inside the occupant compartment). The Securiflex windshield reduces the risk of lacerations to car occupants who strike the window in an accident because the plastic inner layer prevents the occupant from coming into contact with the sharp glass edges that are formed when the glazing is struck and broken.

In early 1980 SGV requested an interpretation from the agency stating that the abrasion requirements of Standard No. 205 are applicable only to the exterior, glass side of glass-plastic materials such as Securiflex. On April 22, 1980, the agency issued an interpretation which stated that both sides of windshield glazing material must pass the performance tests specified in the standard for a particular glazing item (contrary to the interpretation urged by SGV). When ANS § 26 was first drafted, almost all types of glazing material were symmetrical, i.e., both sides of the glazing were made of the same substance. Thus, Standard No. 205 did not contemplate asymmetrical glazing material such as Securiflex, and the agency had determined that the existing requirements of the standard are not appropriate for glass-plastic glazing.

Subsequently, SGV filed a petition for rulemaking requesting that Standard No. 205 be amended to permit the use of glass-plastic glazing (June 12, 1980). The agency finally granted the petition on December 8, 1980. An amendment of the standard was necessary because the interior plastic side of glass-plastic windshields cannot pass Test No. 18, Abrasion Resistance, and therefore Securiflex cannot qualify as Item 1 glazing under the standard.

After granting the SGV petition, the agency still did not issue a proposal to amend the standard to permit the use of glass-plastic glazing. Rather, on January 26, 1981, the agency issued an advance notice of proposed rulemaking concerning possible amendment of Standard No. 205 to adopt specific requirements for glass-plastic glazing (46 FR 8076). At that time, the agency was beginning a study of the new glazing material and requested information from the public concerning various issues associated with that material.

Primary among these issues was whether the inner plastic side of glass-plastic glazing materials such as Securiflex can adequately resist abrasion. Plastic does not resist the surface damage caused by rubbing and scuffing as well as glass. Abrasion is a potential concern since it produces haze which scatters the light passing through the glazing in a way that can make it more difficult for the driver to see through the windows. Obviously, the sources of abrasion are less numerous and severe on the inside of a vehicle window than on the outside. Nevertheless, abrasion on the inner side is still an important issue.

Another possible problem of concern to the agency was delamination. The Securiflex windshield consists of four layers of glass and plastic bonded together. As the number of bonding layers increases, the probability of a bonding failure may increase. Such delamination may result in vision distortion and optical deviation and thus present a safety hazard to drivers.

Other considerations discussed in the advance notice included rearview mirror attachment to the inner side of the windshield, attachment to and removal from the inner side of the windshield of decals such as State inspection stickers, the ability of the plastic coating to withstand body repair shop paint bake ovens, and the ability of the plastic coating to withstand inboard frost accumulation and its removal.

To address these concerns, the advance notice listed various questions and areas in which data and information were requested so that appropriate performance requirements could be established for glass-plastic glazing to ensure the safety and structural integrity of this new development in automotive glazing. Since that time, the agency has also collected additional information and analyzed the effectiveness of glass-plastic glazing in reducing injuries as well as performance requirements that are necessary to address the potential problems that could result with the use of such materials.

The agency has always recognized that glass-plastic glazing would have substantial potential for reducing lacerative injuries in motor vehicle accidents, and has now tentatively concluded that the standard can and should be amended, consistent with and in furtherance of the interests of the safety of occupants, to permit this type of glazing in the windshield and all windows of motor vehicles.

This notice proposes specific performance requirements designed particularly for glass-plastic glazing, recognizing the varying environmental demands placed on the outer and the inner or occupant compartment side of glazing materials.

The agency believes that the proposed performance requirements will ensure adequate abrasion resistance for glass-plastic glazing. As for the potential other problems discussed in the advance notice, the agency tentatively concludes that they are not so serious that they should forestall the introduction of a technology which has such great injury reducing potential.

Every year, hundreds of thousands of American motorists suffer pain, disfigurement and psychological trauma from lacerative injuries caused by broken motor vehicle windows. SGV studied this safety problem by interviewing 600 hospital physicians in the United States, and estimated that more than 350,000 patients were treated for facial injuries cause by broken windshield glass in automotive accidents during a 12-month period. Sixty percent of the lacerations required suturing and more than 15 percent required further treatment by plastic surgeons or other specialists (such as ophthalmologists) to prevent permanent disfigurement or physical handicaps. SGV estimated that the cost of medical treatment for laceration injuries caused by broken windshields could exceed $16 million annually.

NHTSA's own data indicate that more than 208,000 laceration injuries occur each year due to broken windshield glass, and that another 100,000 such injuries result from broken side window glass. (See NHTSA's July 1980 report, "Glass Related Injuries on NCSS," including the December 18, 1981, update of this report, as well as Table 10, Motor Vehicle Lacerative Injury Rate, Regulatory Evaluation, in NHTSA Docket 84–01; Notice 01 and Notice 03, respectively.)

All evidence thus indicates that glass-plastic glazing has the potential to eliminate many of these lacerative injuries. (See, for example, "Safety Performance of Securiflex Windshield," Patrick and Chou, NHTSA Docket 84–01; Notice 01.)

The amendment proposed in this notice would establish a new glazing "Item", glass-plastic glazing, which could be used anywhere in a motor vehicle, including the windshield. Specific new performance requirements would be established for this new glazing category. For example, the present standard assumes that all windshields have inner and outer layers composed of glass and, therefore, includes no specifications for testing chemical resistance, flammability and weathering. It appropriately assumes that windshields made of glass on both sides are highly resistant to all of these factors and thus specifies no tests for these capabilities. These characteristics are, however, important and less certainly are properties of less durable materials like plastics. The agency has therefore tentatively determined that minimum performance levels should be established for materials, for these characteristics, to ensure the integrity of glass-plastic glazing.

The proposed amendment specifies that glass-plastic glazing materials to be used in areas requisite for driving visibility must meet, in addition to the normal tests to which the conventional windshield is subjected, Abrasion Test No. 17 (for the plastic side of the glazing), but would allow a haze of only four percent after 100 cycles of the Taber abraser; Flammability Test No. 24; Chemical Resistance Test No. 19; Weathering Test No. 16, and Resistance to Temperature Change Test No. 28. All of these tests are already included in the standard (ANS §26). It is important to note that the four percent haze criterion specified in this proposal for the plastic side of glass-plastic glazing is far more stringent than the 15 percent haze limitation currently specified for other plastic materials which cannot be used in areas necessary for driver visibility.

The proposed abrasion requirement for the plastic side of glass-plastic glazing would result in an abrasion test procedure identical to that for glass-plastic windshields specified by the Economic Commission for Europe in ECE Regulation R43, which is currently recognized by ten European countries. Thus, the proposal would foster the international harmonization of standards in this regard. The agency believes that the typical windshield would actually experience less than 4 percent haze over its lifetime. The agency does, however, seek additional comment concerning the 4 percent haze proposal, including any information concerning whether this level of stringency is adequate to ensure visibility through glass-plastic glazing over time.

All information available to the agency indicates that the proposed test requirements for glass-plastic glazing can be met by materials such as Securiflex, and that the requirements are sufficiently stringent to ensure that inferior glass-plastic glazing is not produced. (See Exhibit 1 in Docket 81–04; Notice 01.) In addition to abrasion resistance, the other proposed test requirements for glass-plastic glazing are very similar to the requirements specified in ECE Regulation 43. The

agency has prepared a Table which illustrates the similarities and differences among the requirements proposed in this notice, ECE Regulation 43, the tests proposed by Saint Gobain in their petition, the new requirements being sponsored by the ANS § 26 committee, and the basic requirements for windshield grade material (Type 1) currently specified in the standard. (See Table 1 in Docket 81-04; Notice 03.)

The proposal also includes a requirement that manufacturers place a label on glass-plastic glazing which specifies proper cleaning instructions and other warnings. The agency has tentatively determined that such a label would help ensure that owners do not subject the plastic glazing to unduly abrasive objects for purposes of cleaning or removing decals from their windshields.

Relevant Technical Information

Following is a brief discussion of the information that has been gathered and which has led the agency to propose the requirements included in this notice. The discussion is organized in terms of some of the major points and questions included in the January 1981 advance notice.

1. The advance notice asked about the relationship between light transmittance and haze (caused by either abrasion or chemical action) for glass-plastic materials, particularly as this relationship is affected by the age of the material. It is very difficult to quantify the amount of haze that is tolerable before a driver's vision is impaired to the point that it is unsafe. However, when evaluated under the existing test procedures of Standard No. 205, Securiflex has performed very well, and other available information indicates that there would be no problem. For example, a Securiflex side window was tested by SGV during two series of development tests to determine the haze producing effects of dry, dusty friction such as could be produced by felt and rubber strips during roll-up/roll-down of typical side windows. During the first series of tests, run at 300 cycles per day, the Securiflex sample gained less than 0.1 percent haze after 27,000 cycles. During the second series, run at 1000 cycles per day, the sample gained 0.1 percent haze after 20,000 cycles. These data indicate that Securiflex is able to withstand the type of abrasion caused by the sliding motion of windows being rolled up or down.

The in-use experience of the European cars equipped with Securiflex windshields corroborates these laboratory results. The accuracy of the transmittance and haze data of high mileage and other European Securiflex car windshields provided by SGV has been verified in independent tests conducted for the agency by the National Bureau of Standards. The agency has tentatively determined that haze on both clear and tinted Securiflex windshields builds up slowly with use. The agency estimates that haze build-up for Securiflex windshields would be less than 4 percent in the typical 10 year life of a car, and could be less than 2 percent if trends of present data continue.

With regard to haze and light transmittance of Securiflex, the agency is also monitoring an experimental test program of Securiflex-equipped vehicles being conducted by the Maryland State Police in conjunction with SGV and the Insurance Institute for Highway Safety. An interim progress report concerning this test program was issued on April 7, 1982. Test measurements relating to the degree of surface deterioration were made on a number of the vehicles. These data, although preliminary, indicate that the surface quality of the Securiflex polyurethane (plastic) sheet is stable, even under the hard use condition in an American environment. (See Docket 81-04; Notice 01, Entry 001, 009, 024, 019, 025, 027.)

2. The advance notice also discussed the possible problem of delamination of the glass and plastic components of Securiflex type windows, under natural causes such as heat, light and moisture. SGV reports that its field experience with a relatively few cars for more than five years and thousands of cars for more than three years has revealed no sign of any delamination problem. Standard No. 205 currently includes four tests to measure properties associated with delamination due to natural causes (Test 1, Light Stability; Test 3, Humidity; Test 4, Boil; Test 28, Temperature Change), for laminated glass windshield material. This notice would apply these tests to glass-plastic glazing as well as one additional test not required for glass windshields (Test 16, Weathering). The agency has tentatively concluded that these tests would ensure that glass-plastic glazing materials experience no problem with delamination. (See SGV Supplement of April 22, 1981, Docket 81-04; Notice 01, Entry 035).

3. The agency asked whether the attachment of rearview mirrors to the inside plastic layer of glass-plastic windshields would present problems. A review of technical material presented in SAE Paper 770246, "Performance of a Non-Lacerative Windshield in Case of Accident and under Environmental Conditions" (NHTSA Docket 81-04; Notice 01) indicates that this is not an insurmountable technical problem. SGV has also presented a feasible solution for this problem. In recent developments in Europe, an aerobic acrylic adhesive material has been used to attach the mirror to Securiflex, polymerized by ultraviolet radiation or by chemical action. SGV reports that a mirror retainer button made of Zamac bonded with Loctite No. 356 and No. 312 adhesive materials apparently withstands the necessary performance for cleavage resistance and fatigue strength. Therefore, the agency has tentatively concluded that attachment of rearview mirrors on glass-plastic windshields would not present a problem. (See Docket 81-04; Notice 01.)

4. The advance notice also asked whether attachment and removal of decals such as State inspection stickers on glass-plastic glazing would present a problem because of the possibility of abrading or tearing the inner plastic layer. Stickers are typically removed by the use of a razor blade or other metal scraper. Although a steel cutting edge will damage the plastic of Securiflex, tests indicate that plastic scrapers would not be harmful. Under the proposed requirements of this notice, this information would be provided to all vehicle owners by a warning label on the glass-plastic windshield and information in the Owner's Manual. Additionally, SGV has worked with the American Decal and Manufacturing Co. which has produced a sticker which can be removed by a simple manual peeling action (i.e., without use of a sharp tool), and which will meet all needs of existing State required stickers, e.g., they are automatically "voided" if removed. Other options include the use of mechanical positioning devices (pedestal mounted, for example) to hold the sticker in the vicinity of the windshield. The agency has tentatively determined that this potential problem can probably be solved and should not preclude the use of a material which has such great potential for reducing lacerative injuries in vehicle accidents. (See SGV Supplement of April 22, 1981.) However, the agency remains concerned about the possibility of damaging the relatively soft plastic inner liner on these types of windshields, and solicits specific comments and suggestions on this issue, including comments concerning the adequacy and practicability of the possible solutions just discussed.

5. The advance notice asked whether Securiflex type windshields could withstand the intense heat generated in paint bake ovens (used for baking paint on a car originally or when the paint has

to be retouched or redone). Existing information indicates that the Securiflex plasic layer can withstand such exposure as well as, or better than, many other elements of a vehicle. The results of the "tunnel bake" test reported in SAE paper 770246 (Docket 81-04; Notice 01) for Securiflex windshields shows that the glass-plastic glazing successfully passed stringent tests with no bubbles appearing under the plastic layer or any other adverse effect. Therefore, the agency tentatively concludes that bake ovens will not present problems for glass-plastic windows.

6. The advance notice discussed the possible problem of inboard frost accumulation and its removal on the inner plastic layer of glass-plastic windows. Tests are currently being conducted concerning this question by Transport Canada (the Canadian regulatory agency equivalent to NHTSA), to determine if the mechanical removal of ice and frost with scrapers will scratch and damage Securiflex. The Results of these tests are scheduled for completion in the near future and will be reported to NHTSA. SGV has conducted its own test concerning this question along lines similar to the Transport Canada procedures and reports that Securiflex shows no problems. (See Docket 81-04; Notice 01.) The agency seeks any additional information which might now be available on this subject.

7. The advance notice asked, "Do the anti-lacerative properties of glass-plastic windshields, such as the Securiflex windshield, outweigh the problems of visibility distortion that may result with this type of windshield?"

This question was asked as part of the ANPRM's general inquiry. No information was presented which would indicate that visibility distortion would be a problem. As proposed in this notice, glass-plastic glazing would have to pass the light stability, luminous transmittance and deviation distortion tests currently specified in the standard for windshield-grade glazing materials. If glass-plastic materials pass these tests, the agency believes they would perform as well as existing HPR windshields with regard to visibility distortion.

8. The advance notice asked about the cost-differential between glass-plastic glazing such as Securiflex and typical HPR windshields. Although no exact cost estimates were received in response to the advance notice, the agency estimates that glass-plastic windshieds will cost approximately $38 to $45 more than their standard HPR counterpart. However, use of this material would result in greatly reduced laceration injuries, with attendant savings. It should be emphasized that, as proposed in this notice, glass-plastic glazing would be permitted but not required. Therefore, the cost differential and replacement costs would depend greatly on the volume of installation chosen by manufacturers, which cannot be determined at the current time.

9. The agency notes that data reported by Patrick and Chou (see NHTSA Docket) suggest that HIC (Head Injury Criteria) values in impact tests with some types of glass-plastic glazing may be higher then for similar HPR (high penetration resistant) windshields. A review of the reported HIC values shows that the data were scattered, but that, graphically, the "best fit" curve of HIC values for glass-plastic glazing is approximately 100 units higher than the comparable curve representing the standard HPR glazing (see Regulatory Evaluation). The safety implications of these limited data are of concern to the agency. Comments and information are specifically requested on this issue.

10. The ANPRM also listed several areas of research and study which would be conducted concerning the various issues surrounding glass-plastic glazing materials. These included:

- Identifying specific methods and engineering tests to assess the suitability of glass-plastic glazing and other asymmetrical glazing for safe automotive use.
- Assessing the consistency of measurements of light transmittance through glass and plastic.
- Assessing the adequacy and consistency of current mechanical abrasion methods to measure the abrasion resistance properties of glass and plastic.
- Determining the adequacy of current methods used to measure haze and distortion in glass and plastic glazing materials.

The agency has undertaken an active effort to acquire specific information concerning the above technical areas. This work, initiated under contract DTNH22-82-C-07045, is designed to conduct optical engineering research on new and used automotive glazing for the purpose of considering longer-range modifications of Standard No. 205 if research indicates that this is advantageous. The IIT Research Institute has been awarded this contract and began work in March 1982. The final report of this contract is due in March 1983, and will be placed in the NHTSA Docket. The work being performed is expected to confirm the appropriateness of the test requirements proposed in this notice for glass-plastic glazing. The testing under this project is almost completed and there have been no advance reports of findings inconsistent with the information used by the agency to develop the specifications in this proposal.

The agency has examined the impacts of this proposed amendment and determined that the notice is not major within the meaning of Executive Order 12291 or significant according to the Department of Transportation's regulatory policies and procedures. The agency has prepared a preliminary regulatory evaluation concerning the proposed amendment, which has been placed in the public docket. (A free copy may be obtained by contacting the Docket Section.) The agency estimates that the consumer cost of glass-plastic glazing would be greater than existing laminated or tempered glass, although it is not possible to determine the exact increase in cost at the current time because this material is not being marketed. (As noted earlier, the agency estimates costs at $38 to $45 greater.) It should be noted that the proposed amendment would allow glass-plastic glazing, but not require it. Therefore, any increase in cost would be determined by the number of manufacturers which chose this alternative material for certain windows in their vehicles. The agency has determined, however, that cost increases to consumers would not be significant within the meaning of the Executive Order. Moreover, any increase in cost for this material would be offset to a certain extent by the savings which would accrue because of reduced lacerative injuries resulting from the installation of glass-plastic glazing.

NHTSA has also considered the impacts of this proposal under the Regulatory Flexibility Act. I hereby certify that permitting the use of glass-plastic glazing under Safety Standard No. 205 would not have a significant economic impact on a substantial number of small entities. Few, if any, motor vehicle manufacturers would qualify as small entities. Small organizations or governmental units that purchase vehicles equipped with glass-plastic glazing might have to pay a slightly higher price, but this cost increase would be somewhat offset by the accruing savings discussed above. The proposed amendment could have some impact on small glazing manufacturers and glazing dealers that would be considered small entities for purposes of the Act. If glass-plastic glazing were to become popular, these small entities might be forced, through competition, to stock the new item of

glazing, to provide safe and secure types of storage, to develop new material handling procedures and to ensure the soft plastic side of such glazing is not damaged during shipment and installation. These possible impacts are all speculative at the current time since the agency has no information to determine how many manufacturers would choose the option of producing glass-plastic glazing, and no information on the magnitude of the above possible impacts or on the likelihood of their occurrence. Based on the agency's judgments regarding information that is currently available, I certify that the proposed option would not have a significant economic impact on a substantial number of these small entities. Specific comments on this issue are requested.

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

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

As provided in 49 CFR 553.21, all comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for the consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

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

PART 571—[AMENDED]

In consideration of the foregoing, it is proposed that Safety Standard No. 205, *Glazing Materials* (49 CFR 571.205), be amended as set forth below.

§ 571.205 [Amended]

1. Paragraph § 4 would be amended to add the following definition:

* * * * *

"Glass-plastic glazing material" means a laminate of one or more sheets of glass that has a layer of plastic that is bonded to the surface of the glazing that faces inward when the glazing is installed in a vehicle.

* * * * *

2. Existing paragraph § 5.1.2.3 would be designated § 5.1.2.4 and revised to read as follows:

* * * * *

Section 5.1.2.4 *Cleaning instructions.* Each manufacturer of glazing materials designed to meet the requirements of § 5.1.2.1, § 5.1.2.2 or § 5.1.1.3 shall affix a label, removable by hand without tools, to each item of such glazing materials. The label shall identify the product involved, specify instructions and agents for cleaning the material that will minimize the loss of transparency and instructions for removing frost and ice and, at the option of the manufacturer, refer owners to the vehicle's Owner's Manual for more specific cleaning and other instructions.

* * * * *

3. A new paragraph § 5.1.2.3 would be added to read as follows:

* * * * *

Section 5.1.2.3 Item 14—*Glass Plastics.* Glass-plastic glazing materials that comply with the labeling requirements of § 5.1.2.4 and Tests Nos. 1, 2, 3, 4, 9, 12, 15, 16, 17, 18, 19, 24, 26, and 28, as those tests are modified in (a), (b), and (c) of this paragraph, may be used anywhere in a motor vehicle.

(a) Tests Nos. 9, 16, and 18 shall be conducted on the glass side of the specimen, i.e., the surface which would face the exterior of the vehicle. Tests Nos. 17, 19, 24, and 26 shall be conducted on the plastic side of the specimen, i.e., the surface which would face the interior of the vehicle. Test No. 15 should be conducted with the glass side of the glazing facing the illuminated box and the screen, respectively.

(b) Glass-plastic specimens shall be exposed to an ambient air temperature of −40°C (±5°) (−40°F ±9°) for a period of 6 hours prior to conducting Test No. 28, rather than at the initial temperature specified in that test. After testing, the glass-plastic specimens shall show no evidence of cracking, clouding, delaminating, or other evidence of deterioration.

(c) Glass-plastic specimens tested in accordance with Test No. 17 shall be carefully rinsed with distilled water following the abrasion procedure and wiped dry with lens paper. After this procedure, the arithmetic mean of the percentages of light scattered by the three abraded specimens shall not exceed 4.0 percent.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on March 7, 1983.

Courtney M. Price,

Associate Administrator for Rulemaking.

[FR Doc. 83-6188 Filed 3-8-83; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Development of an Agreement on Interpretation and Implementation of a Protocol on Subsistence Hunting of Migratory Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: This notice is to inform the public that the Fish and Wildlife Service in coordination with the Department of State intends to work with the Canadian Wildlife Service to develop an agreement regarding the interpretation and implementation of a protocol to amend the subsistence hunting provisions of the *Convention for the Protection of Migratory Birds* concluded by the United States and Great Britain

(acting on behalf of Canada) in 1916. The amendment would make the subsistence hunting provisions of this treaty consistent with those of the *Convention between the United States of America and the Union of Soviet Socialist Republics Concerning the Conservation of Migratory Birds and their Environment*, signed in 1976. It would provide a basis for managing subsistence hunting of migratory birds in Alaska and Canada.

DATE: Comments on this notice must be received by April 30, 1983.

ADDRESS: Address correspondence to Director, U.S. Fish and Wildlife Service (MBMO), U.S. Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: John P. Rogers, U.S. Fish and Wildlife Service, Migratory Bird Management Office, Department of the Interior, Washington, D.C. 20240; (202/254–3207).

SUPPLEMENTARY INFORMATION: On January 30, 1979, the Secretary of the Interior of the United States and the Minister of the Environment of Canada signed a protocol to amend the subsistence hunting provisions of the 1916 *Convention for the Protection of Migratory Birds*. This convention is between the United States and Great Britain (acting on behalf of Canada) and is hereafter referred to as the 1916 Treaty. The amendment would make the subsistence hunting provisions of the 1916 Treaty consistent with those of the *Convention between the United States of America and the Union of Soviet Socialist Republics Concerning the Conservation of Migratory Birds and their Environment*, signed in 1976 (hereafter referred to as the US/USSR Treaty).

The US/USSR treaty provides, in essence, that residents of rural Alaska (not just Indians and Eskimos) may take migratory birds for their own nutritional and other essential needs in accordance with seasons set by the competent authority, i.e., the Secretary of the Interior. The seasons may occur during periods when hunting would otherwise be prohibited, i.e., outside the March 10–September 1 period. The treaty requires that the nutritional and other essential needs, for which subsistence hunting may be permitted, must be determined by the competent authority, and any hunting seasons set must provide for the preservation and maintenance of the stocks of migratory birds. There is a clear provision for regulation and control of subsistence hunting, which is presently lacking in the 1916 Treaty. The pertinent wording of the US/USSR Treaty is contained in Article II (1 and 2) and is as follows:

Article II

1. Each Contracting Party shall prohibit the taking of migratory birds, the collection of their nests and eggs and the disturbance of nesting colonies. Also, any sale, purchase or exchange of these birds, whether dead or alive, or their nests or eggs, and any sale, purchase or exchange of their products or parts, shall be prohibited. The importation and exportation of migratory birds and their nests, eggs, parts, and products shall also be prohibited. Exception to these prohibitions may be made on the basis of laws, decrees or regulations of the respective Contracting Parties in the following cases:

(a) For scientific, educational, propagative, or other specific purposes not inconsistent with the principles of this Convention;

(b) For the establishment of hunting seasons in accordance with Paragraph 2 of this Article;

(c) For the taking of migratory birds and the collection of their eggs by the indigenous inhabitants of the Chukchi and Koryaksk national regions, the Commander Islands and the State of Alaska for their own nutritional and other essential needs (as determined by the competent authority of the relevent Contracting Party) during seasons established in accordance with Paragraph 2 of this Article; and

(d) For the purpose of protecting against injury to persons or property.

2. The hunting seasons for migratory birds provided for in Paragraph 1(b) of this Article, and the seasons during which the indigenous inhabitants mentioned in Paragraph 1(c) of this Article may take such birds and collect their eggs for their own nutritional and other essential needs (as determined by the competent authority of the relevant Contracting Party), shall be determined by the competent authority of each Contracting Party respectively. These seasons shall be set so as to provide for the preservation and maintenance of stocks of migratory birds.

The Fish and Wildlife Improvement Act of 1978 authorized the Secretary of the Interior to implement the provisions of the US/USSR Treaty and specifically directed the Secretary to assure that subsistence hunting of migratory birds in Alaska will be guided by the language of that Treaty. In effect, Congress established the language of the US/USSR Treaty as the standard for dealing with subsistence hunting of migratory birds in Alaska.

The subsistence hunting provisions of the 1916 Treaty are inconsistent with this standard. The pertinent wording of the 1916 Treaty is contained in Article II and is described in the following excerpt:

The High Contracting Powers agree that, as an effective means of preserving migratory birds, there shall be established the following close seasons during which no hunting shall be done except for scientific or propagating purposes under permits issued by proper authorities.

The close season on migratory game birds shall be between March 10 and September 1, except * * * that Indians may take at any time scoters for food but not for sale.

The close season on other migratory birds shall continue throughout the year, except that Eskimos and Indians may take at any season auks, auklets, guillemots, murres, and puffins, and their eggs, for food and their skins for clothing, but the birds and eggs so taken shall not be sold or offered for sale.

The protocol is modeled after the subsistence hunting provisions of the US/USSR Treaty. It is intended to make the 1916 Treaty consistent with those provisions, and provide a basis for managing subsistence hunting of migratory birds in Alaska and Canada. The wording of the protocol is as follows:

The Government of Canada and the Government of the United States of America,

Desirous of amending the Migratory Birds Convention signed at Washington on August 16, 1916,

Have agreed as follows:

Article I

Article 2 of the Convention of August 16, 1916 for the Protection of Migratory Birds in Canada and the United States is amended by adding the following additional paragraph:

Notwithstanding any other provision of this Convention, the High Contracting Powers may, without prejudice to those rights accorded to Indians by sub-paragraph 1 of the first paragraph of this Article and to Eskimos and Indians by sub-paragraph 3 of the said first paragraph, authorize by statute, regulation, or decree the taking of migratory birds and the collection of their eggs by the indigenous inhabitants of the State of Alaska and the Indians and Inuit of Canada for their own nutritional and other essential needs (as determined by the competent authority of each High Contracting Power), during any period of the year in accordance with seasons established by the competent authority of each High Contracting Power respectively, so as to provide for the preservation and maintenance of stocks of migratory birds.

Article II

This Protocol shall be subject to ratification. It shall enter into force on the date of exchange of instruments of ratification which shall take place at Washington as soon as possible.

The major problem addressed by the protocol is that subsistence hunting of migratory birds, as practiced for generations in Alaska and Canada, for the most part is not provided for under terms of the 1916 Treaty. This treaty prohibits hunting between March 10 and September 1, the period when waterfowl are most available and most needed for food in the far North. Exceptions are made for subsistence hunting but they

apply only to Indians for the taking of scoters and to Eskimos and Indians for the taking of certain sea birds and their eggs. These species may be taken by these people at any time of the year and in any number but they are either not generally available or not traditionally utilized in most areas of Alaska. Although migratory birds generally are a relatively small part of the total subsistence needs of the people in these areas, they are a very important element at certain times of the year in some locations and the people still depend on them. Thus, the 1916 Treaty does not adequately address the legitimate subsistence needs of people.

Subsequent to the signing of the protocol an environmental assessment on *Subsistence Hunting of Migratory Birds in Alaska and Canada* was prepared by the Fish and Wildlife Service. This was made available in March 1980 as a draft for public comment. A final version, incorporating changes derived from the public comments, was completed and made available in December 1980. The assessment was structured around a proposal to amend the subsistence hunting provisions of the 1916 Treaty as well as the migratory bird treaties with Mexico, and Japan so as to make them consistent with the subsistence hunting provisions of the US/USSR Treaty. The consequences of implementing the proposal (no significant adverse impacts were found), and the alternatives of taking no action, prohibiting subsistence hunting of migratory birds, or renegotiating the protocol on subsistence hunting to make it more specific were described and evaluated. The protocol to amend the 1916 Treaty is the first and most important step in this process because the subsistence hunting provisions of this treaty are most in conflict with those of the US/USSR Treaty.

Following completion of the environmental assessment the protocol was transmitted to the Senate in December 1980 with a request for ratification but no immediate action was taken. On January 24, 1981, the Secretary of the Interior requested the Senate Foreign Relations Committee to delay action on the protocol until the Department had an opportunity to evaluate concerns that had been raised about it. Thus, the protocol was set aside and has not as yet been taken up in the Senate.

A number of organizations and individuals have expressed concern about some aspects of the protocol. Most stated that they did not object in principle to subsistence hunting if carefully regulated. However, they were concerned that the protocol was too vague and imprecise about what would be permitted in the way of subsistence hunting and who would be allowed to participate in it.

More specifically, these groups identified the following points of concern or objection:

1. The protocol does not clearly identify who has authority to set seasons for subsistence hunting.
2. It does not appear to clearly prohibit commercial use of birds taken for subsistence purposes.
3. It does not establish bag limits, season lengths, methods of taking, etc.
4. It does not set limits on the size of the subsistence harvest.
5. It does not identify those who will be allowed to engage in subsistence hunting.
6. It does not contain a viable framework and plan for enforcement of subsistence hunting regulations.

Underlying these specific points is a basic concern that subsistence hunting in Alaska and Canada will adversely affect recreational hunting in the United States. There is a particular concern about this in connection with subsistence hunting in Canada, which contains the breeding grounds for a large proportion of the ducks and geese important to U.S. hunters. In this regard it is important to note that the protocol is not aimed at increasing the amount of subsistence hunting but at regulating and controlling a subsistence harvest that has been occurring for decades. Nevertheless, some people fear that it could lead to increases in subsistence hunting to the point that a reduction in recreational hunting would be necessary.

In contrast to the views outlined above, the protocol has essentially the unanimous support of people who live in rural areas of Alaska where subsistence hunting continues to be an important means of livelihood. About 90 percent of the population in these areas is made up of Eskimos, Indians, and Aleuts. These people have long been troubled by a situation in which laws and prohibitions that they had no voice in developing are in conflict with their traditional customs and needs. They have repeatedly urged that this situation be changed.

Although the protocol was signed in 1979, it has not been implemented because the United States has not ratified it. In view of the questions raised about it since it was signed, it now appears necessary and desirable to address and clarify the points mentioned above. In order to do this the Fish and Wildlife Service intends to work with the Canadian Wildlife Service to develop a joint U.S./Canadian agreement that would further specify exactly how the two countries will interpret and implement the provisions of the protocol. It is intended that any agreement reached will be made binding on the two countries by inclusion in a signed memorandum/statement of understanding or a diplomatic exchange of notes between the governments. Any such document will be sent to the Senate for information and clarification, and so that it can be considered in deliberation on ratification of the protocol.

Items that will be considered for further discussion and definition in any such agreement will include: (1) A definition of competent authorities, (2) how birds taken under provisions of the protocol may be used, (3) means of regulating take, (4) levels of harvest, (5) who may participate in subsistence hunting, (6) geographic areas where subsistence hunting may take place, (7) provisions for enforcement of subsistence hunting regulations. It is believed that these items cover the major points of concern that have been identified.

As soon as possible after the close of the comment period on this notice of intent, and upon review and consideration of any comments received, the Fish and Wildlife Service will meet with the Canadian Wildlife Service to develop a proposed agreement on interpretation and implementation of the protocol on subsistence hunting of migratory birds. The Fish and Wildlife Service will provide public notice of the proposed agreement through publication in the **Federal Register** and will consider all comments received. In addition, public hearings will be held in Washington, D.C. and Alaska to provide additional opportunity for public comment. Notice of these hearings will be published in the **Federal Register** as soon as possible after determination of times and locations.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Dated: March 4, 1983.

Robert A. Jantzen,

Director, Fish and Wildlife Service.

[FR Doc. 83-6115 Filed 3-9-83; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

Gulf of Mexico Fishery Management Council; Public Hearings

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Public Hearings and Availability of Proposed Amendment.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold public hearings for the purpose of gathering information on possible long-term solutions to the gear conflict in Federal waters of Citrus County, Florida. This hearing has particular reference to the extension of control over shrimping and stone crabbing to the Federal waters to complement similar management of these fisheries under Florida law for Citrus County. The Council seeks views on proposed amendments of its stone crab and shrimp plans which may be necessary to provide for orderly conduct of these fisheries in Federal waters, thus reducing the possibility of conflict between stone crab and shrimp fishermen in the area. The hearings will be tape recorded with the tapes filed as an official transcript of the proceedings. A written summary will be prepared.

DATES: Written comments on the proposed management measures or alternatives from the public may be submitted no later than April 1, 1983. Individuals or organizations wishing to comment on this matter may do so at the following public hearings:

March 29, 1983, 7:00–10:00 p.m., Crystal River, Florida;

March 30, 1983, 7:00–10:00 p.m., Apalachicola, Florida.

ADDRESS: A copy of the proposed amendment, environmental assessment, regulatory impact review, and proposed regulations may be obtained from the Council at the address listed below.

Send comments to: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609.

Public Hearings Locations:

March 29—Plantation Inn and Golf Resort, Kings Bay Road, Crystal River, Florida;

March 30—The Court Room, Franklin County Court House, Market Street, Apalachicola, Florida.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council (813) 228–2815.

SUPPLEMENTARY INFORMATION: The hearings will deal with the need to amend the stone crab and shrimp plans, as a result of cumulative losses of traps by stone crab fishermen in the Gulf of Mexico, loss of damage to shrimp trawling gear, and the possibility of conflict between shrimp and stone crab fishermen in Federal waters adjacent to an area managed by the State of Florida (Chapter 81–199 of the Florida Code). This State statute provides for fishing areas for shrimping and stone crabbing which change over the course of the stone crab season and which can be modified by State regulation based on recommendation of the Citrus County Shrimping and Crabbing Advisory Committee. This Committee is duly constituted by the statute and represents both shrimping and crabbing interests. The fishing areas established by State statutes extend out to the limit of the State waters (nine nautical miles) which transects the proposed Federal area which is in the fishery conservation zone (FCZ). The Committee has petitioned the Gulf Council to modify its stone crab and shrimp plans to establish exclusive fishing areas for stone crab fishing in the FCZ during the period October 4 to May 20 each year. The Council is holding the hearings to seek public input on the proposed measure, and other alternatives that would provide a long-term solution to the conflict problem for inclusion in amendments to its stone crab and shrimp plans.

Dated: March 4, 1983.

Joe P. Clem,

Acting Chief, Fisheries Process Division, National Marine Fisheries Service.

[FR Doc. 83-6183 Filed 3-9-83; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 48, No. 48
Thursday, March 10, 1983

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Exceptions and Waivers, Non-Lawyer Representation; Meeting

AGENCY: Administrative Conference of the United States; Committee on Regulation.

ACTION: Committee meeting.

SUMMARY: The Committee will meet with its consultants to discuss progress on the projects: (1) Exceptions and waivers in the operation of regulatory programs, and (2) Non-lawyer representation of clients in agency proceedings.

DATE: March 18, 1983, 9:30 a.m.

ADDRESS: 1250 Connecticut Avenue, NW., Washington, D.C., 8th Floor Conference Room.

Public Participation: Attendance at the Committee's meeting is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The Committee chairman may permit members of the public to present appropriate oral statements at the meeting. Any member of the public may file a written statement with the Committee before, during, or after the meeting. Minutes of the meeting will be available on request to the contact person. This meeting is subject to the Federal Advisory Committee Act (Pub. L. 92–463).

FOR FURTHER INFORMATION CONTACT: William C. Bush, Administrative Conference of the United States, 2120 L Street N.W., Suite 500, Washington, D.C. 20037. Telephone (202) 254–7065.

SUPPLEMENTARY INFORMATION: (1) Exceptions and Waivers—This project deals with the role of an exceptions and waivers process in a regulatory program. The focus will be on the operation of the Office of Hearings and Appeals at the Department of Energy. The Committee will be discussing a draft report recently submitted by our consultant, Professor Peter Schuck of Yale Law School.

(2) Non-lawyer Representation—Our consultant, Professor Jonathan Rose of Arizona State University School of Law, is advising the Committee on possible roles for non-lawyer experts in finance, economics and related fields as direct representatives of clients in agency regulatory proceedings. Particular problems to be explored are the difficulties in exerting ethical controls on non-lawyers and the treatment of a client-representative confidentiality privilege.

Richard K. Berg,
General Counsel.
March 7, 1983.

[FR Doc. 83-6197 Filed 3-9-83; 8:45 am]
BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Loss Adjustment and Contract Service Agreement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith publishes this notice to provide, for the information of interested parties, the terms and conditions of the Loss Adjustment and Contract Service Agreement (FCIC–448), which becomes effective upon execution by FCIC and a private entity seeking such agreement as a loss adjustment and field service contractor, for the 1983 and succeeding crop years.

ADDRESS: Written comments on this notice may be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

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

SUPPLEMENTARY INFORMATION: Under the authority contained in Section 507(c) of the Federal Crop Insurance Act (7 U.S.C. 1507(c)), as amended by Pub. L. 96–365, 94 Stat. 1312, approved September 26, 1980, the Board of Directors of the Corporation authorized the use of contractors from the private sector to perform all services in connection with loss adjustment including, but not limited to:

1. Visiting farms to inspect damaged or destroyed crops during the growing season or following harvest;
2. Appraising potential production and giving consent to put the acreage to another use;
3. Explaining to insureds their responsibilities under the insurance contract and necessary filing procedures;
4. Determining cause and time of loss;
5. Determining actual production harvested, unharvested potential, and the amount of insured acres; and
6. Making measurements of farm-stored production.

Form FCIC–448, the Loss Adjustment and Contract Service Agreement, reproduced in part herein, prescribes the terms and conditions under which a private entity may be appointed as a contract loss adjuster.

This notice does not set out the provisions contained in Appendix I, since this document is lengthy; however, a copy will be made available to any qualified applicant for a Loss Adjustment and Contract Service Agreement.

Any interested party is invited to comment on the terms and conditions of the Loss Adjustment and Contract Service Agreement contained in this notice.

FCIC will consider all suggestions and may choose to offer publicly an additional or amended agreement or related document for subsequent crop years incorporating suggested changes.

The terms and conditions of the Loss Adjustment and Contract Service Agreement, effective with the 1983 and succeeding crop years, are as follows:

U.S. Department of Agriculture

Federal Crop Insurance Corporation

Loss Adjustment and Contract Service Agreement

For 19—— Crop Year

[ ] Tax
[ ] S.S. _____
(Identification Number)

(Name) _____
Contract Code
Designated Area

(City and State) _____
(Zip Code) _____
(Contractor's Telephone Number) _____

The Federal Crop Insurance Corporation (hereinafter referred to as the "Corporation") appoints the entity identified above (hereinafter referred to as the "Contractor") as a loss adjustment and field service contractor within the area designated on this agreement according to the provisions of 7 U.S.C. 1507(c), as amended by P.L. 96-365, 94 Stat. 1312.

I The Corporation and the Contractor hereby agree that such appointment shall be subject to the following terms and conditions:

1 The Contractor will perform all services in connection with loss adjustment as assigned by the Corporation including, but not limited to:
- a Visit farms to inspect damaged or destroyed crops during the growing season or following harvest as applicable;
- b Appraise potential production and give consent to have insured acreage put to another use;
- c Explain to insured producers their responsibilities under the insurance contract and necessary filing procedures;
- d Determine cause and time of loss;
- e Determine actual production harvested and unharvested potential and the amount of insured acres; and,
- f Make measurements of farm-stored production.

2 The Contractor will promote favorable relationships with insured producers and stimulate interest and understanding of the Federal Crop Insurance Program with present and potential policyholders.

3 All the required services shall be conducted in a manner set forth in procedures issued by the Federal Crop Insurance Corporation.

4 The Contractor and the Contractor's employees engaged in loss adjustment for the Corporation will be required to successfully complete, at the Corporation's expense, a program of classroom instruction as determined by the Corporation.

5 The Contractor shall keep such records and make such reports as may be required by the Corporation in an accurate and current manner of all activities related to the performance of this agreement. All work performed by the Contractor will be subject to review for accuracy and timeliness of service to insured producers. The Contractor will make its records available to any representative designated by the Corporation during reasonable hours. The Contractor will cooperate at all times with the Corporation in the investigation and litigation of claims.

6 The Corporation will compensate the Contractor for on-the-job training, loss adjustment and servicing, as specified in Appendix II attached.

7 The Corporation shall have the right to terminate the Contractor without advance notice if the Contractor knowingly has committed a material breach of this contract or knowingly has violated Federal law. In the event the Corporation terminates the agreement on this basis, the Corporation shall be liable to the Contractor for all compensation fully earned and for the fair value of other services rendered until the date of termination.

8 The Corporation will make payment to the Contractor on a bi-weekly basis upon submission by the contractor of the prescribed FCIC voucher form at the end of each bi-weekly period in which services are performed.

9 The Contractor shall understand and so advise the public that:
- a All findings with respect to field conditions are the property of and for the sole use of the Corporation.
- b The Contractor is not an employee and does not represent the Corporation on any matter other than specifically set forth herein.
- c the Contractor does not have the power to execute any waiver or incur any indebtedness on behalf of the Corporation.
- d The Contractor is liable for any intentional act or omission outside of or contrary to the scope of its authority and which would cause the Corporation to incur any liability whatsoever.

10 The Corporation reserves the right to modify or terminate this agreement at any time, upon giving the Contractor at least 60 days advance notice, if the Contractor's performance on loss adjustment or field servicing is deemed unsatisfactory by the Corporation, provided the Corporation has put the Contractor on notice of these performance standards, the performance standards are fairly applied on a nondiscriminatory basis to contractors similarly situated, and the Corporation has given the Contractor a reasonable opportunity to comply. Such standards will be considered a part of this agreement as though contained herein. In the event the Corporation terminates this agreement on this basis, the Contractor may continue to perform assigned services up until the date of termination and shall be entitled to full compensation for those services rendered.

11 The Contractor may cancel this agreement by giving at least 14 days advance written notice to the Corporation.

12 The Contractor agrees to give the Corporation priority in time available for loss adjustment over loss adjustments from other agencies, organizations or insurance firms.

13 The Contractor and any employee of the Contractor shall not engage in any selling, servicing or administration involving any policies of the Corporation or reinsured by the Corporation except as that work is assigned under the provision of this contract. This provision specifically does not prohibit the performance of loss adjustment service for other insurance companies as long as such loss adjustment work does not conflict with work assigned by the Corporation. This paragraph applies during the life of the contract and for one year after termination of the contract or termination of the employee status with the Contractor. The Contractor shall not engage in loss adjustment of any policy sold, administered or serviced by any member of the Contractor's family or the family of an employee of the Contractor unless the facts are reported to the Corporation and a written waiver is obtained.

14 The Corporation shall have the right to debar the Contractor or any employee of the Contractor in accordance with Office of Procurement Policy (OFPP), policy letter 82-1, and any amendment thereto (47 FR 28854-60). The Contractor shall provide the Corporation with a list of its Officers and Employees and shall amend that list within 15 days of any change. The Contractor agrees not to employ or contract with any individual or company who has been suspended or debarred by the Corporation or the United States during the term of such suspension or debarment.

15 Moneys due the Corporation from the Contractor or any employee of the Contractor shall be set off, in whole or in part, against any moneys payable to the Contractor or Contractor's employees, respectively, by the Corporation or any other United States Government agency.

II The Corporation and the Contractor further agree that the compensation rates and contract clauses in the appendixes hereto required by various statutes, regulations and executive orders are hereby made a part of the agreement to the extent that they are applicable.

Recommended by:
District Director _____
Date _____

Accepted and Executed by:
Service Contractor _____
Date _____

Approved and Executed for the Corporation by:
Contracting Officer _____
Date _____

Appendix II-STD to FCIC-448, Loss Adjustment and Contract Service Agreement

1 The Corporation will compensate the Contractor for loss adjustment and servicing as specified below:

A The Contractor will be paid at an hourly rate as stated below:

During formal classroom training None
On-job training prior to full certification $7.50
After full certification on at least two crops $10.00

B The Corporation will reimburse the Contractor for reasonable expenses which the Corporation has determined to be necessary in fulfilling this agreement. Such expenses will be paid in accordance with GSA travel regulations published for General Schedule government employees. During formal classroom training contractors will not be compensated, but will be reimbursed for travel and lodging.

C Payment for services will be made according to the Prompt Payment Act (31 U.S.C. § 1801 *et seq.*). The required payment date for this agreement shall be thirty days after receipt of a proper invoice for the amount of payment due. Proper invoices and filing procedures will be provided by the Corporation. Payment is conditional on the Contractor's meeting standards of performance, including the fulfillment of a minimum number of unit inspections, as established in writing by the Corporation.

D The Corporation will compensate and reimburse the Contractor for loss adjustment and servicing duties including, but not limited to: farm visits on which acreage is released or a final claim is prepared; and farm visits solely for the purpose of measuring farm-stored production at the insured's request.

E When producer data assigned to the Contractor for farm visit(s) includes work for Agricultural Stabilization Conservation Service (ASCS) purposes (whether solely for ASCS or in conjunction with Corporation work) the Contractor will be compensated for ASCS work at the same rates specified herein for FCIC.

2 In the event this agreement is terminated under Section 7 or 10 of the agreement and/or the Contractor withdraws from this agreement, any compensation paid to the Contractor and not earned, shall be returned to the Corporation.

3 In the event loss adjustment work performed by the Contractor must be performend again, and the original work is found to be incomplete or in error, the Contractor will not be compensated for the subsequent inspection.

This appendix is effective for the 19—— crop year for Contract Code No.——.

Initials Date
Corporation

Initials Date
Service Contractor

Done in Washington, D.C., on February 1, 1983.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Merritt W. Sprague,

Manager.

Dated: March [illegible], 1983.

[FR Doc. 6076 Filed [illegible] 8:45 am]

BILLING CODE 34[illegible]

Forest Service

1986–90 Period Operating Plan; Alaska Lumber and Pulp Co.; 50–Year Timber Sale; Tongass National Forest, Sitka, Alaska; Intent To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, USDA, Forest Service, will prepare an Environmental Impact Statement for the 5-year operating period 1986–90 of the Alaska Lumber and Pulp Company (ALP) 50–year timber sale and for advanced roading associated with other operating periods.

The proposed activity is to harvest 525 million board feet of timber plus an unestimated volume of timber carried over from previous operating periods, and construct roads, terminal transportation facilities, and logging communities. These actions are authorized under the existing 50–year timber sale contract between the United States Department of Agriculture and ALP and in accord with the Tongass National Forest Land Management Plan. The 50-year timber sale operating area includes portions of Chichagof, Baranof, Kruzof, and Kuiu Islands in southeast Alaska.

Public involvement will include inviting participation from those Federal, State, and local agencies, organizations, and individuals interested in the scoping process, which includes: (1) Identification of those issues to be addressed; (2) indentification of issues to be analyzed in depth; (3) elimination of insignificant issues or those which have been covered by previous environmental reviews; (4) determination of potential cooperating agencies, and assignment of responsibilities. Notice of the initiation of the scoping process will also be sent to the news media.

The Forest Service will develop a range of alternatives that will address the various issues, concerns, and opportunities established in the scoping process. One of the alternatives considered will be a no action alternative which will be within the guidelines of the Tongass Land Management Plan and responsive to the timber sale contract. Other possible alternatives will vary the amount of pre-roading, the location of cutting units and roads, and the areas to be available for harvest. Alternatives include: (1) A highly economical alternative that provides a maximum return on investment; (2) a normal harvest alternative such as occurred in past harvest practices, and which includes a mix of economical and economically marginal timber volume; (3) maximum utilization of timber volumes requiring advanced, and costly, harvesting techniques, including helicopter and multi-span skyline systems.

The preliminary issues and concerns that were identified from past planning efforts include: (1) What are the social and economic impacts of logging and associated development on existing communities? (2) Is there enough volume in the contract area to fulfill the life of the contract? (3) What are the costs of implementing the 1986–90 Operating Plan as compared to the value of the product? (4) Are interconnected transportation systems between communities desirable? (5) What is the potential for a loss of soil productivity? (6) How will fish habitat, wildlife habitat, water quality, be maintained? (7) How will the change in land base as a result of Native Corporation and State land selection affect the timber sale? (8) What is the potential for blowdown, and what would be an appropriate process for dealing with blowdown as it occurs in the 1986–90 Operating Period? (9) What will be the logistics, cost and environmental impacts, of the proposed logging camp locations? (10) How will technically marginal timber be phased into the harvesting plan? (11) How will substitution of timber volume from wilderness areas within the 50-day timber sale contract be accommodated?

The analysis is expected to take about eight months. It is anticipated that the Draft Environmental Impact Statement should be available for public review in December 1983 and the Final Environmental Impact Statement is expected to be completed in May of 1984. Implementation of harvest activities would not occur until after December 1985.

The responsible official is R. Max Peterson, Chief of the Forest Service. Comments on this Notice of Intent or on the proposed activity should be sent to William P. Gee, Forest Supervisor, Chatham Area, Tongass National Forest, P.O. Box 1980, Sitka, Alaska 99835, or John M. Hughes, Forest Supervisor, Stikine Area, Tongass National Forest, P.O. Box 3091 Petersburg, Alaska 99833 by April 1, 1983.

Dated: February 28, 1983.

F. Dale Robertson,

Associate Chief, Forest Service

[FR Doc. 83-6024 Filed 3-9-83; 8:45 am]

BILLING CODE 3410-11-M

Deschutes National Forest Grazing Advisory Board; Meeting

The Deschutes National Forest Grazing Advisory Board will meet at 10 a.m. on March 30, 1983, at the Forest Supervisor's Office, 211 NE Revere, Bend, Oregon 97701. The purpose of this meeting is:

1. Review Deschutes National Forest Range Management Program for 1983 and 1984.

2. Review Allotment Management Plans and Range Betterment Funds.

3. Review status of Forest Land and Resource Management Plan.

4. Open discussion of topics of interest to the Advisory Board.

This meeting will be open to the public. Persons who wish to attend should contact Will Griffin, 211 NE Revere, Bend, Oregon 97701, telephone 382-6922, extension 362.

Dated: March 4, 1983.

Wallace S. Qual,

Acting Forest Supervisor.

[FR Doc. 83-6077 Filed 3-9-83; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[Case No. 640]

Robert J. Lambert d.b.a. Computer and Test Systems, et al.; Order Temporarily Denying Export Privileges

In the matter of: Robert J. Lambert d.b.a. Computer and Test Systems, 5671 Via Ceresa, Yorba Linda, California 92686; Dierk Hagemann d.b.a. Uni-Data World Transport Corporation, 110 Standard Street, El Segundo, California 90245; and Albert Franz Kessler, 20 Kennel Street, 8800 Thawil, Switzerland.

The Department of Commerce (the "Department"), pursuant to the provisions of § 388.19 of the Export Administration Regulations (15 CFR Part 368, *et seq.* (1982)) (the "Regulations"), has petitioned the Hearing Commissioner for an order temporarily denying all export privileges to Robert J. Lambert, doing business as Computer and Test Systems, 5671 Via Ceresa, Yorba Linda, California 92686, Dierk Hagemann, doing business as Uni-Data World Transport Corporation, 110 Standard Street, El Segundo, California 90245, and Albert Franz Kessler, 20 Kennel St., 8800 Thawil, Switzerland.

The Department states that separate administrative proceedings have been initiated against the respondents by the Department's Office of Export Enforcement alleging specific violations of the Regulations as follows: (i) That, in order to carry out certain transactions, the respondents conspired to export certain U.S.-origin electronic testing equipment from the United States to Switzerland without the validated export licenses required by the Regulations; (ii) that Mr. Kessler exported or attempted to export this equipment without the required validated export license; (iii) that Mr. Hagemann caused documents and records relating to the purchase and delivery of this equipment to be destroyed; (iv) that Mr. Lambert subsequently filed two license applications representing that the destination for this equipment was Tijuana, Mexico, knowing, however, that the actual destination was Zurich, Switzerland; and (v) that these respondents may attempt future exports contrary to the Regulations, either directly or through one or more of the known related parties, unless appropriate action is taken to preclude such attempts.

The Department further states that on September 7, 1982, a federal jury found: (1) Messrs. Lambert, Hagemann and Kessler guilty of conspiring to export U.S.-origin electronic testing equipment from the United States to Zurich, Switzerland without having first obtained the required validated export licenses from the Department; (2) Mr. Kessler guilty of attempting to export the same equipment from the United States in violation of the Regulations, and Messrs. Lambert and Hagemann guilty of aiding and abetting such attempt; (3) Mr. Hagemann guilty of causing documents and records relating to the purchase and delivery of this equipment to be destroyed; and (4) Mr. Lambert, doing business as Computer and Test Systems, guilty of knowingly and willfully making false statements and representations to a government agency (the Department).

Based upon the showing made by the Department, I find that an order temporarily denying all export privileges to Robert J. Lambert, doing business as Computer and Test Systems, Dierk Hagemann, doing business as Uni-Data World Transport Corporation, and Albert Franz Kessler, and to related parties, is required in the public interest to facilitate enforcement of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401, *et seq.* (Supp. III 1979)), and the Regulations and to avoid circumvention of the administrative proceedings.

Anyone who is now or may in the future be dealing with the above-named respondents or any related party in transactions that in any way involve U.S.-origin commodities or technical data is specifically alerted to the provisions set forth in Paragraph IV below.

Accordingly, it is hereby

Ordered

I. All outstanding validated export licenses in which respondents or any related party appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Administration for cancellation.

II. The respondents, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to a validated export license application, (b) in the preparation or filing of any export license application or reexport authorization, or of any document to be submitted therewith, (c) in the obtaining or using of any validated or general export license or other export control document, (d) in the carrying on of negotiations with respect to, or in the receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in the financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. Such denial of export privileges shall extend not only to the respondent, but also to its agents and employees and to any successor. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services. Business organizations and individuals now known to be owned by or affiliated with the named respondents, and which are accordingly subject to the provisions of this order, are:

Export Assistance Services, 5671 Via Ceresa, Yorba Linda, California 92686;
Warner Trading Corporation, 5671 Via Ceresa, Yorba Linda, California 92686;
Mrs. Margaret Lambert, 5671 Via Ceresa, Yorba Linda, California 92686;
Manuel Rodrizuez d.b.a. Export Assistance Services, 5671 Via Ceresa, Yorba Linda, California 92686;
Computer Information Systems, also known as (C.I.S.), P.O. Box 90280, Los Angeles, California 90009;

Uni-Data Systems, P.O. Box 90280, Los Angeles, California 90009;
Uni-Data World Ocean Transport Inc.;
Uni-Data Customs Brokers Inc.;
Uni-Data Transport Ltd., London, England and Zurich, Switzerland.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Administration, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with the respondents or any related party, or whereby the respondents or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for the respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. In accordance with the provisions of § 388.19(b) of the Regulations, the respondents or any related party may move at any time to vacate or modify this temporary denial order by filing with the Hearing Commissioner, International Trade Administration, U.S. Department of Commerce, Room 6716, 14th and Constitution Avenue NW., Washington, D.C. 20230, an appropriate motion for relief, supported by substantial evidence, and may also request an oral hearing thereon, which, if requested, shall be held before the Hearing Commissioner at the earliest convenient date.

VI. This order is effective immediately. It remains in effect until the final disposition of the administrative proceedings initiated against the respondents. A copy of this order and Parts 387 and 388 of the Regulations shall be served upon the respondents and the above-designated related parties.

Dated: February 28, 1983.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 83-6151 Filed 3-9-83; 8:45 am]

BILLING CODE 3510-25-M

Telecommunications Equipment Technical Advisory Committee; Closed Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Telecommunications Equipment Technical Advisory Committee was initially established on October 23, 1973, and rechartered on September 18, 1981, in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving: (A) Technical specifications and policy issues relating to those specifications which are of concern to the Department, (B) worldwide availability of products and systems, including quantity and quality, and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to telecommunications equipment or technology, and (D) exports of the aforementioned commodities subject to unilateral and multilateral controls which the United States establishes or in which it participates including proposed revisions of any such controls.

Time and Place: March 31, 1983, at 10:00 a.m. The meeting will take place at the Main Commerce Building, Room 3708, 14th Street and Constitution Avenue, NW., Washington, D.C.

The Committee will meet only in executive session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 29, 1981, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone 202-377-4217.

FOR FURTHER INFORMATION CONTACT: Mrs. Margaret Cornejo, Committee Control Officer, Office of Export Administration, Room 2613, U.S. Department of Commerce, Washington, D.C. 20230; telephone 202-377-2583.

Dated: March 3, 1983.

John K. Boidock,

Director, Office of Export Administration.

[FR Doc. 83-6199 Filed 3-9-83; 8:45 am]

BILLING CODE 3510-25-M

Minority Business Development Agency

Minority Business Development Center Program, Jacksonville, Fla.; Soliciting Applications

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) program to operate one project for a 12-month period beginning July 1, 1983, in the Jacksonville, FL SMSA. The cost of the project is estimated to be $187,000. The maximum Federal participation amount is $168,300. The minimum amount required for non-Federal participation is $18,700. The award number will be 04-10-83006-01.

Applicants shall be required to contribute at least 10% of the total program costs through non-Federal funds. Cost sharing contributions can be in the form of cash contributions, fee for services or in-kind contributions.

CLOSING DATE: April 7, 1983.

ADDRESS: Atlanta Regional Office, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, GA 30309.

FOR FURTHER INFORMATION CONTACT: Gordon M. Anderson/Karen Davis; telephone (404) 881-3094.

SUPPLEMENTARY INFORMATION:

A. Scope and Purpose of This Announcement

Executive Order 11625 authorizes MBDA to fund projects which will

provide technical and management assistance to eligible clients in areas related to the establishment and operation of businesses. The MBDC program is specifically designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit through which and from which information and assistance to and about minority businesses are funneled.

B. Eligible Applicants

Awards shall be open to all individuals, non-profit organizations, for-profit firms, local and state governments, American Indian tribes and educational institutions.

C. Evaluation Process

All proposals received as a a result of this announcement will be evaluated by a MBDA review panel.

D. Evaluation Criteria for Minority Business Development Center Applications

The evaluation criteria is designed to facilitate an objective evaluation of competitive applications for the Minority Business Development Center program.

MBDA reserves the right to reject any or all applications, including the application receiving the highest evaluation, and will exercise this right when it is determined that it is in the best interest of the Government to do so (e.g., the apparent successful applicant has serious unresolved audit issues from current or previous grants, contracts or cooperative agreements with an agency of the Federal Government).

Evaluation of proposals will employ the following criteria:

I. *Capability and Experience of Firm/Staff*—provide information that demonstrates the organization's capabilities and prior experiences in addressing the needs of minority business individuals and firms. Provide information that demonstrates the staff's capabilities and prior experiences in providing management and technical assistance to minority individuals and firms. Indicate previous experience in MBE community to be served in terms of: inventorying resources and opportunities; the brokering thereof; and providing management and technical assistance.

The following are key factors to be considered in this section:

Firm:

—The organization's receptivity in the MBE community to be served, i.e., business contacts in the public and private sector; leadership responsibilities; and experience in assisting MBE business persons and firms. (References from clients assisted are pertinent.)

—Background credentials and references for the owners of the organization and a capability statement of what the organization can do.

—Knowledge of the geographic area to be served in terms of the needs of minority businesses and past ongoing relationships with local, public and private—entities that can possibly enhance the BDC program effort—i.e., Chambers of Commerce, trade associations, venture capital organizations, banks, SBA, HUD, state, city and county government agencies, etc.

Staff:

—List personnel to be used. Indicate their salaries, educational level and previous experience. Provide resumes for all professional staff personnel.

—Demonstrate competence among staff to effectuate mergers, acquisitions, spin-offs and joint-ventures.

—Provide organizational chart, job descriptions and qualification standards involving all professional staff persons to be utilized on the project.

—If any contractors are to be utilized, identify and indicate areas and level of experience. *Primary consideration will be given to inhouse capability.*

Note.—All contracting proposed should be in accordance with procurement standards in Attachment O of OMB Circulars A-110 or A-102.

II. *Techniques and Methodology*—specify plans for achieving the goals and objectives of the project. This section should be developed by using the outline of the Work Requirements and the MBDC responsibilities as *guides* and will become part of the award document. Include start-up plan and example of work plan format. Fully explain the procedures for: outreach, screening, assisting and monitoring clients; maintaining the profile inventory of minority businesses; and brokering of new business ownership, market and capital opportunities and prevention of business failures. In summary, address how, when and where work will be done and by whom. Include level of performance.

III. *Resources*—address technical and administrative resources, i.e., computer facilities, voluntary staff time and space; and financial resources in terms of meeting MBDA's 10% cost-sharing requirement and including a fee for services for assistance provided clients. A fee for services in the amount of 10% of the cost of assistance will be charged to all clients receiving management and technical assistance.

Cost-sharing is that portion of project costs not borne by the Federal Government. The composition and amount of cost-sharing are key factors that will be considered in determining the merit of this section. The cost sharing requirement can be met through the following order or priority: (1) Cash contributions; (2) fee for services; and (3) in-kind contributions.

A. *Cash contribution*—means cash that is contributed or donated by the recipient, and other non-Federal sources, i.e., public agencies and institutions, private organizations, corporations and individuals.

B. *Fee for services*—is a charge to a client for assistance provided by the MBDC for M&TA and/or SCS.

C. *In-Kind contribution*—represents the value of non-cash contributions provided by the recipient and other non-Federal sources. The order of priority for in-kind contributions are: high technology systems to be utilized to achieve program objectives; top level staff personnel and real and personal property donated by other public agencies, institutions and private organizations. Property purchased with Federal funds will not be considered as the recipient's in-kind contribution. Under no circumstances can the in-kind contribution exceed 50% of the total non-Federal contribution.

IV. *Costs*—demonstrate in narrative format that costs being proposed will give the minority business client and the government the most effective program possible in terms of quality, quantity, timeliness and efficiency.

Include the principal costs involved for achieving work plan under Cooperative Agreement by completing Part III—the Budget Information Section of the Request for Application.

Provide cost-sharing plan information in terms of methodology and format for billing the costs of management and technical assistance and specialized consulting services to clients.

Total project cost will be evaluated in terms of:

—Clear explanations of all expenditures proposed, and

—The extent to which the applicant can leverage Federal program funds and operate with *economy* and *efficiency*.

In conclusion, the applicant's schedule for start of the MBDC operation should

be included in Part II. Part II will be known as the applicant's plan of operation and will be incorporated into the Cooperative Agreement Award.

A detailed justification of all proposed costs is required for Part III and each item must be fully explained.

The failure to supply information in any given category of the criteria will result in the application being considered non-responsive and dropped from competitive review.

All information submitted is subject to verification by MBDA.

E. Disposition of Proposals

Notification of awards will be made by the Grants Officer, U.S. Department of Commerce (DOC) Organizations whose proposals are unsuccessful will be advised by MBDA, DOC.

F. Proposal Instructions and Forms

This program is subject to OMB Circular A-95 requirements.

Questions concerning the preceding information, copies of application forms, and applicable regulations can be obtained at the above address.

Nothing in this solicitation shall be construed as committing MBDA to divide available funds among all qualified applicants.

G. A pre-application conference to assist all interested applicants will be held at the above address on March 24, 1983 at 1:00 p.m.

Dated: March 1, 1983.

(11.800 Minority Business Development (Catalog of Federal Domestic Assistance))

Stanley W. Tate,

Regional Director.

[FR Doc. 83-6148 Filed 3-9-83; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Caribbean Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94-265, as amended), will hold its 45th regular meeting to consider the draft fishery management plan for the shallow-water reef fish fishery of Puerto Rico and the U.S. Virgin Islands to discuss U.S.-Dominican Republic boundary negotiations, as well as discuss other related Council business.

DATES: The Council's public meeting will convene on Monday, April, 11, 1983, at approximately 2 p.m., and will adjourn at approximately 5 p.m; reconvene on Tuesday, April 12, 1983, at approximately 9:30 a.m., and will adjourn at approximately 5 p.m.

ADDRESS: The public meeting will take place at the Frederiksted Fort, Conference Room, Frederiksted, St. Croix, U.S. Virgin Islands.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, Puerto Rico 00918; telephone (809) 753-4926.

Dated: March 7, 1983.

Richard B. Stone,

Acting Chief, Operations Coordination Group, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 83-6193 Filed 3-9-83; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Gulf of Mexico Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94-265, as amended), will meet to discuss comments by the Advisory Panel and the Scientific and Statistical Committee on the red drum fishery profile; discuss public and federal comments on the proposed amendment to the Shrimp and Stone Crab Fishery Management Plans (FMP's); consider amendment to the Coastal Migratory Pelagics FMP, as well as discuss other fishery management and administrative matters, as appropriate.

DATES: The public meetings will convene on Wednesday, April 6, and Thursday, April 7, 1983, at approximately 8:30 a.m., both days, and will adjourn at approximately 5 p.m., on April 6, and at approximately noon, on April 7. The public meetings will take place at the Harbour House Restaurant, 3001 West 10th Street, Panama City, Florida.

FOR FURTHER INFORMATION CONTACT: Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609; telephone (813) 228-2815.

Dated: March 7, 1983.

Richard B. Stone,

Acting Chief, Operations Coordination Group, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 83-6195 Filed 3-9-83; 8:45 am]

BILLING CODE 3510-22-M

Mid-Atlantic Fishery Management Council and New England Fishery Management Council; Public Meetings

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Mid-Atlantic and New England Fishery Management Councils were established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94-265, as amended), and the two Councils will hold joint and separate public meetings. The New England Council will meet separately to discuss reports from the Lobster Oversight and Demersal Finfish Committees, as well as discuss other fishery management and administrative matters. The Mid-Atlantic Council will meet separately to discuss the gear conflicts amendment, the Surf Clam/Ocean Quahog Fishery Management Plan (FMP), the status of other FMP's, as well as other fishery management and administrative matters. The two Councils will also meet jointly to discuss the Surf Clam/Ocean Quahog FMP, joint ventures, the status of other FMP's, as well as other fishery management and administrative matters. The meetings may be lengthened or shortened depending upon progress on the agenda.

DATES: The public meetings will convene at approximately 8:30 a.m., on April 6, 1983, and will adjourn at approximately 5 p.m., on April 7, 1983, at the Sheraton Inn Coliseum, 1215 West Mercury Boulevard, Hampton, Virginia.

FOR FURTHER INFORMATION CONTACT: Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, Delaware 19901; telephone (303) 674-2331.

Dated: March 7, 1983.

Richard B. Stone,

Acting Chief, Operations Coordination Division, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 83-6194 Filed 3-9-83; 8:45 am]

BILLING CODE 3510-22-M

Mid-Atlantic Fishery Management Council's Surf Clam and Ocean Quahog Subpanel; Public Meeting

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Mid-Atlantic Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265, as amended), has established a Surf Clam and Ocean Quahog Subpanel, which will meet to discuss alternatives to Amendment #4 to the Surf Clam and Ocean Quahog Fishery Management Plan.

DATES: The public meeting will convene on Saturday, March 26, 1983, at approximately 10 a.m., and will adjourn at approximately 4 p.m. The meeting may be lengthened or shortened or agenda items rearranged, depending upon progress on the agenda.

ADDRESS: The public meeting will take place at Jonathan's at the Hub, Route 13 and Loockerman Street, Dover Delaware.

FOR FURTHER INFORMATION CONTACT: Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, Delaware 19901; telephone (302) 674–2331.

Dated: March 7, 1983.

Richard B. Stone,

Acting Chief, Operations Coordination Group, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 83-6196 Filed 3-9-83; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Agenda Amendment

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: The agenda for the public meeting of the South Atlantic Fishery Management Council, as published in the **Federal Register**, March 4, 1983 (48 FR 9330), has been changed to include a partially closed session by the Council to discuss personnel matters, on Wednesday, March 23, 1983, from approximately 1 p.m. to 4 p.m. All other information as previously published remains unchanged.

FOR FURTHER INFORMATION CONTACT: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, South Carolina 29407; telephone (803) 571–4366.

Dated: March 7, 1983.

Richard B. Stone,

Acting Chief, Operations Coordination Group, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 83-6192 Filed 3-9-83; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Invention; Notice of Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Government Inventions and Patents, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

George Kudravetz,

Program Manager, Office of Government Inventions and Patents, National Technical Information Service, U.S. Department of Commerce.

Department of Health and Human Services
- SN 6-457,352 Plasmid Cloning vector pAS1
- SN 6-294,203 (4,372,888) nondenaturing Zwitterionic Detergents
- SN 6-170, 570 (4,371,673) Water Soluble Forms of Retinoids
- SN 6-769, 686 (4,371,463) Enxyme-Resistant Oplate Pentapeptides
- SN 6-180, 373 (4,371,540) Nitroimidazoles of Low Toxicity and High Activity as Radiosensitizers of Hypoxic Tumor Cells

Department of Agriculture
- SN 6-258, 482 (4,371,469) Process for the Preparation of Branched Chain Fatty Acids and Esters

Department of the Air Force
- SN 6-187, 646 (4,370,854) Fuel Valve

Department of the Army
- SN 6-202, 261 (4,371,784) Thin Film Plane-Polarized Intensity Pickoff
- SN 6-227, 890 (4,371,884) Inas-Gasb Tunnel Diode
- SN 6-279,394 (4,371,968) Monolithic Injection Laser Arrays Formed by Crystal Regrowth Techniques
- SN 6-208,961 (4,371,866) Real-Time Transformation of Incoherent Light Images to Edge-Enhanced Darkfield Representation for Cross-Correlation Applications
- SN 6-140,029 (4,372,211) Thermoelectric Power Supply for Warheads
- SN 6-148,889 (4,372,217) Double Ramp Discarding Sabot
- SN 6-219,046 (4,372,192) First Motion Detector

[FR Doc. 83-6140 Filed 3-9-83; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Department of the Air Force

National Security Telecommunications Advisory Committee; Closed Meeting

A meeting of the National Security Telecommunications Advisory Committee (NSTAC) Resource Enhancements Working Group will be held beginning at 9:00 a.m. on Tuesday, March 29, 1983. The meeting will continue through Wednesday, March 30, 1983. The meeting will be held in the Westgate Building of the MITRE Corporation, 1820 Dolley Madison Boulevard, McLean, Virginia. The agenda is as follows:

A. Opening Remarks.

B. Review of NSTAC Statellite Survivability Process.

C. Government Statement of Requirements.

D. Review and Analysis of Industrial Statellite Survivability Papers.

E. Symposia on Survivability Enhancements.

F. Prioritization of Recommended Enhancements.

G. Adjournment.

Any person desiring information about the meeting may telephone (Area Code 202–692–9274) or write the Manager of the National Communications System, 8th Street and South Courthouse Road, Arlington, Virginia 22204.

Joseph C. Wheeler,

Colonel, USAF, NCS Joint Secretariat.

March 2, 1983.

[FR Doc. 83-6143 Filed 3-9-83; 8:45 am]

BILLING CODE 3810-05-M

Air University Board of Visitors; Meeting

The Air University Board of Vistitors will hold an open meeting at 6:30 pm on 12 April 1983 in the Old South Room of the Maxwell Officers' Club, Maxwell Air Force Base, Alabama.

The purpose of the meeting is to give the board an opportunity to present to the Commander, Air University, a report of the findings and recommendations concerning Air University educational programs.

For further information on this meeting, contact Dr. Dorothy D. Reed, Coordinator, Air University Board of

Visitors, Headquarters, Air University, telephone (205) 293–5157.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 83-6181 Filed 3-9-83; 8:45 am]

BILLING CODE 3910-01-M

Scientific Advisory Board Ad Hoc Committee on Potential Military Utility of Manned National Space Station, Meeting

February 25, 1983

The USAF Scientific Advisory Board Ad Hoc Committee on the Potential Military Utility of a Manned National Space Station will meet at the Pentagon, Washington, DC on March 24–25, 1983. The purpose of the meeting will be to review past studies and experimental results of pertinent Air Force programs. The meeting will convene at 8:30 a.m. and adjourn at 5:00 p.m. each day.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8845.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 83-6400 Filed 3-9-83; 10:41 am]

BILLING CODE 3910-01-M

Office of the Secretary

Defense Science Board Task Force on Close Air Support; Advisory Committee Meeting

The Defense Science Board Task Force on Close Air Support will meet in closed session on 5 thru 7 April 1983 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At the meeting on 5 thru 7 April 1983, the Task Force will consider the potential for improving our capability to achieve sustained effectiveness of close air support in the future air-land battles.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. I (1976)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly these meetings will be closed to the public.

Dated: March 7, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Service, Department of Defense.

[FR Doc. 83-6189 Filed 3-9-83; 8:45 am]

BILLING CODE 3810-01-M

Overseas Dependents Schools; National Advisory Panel on the Education of Handicapped Dependents; Meeting

The National Advisory Panel on the Education of Handicapped Dependents will meet in open session from 9 a.m. to 4 p.m., 22–24 March 1983, at the Hoffman Building, II Room 12N56, 2460 Eisenhower Avenue, Alexandria, Virginia.

The mission of the Panel is to advise the Director, Department of Defense Dependents Schools (DoDDS), of unmet needs within the system for the education of handicapped children, to comment publicly on rules and regulations proposed for issuance by the Office of Dependents Schools (ODS) concerning education for the handicapped and on procedures for distribution of funds, and to assist ODS in developing and reporting all data and evaluation as may assist the Director in performance of her responsibilities under section 618 of Pub. L. 94–142.

The Panel will review the following areas: eligibility criteria, monitoring procedures, and program development.

This meeting is open to the public; however, due to space constraints, anyone wishing to attend should contact the ODS coordinator, Dr. Diane Goltz, Chief, Special Education, 2461 Eisenhower Avenue, Alexandria, Virginia 22331, (202) 325–7810.

Dated: March 2, 1983.

M.S. Healy,

OSD Federal Register Liasion Officer, Washington Headquarters Services, Department of Defense.

[FR Doc. 83-6162 Filed 3-9-83; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs

Civil Uses of Atomic Energy; Proposed Subsequent Arrangement; Canada

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under Agreement for Cooperation Between the Government of the United States of America and the Government of Canada Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of a contract for the sale of 15,322 grams of uranium-233 to Atomic Energy of Canada, Ltd., for use in the study of thorium fuel cycles.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: March 4, 1983.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 83-6156 Filed 3-9-83; 8:45 am]

BILLING CODE 6450-01-M

Civil Uses of Atomic Energy; Proposed Subsequent Arrangement; Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the return of 13.4 kilograms of highly enriched research reactor fuel from the Kyoto University reactor in Osaka, Japan for reprocessing and storage at the DOE facility in Idaho.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security. This arrangement for the return of U.S. origin highly enriched uranium (HEU) is consistent with U.S. non-proliferation objectives in that it serves to reduce the amount of HEU abroad.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: March 4, 1983.

George J. Bradley, Jr.,

Acting Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 83-6157 Filed 3-9-83; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Forms Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: Under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), Department of Energy (DOE) notices of proposed collections under review will be published in the **Federal Register** on the Thursday of the week following their submission to the Office of Management and Budget (OMB). Following this notice is a list of the DOE proposals sent to OMB for approval since Thursday, March 3, 1983. The listing does not contain information collection requirements contained in regulations which are to be submited under 3504(h) of the Paperwork Reduction Act.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The form number; (2) Form title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Type of respondent; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to fill out the form; and (9) A brief abstract describing the proposed collection.

DATE: Last Notice published Thursday, March 3, 1983

FOR FURTHER INFORMATION CONTACT:

John Gross, Director, Forms Clearance and Burden Control Division, Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., NW., Washington, DC 20503

Jefferson B. Hill, Department of Energy, Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503

Vartkes Broussalian, Federal Energy Regulatory Commission, Desk Oficer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION: Copies of proposed collections and supporting documents may be obtained from Mr. Gross. Comments and questions about the items on this list should be directed to the OMB reviewer; comments should also be provided Mr. Gross. If you anticipate commenting on a form, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, D.C., March 7, 1983

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

DOE Forms Under Review by OMB

Form No.	Form title	Type of Request	Response frequency	Response obligation	Respondent description	Estimated number of respondents	Annual respondent burden	Abstract
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
EIA: EIA-142	International Energy Agency Imports/ Stocks-at-Sea Report.	Revision	Monthly	Mandatory	Importers of Crude oil, Natural gas liquids, feedstocks and petroleum products.	78	7956	Form EIA-142 is used to collect information on imports and stocks at sea of crude oil, natural gas liquids, feedstocks and petroleum products. The information is used to meet reporting requirements set by the International Energy Agency.
EIA-627	Annual Quantity and Value of Natural Gas Report.	Reinstatement	Annual	Voluntary	State Energy Offices	31	93	Form EIA-627 is designed to obtain information on gas production, the value of marketed natural gas and the number of producing gas wells. Data are used as input to the *Natural Gas Annual*, the *Natural Gas Monthly*, the *Monthly Energy Review* and the *Quarterly* and *Annual Reports to Congress*.
FERC: FERC-521.	Headwater Benefits	Extension	On occasion	Mandatory	Electric Utilities or Industrial Plants.	10	501	Data reported on FERC-521 are needed to carry out the legislation requirements of section 10(f) of the Federal Power Act.

[FR Doc. 83-6158 Filed 3-9-83; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP83-176-000]

Consolidated Gas Supply Corp.; Application

March 7, 1983

Take notice that on January 31, 1983, Consolidated Gas Supply Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP83-176-000 an application pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the continued sale of natural gas to Corning Natural Gas Corporation (Corning) under a combined service agreement which reflects Corning's acquisition of the utility assets of Southern Tier Gas Corporation (Southern Tier), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes the sale of natural gas to Corning as successor to Southern Tier, another customer of Applicant, under a combined service agreement, dated November 19, 1982. The application states that no change in sales obligations, rates, or charges would result from the proposed combination of the Corning and Southern Tier service agreements and that no new or additional jurisdictional facilities are required to be constructed in connection with the instant proposal. It is asserted that the only change not a result of the combination of Applicant's existing service agreements is the addition to Article IV of the agreement of two new delivery points in the Village of Bath, New York. These delivery

points are off-system, wholly intrastate connections for delivery of locally-produced gas purchased by Consolidated and resold to Corning, without commingling with Consolidated's general system supply, it is asserted.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 28, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held witout further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on it own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-6176 Filed 3-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-188-000]

El Paso Natural Gas Co.; Application

March 7, 1983.

Take notice that on February 9, 1983, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP83-188-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas metering facilities and the deletion of a balancing point with Northwest Pipeline Corporation (Northwest) all located in La Plata County, Colorado, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that by order issued January 22, 1974, in Docket No. CP73-331, *et al.*, the Commission approved activities that were to be undertaken pursuant to a San Juan Gathering Agreement dated January 31, 1974, as amended, between Applicant and Northwest. The gathering agreement, it is said, provides for the mutual gathering and exchange of natural gas in the San Juan Basin area of northwestern New Mexico and southwestern Colorado. The authorizations, it is stated, granted by the Commission's January 22, 1974, order permitted Applicant and Northwest to utilize, among other things, a point of interconnection between their respective gathering systems in the San Juan Basin area referred to as the Point of Interconnection No. 2 in order to achieve the balancing of deliveries of exchange gas under the gathering agreement. Said Point of Interconnection No. 2 is located at the intersection of Applicant's Trunk 4A-39 pipeline and Northwest's Trunk K pipeline in La Plata County, Colorado, it is asserted.

Applicant states further that subsequent to the installation and initial operation of the Point of Interconnection No. 2 pressure differentials between gathering pipelines of Applicant and Northwest developed which made the exchange of balancing gas at that point impractical. Applicant asserts that as a direct consequence no balancing gas has been delivered by the parties at the Point of Interconnection No. 2 since December 1976. Moreover, it is stated, since the gathering agreement currently provides for four additional balancing points, Applicant and Northwest do not anticipate the need for the Point of Interconnection No. 2 in the future. Applicant and Northwest, it is said, have therefore entered into an amendatory agreement dated December 21, 1982, wherein the parties have mutually agreed to delete said balancing point from the gathering agreement. Accordingly, Applicant requests permission and approval to remove the idle metering facilities, consisting of two standard 12¾ inch O.D. orifice-type meter runs with appurtenances and place them in stock for future use.

Applicant states that no interruption, reduction or termination of natural gas service presently rendered by Applicant to any of its customers would result upon effectuation of the abandonment.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 28, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-6177 Filed 3-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI75-122-001, et al.]

Getty Oil Company, et al.; Applications To Amend Certificates To Establish Entitlement To Section 109 Price[1]

March 7, 1983.

Take notice that each of the Applicants listed herein has either filed

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

a petition to amend certificate pursuant to Section 7 of the Natural Gas Act or a notice of change in rate which is being treated as a petition to amend certificate to establish Applicant's right to collect the section 109 price consistent with the court order issued in *Tenneco Exploration Ltd v. FERC*, 649 F2d. 376, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 22, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI75-122-001, February 14, 1983	Getty oil company, Post Office Box 1404, Houston, Texas 77251.	Trunkline Gas Company	(1)	
CI77-17-001 February 14, 1983	do	Transco Gas Supply Company	(1)	
CI78-256-002 February 14, 1983	do	United Gas Pipeline Company	(1)	
CI78-1103-001 February 14, 1983.	do	United Gas Pipeline Company	(1)	

[1] Applicant proposes to amend certificate to establish Applicant's entitlement to collect section 109 price consistent with court order issued in *Tenneco Exploration, Ltd.* v. *FERC* 649 F2d 376.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 83-6178 Filed 3-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA 83-2-37-000 (PGA 83-2, IPR 83-2)]

Northwest Pipeline Corporation; Change in Rates Pursuant to Purchased Gas Cost Adjustment

March 4, 1983.

Take notice that Northwest Pipeline Corporation (Northwest), on February 15, 1983, tendered for filing a proposed change in rates applicable to service rendered under rate schedules affected by and subject to Article 16, Purchase Gas Cost Adjustment Provisions ("PGAC"), contained in its FERC Gas Tariff, First Revised Volume No. 1. Such change in rates is for the purpose of (1) reflecting changes in Northwest's cost of purchased gas which will become effective during the period April 1, 1983 through September 30, 1983, applied to volumes purchased for the 12-month period ending December 31, 1982; (2) its change in unrecovered purchased gas costs since Northwest's prior PGAC filing dated August 16, 1982; and (3) projecting incremental surcharges to be assessed Northwest's affected direct and sales for resale customers pursuant to Order 49. Northwest has included as part of this change in rates costs associated with its pre-1973 leasehold production valued at the applicable NGPA rates pursuant to the March 2, 1982 mandate of the United States Court of Appeals for the Fifth Circuit in *Mid-Louisiana Gas Company* v. *FERC* 664 F.2d 530 (1981).

The current PGAC adjustment, for which notice is given herein, aggregates to a decrease of 1.079¢ per therm in all rate schedules affected by and subject to the PGAC. The annualized change in Northwest's rates is a decrease of $21,176,726. Northwest proposes to recover through a surcharge the adjusted balance of ($3,598,921) in its current deferral subaccount of FERC Account No. 191, as of December 31, 1982. The proposed change in rates from the PGAC and the other changes proposed by Northwest would result in a net decrease in its annual revenues from jurisdictional sales and service of $32,182,657.

Northwest is concurrently filing a notice of change in rates applicable to Section 13.7, Changes in Rates to Reflect Curtailment Credits, contained in its First Revised Volume No. 1 Tariff. In accordance with Article 13.7 contained in the aforementioned tariff, the current rate adjustments under the Demand Charge Credit Adjustment provision is to become effective on Northwest's PGAC adjustment date. Accordingly, both rate ajustments are reflected on the tendered First Amended Eighth Revised Sheet No. 10 which is proposed to become effective on April 1, 1983. Northwest also tendered for filing and acceptance Sixth Revised Sheet No. 10-B. Sixth Revised Sheet No. 10-B sets forth revised projected incremental pricing surcharges to become effective April 1, 1983 as part of the instant filing.

A copy of this filing has been served on all parties on record in Docket No. RP72-154, upon all jurisdictional customers, and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before March 9, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-6160 Filed 3-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 3174-001, et al.]

Ptarmigan Resources and Energy, Inc., et al; Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1a. Type of Application: License Less than 5MW

b. Project No: 3174-001

c. Date Filed: January 5, 1983

d. Applicant: Ptarmigan Resources and Energy, Incorporated

e. Name of Project: Vallecito

f. Location: Los Pinos River, near the City of Durango, La Plata County, Colorado

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r)

h. Contact Person: Johnnie A. Siegfried, President, Ptarmigan Resources and Energy, Inc., P.O. Box 292, Durango, Colorado 81301

i. Comment Date: April 29, 1983.

j. Description of Project: The proposed project would utilize the existing U.S. Bureau of Reclamation's Vallecito Dam, Reservoir and adjacent lands and would consist of: (1) A new concrete headwall/intake structure connected to the existing outlet works; (2) a new 1200-foot long, 16-foot deep, 60-foot wide power canal; (3) a new 8.5-foot diameter, 80-foot long welded steel penstock; (4) a new powerhouse containing a single 2,350 kW turbine-generator; (5) an outlet channel; (6) an 1,800-foot long, 12.4-kV transmission line; and (7) appurtenant facilities. The Project would generate up to 8,500,000 kWh annually. The application was filed during the term of Applicant's preliminary permit for Project No. 3174.

k. Purpose of Project: Energy produced at the project would be sold to the local electric cooperative

l. This notice also consists of the following standard paragraphs: A2, B, C, D1

2a. Type of Application: Major License (Over 5 MW)

b. Project No.: P-3344-002

c. Date Filed: January 10, 1983, and revised on January 20, 1983

d. Applicant: Town of Gassaway, West Virginia

e. Name of Project: Sutton

f. Location: On the Elk River, near the Towns of Sutton and Gassaway, Braxton County, West Virginia

g. Filed Pursuant to: 16 U.S.C. 791(a)-825(r)

h. Contact Person: Mr. Robert R. Sowa, 193 Main Street, Sutton, West Virginia 26601

i. Comment Date: April 27, 1983.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Sutton Dam and would consist of: (1) New trash bars; (2) a new 16-foot-diameter penstock connected to three existing outlet sluices; (3) a new gated by-pass; (4) a new powerhouse containing two generating units having a total rated capacity of 12,000-kW operated under an 89-foot-head and at a flow of 1,730 cfs; (5) a tailrace; (6) a new switchyard; (7) a new 1,400-foot-long 138-kV transmission line; and (8) miscellaneous appurtenant facilities

Applicant proposes to reschedule the flow from the reservoir to generate the maximum energy during peak hours. Applicant estimates that the proposed project would cost $12,500,000. The application was filed during the term of Applicant's preliminary permit for Project No. 3344

k. Purpose of Project: Project energy would be sold to Allegheny Power System. Applicant estimates that the average annual energy output would be 50 GWh

l. This notice also consists of the following standard paragraphs: A2, B and C

3a. Type of Application: License (5 MW or Less)

b. Project No.: 4881-002

c. Date Filed: September 7, 1982

d. Applicant: Ada County, City of Boise, & Arthur L. Bloom

e. Name of Project: Barber Dam

f. Location: On Boise River, near Boise, in Ada County, Idaho

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r)

h. Contact Person: William Kenney, Perito, Duerk, Carlson and Pinco, Suite 400, 1140 Connecticut Ave. NW., Washington, D.C. 20036

i. Comment Date: April 8, 1983.

j. Competing Application: Project No. 3598. Date Filed: 10/23/80. Notice Issued: 2/1/81

k. Description of Project: The Barber Damn Project would consist of: (1) The existing 1,500-foot-long, 25-foot-high embankment and timber-crib Barber Dam; impounding (2) a 180-acre reservoir; (3) a new intake structure; (4) a concrete powerhouse containing three generating units with a total installed capacity of 4,140 kW; (5) a 100-foot-long concrete tailrace; and (6) a 175-foot-long transmission line. The run-of-the-river project would have an estimated average annual generation of 16.5 million kWh

l. Purpose of Project: The energy generated by the project would be sold to Idaho Power Company

m. This notice also consists of the following standard paragraphs: A2, B, C, D1

4a. Type of Application: Exemption of Small Hydroelectric Power Project

b. Project No: 6186-000

c. Date Filed: April 7, 1982

d. Applicant: Birch Creek Hydro

e. Name of Project: Birch Creek

f. Location: Inyo County, California

g. Filed Pursuant to: 18 CFR Part 4 Subpart K (1980)

h. Contact Person: Mr. K. Thomas Miller, President, Fluid Energy Systems, Inc., 2210 Wilshire Blvd., #699, Santa Monica, California 90403.

i. Comment Date: April 11, 1983.

j. Description of Project: The proposed project would consist of: (1) 2 proposed powerhouses, each containing 1 generating unit rated at 1,608 kW and 3,120 kW, respectively; (2) proposed diversion and intake structures; (3) proposed steel penstocks and pipelines, ranging in size from 24 inches to 42 inches; (4) proposed 13 kV and 34 kV transmission lines; (5) proposed solar power pumping system; and (6) appurtenant facilities. The average annual energy output would be 19,942,584 kWh. The Applicant would utilize lands owned by the U.S. Forest Service and the Bureau of Reclamation.

k. Purpose of Project: The Applicant proposes to sell the generated power to Southern California Edison.

l. This notice also consists of the following standard paragraph: A1, B, C, and D3a

5a. Type of Application: 5 MW Exemption

b. Project No: P-6802-000

c. Date Filed: October 26, 1982

d. Applicant: Snowbird, Ltd.

e. Name of Project: Little Cottonwood Creek/Tannersville

f. Location: Salt Lake County, Utah; Little Cottonwood Creek

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705 and 2708 *as amended*).

h. Contact Person: Gale C. Corson, P.E., 594 SE Craven Rd., Bend, Oregon 97702.

i. Comment Date: April 8, 1983.

j. Description of Project: The proposed totally unconstructed and run-of-the-river project would consist of: (1) A reinforced concrete diversion structure, approximately 50.0 feet long and 6.0 feet high, and extending from bank to bank;

(2) a reservoir having negligible storage capacity; (3) a steel penstock, 36.0-inches in diameter, and approximately 5,550 feet long; (4) a powerhouse with two generating units, one 390 kW and the other 2,045 kW, giving a total installed capacity of 2,435 kW; (5) an underground 25-kV transmission line, approximately 0.2-miles long; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 7.2 million kWh. The project would be located within the Wasatch National Forest. Project power would be sold to the Utah Power & Light Company.

k. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

l. This notice also consists of the following standard paragraphs: D3a, A1, B and C.

6a. Type of Application: License (under 5 MW)

b. Project No.: 6951–000

c. Date Filed: December 21, 1982

d. Applicant: Oglethorpe Power Corporation

e. Name of Project: Tallassee Shoals Hydro Project

f. Location: The Middle Oconee River in Clarke and Jackson Counties, Georgia

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Contact Person: Mr. Donald L. Martin, Oglethorpe Power Corporation, 2888 Woodcock Blvd., Atlanta, Georgia 30348

i Comment Date: April 29, 1983

j. Description of Project: The proposed project would consist of: (1) An existing quarry rock dam 365 feet long and 25 feet high with a 70-foot-wide breach; (2) a proposed impoundment with a surface area of 37 acres and with a storage capacity of 350 acre-feet; (3) the proposed installation of two 950 kW generator/turbine units for a total installed capacity of 1.9 MW; (4) the proposed refurbishing of a 1400-foot-long and 20-foot-wide headrace; (5) the proposed refurbishing of two existing penstocks which are 8-feet in diameter and which are 60 and 100 feet long respectively; (6) the proposed reconstruction of a powerhouse on the foundation works of the original powerhouse; (7) the proposed interconnection with Georgia Power Company less than one-mile from the project; and (8) appurtenant facilities. The average annual generation is estimated to be 8.0 GWh

k. The notice also consists of the following standard paragraphs: A2, B, C, and D1

7a. Type of Application: Preliminary Permit

b. Project No.: 6960–000

c. Date Filed: December 27, 1982

d. Applicant: Midvale Irrigation District

e. Name of Project: Pilot Canal Chute Hydroelectric Power Development

f. Location: Pilot Canal, Fremont County, Wyoming

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Contact Person: Mr. Jack Long, Manager, Midvale Irrigation District, Post Office Box 128, Pavillion, Wyoming 82523

i. Comment Date: May 2, 1983

j. Description of Project: The proposed project would consist of: (1) A proposed diverion structure at the head of the existing Pilot Canal Chute; (2) a proposed penstock; (3) a proposed powerhouse at the bottom of the Pilot Canal Chute, with an estimated installed capacity of 2,500 kW; (4) a proposed transmission line to an existing substation about 6 miles from the site; and (5) appurtenant facilities. Applicant estimates the average annual generation to be 7.0 GWh

k. Purpose of Project: The Applicant proposes to market the power generated in an appropriate local power market

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, C, and D2

8a. Type of Application: Minor License

b. Project No: 6981–000

c. Date Filed: January 3, 1983

d. Applicant: Ray E. Toney

e. Name of Project: South Canal Hydroelectric

f. Location: Adjacent to the existing by-pass chute connecting the High Line Canal to the South Canal in the Stony Creek basin, on U.S. Bureau of Reclamation land in Glenn County, California.

g. Filed Pursuant to: Federal Power Act (16 U.S.C. 791(a)–825(r))

h. Contact Person: Larry A. Toney, P.O. Box 1342, Redding, California 96099

i. Comment Date: April 29, 1983.

j. Description of Project: The proposed project would utilize an existing irrigation canal and would consist of: (1) A gated intake structure; (2) two 48-inch-diameter, 130-foot-long concrete penstocks; (3) two turbine-generators with a total rated capacity of 350 Kw and an average annul output of 1.2 GWh; (4) a control building; and (5) a 150-foot-long transmission line connecting to an existing power line. Project construction would include extending the access road 130 feet and adding a 12-foot by 15-foot parking area. The Applicant expects the project to cost $400,000.

k. Purpose of Project: To generate electric power for sale to the Pacific Gas and Electric Company.

l. This notice also consists of the following standard paragraphs: A2, B, C and D1

9a. Type of Application: Preliminary Permit

b. Project No.: 6989–000

c. Date Filed: January 10, 1983

d. Applicant: Winterflow Hydro, Inc.

e. Name of Project: Little Sardine Creek

f. Location: On Little Sardine Creek, in Linn County, Oregon

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Contact Person: Mr. Thomas J. Gallagher, President, Winterflow Hydro, Inc., P.O. Box 40352, Portland, Oregon 97240

i. Comment Date: April 29, 1983.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high, 36-foot-long diversion structure; (2) a 3-foot-high, 24-foot-long intake structure; (3) a 30-inch-diameter, 600-foot-long conduit; (4) a 12-inch-diameter, 4,500-foot-long penstock; (5) a powerhouse containing a single generating unit with a rated capacity of 305 kW, operating under a head of 1,200 feet; and (6) a transmission line tying into an existing Consumers Power, Inc., line. The average annual energy output would be 1,336,000 kWh.

A preliminary permit, if issued does not authorize construction. The Applicant seeks a 24-month permit to study the feasibility of constructing and operating the project. The estimated cost for conducting these studies is $25,000. No new access roads will be required for the purpose of conducting these studies.

k. Purpose of Project: Project power will be sold to Consumers Power, Inc.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, C and D2

10a. Type of Application: Preliminary Permit

b. Project No: 7014–000

c. Date Filed: January 20, 1983

d. Applicant: Malta, *et. al.* Irrigation Districts of Montana

e. Name of Project: Fresno Dam Hydro Project

f. Location: Havre, Hill County, Montana

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r)

h. Contact Person: Mr. Sever Enkerud, Tampico Route, Glasgow, Montana 59230

i. Comment Date: April 8, 1983.

j. Competing Application: Project No. 6750-000 Date Filed: October 4, 1982. Notice Due Date: February 11, 1983.

k. Description of Project: The proposed project would be located at the Bureau of Reclamation's Fresno Dam and consists of: (1) A proposed penstock; (2) a new powerhouse to be located on the east side of the existing stilling basin with an installed capacity of 2.6 MW and an average annual generation of 8.8 GWh; (3) transmission lines; and (4) appurtenant facilities. All power generated would be sold to Montana Power Company or a local utility.

l. This notice also consists of the following standard paragraphs: A3, B, C, and D2

11a. Type of Application: Preliminary Permit

b. Project No: 7042-000

c. Date Filed: February 1, 1983

d. Applicant: Cities of Minden, Natchitoches and Ruston, Louisiana

e. Name of Project: Red River Lock and Dam #2

f. Location: Red River mile 89, near the towns of Vick and Pollard, Rapides Parish, Louisiana

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r)

h. Contact Person: Ralph L. Laukhuff, Jr., Vice President, Forte and Tablada, Inc., P.O. Box 64844, Baton Rouge, Louisiana 70896

i. Comment Date: April 29, 1983.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers Red River Lock and Dam #2. The project would consist of a new powerhouse located adjacent to or integral with the Corps' dam structure, containing turbine-generators with a total rated capacity of 39 MW, a transmission line tie-in and appurtenant facilities. The project would produce up to 140,000,000 kWh annually.

k. Purpose of Project: Energy produced at the project would be utilized in the Applicants' municipal electric system for distribution to their customers.

l. This notice also consists of the following standard paragraphs: A4b, A4d, B, C and D2

m. Proposed Scope of Studies under Permit: Applicant seeks issuance of a preliminary permit for a period of two years, during which time it would perform surveys and geologic investigations, coordinate studies with the U.S. Army Corps of Engineers, determine the economic feasibility of the project, reach final agreement on sale of project power, secure financing commitments, consult with Federal, State, and local government agencies concerning the potential environmental effects of the project, and prepare an application for FERC license, including an environmental report. Applicant estimates the cost of studies under permit would be $25,000.

12a. Type of Application: Preliminary Permit

b. Project No.: 7043-000

c. Date Filed: February 1, 1983

d. Applicant: Cities of Minden, Natchitoches and Ruston, Louisiana

e. Name of Project: Red River Lock and Dam #1

f. Location: Red River mile 50, near the town of Marksville, Catachoula Parish, Louisiana

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r)

h. Contact Person: Ralph L. Laukhuff, Jr., Vice President, Forte and Tablada, Inc., P.O. Box 64844, Baton Rouge, Louisiana 70896

i. Comment Date: May 2, 1983.

j. Description of Project: The proposed project would utilize the U.S. Corps of Engineers Red River Lock and Dam #1 which is presently under construction. The project would consist of a new powerhouse located adjacent to or integral with the Corps' dam structure, containing turbine-generators with a total rated capacity of 25 MW, a transmission line tie-in, and appurtenant facilities. The project would produce up to 100,000,000 kWh annually.

k. Purpose of Project: Energy produced at the project would be utilized in the Applicants' municipal electric system for distribution to their customers.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, C and D2

m. Proposed Scope of Studies under Permit: Applicant seeks issuance of a preliminary permit for a period of two years, during which time it would perform surveys and geologic investigations, coordinate studies with the U.S. Army Corps of Engineers, determine the economic feasibility of the project, reach final agreement on sale of project power, secure financing commitments, consult with Federal, State, and local government agencies concerning the potential environmental effects of the project, and prepare an application for FERC license, including an environmental report. Applicant estimates the cost of studies under permit would be $25,000.

13a. Type of Application: Preliminary Permit

b. Project No.: 7053-000

c. Date Filed: February 3, 1983

d. Applicant: Balance One, Incorporated

e. Name of Project: Circular Dam

f. Location: Charles River, near the towns of Needham and Newton, Norfolk and Middlesex Counties, Massachusetts

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r)

h. Contact Person: Allen Benjamin, 99 Concord Road, Wayland, Massachusetts 01778

i. Comment Date: April 29, 1983.

j. Description of Project: The proposed project would consist of: (1) An existing 11-foot high, 84-foot long granite block dam; (2) a reservior with no storage capacity at elevation 70.35 feet M.S.L.; (3) a new intake and gate/trash rack assembly; (4) a new 170-foot long reinforced concrete penstock; (5) a new powerhouse containing turbine-generators with a total rated capacity of 275 kW; (6) a new 50-foot long tailrace channel; (7) a 100-foot long transmission line; and (8) appurtenant facilities. The dam is owned by the Metropolitan District Commission. The project would generate up to 1,060,000 kWh annually.

k. Purpose of Project: Energy produced at the project would be sold to the Metropolitan District Commission or Boston Edison Company.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, C, and D2

m. Proposed Scope of Studies under Permit: Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time it would perform surveys and geologic investigations, determine the economic feasibility of the project, reach final agreement on sale of project power, secure financing commitments, consult with Federal, State, and local government agencies concerning the potential environmental effects of the project, and prepare an application for FERC license, including an environmental report. Applicant estimates the cost of studies under the permit would be less than $61,000.

14a. Type of Application: Change in Land Rights

b. Project No.: 485-010

c. Date Filed: August 11, 1982

d. Applicant: Georgia Power Company

e. Name of Project: Bartlett's Ferry Hydropower Project

f. Location: Layfield Creek Branch of Bartlett's Ferry Reservoir in Harris County, Georgia

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r)

h. Contact Person: Georgia Power Company, Land Department, P.O. Box 4545, Atlanta, Georgia 30303

i. Comment Date: April 8, 1983

j. Description of Project: The Applicant seeks Commission approval

to lease approximately 1 acre of project land to the Harris County Commission of Harris County, Georgia, for the construction of a raw water pumping station consisting of: (1) A proposed floating platform positioned approximately 50 feet from shore upon which will be mounted two 750 gallon per minute pumps; (2) a proposed walkway from the shoreline to the floating platform; (3) a proposed 6-inch flange fitting cast iron water line supported by the walkway and the platform with flexible connections at the pivot points on the land and the platform through which water will be transported to the land; and (4) two proposed water intake lines extending 8 feet below the platform. The Harris County Commission intends to use the water in their municipal water works system. The estimated average water withdrawal rate will be approximately 1.2 million gallons per day initially; will increase to 1.8 million gallons per day by 1990; 2.6 million gallons per day by the year 2000; and is estimated to be 4.4 million gallons per day by the year 2014.

The water filtration plant will be located adjacent to Bartlett's Ferry Road approximately 1600 feet from the pumping station. The plant's location is outside of the project boundary defined in the license held by Georgia Power Company for Bartlett's Ferry Hydropower Project.

k. This notice also consists of the following standard paragraphs: B, C and D2.

15a. Type of Application: Application for License of 5 MW or Less

b. Project No: 6188–001

c. Date Filed: August 6, 1982

d. Applicant: Camille E. and Walton B. Held, A.W. Stuart Trust, W. Titus Nelson, and Dale E. Grenoble

e. Name of Project: Tinnemaha and Red Mountain Creeks

f. Location: County of Inyo, California

g. Filed Pursuant to: Order No. 185, RM 81–10

h. Contact Person: Camille E. Held, P.O. Box 1298, Ventura, California 93002 and Dr. Dale E. Grenoble, 2977 Willow Lane, Suite 201, Thousand Oaks, California 91361.

i. Comment Date: April 18, 1983.

j. Competing Application: Project No. 6186–001 Date Filed: April 7, 1982

k. Description of Project: The proposed project would consist of: (1) A proposed concrete masonry unit powerhouse containing 1 generating unit rated at 950 kW; (2) proposed penstock, conduits, and diversion structures; (3) proposed 12 kV transmission line; and (4) appurtenant facilities. The estimated average annual energy output would be 2,613,210 kWh. The Applicant would utilize lands owned by the U.S. Forest Service.

l. Purpose of Project: The Applicant proposes to sell the generated power to the Los Angles Department of Water and Power or the Southern California Edison.

m. The notice also consists of the following standard paragraph: A3, B, C and D1.

16a. Type of Application: Preliminary Permit

b. Project No.: 6938–000

c. Date Filed: December 16, 1982

d. Applicant: Thomas B. Weathers, Wilson B. Humphries and Roland M. Webb

e. Name of Project: Pine Crest Lake

f. Location: Tuolumne County, California; South Fork Stanislaus River

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Contact Person: Mr. Wilson Humphries, 17104 Mono Vista Road South, Soulsbyville, California 95372

i. Comment Date: May 9, 1983.

j. Description of Project: A preliminary permit does not authorize construction. The proposed project would consist of: (1) The existing 135-foot-high Pinecrest Lake Dam and Reservoir having an 18,300-acre-feet capacity (also known as the Strawberry Reservoir) owned and operated by the Pacific Gas and Electric Company as a flow regulation component of Project No. 2130; (2) a 21-inch-diameter, 500-foot-long penstock; (3) a powerhouse with a total installed capacity of 375 kW; and (4) a 1,200-foot-long, 4-kV transmission line connecting with an existing Pacific Gas and Electric Company transmission line.

The Applicant does not propose to construct any new roads. The Applicant seeks issuance of a preliminary permit for a period of 36 months during which it would conduct engineering, economic and environmental studies and prepare an FERC license application. These studies are estimated to cost $33,000. The proposed project would affect United States lands within the Stanislaus National Forest.

k. Purpose of Project: The estimated annual output of 2 million kWh from the proposed project would be sold to the Pacific Gas and Electric Company.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, C and D2.

17a. Type of Application: Preliminary Permit

b. Project No.: P–7003–000

c. Date Filed: January 18, 1983

d. Applicant: The Phoenix Hydro Corporation

e. Name of Project: Morgan Dam

f. Location: on West Canada Creek, in the Towns of Russia and Trenton, Herkimer and Oneida Counties, New York

g. Filed Pursuant to: 16 U.S.C. 791(a)–825(r)

h. Contact Person: Diane L. Schoonmaker, 2701 Howlett Hill Road, Marcellus, New York 13108

i. Comment Date: May 9, 1983.

j. Description of Project: The proposed project would comprise the following existing facilities owned by the New York State Department of Transportation: (1) A 175-foot-long 8-foot-high concrete overflow-type dam; (2) a 25-foot-wide 10-foot-high taintor gate control at the right (west) bank; and (3) a reservoir having a one-acre surface area and a negligible storage capacity at surface elevation 752 feet M.S.L. datum.

Applicant would add the following facilities: (1) A 5-foot-diameter 75-foot-long steel penstock; (2) a powerhouse containing a generating unit having a rated capacity of 160-kW operated under a 14-foot-head; (3) a 1,000-foot-long 46-kV transmission line; and (4) miscellaneous appurtenances.

k. Purpose of Project: Project energy would be sold to Niagara Mohawk Power Corporation. Applicant estimates that the average annual generation would be 1,200,000 kWh.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, C and D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months, during which time it would perform studies and would prepare an application for an FERC license. Applicant estimates the cost of the work under the permit would be $30,000.

8a. Type of Application: Exemption (5 MW or less)

b. Project No: 7016–000

c. Date Filed: January 24, 1983

d. Applicant: City of Hailey, Idaho

e. Name of Project: Hailey

f. Location: On Indian Creek Springs, near Hailey, within BLM lands, in Blaine County, Idaho

g. Filed Pursuant to: Section 408, Energy Security Act of 1980, 16 U.S.C. §§ 2705 and 2708 *as amended*

h. Contact Person: Wordell Rainey, Mayor, City of Hailey, P.O. Box 945, Hailey, Idaho 83333

i. Comment Date: Apr. 18, 1983.

j. Description of Project: The proposed Hailey Project would consist of: (1) The existing spring collection system, comprising 10-inch-diameter infiltration pipes and collection box; (2) a 2.5-mile-long, 12-inch-diameter pipeline; (3) a 700-foot-long, 18-inch-diameter steel

penstock, bifurcated from the water main; (4) a powerhouse containing one generating unit rated at 46 kW; and (5) an 800-foot-long, underground transmission line. The average annual energy generation is estimated to be 408,000 kWh.

k. Purpose of Project: Power will be sold to Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A1, B, C, D3a.

9a. Type of Application: Preliminary Permit.

b. Project No: 7029-000.

c. Date Filed: January 247 1983.

d. Applicant: Grisdale Hill Company.

e. Name of Project: Fern Ridge Dam.

f. Location: Lane County, Oregon; Fern Ridge Reservoir.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ms. Joy Leong, Morrison and Foerster, 1920 N Street, N.W., Washington, D.C. 20036.

i. Comment Date: May 9, 1983.

j. Description of Project: The proposed project would consist of: (1) Two 9-foot-diameter, 300-foot-long penstocks connected to the existing outlet works from the existing Fern Ridge Dam owned and operated by the U.S. Army Corps of Engineers; (2) a powerhouse with a total installed capacity of 2.7 MW; (3) an outdoor switchyard; and (4) a 300-foot-long, 21-kV transmission line connecting with an existing transmission line. A preliminary permit does not authorize construction. The Applicant seeks a 24-month permit to study the feasibility of constructing and operating the project and does not propose to construct any new roads.

k. Purpose of Project: The estimated 9.5 million kWh generated annually by the project would be sold to the Bonneville Power Administration or a local utility.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, C and D2.

Competing Applications

A1. Exemptions for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1982). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d).

A2. Applications for License—Anyone desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either the competing application itself (see 18 CFR 4.33 (a) and (d), and Part 16, where applicable) or a notice of intent (see 18 CFR 4.33 (b) and (c)) to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or §§ 4.101 to 4.104 (1982).

A3. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing application for license, exemption or preliminary permit, or notices of intent to file competing applications, will be accepted for filing in response to this notice (see 18 CFR 4.30 to 4.33 or §§ 4.101 to 4.104 (1982), as appropriate). Any application for license or exemption from licensing, or notice of intent to file a license or an exemption application, must be filed in accordance with the Commission's regulations (see 18 CFR 4.30 to 4.33 or §§ 4.101 to 4.104 (1982), as appropriate).

Preliminary Permits

A4a. Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A4b. No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or there are proposed to be major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application (see 18 CFR 4.30 to 4.33 (1982)).

A4c. The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before the specified comment date for the particular application. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see 18 CFR 4.30 to 4.33 or §§ 4.101 to 4.104 (1982), as appropriate).

A4d. Submission of a timely notice of intent to file an application for preliminary permit allows an interested person to file an acceptable competing application for preliminary permit no later than 60 days after the specified comment date for the particular application.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of responsive Documents*—Any filings must bear in all capital letters the titles "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments

D1. License applications (5 MW or less capacity)—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. Preliminary permit applications—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. Exemption applications (5 MW or less capacity)—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Act, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. Exemption applications (Conduit)—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 7, 1983.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-6188 Filed 3-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-7004-011]

Pennzoil Company; Second Amendment to Application for Immediate Clarification or Abandonment Authorization

March 4, 1983.

Take notice that on March 3, 1983, Pennzoil Company (Pennzoil), P.O. Box 2967, Houston, Texas 77001, filed in Docket No. G-7004-011 an application for immediate clarification of Order dated November 24, 1980 in the above-referenced docket, or abandonment authorization for as much gas as is required to allow sales of gas to nine new applicants for residential service in West Virginia in addition to those applicants specified in Pennzoil's original application filed on October 25, 1982. In filing this Second Amendment to its original application, Pennzoil incorporates herein and renews each of the requests for clarification or abandonment authorization set forth in that application. Service to these applicants would be provided from gas supplies that would otherwise be sold to Consolidated Gas Supply Corporation (Consolidated), an interstate pipeline.

Pennzoil states that immediate action is necessary to protect the health, welfare and property of the applicants and customers in West Virginia who depend upon Pennzoil for their gas supply needs. Pennzoil also states that immediate action also is required because, by order dated October 21, 1982, the Public Service Commission of West Virginia directed Pennzoil "to show cause, if any it can, why it should not be found to be in violation of its duty . . . to provide adequate gas service to all applicants . . . and why it should not be required to provide service to domestic customers in West Virginia when requests are received for same."

Consolidated has indicated that it has no objection to the requested authorization.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said amendment to the original application should on or before March 11, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Any person previously granted intervention in connection with Pennzoil's original application in Docket No. G-7004-006 need not seek intervention herein. Each such person will be treated as having also intervened in Docket No. G-7004-011.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the

Commission on the amendment to the original application in the event no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-6181 Filed 3-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-199-000]

Sabine Pipe Line Company; Application

March 7, 1983.

Take notice that on February 16, 1983,[1] Sabine Pipe Line Company (Applicant), P.O. Box 52332, Houston, Texas 77052, filed in Docket No. CP83-199-000 an application pursuant to Section 7 of the Natural Gas Act and Subpart F of Part 157 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the construction, acquisition, and operation of certain facilities and the transportation and sale of natural gas and for permission and approval to abandon certain facilities and service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 28, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-6182 Filed 3-8-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL83-1-000]

Sacramento Municipal Utility District v. Pacific Gas & Electric Company; Order Denying Requests for Declaratory Order and Setting Complaint for Hearing

Issued March 7, 1983.

Sacramento Municipal Utility District (SMUD) and Pacific Gas and Electric Company (PG&E) are parties to an interconnection agreement which they call the Power Sale, Exchange and Integration Contract and which is on file with this Commission.[1] On October 21, 1982, SMUD filed a complaint against PG&E alleging that PG&E is wrongfully charging SMUD for stand-by capacity and energy under the terms of this agreement. SMUD also alleges that PG&E has unlawfully withheld payment of uncontested charges due to SMUD for other transactions governed by the agreement as a set-off without seeking Commission approval. SMUD requests that the Commission issue a declaratory order (1) finding that PG&E's allocation of costs for stand-by capacity is unlawful, and (2) requiring a just and reasonable allocation of those costs. Pending resolution of this controversy, SMUD also requests that PG&E be prohibited from collecting costs associated with "out of area purchases" through set-offs or other means.

Notice of the complaint was published in the **Federal Register**, with comments due on or before December 3, 1982. On December 3, 1982, PG&E filed its answer to the complaint. No interventions have been filed.

SMUD subsequently requested interim relief from further set-offs by PG&E in a motion filed on October 22, 1982, and a petition filed on November 30, 1982. These requests were denied by a Commission order issued December 28, 1982, without prejudice to our making a determination on the merits of the complaint.

Background

Among other things, the power sale agreement entitles PG&E to purchase excess capacity from SMUD. The rate for these purchases is determined according to the agreement, and the amounts charged for this service are uncontested.

The agreement also entitles SMUD to stand-by capacity from PG&E to cover deficiencies on SMUD's system. Article 6 of the power sale agreement provides in pertinent part:

(a) Commencing on the date Rancho Seco Unit No. 1, becomes Commercially Operable, Pacific shall use its best efforts to provide, at Points of Delivery, capacity and energy standby to meet Sacramento's load deficiencies pursuant to this Article for scheduled and unscheduled outages, and for delays in completion, of Sacramento Resources and associated Sacramento transmission facilities and Sacramento shall return energy as hereinafter set forth; *provided* such capacity standby for any such delay in completion shall not exceed the Forecasted Capability of the delayed resource.

(b) In exchange for Reserve Capacity and overhaul capacity provided by Sacramento pursuant to Articles 3 and 4, Pacific shall make available capacity to Sacramento for such outages at no charge except to the extent that unscheduled outages, scheduled outages extending beyond the scheduled period or delays in completion of Sacramento Resources and other Sacramento facilities cause Pacific to incur additional costs to obtain capacity from outside the Area to maintain adequate reliable service within the Area. Sacramento shall pay Pacific the amount of such costs.

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[1] The application was initially tendered for filing on February 16, 1983. However, the fee required by § 159.1 of the Regulations under the Natural Gas Act (18 CFR 159.1) was not paid until February 18, 1983; thus filing was not completed until the latter date.

[1] Pacific Gas & Electric Company, Rate Schedule FPC No. 45, filed December 21, 1970. The contract is dated June 4, 1970.

PG&E has billed SMUD approximately $7 million [2] for outage capacity purchased outside of the contract area pursuant to Article (6)(b) between January and July of 1982. When SMUD had still not paid these charges in October of 1982, PG&E began withholding its payments for excess capacity purchased from SMUD as an offset in order to recover the disputed charges. By December 16, 1982, PG&E had offset the entire amount in dispute. SMUD now acknowledges that it owes PG&E $1,131,995 for service under Article 6(b), but SMUD has not voluntarily paid PG&E any of that amount.

SMUD asserts that PG&E's allocation of the cost of out-of-area purchases does not conform to PG&E's filed rate. Thus, SMUD asks that PG&E's present allocation of these costs be declared unlawful and that a just and reasonable allocation be substituted.

SMUD further alleges that only a small portion of PG&E's purchases between January and July of 1982 were in fact caused by SMUD's outages. According to SMUD, whenever PG&E purchases out-of-area capacity when Rancho Seco Unit No. 1 is out of service or is expected to be out of service, PG&E improperly allocates to SMUD the entire cost of the purchase or the cost of purchasing an amount of capacity equal to the capacity of Rancho Seco Unit No. 1, whichever is less. SMUD also alleges that PG&E fails to account for the extent to which PG&E's outages or delay in the completion of PG&E resources contribute to the need for the purchase.

It is SMUD's position that the cost of out-of-area purchases should be equitably allocated between SMUD and PG&E. An equitable allocation, according to SMUD, would include (1) considering Area reserves as available to "the integrated [PG&E–SMUD] system" because SMUD and PG&E contribute an equal percentage of their capacity to Area reserves; (2) making PG&E responsible for that portion of out-of-area purchases which is attributable to PG&E's own outages; and (3) prohibiting PG&E from charging SMUD for replacing capacity that PG&E is receiving from SMUD, becuase SMUD sells that excess capacity at cost, and it should therefore be treated for purposes of Article 6 as a resource of PG&E rather than SMUD.

According to SMUD, PG&E's present allocation makes reserves available to SMUD only to the extent that they are not needed by PG&E. SMUD contends that this allocation: (1) is unjust, unreasonable, unduly discriminatory and preferential, in violation of section 206 of the Federal Power Act; (2) is inconsistent with the terms and intent of the contract between the two parties and therefore violates PG&E's obligation under section 205 of the Act to adhere to the filed rate; and (3) constitutes a change in a filed rate schedule without the notice and permission required by section 205 of the Act and Part 35 of the Commission's regulations.

PG&E responds that its charges have been calculated in accordance with Article 6(b) and that it is SMUD's proposed allocation of the costs of out-of-area purchases that would require a departure from the filed rate. PG&E contends that SMUD has only been billed for out-of-area capacity purchases that resulted from a SMUD resource outage where PG&E did not have sufficient resources available to maintain adequate and reliable service. Where these purchases were made in anticipation of a SMUD resource outage, PG&E asserts that it charged SMUD an amount equal to the rate per kilowatt which PG&E paid for the purchase times the number of kilowatts of the purchase which were caused by the outage, as PG&E contends Article 6(b) expressly permits. PG&E states that not all out-of-area purchases are charged to SMUD, although the only example it gives occurred in August, which was after the period during which the disputed charges were made.

PG&E admits that it takes no account of its own outages or delayed resources in calculating charges for out-of-area purchases but contends that under the terms of the contract it is not required to do so. PG&E admits that SMUD contributes a share of reserve capacity without charge pursuant to Article 3(c) of the contract, but denies that the contract requires PG&E to treat reserves as being equally available to SMUD and PG&E. In addition, PG&E admits that SMUD's capacity is sold to PG&E at cost, but denies that the capacity obtained from SMUD should be treated for purposes of Article 6 as a PG&E resource rather than a SMUD resource. PG&E also admits that it "applies its own resources to meeting the needs of its own customers rather than apportioning or prorating the cost of capacity purchased from outside the Area." However, PG&E denies that the contract or PG&E's interpretation of it is unjust, unreasonable, unduly discriminatory or preferential.

Furthermore, PG&E asserts two "affirmative defenses," both of which pertain to our jurisdiction. First, PG&E alleges that SMUD is seeking a change in the terms and conditions of its own power sales to PG&E when SMUD asks that the amount of capacity it sells to PG&E be excluded from the calculation of out-of-area purchases. PG&E asserts that SMUD's rates and services are beyond the authority of the Commission because SMUD is a governmental entity formed under State law. As its second affirmative defense, PG&E asserts that SMUD is seeking to have the Commission collect SMUD's bills for rates that are not within the Commission's jurisdiction.

PG&E requests that the Commission dismiss the complaint with prejudice. In the alternative, PG&E requests a declaratory order that PG&E's interpretation of its rights to charge SMUD under Article 6(b) of the contract is correct.

Discussion

As a preliminary matter, we shall address PG&E's "affirmative defenses." The second defense was asserted against SMUD's request for a prohibition against further offsets. Without at this time disposing of questions regarding the propriety of PG&E's set-off practice, we note that SMUD's request for an order restraining PG&E from offsetting the particular amounts in controversy has for now become moot since PG&E has already withheld the entire disputed amount from its payments to SMUD for excess capacity. The first defense was asserted against SMUD's request that the amount of capacity it sells to PG&E be excluded from the calculation of out-of-area purchases. It may be true that section 201(f) exempts SMUD's rates and services from regulation by this Commission. However, SMUD is not requesting Commission approval of a change in its own rates and services. The gravamen of SMUD's complaint is that PG&E is incorrectly calculating billings under PG&E's filed rate. It is clear, and PG&E does not deny, that PG&E's rate for service to SMUD is within this Commission's jurisdiction. We see no need to preclude consideration of SMUD's argument merely because capacity sales from SMUD are also involved under the filed rate schedule.

The major question facing the Commission is whether it is appropriate at this juncture to issue a declaratory order on the matters raised by SMUD and by PG&E. SMUD and PG&E dispute several points. They apparently disagree as to whether PG&E has billed SMUD for out-of-area purchases that were not due to actual or anticipated SMUD outages. This is a question of fact which

[2] PG&E had billed SMUD $6,819,260 in charges plus $149,668 in interest as of October 12, 1982.

cannot be resolved on the basis of the pleadings submitted by the parties to date. They also disagree as to whether the contract requires PG&E to (1) take its own outages or delayed resources into account, (2) treat reserves as being equally available to SMUD and PG&E, or (3) treat capacity sold by SMUD to PG&E as a PG&E resource rather than a SMUD resource for the purposes of Article 6(b) of the contract. These are questions of interpreting the contract between the two parties. SMUD asserts that PG&E's allocation violates the intent as well as the terms of the contract. Furthermore, even in the event that PG&E prevails in its interpretation of existing contractual commitments, SMUD's complaint can be read as seeking a prospective amendment to the procedure for allocating out-of-area purchases.

In light of these and other conceivable issues, it would be inappropriate at this time for the Commission to issue an order declaring that the interpretation or actions of either party is correct. The questions raised involve matters best left for resolution after a hearing on the merits. Accordingly, we shall deny the requests for a declaratory order and, instead, set the matter for hearing.

The Commission orders:

(A) The request of SMUD for an order declaring that PG&E's allocation of costs is lawful is hereby denied without prejudice.

(B) The request of PG&E for an order declaring that PG&E's interpretation of its rights to charge SMUD under Article 6(b) of the contract is correct is hereby denied without prejudice.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 205 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act [18 CFR Chapter I], a public hearing shall be held concerning the matters raised in SMUD's complaint and PG&E's response thereto.

(D) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the date of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Such conference shall be held for purposes of delineating the issues and establishing a procedural schedule, including a date for the submission of testimony and exhibits by all participants.

The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(E) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-6183 Filed 3-9-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS81-413-000, et al.]

J. Gregory Merrion Robert L. Bayless, et al.; Applications for "Small Producer" Certificates [1]

March 7, 1983.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7(c) of the Natural Gas Act and Section 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 22, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS71-413-000.	Jan. 24, 1983 [1]	J. Gregory Merrion, Robert L. Bayless, P.O. Box 1017, Farmington, New Mexico 87499.
CS83-53-000.	Feb. 7, 1983	Toxie E. Beavers, 4500 Republic Bank Tower, Dallas, Texas 75210.
CS83-54-000.	do	Joseph Wm. Foren, 4500 Republic Bank Tower, Dallas, Texas 75201.
CS83-55-000.	do	Bob C. Mims, 4500 Republic National Bank Tower, Dallas, Texas 75201.
CS83-56-000.	Feb. 11, 1983	C. Robert Milner, Jr., 10314 Lanshire, Dallas, Texas 75238.
CS83-57-000.	do	Thompson Petroleum Corporation, 4500 Republic Bank Tower, Dallas, Texas 75201.

[1] Letter received dated January 24, 1983 requesting that the small producer certificate issued to J. Gregory Merrion be changed to add the name of Robert L. Bayless to the certificate.

[FR Doc. 83-6179 Filed 3-9-83; 8:45 am]

BILLING CODE 6717-01-M

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

ENVIRONMENTAL PROTECTION AGENCY

[AH-FRL 2318-6]

Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application for an Equivalent Method Determination

Notice is hereby given that on January 24, 1983, the Environmental Protection Agency received an application from the Texas Air Control Board to determine if their X-Ray Fluorescence Spectrometry method for the determination of lead in suspended particulate matter collected from ambient air should be designated by the Administrator of the EPA as an equivalent method under 40 CFR Part 53 (40 FR 7044, 41 FR 11255, 44 FR 37916). If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT:
Larry J. Purdue, FTS 629–2665.

Dated: February 25, 1983.

Courtney Riordan,

Acting Assistant Administrator for Research and Development.

[FR Doc. 83-6110 Filed 3-9-83; 8:45 am]

BILLING CODE 6560-50-M

[AH-FRL 2318-7]

Ambient Air Monitoring Reference and Equivalent Methods; Equivalent Method Designation

Notice is hereby given that EPA, in accordance with 40 CFR Part 53 (40 FR 7049, 41 FR 11255), has designated another equivalent method for the measurement of ambient concentrations of ozone. The new equivalent method is an automated method (analyzer) which utilizes a measurement principle based on the absorption of ultraviolet radiation by ozone at a wavelength of 254 nm.

The method is:

EQOA–0383–056, "Dasibi Model 1008–AH Ozone Analyzer," operated on a range of either 0–0.5 or 0–1.0 ppm, with or without any of the following options:

Ozone Generator
BCD Digital Output
IEEE–488 General Purpose Interface Bus
RD–232–C Digital Output
Error Code

This method is available from Dasibi Environmental Corporation, 616 East Colorado Street, Glendale, California 91205. A notice of receipt of applications for this method appeared in the **Federal Register**, Volume 47, April 22, 1982, page 17331.

A test analyzer representative of this method has been tested by the applicant, in accordance with the test procedures specified in 40 CFR Part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with Part 53, that this method should be designated as an equivalent method.

The information submitted by the applicant will be kept on file at the address shown below and will be available for inspection to the extent consistent with 40 CFR Part 2 (EPA's regulations implementing the Freedom of Information Act).

As an equivalent method, this method is acceptable for use by States and other control agencies for purposes of 40 CFR Part 58, Ambient Air Quality Surveillance (44 FR 27571, May 10, 1979). For such use, the method must be used in strict accordance with the operation or instruction manual provided with the method and subject to any limitations (e.g., operating range) specified in the applicable designation (see description of the method above). Vendor modifications of a designated method used for purposes of Part 58 are permitted only with prior approval of EPA, as provided in Part 53. Provisions concerning modification of such methods by users are specified under Section 2.8 of Appendix C to Part 58 (44 FR 27585).

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in Table B–1 of Part 53 for at least 1 year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with Part 53.

(5) If such an analyzer has one or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the analyzer has been cancelled or if adjustment of the analyzers is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(7) An applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the analyzer (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated non-compliance with any of these conditions should be reported to: Director, Environmental Monitoring Systems Laboratory, Department E (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this equivalent method will provide assistance to the States in establishing and operating their air quality surveillance systems under Part 58. Additional information concerning this action may be obtained by writing to the address given above. Technical questions concerning the method should be directed to the manufacturer.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not a major regulation because it imposes no additional regulatory requirements, but instead announces the designation of an additional equivalent method that is acceptable for use by States and other control agencies for purposes of 40 CFR Part 58, Ambient Air Quality Surveillance (44 FR 27571, May 10, 1979) or other applciations where use of a reference or equivalent method is required.

This notice was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

FOR FURTHER INFORMATION CONTACT:
Larry J. Purdue, FTS 629–2665.

Dated: February 25, 1983.

Courtney Riordan,

Acting Assistant Administrator for Research and Development.

[FR Doc. 83-6111 Filed 3-9-83; 8:45 am]

BILLING CODE 6560-50-M

[WH-FRL 2319-3]

Management Advisory Group to the Construction Grants Program; Open Meeting—March 30–31, 1983

Under Pub. L. 92–463, notice is hereby given that a meeting of the Management Advisory Group (MAG) to the Construction Grants Program will be held at the Environmental Protection Agency, 4th and M Streets, SW., Washington, D.C. 20460 in Room S–353 on March 30–31, 1983 beginning at 9 a.m. on March 30, 1983.

The agenda includes meetings of Task Forces on the 1982/1984 Needs Survey, Compliance/Inspections, and Sludge Management. The agenda will also

include briefings and discussions on other topics of current or future interest to MAG.

The meeting will be open to the public. Additional information on the meeting may be obtained from Ms. Georgette Brown, at the Environmental Protection Agency, WH-547, 401 M Street, SW., Washington, D.C. 20460 or on (202) 382-5859.

Dated: February 25, 1983.

Frederic A. Eidsness, Jr.,

Assistant Administrator for Water (WH-556).

[FR Doc. 83-6112 Filed 3-9-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

Peninsula Savings and Loan, FA, Newport News, Virginia; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in Section 5(d)(6)(A) of the Home Owners' Loan Act of 1933 ("HOLA"), as amended, 12 U.S.C. 1464(d)(6)(A) (1976), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Peninsula Savings and Loan, FA, Newport News, Virginia, on March 3, 1983.

Dated: March 7, 1983.

J. J. Finn,

Secretary.

[FR Doc. 83-6164 Filed 3-9-83; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

[Agreement No. 10374-3]

Availability of Finding of No Significant Impact

Upon completion of an environmental assessement, the Federal Maritime Commission's Office of Energy and Environmental Impact has determined that the Commission's decision on Agreement No. 10374-3 will 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, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

Agreement No. 10374-3 among Hapag-Lloyd A.G., Intercontinental Transport (ICT) and Compagnie Generale Maritime (CGM) is designed to allow ICT and CGM to transport international cargo in the U.S. Gulf and South Atlantic/Europe trade. On August 5, 1980 (45 FR 51918) the FMC issued a Finding of No Significant Impact concerning Agreement No. 10266-4. The subject agreement encompasses the identical operational terms of Agreement No. 10266-4 and none of the energy or environmental considerations relative to the requested intermodal authority have changed since August 5, 1980.

This Finding of No Significant Impact (FONSI) will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 547.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725.

Francis C. Hurney,

Secretary.

[FR Doc. 83-6198 Filed 3-9-83; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by a Bank Holding Company; KYNB Bancshares, Inc.

The company listed in this notice has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in the acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. With respect to the application, interested persons may express their views in writing to the address indicated. Any comment on the application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary), Washington, D.C. 20551:

1. *KYNB Bancshares Inc.*, Lexington, Kentucky; to acquire 95 percent of the voting shares or assets of Citizens Union National Bank & Trust Co., Lexington, Kentucky. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Cleveland. Comments on this application must be received not later than March 18, 1983.

Board of Governors of the Federal Reserve System, March 7, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-6255 Filed 3-9-83; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Bank Shares by a Bank Holding Company; Andrews Financial Corp.

The company listed in this notice has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. With respect to the application, interested persons may express their views in writing to the address indicated. Any comment on the application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Andrews Financial Corporation*, Andrews, Texas; to acquire 80 percent of the voting shares or assets of First National Bank of Hamilton, Hamilton, Texas. Comments on this application must be received not later than April 1, 1983.

Board of Governors of the Federal Reserve System, March 4, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-6090 Filed 3-9-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies; Cambridge Bancorp et al.

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated

for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Cambridge Bancorp,* Cambridge, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Cambridge Trust Company, Cambridge, Massachusetts. Comments on this application must be received not later than April 1, 1983.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlantia, Georgia 30303:

1. *Ardmore Bancshares, Inc.,* Ardmore, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Ardmore, Ardmore, Tennessee. Comments on this application must be received not later than April 1, 1983.

2. *Williamson County Bancorp, Inc.,* Franklin, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Williamson County Bank, Franklin, Tennessee. Comments on this application must be received not later than March 30, 1983.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Purchase Area Bancorp, Inc.,* Bardwell, Kentucky; to become a bank holding company by acquiring 80 percent of the voting shares of Bardwell Deposit Bank, Bardwell, Kentucky. Comments on this application must be received not later than April 1, 1983.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Bazine Bancorp, Inc.,* Bazine, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The Bazine State Bank, Bazine, Kansas. Comments on this application must be received not later than March 30, 1983.

2. *T-Mark Corporation,* Cheyenne, Wyoming; to become a bank holding company by acquiring 92 percent of the voting shares of Farmers State Bank, Lyman, Nebraska. Comments on this application must be received not later than April 1, 1983.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Alvord Financial Corporation,* Alvord, Texas; to become a bank holding company by acquiring at least 95.5 percent of the voting shares of Alvord National Bank, Alvord, Texas. Comments on this application must be received not later than April 1, 1983.

2. *Pharr Financial Corporation,* Pharr, Texas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Security State Bank, Pharr, Texas. Comments on this application must be recieved not later than April 1, 1983.

F. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *Bay Bancorporation,* San Leandro, California; to become a bank holding company by acquiring 100 percent of the voting shares of Bay Bank of Commerce, San Leandro, California. Comments on this application must be received not later than March 30, 1983.

2. *Stadium Bancorp,* Anaheim, California; to become a bank holding company by acquiring 100 percent of the voting shares of California Bank, N.A., Anaheim, California (In Organization). Comments on this application must be received not later than March 24, 1983.

Board of Governors of the Federal Reserve System, March 4, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-6091 Filed 3-9-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Company; St. Ansgar Bancorporation

St. Ansgar Bancorporation, St. Ansgar, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of St. Ansgar State Bank, St. Ansgar, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

St. Ansgar Bancorporation, St. Ansgar, Iowa, has also applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to directly engage in general insurance activities in a town with population of less than 5,000.

These activities would be performed from Applicant's office in St. Ansgar, Iowa, and the geographic area to be served is a 12-mile radius around St. Ansgar, Iowa. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b). In addition, such insurance activities are permissible under Section 601(C) of the Garn-St Germain Depository Institutions Act of 1982.

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

Any views or requests for hearing should be submitted in writing and received by the Reserve Bank not later than April 3, 1983.

Board of Governors of the Federal Reserve System, March 4, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-6092 Filed 3-9-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities; Barclays Bank PLC et al.

The organizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the question whether

consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays Bank PLC* and its subsidiary, *Barclays Bank International Limited*, each a bank holding company whose principal office is in London, England (consumer finance, insurance, and travelers checks activities; Ohio): To continue to engage through their subsidiaries, BarclaysAmerican/Financial, Inc. ("BAF") and BarclaysAmerican/Mortgage, Inc. ("BAM"), in making direct consumer loans, including loans secured by real estate, and purchasing sales finance contracts representing extensions of credit such as would be made or acquired by a consumer finance company, and wholesale financing (floor planning); acting as agent for the sale of credit-related insurance, including credit life, credit accident and health, and credit property insurance. Credit life and credit accident and health insurance sold as agent may be underwritten or reinsured by BAC's insurance underwriting subsidiaries; and selling at retail travelers checks issued by Barclays Bank International Limited. The proposed insurance activities are permissible under Sections 601(A) and 601(D) of the Garn-St Germain Depository Institutions Act of 1982. Comments on this application must be received not later than April 1, 1983.

2. *Citicorp*, New York, New York (finance company activities; Massachusetts, Maine, New Hampshire, Vermont and Rhode Island): To establish a *de novo* office of its subsidiary, Citicorp Acceptance Company, Inc. located in Braintree, Massachusetts. The activities in which the *de novo* office proposes to engage are: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the extension of loans to dealers for the financing of inventory (floor planning) and working capital purposes; the purchasing and servicing for its own account of sales finance contracts; and the servicing for any person, of loans and other extensions of credit. The service area of the *de novo* office would be comprised of the states of Massachusetts, Maine, New Hampshire, Vermont, and Rhode Island. Comments on this application must be received not later than April 1, 1983.

3. *Citicorp*, New York, New York (consumer finance and credit related insurance activities; Washington): To establish five *de novo* offices of its subsidiary, Citicorp Homeowners, Inc. The activities in which the *de novo* offices of Citicorp Homeowners, Inc. propose to engage are: making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; the servicing, for any person, of loans and other extensions of credit; the making, acquiring, and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area for each of the *de novo* offices of Citicorp Homeowners, Inc. shall be comprised of the entire state of Washington for all the aforementioned proposed activities. In regard to credit related insurance, the business of a general insurance agency will not be conducted. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Homeowners, Inc. The aforementioned activities will be conducted from offices in Spokane, Seattle, Bellevue, Tacoma and Lacey, Washington, serving the State of Washington. Comments on this application must be received not later than April 1, 1983.

4. *The Hongkong and Shanghai Banking Corporation*, Hong Kong, B.C.C. (leasing, installment and commercial financing activities; United States): To engage through its existing indirect subsidiary, U.S. Concord, Inc., in leasing and installment financing activities and to act as agent, broker or adviser for such activities; and commercial financing activities, including making installment, conditional sales and working capital loans secured by commercial and industrial equipment. These activities will be conducted from an additional *de novo* office in Dallas, serving the entire continental United States. Comments on this application must be received not later than April 6, 1983.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *South Carolina National Corporation*, Columbia, South Carolina (finance, servicing and insurance activities; South Carolina): To engage, through its subsidiary, Provident Financial Corporation, in making or acquiring of loans or extensions of credit for its own account such as would be made by a consumer finance company; servicing loans and other extensions of credit for the account of others, and offering life, accident, and health, and property insurance directly related to its extensions of credit. These activities would be conducted from an office located in and serving Columbia, South Carolina. Comments on this application must be received not later than April 1, 1983.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Altanta, Geogia 30303:

1. *Southwest Florida Banks, Inc.*, Fort Myers, Florida (real estate appraisals; Florida): To engage through its subsidiary, Southwest Financial Services, Inc., in appraisals of real estate property. These activities would be conducted in the Florida counties of Collier, Lee, Charlotte, Sarasota, Manatee, Hillsborough, Pinellas and Pasco. Comments on this application must be received not later than March 30, 1983.

D. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Northstar Bancorporation*, Wayzata, Minnesota (mortgage banking company, Minnesota): To engage, through its subsidiary, Wayzata Realty Company, in making and acquiring, for its own accounts or for the accounts of others, loans, including but not limited to permanent and construction financing

of residential, income producing, and development projects, and other extensions of credit such as would be made, for example, by a mortgage banking company and servicing of loans and other extensions of credit for any person or company. These activities will be conducted from offices in Wayzata, Minnesota, servicing Minnesota. Comments on this application must be received not later than April 1, 1983.

Board of Governors of the Federal Reserve System, March 4, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-6093 Filed 3-9-83; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Line of Business Program; Request for Comments

AGENCY: Federal Trade Commission.

ACTION: Request for comments on the staff analysis of the benefits and costs of the Federal Trade Commission's Line-of-Business Program.

SUMMARY: The Comission will consider in the near future whether to resume Line of Business data collection for years subsequent to 1977. The Commission requests comments on the staff analysis of the benefits and costs of the Line of Business Program to assist it in making its decision. A 45-day comment period is established and expires April 25, 1983. Comments should be submitted in writing to the Secretary of the Commission; twenty copies should be supplied.

ADDRESS: Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: The Federal Trade Commission is currently engaged in evaluating its Line-of-Business ("LB") Program in order to decide whether to collect LB data for years subsequent to 1977. As part of the evaluation process, notices were published in the Federal Register on February 26, and April 12, 1982 (47 FR 8407, 47 FR 15646), inviting public comments on the benefits and costs of the LB Program. Comments were received from about a hundred parties. LB staff have now prepared and submitted to the Commission an analysis of the benefits and costs of the program, based in part on the information supplied by these outside parties.

By this notice, the Commission makes the staff analysis available to the public and invites interested parties to submit comments on the issues raised by the staff analysis. The comment period begins effective the date of this notice, and expires April 25, 1983. The staff analysis consists of the following set of documents.

1. Memorandum to the Commission from Robert D. Tollison, Richard S. Higgins, and William F. Shughart II, Bureau of Economics, January 20, 1983.

2. Memorandum to the Commission from William F. Long, Manager, Line of Business Program, "Line of Business Data Collection," January 20, 1983.

3. Benefits and Costs of the Federal Trade Commission's Line-of-Business Program.

a. Executive Summary;

b. Volume I: Staff Analysis;

c. Volume II: Public Comments on the Benefits and Costs of the LB Program Received in Response to Federal Register Notice Requests of February 26, 1982 and April 12, 1982;

d. Volume III: Comments of Consultant Reviewers to Preliminary Drafts of Volume I: Staff Analysis.

Interested parties may obtain a copy of those documents by writing the Distribution Branch, Office of Public Records, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., Washington, D.C. 20580, or by calling (202) 523-3598.

FOR FURTHER INFORMATION CONTACT: FTC/ESL, David F. Lean, Washington, D.C. 20580; (202) 634-7332.

Dated: February 22, 1983.

By Direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 83-6280 Filed 3-9-83; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Mental Health Research Education Review Committee; Meeting; Correction

This notice is to correct a document that was published in Federal Register Volume #48, Issue #40, Pages 8348-8349, Docket Number 83-4937 on February 28, 1983 as follows: The open portion of the Mental Health Research Education Review Committee meeting will be March 10 from 1:30-3:00 p.m., instead of March 9.

Dated: March 4, 1983.

Sue Simons,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 83-6079 Filed 3-9-83; 8:45 am]

BILLING CODE 4160-20-M

Rape Prevention and Control Advisory Committee; Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following national advisory body scheduled to assemble during the month of April.

Rape Prevention and Control Advisory Committee: April 11-12; 9:00 a.m., Parklawn Building, Conference Room 17-09B, 5600 Fishers Lane, Rockville, Maryland 20857.

Open: April 11-12.

Contact: Mary Lystad, Ph.D., Executive Secretary, Rape Prevention and Control Advisory Committee, 5600 Fishers Lane, Room 6C-12, Rockville, Maryland 20857; (301) 443-1910.

Purpose: The Rape Prevention and Control Advisory Committee advises the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, through the National Center for the Prevention and Control of Rape (NCPR), on matters regarding the needs and concerns associated with rape in the United States and makes recommendations pertaining to activities to be undertaken by the Department to address the problems of rape.

Agenda: The entire meeting will be open to the public. It will include a report from the National Center for the Prevention and Control of Rape on the research, training and educational activities of the Center. Discussions will be held on the role of the Nurse/practitioner, the physician, the police, and judges in handling of sexual assault cases.

Substantive program information may be obtained from the contact person listed above. A summary of the meeting and roster of the Committee members will be furnished upon request from Ms. Helen W. Garrett, Committee Management Officer, National Institute of Mental Health, Room 17C-26, Parklawn Building, Rockville, Maryland, (301) 443-4333.

Dated: March 7, 1983.

Sue Simons,

Committee Management Officer, Alcohol, Drug Abuse and Mental Health Administration.

[FR Doc. 83-6160 Filed 3-9-83; 8:45 am]

BILLING CODE 4160-20-M

National Institutes of Health

Biometry and Epidemiology Contract Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, March 21, 1983, Building 31C, Vanderbilt University, Medical Center, North U–8206 Learned Laboratory, Nashville, Tennessee 37232. This meeting will be open to the public on March 21, from 8:30 a.m. to 9:00 a.m., to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 522(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on March 21, from 9:00 a.m. to adjournment, for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Wilna A. Woods, Executive Secretary, Biometry and Epidemiology Contract Review Committee, National Cancer Institute, Westwood Building, Room 822, National Institutes of Health, Bethesda, Maryland 20205 (301/496–7153) will furnish substantive program information.

Dated: February 22, 1983.

Betty J. Beveridge,

Committee Management Officer, NIH

[FR Doc. 83–6096 Filed 3–9–83; 8:45 am]

BILLING CODE 4140–01–M

Cancer Center Support Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Center Support Review Committee, National Cancer Institute, March 31-April 1, 1983, Building 31C, Conference Room 6, National Institutes of Health, Bethesda, Maryland 20205. This meeting will be open to the public on March 31 from 8:30 a.m. to 9:30 a.m. to review administrative details, and to present reports by the Division Director, Branch Chief, and Executive Secretary on committee concerns. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on March 31, from 9:30 a.m. to recess, and on April 1, from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. John W. Abrell, Acting Executive Secretary, Cancer Center Support Review Committee, National Cancer Institute, Westwood Building, Room 821, National Institutes of Health, Bethesda, Maryland 20205 (301/496–9767) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Number 13.397, project grants in cancer center support, National Institutes of Health)

Dated: February 22, 1983.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 83–6094 Filed 3–9–83; 8:45 am]

BILLING CODE 4140–01–M

Clinical Cancer Program Project Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Clinical Cancer Program Project Review Committee, National Cancer Institute, April 15–16, 1983, Building 31C, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20205. This meeting will be open to the public on April 15 from 8:30 a.m. to 10:00 a.m. for reports by the Chairperson, Executive Secretary, and other staff members; and to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on April 15, from 10:00 a.m. to recess; and on April 16, from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Louise G. Thomson, Executive Secretary, Clinical Cancer Program Project Review Committee, National Cancer Institute, Westwood Building, Room 809, National Institutes of Health, Bethesda, Maryland 20205 (301/496–7924) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Number 13.397, project grants in cancer center support, National Institutes of Health)

Dated: February 22, 1983.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 83–6093 Filed 3–9–83; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[N–13238]

Airport Lease Amended; Nevada

March 2, 1983.

Notice is hereby given that pursuant to the Act of May 24, 1928, (49 U.S.C. 211–214), Sandy Valley Associates have applied to amend their airport lease N–13238, to include the following described lands:

Mount Diablo Meridian, Nevada

T. 25 S., R. 58 E.,
Sec. 1, Lots 1, 2, 3, 4 and portion of Lot 5 north of the Von Schmidt Line of 1873.

The purpose of this notice is to inform the public that the filing of this amended application segregated the described public lands from all other forms of appropriation under the public land laws. Interested persons should promptly send their comments together with their name and address to the Las Vegas District Manager, Bureau of Land

Management, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Richard G. Morrison,

Acting Deputy State Director, Operations.

[FR Doc. 83-6137 Filed 3-9-83; 8:45 am]

BILLING CODE 4310-84-M

Bureau Forms Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official at (202) 395-7340.

Title: 40 CFR Part 1501, 40 CFR Part 1503, 43 CFR Part 2, Public Comment Form for Energy and Mineral Resources Evaluation.

Bureau Form Number: 3030-2.

Frequency: On Occasion.

Description of Respondents: Evaluators of energy and mineral resources.

Annual Responses: 150.

Annual Burden Hours: 300.

Bureau clearance officer (alternate): Linda Gibbs (202) 653-8853.

Dated: February 8, 1983.

James M. Parker,

Acting Director.

[FR Doc. 83-6136 Filed 3-9-83; 8:45 am]

BILLING CODE 4310-84-M

[C-35774]

Classification of Public Lands for State Indemnity Selection; Colorado

February 28, 1983.

1. Pursuant to Sections 2275 and 2276 of the Revised Statutes, as amended (43 U.S.C. 851, 852), and the provisions granted to the State of Colorado by the Act of March 3, 1875 (18 Stat. 475), the public lands described below are hereby classified for State Indemnity Selection. The State of Colorado has filed an application to acquire the described lands in lieu of certain school lands that were encumbered by other rights or reservations before the State's title could attach. This application was assigned serial number Colorado 35774.

2. The notice of proposed classification of these lands was published in the **Federal Register** of December 13, 1982, Vol. 47, No. 239, pages 55739-55740. The land is being classified as proposed. Public lands lying between the linear strips described in the December 13, 1982 **Federal Register** notice are included in this notice of classification.

3. The lands included in this classification are in Montrose County and are described as follows:

New Mexico Principal Meridian

T. 48 N., R. 16 W.,
Sec. 19, lots 1, 2, 3, W½SW¼NE¼NW¼, and W½NW¼SE¼NW¼.
T. 48 N., R. 17 W.,
Sec. 24, SE¼NE¼NE¼, E½SW¼NE¼NE¼, E½W½SE¼NE¼, E½SE¼NE¼, S½NE¼SW¼, SE¼NW¼SW¼, S½SW¼, NE¼NE¼SE¼, E½NW¼NE¼SE¼, S½N½SE¼, and S½SE¼;
Sec. 25, N½, W½SW¼, E½NE¼NE¼SW¼, W½E½SW¼, W½E½E½SW¼, W½NE¼NE¼SE¼, NW¼NE¼SE¼, and N½NW¼SE¼;
Sec. 26, E½E½, E½SW¼NE¼, and SW¼SE¼;

§ 70.8 [Amended]

Sec. 27, Lots 3 and 4;
Sec. 28, All that portion of Lot 36 lying within a strip 100 feet in width westerly from, and parallel to the centerline of the existing Spring Creek Mesa truck trail;
Sec. 34, Lot 22;

Together with all those portions of the following described public lands lying southeasterly of a line extending from the center of the SE¼NE¼ of section 26, S. 59°02.0'W approximately 8,137 feet to the intersection with line 5-6 of Mineral Survey 20266, Little Basin lode mining claim in lot 20 of section 34, from which corner No. 6 of said claim bears S. 40°30.0'E. 200 feet:

Sec. 26, SE¼SE¼NW¼SW¼, SW¼SW¼, E½SW¼, and NW¼SE¼;
Sec. 27, S½SE¼SW¼SE¼, and SE¼SE¼; and,

All those portions of the following described public lands lying northerly of a line paralleling the centerline of the existing Spring Creek Mesa truck trail, said line being approximately 100 feet southerly from said centerline, through the following described lands:

Sec. 34, W½ of the NW¼ of Lot 1, and Lots 20 and 21;
Sec. 35, N½NW¼NW¼NW¼, NE¼NE¼NE¼NW¼, NW¼NE¼NW¼, and N½NW¼NW¼.

The areas described aggregate approximately 1,400 acres.

4. This classification decision is based on the following disposal criteria set forth in Title 43 Code of Federal Regulations, Part 2400.

Transfer of the lands to the State will help fulfill the Federal Government's common school land grant to the State, and constitutes a public purpose use of the land. Lands found to be valuable for a public purpose use will be considered chiefly valuable for public purposes (43 CFR 2430.2b).

5. Rights-of-way granted by the Bureau of Land Management on the above lands will transfer with the land. All minerals will be reserved to the United States if the land is clearlisted to the State of Colorado. Oil and gas leases will remain in effect under the terms and conditions of the lease. State law and Board of Land Commissioners procedures provide for the offering to holders of Bureau of Land Management grazing permits, licenses or leases the first right to lease lands that are transferred to the State.

In the event these lands are clearlisted, the Bureau of Land Management authorized grazing use will terminate at the time title to the land is transferred to the state. Any cultural resources will be managed by the State.

6. The public lands classified by this notice are shown on a map on file and available for inspection in the Bureau of Land Management, Montrose District Office, 2465 South Townsend, P.O. Box 1269, Montrose, Colorado 81402.

7. For a period of 30 days from the date of publication in the **Federal Register**, this classification shall be subject to exercise of administrative review and modification by the Secretary of the Interior as provided for in 43 CFR 2461.3 and 2462.3. Interested parties may submit comments to the Secretary of the Interior, LLM 320, Washington, D.C. 20240.

George C. Francis,

State Director.

[FR Doc. 83-6141 Filed 3-9-83; 8:45 am]

BILLING CODE 4310-84-M

Idaho Falls District; Advisory Council Meeting

Notice is hereby given in accordance with Pub. L. 91-463, Pub. L. 94-579, Pub. L. 95-514 and 43 CFR Part 1780, that a meeting of the Idaho Falls District Advisory Council will be held on Wednesday, April 13, 1983, at 9 a.m. at the Idaho Falls BLM District Office, 940 Lincoln Road, Idaho Falls, Idaho 83401.

Agenda for the meeting will include the following:

1. Wild Horse and Burro Legislation.
2. Asset Management Program.
3. Right-of-way Application, Poleline Road (Egin-Hamer).

The meeting is open to the public. Interested persons may make oral statements to the Council between 11:30 a.m. and 12 noon, or file written statements for the Council's consideration. The afternoon session will be a field tour to the St. Anthony area to the site of the right-of-way application. Persons wishing to attend

the field tour must provide their own transportation. Anyone wishing to make an oral statement or attend the field tour must notify the District Manager at the Idaho Falls BLM District Office, 940 Lincoln Road, Idaho Falls, Idaho 83401 by April 9, 1983. Depending on the number of persons wanting to make oral statements, a per-person time limit may be established.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction during business hours (7:45 a.m. to 4:30 p.m.) 30 days after the meeting.

Dated: March 1, 1983.

James Gabettas,

Acting District Manager.

[FR Doc. 83-6138 Filed 3-9-83; 8:45 am]

BILLING CODE 4310-84-M

[M-45179]

Montana; Conveyance and Order Providing for Opening of Public Lands

March 2, 1983.

Notice is hereby given that pursuant to Sec. 206 of the Act of October 21, 1976 (43 U.S.C. 1716 (1976)), the surface estate only in the following described land has been conveyed to Carol Raffety, et al., Dillon, Montana:

Principal Meridian, Montana

T. 5 S., R. 8 W.,
Sec. 1, E½SW¼ and W½SE¼;
Sec. 2, SW¼NE¼ and SE¼;
Sec. 11, N½NE¼, SW¼NE¼, NE¼SW¼, and SW¼SW¼; and
Sec. 14, NW¼NW¼.

Containing 600.00 acres.

In exchange for the above land, the United States acquired the surface estate only in the following described land in Beaverhead County, Montana. The government owns the phosphate in the SW¼NE¼, SW¼, W½SE¼, Sec. 3; and the SE¼SE¼, Sec. 4. It owns all the minerals in the SE¼SE¼, Sec. 3, and the NE¼, SE¼NW¼, N½SW¼, Sec. 10:

Principal Meridian, Montana

T. 5 S., R. 8 W.,
Sec. 3, That portion of the SW¼NE¼ south of the Big Hole River, SW¼, W½SE¼ and SE¼SE¼;
Sec. 4, SE¼SE¼ and;
Sec. 10, NE¼, SE¼NW¼ and N½SE¼.

Containing 608.00 acres.

This order restores the land acquired by the United States to the operation of the public land laws generally.

The lands are located along the Big Hole River approximately 14.5 miles northwest of Dillon, Montana. These lands have high recreational values.

At 8 a.m. on April 6, 1983, the lands shall be open to the public land law generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All applications received at or prior to 8 a.m. on April 6, 1983, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Roland Lee,

Acting Chief, Division of Lands and Renewable Resources.

[FR Doc. 83-6135 Filed 3-9-83; 8:45 am]

BILLING CODE 4310-84-M

Richfield District Grazing Advisory Board Meeting

Notice is hereby given in accordance with Pub. L. 92-463, that a meeting of the Richfield District Grazing Advisory Board will be held on March 30, 1983.

The meeting will begin at 9 a.m. in the Conference Room of the Bureau of Land Management Office at 150 East 900 North, Richfield, Utah.

The agenda for the meeting includes discussion of the following items:

(1) Discuss the recently developed Cooperative Management Agreements relating to project implementation (FY 1983).

(2) Discuss 1983 AWP funds and planned projects.

(3) Discuss allotment categorization program.

(4) Discuss the planning and EIS schedule.

(5) Arrange future meeting details.

The meeting is open to the public. Interested persons may make oral statements to the board between 2 p.m. and 3 p.m. on March 30, 1983, or file written statements for the board's consideration.

Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701 by March 25, 1983. Depending on the number of persons wishing to make oral statements, a per person 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 reproductions during regular business hours within 30 days following the meeting.

Dated: February 28, 1983.

Larry R. Oldroyd,

Associate District Manager.

[FR Doc. 83-6140 Filed 3-9-83; 8:45 am]

BILLING CODE 4310-84-M

[UT-910]

Utah Advisory Board; Meeting and Field Tour

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: A combined meeting and field tour will be held at St. George, Utah on March 31, and April 1, 1983 with District Grazing Advisory Boards from Cedar City, Richfield, Moab, Salt Lake and Vernal districts.

The purpose of the tour and meeting will be to review accomplishments in the Hot Desert area including Allotment Management Plans and Range Improvements.

The field tour will commence at 8 a.m. on March 31 and April 1 at the Four Seasons North Motel. A joint meeting will be held at the same motel on March 31 at 7:30 p.m. The meeting agenda items will include Cooperative Allotment Planning Efforts in Utah, and an update on the Randolph Stewardship area.

Individuals desiring to make a statement at the evening meeting or desiring to attend the field tour should notify the Cedar City District Manager at 801-586-2401.

The summary minutes will be maintained in the district offices and will be available 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Margan Jensen, Cedar City District Manager, 801-586-2401.

Dated February 25, 1983.

Roland G. Robison,

State Director.

[FR Doc. 83-6139 Filed 3-9-83; 8:45 am]

BILLING CODE 4310-84-M

[OR-34957]

Realty Action; Competitive/Modified Competitive Sale of Public Land in Lake County, Oregon

The following described parcels of land have been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) at no less than the appraised fair market value shown:

Parcel No.	Legal description	Acreage	Appraised value
T. 27 S., R. 17 E., Willamette Meridian, Oregon			
1	Sec. 15: SW¼SE¼	40	$13,000
2	Sec. 15: SW¼SW¼	40	12,600
3	Sec. 22: SE¼NE¼	40	13,000

Parcel No.	Legal description	Acreage	Appraised value
4	Sec. 14: SE¼SW¼		
	Sec. 23: NE¼NW¼, S½NW¼ NW¼	100	29,500
5	Sec. 23: S½NW¼, N½SW¼	160	49,600

The sale will be held on Wednesday, May 18, 1983, at 10:00 a.m., P.D.T., Bureau of Land Management Conference Room, 1000 South Ninth Street, Lakeview, Oregon.

The sale is consistent with publicly supported Bureau planning. The sale involves isolated land completely surrounded by private land, and because of its location, is difficult and uneconomical to manage as part of the public lands, and is not suitable for management by another Federal department or agency. The public interest will be served by offering this land for sale.

Sale parcels #1, #2, #3, and #5, will be offered for sale at public auction through competitive bidding.

Sale parcel #4 will be offered for sale at public auction through modified competitive bidding with William C. Remy given preference to meet the high selling bid. Refusal or failure by Mr. Remy to meet the high selling bid immediately after the close of oral bidding shall constitute a waiver of such right.

Modified competitive bidding procedures are being used to recognize the needs of adjoining landowners and historical use by these landowners. Preference to meet the high selling bid is authorized under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713; 43 CFR 2711.3-2(a)(2)).

Federal law requires that all bidders by U.S. citizens, 18 years of age or more, a state or state instrumentality authorized to hold property, or in the case of corporations, be authorized to own real estate in the state in which the sale land is offered. Proof of these requirements shall accompany all sale bids.

Sealed written bids will be considered only if received by the Bureau of Land Management, 1000 South Ninth Street, P.O. Box 151, Lakeview, Oregon 97630, prior to 10:00 a.m., Wednesday, May 18, 1983, P.D.T., and for at least the appraised value. A separate written bid must be submitted for each sale parcel desired. Each written sealed bid must be accompanied by a certified check, postal money order, bank draft or cashiers check, made payable to the Bureau of Land Management for at least twenty percent (20%) of the amount bid and shall be enclosed in a sealed envelope clearly marked, "Bid for Public Land Sale OR-34957, Sale Parcel number ——, Lake County, Oregon, May 18, 1983". The written sealed bids will be opened and publicly declared at the beginning of the sale. If one or more bidders tie as high bid, the bidder who was first to submit his bid deposit and written bid shall be declared the high bidder.

In order to participate in the oral bidding on each parcel, bidders must submit a written bid for not less than the appraised value, and the twenty percent (20%) required deposit.

Oral bidding will be entertained after public declaration of the apparent high sealed bidder and all oral bids must be made in increments of $50.00 or more. After oral bids are entertained, the apparent high qualifying oral bidder shall submit payment by cash, personal check, bank draft, money order or any combination thereof, any additional amount necessary to bring the amount tendered with their sealed bids up to one-fifth of the amount of the oral bid, immediately following the close of the sale.

In the exercise of the preference right, whether submitted by sealed bid or oral bid, the preference right holder shall be required to submit payment as stated above immediately following the close of the sale.

The terms and conditions applicable to the sale are:

1. The apparent high bidder shall submit the remainder of the full bid price within 30 days from receipt of notice of acceptance. Failure to submit the full bid price within 30 days from receipt of notice of acceptance shall result in sale cancellation of the specific parcel and the deposit shall be forfeited.

2. The authorized officer may reject the highest qualified bid and release the bidder from his/her obligation and withdraw any tract for the sale, if he determines that consummation of the sale would be inconsistent with the provisions of any existing law, or collusive or other activities have hindered or restrained free and open bidding, or consummation of the sale would encourage or promote speculation in public lands.

3. The patents will contain a reservation to the United States for ditches and canals.

4. The sale is for surface estate only. The patents will contain a reservation to the United States for all minerals.

5. The sale will be subject to all valid existing rights.

Those parcels not sold pursuant to this Notice of Realty Action shall remain available for sale on a continuing basis until sold. The sale price shall be based on the appraised fair market value at the time of purchase. Subsequent purchases may be transacted at the Lakeview District Office, in person, during regular business hours.

Detailed information concerning the sale, including the planning documents, environmental assessment and the record of public involvement, is available for review at the Lakeview District Office, Bureau of Land Management, 1000 South Ninth Street, Lakeview, Oregon 97630.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Lakeview District Office, Bureau of Land Management, P.O. Box 151, 1000 South Ninth Street, Lakeview, Oregon 97630. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior.

Dated: March 3, 1983.

Richard A. Gerity,

District Manager.

[FR Doc. 83-6084 Filed 3-9-83; 8:45 am]

BILLING CODE 4310-84-M

Intent To Prepare a Management Framework Plan Amendment Environmental Impact Statement; Roswell Resource Area; New Mexico

ACTION: Preparation of a Management Framework Plan Amendment/ Environmental Impact Statement (MFPA/EIS) on the rangeland management program in the Roswell Resource Area, Roswell District, New Mexico.

SUMMARY: This Notice of Intent amends the Federal Register Notice of Intent to Prepare a Resource Management Plan which was published on Thursday, June 25, 1981, pages 32939 and 32940.

SUPPLEMENTARY INFORMATION: The Roswell Resource Area, Roswell District, will prepare a MFPA/EIS on the rangeland management program (one issue) rather than a resource management plan which would cover a number of issues. The MFPA/EIS will provide resource management information and analysis for the rangeland management program on 1.4 million acres of public land administered by the Bureau in the Roswell Resource Area.

The Interdisciplinary Team

The MFPA/EIS will be developed by an interdisciplinary term under the supervision of the Roswell Resource Area Manager. Area specialists working on the team will include a Range Conservationist, Wildlife Biologist, Recreation Specialist, Realty Specialist, Geologist, Archeologist, and Surface Reclamation Specialist.

Additional technical support will be provided by the District staff as required.

Public Participation

The MFPA/EIS process has advanced to the Alternatives Formulation stage. Reasonable alternatives to be considered at this time include (1) No Action, (2) Limited Management, and (3) Intensive Management. A public scoping meeting is scheduled for March 30, 1983 from 6 to 9 p.m. at the Roswell District Office, 1717 W. 2nd St., Roswell, New Mexico 88201. The purpose is to receive input on these and any other alternatives which the public feels should be discussed.

FOR FURTHER INFORMATION CONTACT: For further information contact Phil Kirk, Roswell Resource Area Manager or Linda Rundell, MFPA/EIS Team Leader, U.S. Bureau of Land Management, 1717 W. 2nd St., Roswell, New Mexico 88201. Telephone (505) 622-7670.

Dated: March 3, 1983.

Richard W. Bastin,

Associate District Manager, Roswell, New Mexico.

[FR Doc. 83-6083 Filed 3-9-83; 8:45 am]

BILLING CODE 4310-84-M

Multiple Use Advisory Council Meeting

Notice is hereby given, in accordance with Pub. L. 94-579 and 43 CFR Part 1780, that a meeting of the Coeur d'Alene District Multiple Use Advisory Council will be held on Thursday, April 28, 1983, at 10:00 a.m., at the Bureau of Land Management Office, 1808 North Third Street, Coeur d'Alene, Idaho 83814.

Agenda for the meeting will include:

1. Introduction and biographical sketch of members;
2. Orientation, briefing, and discussion of Coeur d'Alene District programs by resource area;
3. Discussion of the function of the Council;
4. Establishment of committees;
5. Arrangement for next meeting.

The meeting is open to the public. Interested persons may make oral statements to the council between 11:30 a.m. and 12:00 noon, or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager at the above address by April 22, 1983. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established.

Summary minutes of the meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: February 28, 1983.

Wayne W. Zinne,

District Manager.

[FR Doc. 83-6085 Filed 3-9-83; 8:45 am]

BILLING CODE 4310-84-M

Prineville District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 92-463 of a meeting of the Prineville District Grazing Advisory Board to be held April 7, 1983.

The meeting will take place at 1:00 P.M. in the conference room of the Bureau of Land Management office located at 185 East 4th Street, P.O. Box 550, Prineville, OR 97754.

The agenda will center on the following item:

1. Allotment categorization and ranking.

The meeting is open to the public. Anyone wishing to attend and/or make written or oral statements to the board is requested to contact the District Manager at the above address prior to April 1.

Summary minutes of the meeting will be available for review and reproduction within 30 days following the meeting.

Dated: March 1, 1983.

Gerald E. Magnuson,

District Manager.

[FR Doc. 83-6081 Filed 3-9-83; 8:45 am]

BILLING CODE 4310-84-M

[NM 54547]

Proposed Withdrawal and Opportunity for Public Hearing; New Mexico

On February 22, 1983, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described lands from settlement, sale, location, or entry, under all of the general land laws, including the mining laws, subject to valid existing rights:

New Mexico Principal Meridian

T. 24 N., R. 13 W.,
- Sec. 27, SW¼,
- Sec. 28, S½,
- Sec. 29, S½,
- Sec. 30, that portion of the SE¼ east of State Road 371,
- Sec. 31, that portion of the NE¼ east of State Road 371,
- Sec. 33, all,
- Sec. 34, all.

T. 23 N., R. 13 W.,
- Sec. 3, all,
- Sec. 4, all,
- Sec. 5, that portion of the N½ east of R/W NM 12221, that portion of the S½ east of R/W NM 12221,
- Sec. 9, that portion of the N½ north of County Road CO18 and R/W NM 12221,
- Sec. 10, that portion of the N½ north of County Road CO18.

The Area described contains 3,968.00 acres in San Juan County.

The purpose of the proposed withdrawal is to protect the fragile environment of the Bisti and to preserve the outstanding scenic and scenic values of the area for the enjoyment and enrichment of future generations. The lands will be segregated from the operation of the public land laws, including location under the mining laws for a period of 2 years from the date of publication of this notice in the **Federal Register** unless the application is denied or canceled or until the withdrawal is approved prior to that date. Grazing, recreation and temporary discretionary land uses will continue on the subject lands, if they will have no negative impacts on the values to be protected by the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned authorized officer of the Bureau of Land Management.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal. All interested persons who desire to be heard on the proposed withdrawal must submit a written request for a hearing to the State Director, Bureau of Land Management, P.O. Box 1449, Santa Fe, NM 87501, within 90 days from the date of publication of the notice. Upon determination by the authorized officer that a public hearing will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the hearing.

The application will be processed in accordance with regulations set forth in 43 CFR Part 2300.

All communications in connection with this proposed withdrawal should be addressed to the State Director, Bureau of Land Management, Department of the Interior, P.O. Box 1449, Santa Fe, NM 87501.

Dated: February 22, 1983.

Leroy C. Montoya,

Chief, Division of Operations.

[FR Doc. 83-6082 Filed 3-9-83; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Issuance of Permit for Incidental Take of Endangered Species

On December 2, 1982, a notice was published in the **Federal Register** (47 FR 54366), that an application had been filed with the U.S. Fish and Wildlife Service by the County of San Mateo, City of Brisbane, City of Daly City, and City of South San Francisco, California for a permit to incidentally take, pursuant to Section 10(a) of the Endangered Species Act of 1973, as amended, mission blue butterflies (*Icariocia icarioides missionensis*), San Bruno elfin butterflies (*Callophrys mossii bayensis*) and San Francisco garter snakes (*Thamnophis sirtalis tetrataenia*) on San Bruno Mountain, California pursuant to a multi-party agreement which implements the San Bruno Mountain Area Habitat Conservation Plan.

Notice is hereby given that on March 4, 1983, as authorized by the provisions of the Endangered Species Act of 1972 (16 USC 1539), as amended, the U.S. Fish and Wildlife Service issued a permit (PRT 2-9818), to the above named parties subject to certain conditions set forth therein.

Dated: March 4, 1983.

Robert A. Jantzen,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 83-6075 Filed 3-9-83; 8:45 am]

BILLING CODE 4310-55-M

Conservation Plan for Incidental Take of Endangered Wildlife, Finding of No Significant Impact

AGENCY: Fish and Wildlife Service.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: A joint Federal Environmental Assessment and California Environmental Impact Report (hereinafter referred to as the "EA/EIR") has been prepared for the proposed incidental take of the mision blue butterfly *(Icaricia icarioides missionensis)*, San Bruno elfin butterfly *(Callophrys mossii bayensis)*, and San Francisco garter snake *(Thamnophis sirtalis tetrataenia)* under a conservation plan pursuant to Section 10(a) of the Endangered Species Act of 1973, as amended. On the basis of the EA/EIR and related documents, and public comments, the Service has determined that the proposed incidental take of these endangered animals would not constitute a major Federal action significantly affecting the quality of the human environment and that a separate Federal Environmental Impact Statement will not be prepared for this proposed activity.

FOR FURTHER INFORMATION CONTACT: Mr. Richard M. Parsons; Chief, Federal Wildlife Permit Office; U.S. Fish and Wildlife Service; P.O. Box 3654, Arlington, Virginia 22203; (703) 235-1903.

SUPPLEMENTAL INFORMATION: On December 2, 1982, the Service published a notice in the **Federal Register** (47 FR [232]: 54366-54367) soliciting public comments on an endangered species permit application jointly submitted by the County of San Mateo, CA; City of Brisbane, CA; City of Daly City, CA; and the City of South San Francisco, CA, for the incidental take of the endangered wildlife mentioned above. The notice provided background information on the permit application and the conservation plan to be used by the applicant to offset loss of the endangered wildlife due to incidental take during a development project within the San Bruno Mountain area in San Mateo County, California.

The Service is considering the issuance of a permit under the Endangered Species Act that would authorize the incidental taking of the mission blue butterfly, San Bruno elfin butterfly, and San Francisco garter snake, within the San Bruno Mountain area. The permit would be conditioned on implementation of the San Bruno Mountain Area Habitat Conservation Plan through an Agreement with respect to such Plan to be entered into by concerned Federal, State, and local parties. The 1982 San Bruno Mountain Area Habitat Conservation Plan and the proposed permit have been the subject of a combined EA/EIR which was finalized in November, 1982. Between 1976 and 1982, local government entities in San Mateo County approved general plans for development and for protection of open space areas on San Bruno Mountain. These local government land use decisions were subject to full consideration in California Environmental Impact Reports and issuance of the proposed permit would be a harmony with such decisions.

Based on a review of these public comments and evaluation of the information provided by the EA/EIR, the Habitat Conservation Plan, the Agreement, and other relevant documents, the Service tentatively determined that issuance of a permit authorizing the incidental taking of mission blue butterflies, San Bruno elfin butterflies, and San Francisco garter snakes within the San Bruno Mountain area was not a major Federal action which would significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act. On January 26, 1983, the Service published a notice in the **Federal Register** (48 FR 3663-3664) of the availability of a proposed Finding of No Significant Impact on the issuance of the permit. The public review period ended on February 25, 1983.

Several comments were received in response to this notice. Based on these and other public comments received and on the above-mentioned documents, the Director has concluded that, as conditioned and mitigated by the requirements of the Habitat Conservation Plan and the Agreement, issuance of a permit authorizing the incidental taking of mission blue butterflies, San Bruno elfin butterflies, and San Francisco garter snakes within the San Bruno Mountain Area is not a major Federal action which would significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act. Therefore, a separate Federal Environmental Impact Statement for this action will not be prepared.

Copies of the Finding of No Significant Impact will be on file for public review, during normal business hours, at the following locations: Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 601, Arlington, VA 22201, (703/235-1903); U.S. Fish and Wildlife Service, Region 1, Office of Federal Assistance, Lloyd 700 Building, Suite 550, 500 NE Multnomah Street, Portland, OR 97232 (503/231-6134) and; U.S. Fish and Wildlife Service, Sacramento Office of Endangered Species, 1230 "N" Street, 14th Floor Sacramento, CA 95814 (916/440-2791).

This action has been reviewed under the requirements of the National Environmental Policy Act (NEPA), as amended, the Council on Environmental Quality's NEPA Regulations (40 CFR 1500-1508), and the Service's guidelines concerning the implementation of NEPA.

Done this 4th day of March, 1983.

Robert A. Jantzen,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 83-6074 Filed 3-9-83; 8:45 am]

BILLING CODE 4310-55-M

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service clearance officer and the OMB Interior Desk Officer at 202-395-7340.

Title: Pesticide Use Proposal (To monitor the amount and impact of pesticides used on national wildlife refuge lands).

Bureau Form Number: N/A.

Frequency: On occasion.

Description of Respondents: Individuals, farms, mosquito and insect control agencies or businesses.

Animal Responses: 500.

Annual Burden Hours: 50.

Service Clearance Officer: Arthur J. Ferguson, 202-653-7499.

Robert E. Gilmore,

Acting Associate Director, Wildlife Resources.

[FR Doc. 83-6152 Filed 3-9-83; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (except fitness-only); Motor Common Carriers of Passengers (public interest); Freight Forwarders; Water Carriers; Household Goods Brokers. The following applications for motor common or contract carriers of property, water carriage, freight forwarders, and household goods brokers are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common carriage of passengers, filed on or after November 19, 1982, are governed by Subpart D of 49 CFR Part 1160, published in the **Federal Register** on November 24, 1982 at 47 FR 53271. For compliance procedures, see 49 CFR 1160.86. Carriers operating pursuant to an intrastate certificate also must comply with 49 U.S.C. 10922(c)(2)(E). Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E. In addition to fitness grounds, these applications may be opposed on the grounds that the transportation to be authorized is not consistent with the public interest.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative 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 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 that it 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.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: common carrier of property—that the service proposed will serve a useful public purpose, responsive to a public demand or need; water common carrier—that the transportation to be provided under the certificate is or will be required by the public convenience and necessity; water contract carrier, motor contract carrier of property, freight forwarder, and household goods broker—that the transportation will be consistent with the public interest and the transportation policy of section 10101 of chapter 101 of Title 49 of the United States Code.

These presumptions shall not be deemed to exist where the application is opposed. 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 opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication 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.

Agatha L. Mergenovich,

Secretary.

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." Applications filed under 49 U.S.C. 10922(c)(2)(B) to operate in intrastate commerce over regular routes as a motor common carrier of passengers are duly noted.

Please direct status inquiries to Team 2, (202) 275-7030.

Volume No. OP2-090

Decided: February 28, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 150303, filed January 24, 1983. Applicant: HALLOUS H. GARRETT d.b.a. GARRETT TRUCKING COMPANY, Route 3, Box 240, Greenbrier, AR 72058. Representative: Thomas B. Staley, 1550 Tower Building, Little Rock, AR 72201, (501) 375-9151. Transporting *general commidities* (except classes A and B explosives, household goods and commodities in bulk) between points in the U.S. (except AK and HI), under continuing contract(s) with Kirkpatrick Rubber Company, of Greenbrier, AR.

MC 5623 (Sub-62), filed February 4, 1983. Applicant: ARROW TRUCKING CO., 4230 South Elwood, P.O. Box 7280, Tulsa, OK 74105. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101.

(703) 893–3050. *Mercer commodities, machinery, and chemcials and related products,* between points in the U.S. (except HI), under continuing contract(s) with Standard Oil of California and its wholly owned operating subsidiaries, of San Francisco, CA, and Magcobar Group—Dresser Industries, Inc., of Houston, TX.

MC 152383 (Sub-7), filed February 1, 1983. Applicant: C. C. M. ENTERPRISES INC., Suite 40, 27 Produce Dr., Cincinnati, OH 45202. Representative: John R. Mateyko (same address as applicant), 513–621–7568. Transporting (1) *such commodities* as are dealt in or used by manufacturers, operators, and repairers of pipelines and public utility plants, between points in the U.S. (except AK and HI); and (2) *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in WI, IL, IN, OH, and PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 152643 (Sub-3), filed February 7, 1983. Applicant: GENE E. CARTER d.b.a. GENE E. CARTER TRUCKING, 203 S. State Box 223, Norton, KS 67654 0223. Representative: Gene E. Carter (same address as applicant), 913–877–5195. Transporting (1) *lumber and wood products,* between points in OR and WA, on the one hand, and, on the other, points in KS, NE, and OK; (2) *those commodities which because of their size or weight require the use of special handling or equipment,* between points in KS, NE, CO, IA, MO, OK, CA, TX, UT, MT, and WY.

MC 155013 (Sub-3), filed February 7, 1983. Applicant: FREIGHTMASTER, INC., P.O. Box 664, Taylorsville, NC 28681. Representative: D. R. Beeler, P.O. Box 482, Franklin, TN 37064, 615–790–2510. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (expect AK and HI).

Volume No. OP2–092

Decided: March 1, 1982.

By the Commission, Review Board No. 2. Members Carleton, Williams, and Ewing.

MC 52793 (Sub-122), filed February 7, 1983. Applicant: BEKINS VAN LINES CO., 333 South Center St., Hillside, IL 60162. Representative: David A. Gallagher (same address as applicant), 312–547–2184. Transporting *electronic and computerized business machines,* between points in the U.S (except AK and HI), under continuing contract(s) with Edward Mancini Inc., of Chicago, IL.

MC 65112 (Sub-3), filed February 8, 1983. Applicant: FOGARTY VAN LINES, INC., 1103 Cumberland Ave., Tampa, FL 33602. Representative: Ansley Watson, Jr., P.O. Box 1531, Tampa, FL 33601, 813–223–2411. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S., under continuing contract(s) with K-Mart Corporation, of Troy, MI.

MC 128633 (Sub-34), filed January 14, 1983. Applicant: LAUREL HILL TRUCKING COMPANY, 614 New County Rd., Secaucus, NJ 07094. Representative: William J. Augello, 120 Main St., Huntington, NY 11743, 516–427–0100. Transporting (A) (1) *furniture and fixtures,* (2) *metal products,* (3) *waste or scrap materials not identified by industry producing,* (4) *such commodities* as are dealt in or used by department stores, (5) *chemicals and related products,* (6) *paper products,* (7) *rubber and plastic products,* (8) *clays, concrete, glass or stone products,* and (9) *food and related products,* between points in the U.S. (except AK and HI); (B) (1) *paint and painting equipment,* (2) *patching compounds and adhesives,* and (3) *wood products,* between Bayonne, NJ, on the one hand, and, on the other, points in the U.S. (except AK and HI); (C) *stereos and turntables,* between New York, NY, on the one hand, and, on the other, points in the U.S. (except AK and HI). Condition: Issuance of a certificate in this proceeding is subject to coincidental revocation of permits Nos. MC 12866 Sub 32 and MC 128058 Sub 8, issued March 11, 1982 and October 13, 1981, respectively.

Note.—Applicant seeks to convert its permit Nos. MC 128633 (Sub 32) and MC 128058 (Sub 8) to a Certificate of Public Convenience and Necessity.

MC 145243 (Sub-4), filed February 7, 1093. Applicant: REDBIRD DEVELOPMENT, INC., 1018 Whitlock Rd., Rochester, NY 14609. Representative: Raymond A. Richards, 35 Curtice Park, Webster, NY 14580, 716–265–9510. Transporting (1) *hazardous waste materials, metal bearing residues, metal hydroxide sludges, and metal drill dust,* between points in the U.S., under continuing contract(s) with WRC Processing Company, of McLean, VA; and (2) *such commodities* as are dealt in or used by manufacturers and distributors of bank vaults, between points in the U.S., under continuing contract(s) with Ridge Welders and Riggers, Inc., of Rochester, NY.

MC 145922 (Sub-2), filed February 7, 1093. Applicant: WRIGHT TRUCKING, INC., Rt. 1, Box 116, Coalville, UT 84017. Representative: Irene Warr, 311 S. State St., Ste. 280, Salt Lake City, UT 84111, 801–531–1300. Transporting *such commodities* as are dealt in by wholesale grocery houses, between points in the U.S. (except AK and HI), under continuing contract(s) with Fleming Companies, Inc., of Salt Lake City, UT.

MC 152393 (Sub-5), filed January 26, 1983. Applicant: SCOTT B. WARN, d.b.a. OVERNITE EXPRESS, 555 143rd Avenue, San Leandro, CA 94577. Representative: Armand Karp, 743 San Simeon Drive, Concord, CA 94518, (415) 825–1774. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 161512 (Sub-1), filed February 7, 1983. Applicant: RICHARD HUSKEY AND HARLEY SMITH, d.b.a. GRAPEVINE EXPRESS, R.R. 1, Box 143, Granville, IL 61326. Representative: Edward P. Bocko, P.O. Box 496, Mineral Ridge, OH 44440, 216–652–2789. Transporting *food and related products,* between points in IL, those in Avovelles Parish, LA, Sampson County, NC, and Clark County, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 166042, filed February 3, 1983. Applicant: UNLIMITED WAREHOUSING, INC., 2250 Devon Ave., Elk Grove Village, IL 60007. Representative: Irwin D. Rozner, 134 North LaSalle St., Chicago, IL 60602, 312–782–6937. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in IL, on the one hand, and, on the other, points in IN, WI, MN, MI, IA, MO, and OH.

MC 166082, filed February 7, 1983. Applicant: OUI DELIVER COURIER SERVICE, P.O. Box A 2068, 98 Front St., New Bedford, MA 02740. Representative: Peter S. Mason, 292 Slocum Road, North Dartmouth, MA 02747, (617) 996–4388. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in Bronx, Queens and New York Counties, NY, Hartford, New Haven, Middlesex and New London Counties, CT, and RI, VT, MA, NH and ME.

For the following, please direct status calls to Team 3 at 202–275–5223.

Volume No. OP3–78

Decided: March 1, 1983.

By the Commission, Review Board No. 3. Members Krock, Joyce, and Dowell.

FF-864, filed February 7, 1983. Applicant: HAWAIIAN DISTRIBUTION SYSTEM, INC., 971 66th Ave., Oakland, CA 94621. Representative: William D. Taylor, 100 Pine St., #2550, San Francisco, CA 94111, (415) 986-1414. As a freight forwarder, in connection with the transportation of *general commodities* (except classes A and B explosives and household goods), between points in CA and NV, on the one hand, and, on the other, points in HI.

MC 104675 (Sub-46), filed February 10, 1983. Applicant: FRONTIER DELIVERY, INC., 4238 Ridge Lea Road, Amherst, NY 14226. Representative: Ronald W. Malin, Bankers Trust Building, Jamestown, NY 14701, (716) 664-5210. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Ashland Oil, Inc., of Ashland, KY.

MC 150084 (Sub-5), filed February 15, 1983. Applicant: PRIDE TRANSPORT, 1102 W 2100 So, Salt Lake City, UT 84104. Representative: D. Jeffrey England (same address as applicant), (801) 972-8890. Transporting (1) *furniture and fixtures*, between points in CA, CO, ID, MT, NV, UT and WY, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (2) *food and related products, metal products, machinery and equipment*, between points in the U.S. (except AK and HI).

MC 159514 (Sub-1), filed February 16, 1983. Applicant: AMERICAN TRANSPORT, INC., P.O. Box 2897 (Hwy. 182), Morgan City, LA 70381. Representative: C. W. Ferebee, 3910 FM 1960 W., Suite 106, Houston, TX 77068, (713) 537-8156. Transporting *Mercer commodities* and *pipe*, between points in the U.S. (except AK and HI).

MC 161825, filed February 15, 1983. Applicant: WELLS WATSON, 2412 South Cooper Street, Arlington, TX 76010. Representative: Clint Oldham, 623 South Henderson, Suite 200, Fort Worth, TX 76104. Transporting *lumber*, between points in AR, LA, OK, and TX.

MC 161834, filed February 15, 1983. Applicant: KWIK-WAY TRUCKING CO., INC., Route 2, P.O. Box 108, Vale, NC 28168. Representative: William P. Farthing, Jr., 1100 Cameron-Brown Building, Charlotte, NC 28168, (704) 372-6730. Transporting *machinery*, between points in Wayne County, MI and Cuyahoga County, OH, on the one hand, and, on the other, points in Broward and Dade Counties, FL.

MC 166265, filed February 15, 1983. Applicant: HICKORY MOTOR LINES, INC., P.O. Box 1631, 2515 Highway 64-70 SW, Hickory, NC 28603. Representative: William D. Keller (same address as applicant), (704) 322-7355. Transporting (1) *paper and paper products*, and (2) *textile mill products*, between points in NC and SC, on the one hand, and, on the other, points in the U.S. in and east of TX, OK, KS, NE, SD, and ND.

Volume No. OP3-76

Decided: March 1, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 53965 (Sub-205), filed February 11, 1983. Applicant: GRAVES TRUCK LINE, INC., 8717 W. 110th St., Suite 700, Overland Park, KS 66210. Representative: Bruce A. Bullock, One Woodward Ave., 26th Fl., Detroit, MI 48226, (313) 496-3534. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with K Mart Corporation of Troy, MI.

MC 118304 (Sub-11), filed February 15, 1983. Applicant: CALDWELL TRANSPORT LTD., P.O. Box 127, Florenceville, NB, Canada EOJ IKO. Representative: Francis E. Barrett, Jr., 10 Industrial Park Road, Hingham, MA 02043, (617) 749-6500. Transporting *building materials, paper and related products*, and *chemicals and plastic products*, between those points in the U.S. in and east of MN, IA, MO, AR, and LA.

MC 128734 (Sub-9), filed February 15, 1983. Applicant: W.B. PRODUCE HAULERS, INC., 525 Cottage Grove, S.E., Grand Rapids, MI 49507. Representative: David E. Jerome, 436 North Center, Northville, MI 48167, (313) 348-4433. Transporting *food and related products*, between points in MI and OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 133035 (Sub-30), filed February 15, 1983. Applicant: DILTS TRUCKING, INC., Route 1, Box 156, Crescent, IA 51526. Representative: Robert L. Cope, Suite 501, 1730 M Street, NW., Washington, DC 20036 (202) 296-2900. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Commerce Express, Inc., of New Brighton, MN.

MC 135364 (Sub-55), filed February 8, 1983. Applicant: MORWALL TRUCKING, INC., R.D. #3, Box 76-C, Moscow, PA 18444. Representative: Raymond Talipski, 121 S. Main St., Taylor, PA 18517 (717) 344-8030. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Polymers, Inc., of Middlebury, VT.

MC 135824 ((Sub-8), filed February 11, 1983. Applicant: KLAPEC TRUCKING COMPANY, R.D. #1, 673 N. Seneca St., Oil City, PA 16301. Representative: John P. McMahon, 100 E. Broad St., Columbus, OH 43215 (614) 228-1541. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Chicago Pneumatic Tool Company and its subsidiaries of Franklin, PA.

MC 143775 (Sub-171), filed February 8, 1983. Applicant: PAUL YATES, INC., 6601 West Orangewood, Glendale, AZ 85311. Representative: E. Stephen Heisley, 1919 Pennsylvania Ave., NW., Suite 500, Washington, D.C. 20006 (202) 828-5015. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with Borden Chemical Company of North Andover, MA and Paul Yates, A Sole Proprietorship, of Glendale, AZ.

MC 144315 (Sub-11(a)), filed February 8, 1983. Applicant: PORT CITY LEASING, INC., P.O.B. 498, Lewiston, ID 83501. Representative: Timothy R. Stivers, P.O.B. 1576, Boise, ID 83701 (208) 343-3071. Transporting (1) *chemicals and related products, minerals and ores*, between points in the U.S. in and west of WI, IL, MO, AR and LA (except AK and HI), and (2) *petroleum and petroleum products*, between points in ID, OR, and WA on the one hand, and, on the other, points in the U.S. in and west of WI, IL, MO, AR, and LA.

MC 146055 (Sub-22), filed February 8, 1983. Applicant: DOUBLE "S" TRUCKLINE, INC., 731 Livestock Exchange Bldg., Omaha, NE 68107. Representative: James F. Crosby & Associates, 7363 Pacific Street, Suite 210B, Omaha, NE 68114 (402) 397-9900. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Douglas, Washington, Dodge and Sarpy Counties, NE and Pottawattamie County, IA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 146314 (Sub-11), filed February 15, 1983. Applicant: G & T TRUCKING CO., 11111 Deuce Road, Elko, MN 55020. Representative: Thomas Zwiers (same

address as applicant) (612) 461–2181. Transporting *chemicals and related products*, between points in the U.S.

MC 154795 (Sub-3), filed February 8, 1983. Applicant: MMR, INC., 3528 Whippoorwill Road, Louisville, KY 40213. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40202 (502) 589–5400. Transporting *such commodities* as are dealt in or used by drug stores, hardware stores, wholesale grocery stores, and automotive supply stores, between Jersey City, NJ, Kansas City, MO, Louisville, KY, Cleveland, OH, Chicago, IL, Milwaukee, WI, Minneapolis, MN, Memphis, TN, Boston, MA, Philadelphia, PA, Atlanta, GA, Jacksonville, FL, New Orleans, LA, Houston, TX, Los Angeles, CA, Portland, OR, and points in Wake County, NC, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 158635 (Sub-1), filed February 10, 1983. Applicant: NORTHLAND TRANSPORTATION, INC., P.O. Box 65, Magnet, NE 68749. Representative: Marshall D. Becker, Suite 610, 7171 Mercy Rd., Omaha, NE 68106 (402) 392–1220. Transporting *commodities in bulk, chemicals, petroleum products, and automobile care products*, between points in NE, IA, MN, SD, WY, KS, MO, LA, AR, CO, WI, IL, OK, TX, NM, ND, MT and IN.

MC 166114, filed February 7, 1983. Applicant: BILL THOMPSON TRANSPORT LIMITED, P.O. Box 547, Highway 3 East, St. Thomas, Ontario, Canada N5P 3N6. Representative: Wilhelmina Boersma, 1600 First Federal Bldg., Detroit, MI 48226 (313) 962–6492. In foreign commerce only, transporting *general commodities* (except household goods and classes A and B explosives), between ports of entry on the International Boundary line between the U.S. and Canada, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 166304, filed February 15, 1983. Applicant: R.M.T. COMPANY, d.b.a. ROCKY MOUNTAIN TRUCKING, P.O. Box 30457, Billings, MT 59107. Representative: Charles A. Murray, Jr., 2822 Third Ave., N., Billings, MT 59101 (406) 252–4165. Transporting *beverages*, between points in Yellowstone County, MT, on the one hand, and, on the other, points in WA, OR, CA and WI.

MC 67234 (Sub-67), filed December 2, 1982, previously noticed in the **Federal Register** on December 21, 1982. Applicant: UNITED VAN LINES, INC., One United Dr., Fenton, MO 63026. Representative: B. W. LaTourette, Jr., 11 South Meramec, Suite 1400, St. Louis, MO 63105, (314) 727–0777. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in U.S., under continuing contract(s) with Ford Motor Company, of Dearborn, MI.

Note.—This republication shows that applicant is fit, willing, and able, to transport household goods.

Volume No. OP3–82

Decided: March 2, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 108194 (Sub-19), filed February 11, 1983. Applicant: WILLIAM B. MEYER, INCORPORATED, P.O. Box 4206, Bridgeport, CT 06607. Representative: Edward P. Bocko, P.O. Box 496, Mineral Ridge, OH 44440, (216) 652–2789. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in U.S. (except AK and HI), under continuing contract(s) with General Mills, Inc. of Minneapolis, MN.

MC 150854 (Sub-1), filed February 17, 1983. Applicant: NORWALK TRANSFER AND STORAGE, INC., 13900 E. Rosecrans Ave., Santa Fe Springs, CA 90670. Representative: Wayne Nogle (same address as applicant), (213) 921–5501. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AZ, CA, CO, ID, MT, NV, NM, OR, TX, UT, WA, and WY.

MC 155175 (Sub-2), filed February 10, 1983. Applicant: CAPITAL CITY TRUCKING, INC., 13th & Front, Bismarck, ND 58501. Representative: Charles E. Johnson, P.O. Box 2056, Bismarck, ND 58502, (701) 223–5300. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in ND, SD, MN and MT, on the one hand, and, on the other, points in the U.S. (except HI).

MC 156944, filed February 15, 1983. Applicant: LARRY EDISON MORGAN, d.b.a. MORGAN TRUCKING, Rt. 1, Box 419–D, Arden, NC 28704. Representative: William P. Farthing, Jr., 1100 Cameron–Brown Bldg., Charlotte, NC 28204 (704) 372–6730. Transporting *food and related products*, between points in VA, NC, SC, TN, KY, GA, AL, and FL.

MC 160055 (Sub-2), filed February 17, 1983. Applicant: AWC TRANSPORTATION CORPORATION, 355 Boyce-Greeley Bldg., Sioux Falls, SD 57102. Representative: Foster L. Kent, P.O. Box 285, Council Bluffs, IA 51502, (712) 323–9124. Transporting (1)(a) *pulp, paper and related products*, (b) *plastic products*, and (c) *chemicals and related products*, between New York, NY, and points in CO, MO, NM, OK, and TN, on the one hand, and, on the other, points in CA, CO, CT, IL, IA, KS, KY, LA, MN, MT, NE, NC, OH, OK, TX, WI, and WY, and (2) *millwork and building materials*, between points in CA, IA, MN, NE, ND, OH, OR, and WA.

MC 166145, filed February 8, 1983. Applicant: BOB HARDT TRUCKING, P.O. Box 304, Chiloquin, OR 97624. Representative: Bob Hardt (same address as applicant), (503) 783–2732. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Cascade West Transportation Brokers, of Lake Oswego, OR.

MC 166314, filed February 17, 1983. Applicant: GTL TRUCK LINES, INC., 2027 Tenth St., Gering, NE 69341. Representative: William H. Borghesani, Jr., 1150 7th St., NW., Suite 1000, Washington, D.C. 20036, (202) 457–1122. Transporting *such commodities* as are dealt in by wholesale, retail, and chain grocery and food business houses, between points in CO, MT, WY, ND, SD, NE, KS, OK, TX, MN, IA, WI, and IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

For the following, please direct status calls to Team 4 at 202–275–7669.

Vol. No. OP4–120

Decided: March 2, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 42487 (Sub-1067), filed February 16, 1983. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Minle Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208, (503) 226–46902. Transporting *general commodities* (except classes A and B explosives, hosuehold goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with WYO–BEN, Inc., of Billings, MT.

MC 152366 (Sub-6), filed February 23, 1983. Applicant: AMERICAN COLLOID CARRIER CORP., P.O. Box 951, Scottsbluff, NE 69361. Representative: Robert N. Garity (same address as applicant), (308) 635–3157. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Pioneer Wood Products, Inc., of Kansas City, MO.

Vol. No. OP4–121

Decided: March 3, 1983.

By the Commission, Review Board No. 2. Members Carleton, Williams, and Ewing.

MC 97006 (Sub-16), filed February 22, 1983. Applicant: HOWARD'S EXPRESS, INC., East North St., P.O. Drawer 72, Geneva, NY 14456. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048, (212) 466–0220. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in NY, ME, NH, VT, MA, RI, CT, NJ, PA, DE, MD, and DC.

MC 103926 (Sub-111), filed February 22, 1983. Applicant: W. T. MAYFIELD SONS TRUCKING CO., INC., P.O. Box 947, Mableton, GA 30059. Representative: K. Edward Wolcott, Suite 1200, 235 Peachtree St., NE., Atlanta, GA 30303, (404) 522–2322. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 109887 (Sub-3), filed February 18, 1983. Applicant: WEST END MOVING & STORAGE CO., INC., 241 Pine St., P.O. Box 3374, Bridgeport, CT 06605. Representative: Andrew R. Clark, 1600 TCF Tower, Minneapolis, MN 55402, (612) 333–1341. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S., under continuing contract(s) with Uniroyal, Inc., of Middlebury, CT.

MC 114457 (Sub-590), filed February 16, 1983. Applicant: DART TRANSIT COMPANY, 2102 University Ave., St. Paul, MN 55114. Representative: Alan D. Swenson (same address as applicant), (612) 645–0323. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with General Foods Corporation of White Plains, NY and its subsidiaries.

MC 116077 (Sub-441), filed February 17, 1983. Applicant: DSI TRANSPORTS, INC., P.O. Box 1505, Houston, TX 77001. Representative: E. Stephen Heisley, 1919 Pennsylvania Ave., NW., Suite 500, Washington, DC 20006, (202) 828–5015. Transporting *general commodities* (except classes A and B explosives), between points in the U.S. (except AK and HI), under continuing contracts with Union Carbide Corporation of Danbury, CT.

MC 118696 (Sub-52), filed February 17, 1983. Applicant: FERREE FURNITURE EXPRESS, INC., 252 Wildwood Rd., Hammond, IN 46234. Representative: John F. Wickes, Jr., 1301 Merchants Plaza, Indianapolis, IN 46204, (317) 638–1301. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Signode Corporation of Glenview, IL.

MC 125996 (Sub-103), filed February 16, 1983. Applicant: GOLDEN TRANSPORTATION, INC., P.O. Box 26908, Salt Lake City, UT 84126. Representative: John T. Wirth, 717 17th St., Suite 2600, Denver, CO 80202–3357, (303) 892–6700. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 128548 (Sub-3), filed February 16, 1983. Applicant: ABLE EXPRESS, INC., P.O. Box 5235, Lake Station, IN 46405. Representative: Carl L. Steiner, 135 So. LaSalle St., Chicago, IL 60603, (312) 236–9375. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 144826 (Sub-3), filed February 23, 1983. Applicant: COMET TRUCKING, INC., 6 Stuart Rd., Chelmsford, MA 01824. Representative: Dominic J. DiSalvo (same address as applicant), (617) 256–6551. Transporting (1) *rubber and plastic products*, under continuing contract(s) with W. B. C. Extrusion Products, Inc., of Lowell, MA, and (2) *textile mill products*, under continuing contract(s) with Nathan Solomon & Co., Inc., of Lowell, MA, between points in the U.S. (except AK and HI).

MC 149578 (Sub-27), filed February 16, 1983. Applicant: TRANS-AMERICAN TRUCKING SERVICE, INC., 130 Meadow Rd., P.O. Box 1247, Nixon Station, Edison, NJ 08817. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048, (212) 466–0220. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 150647 (Sub-2), filed February 17, 1983. Applicant: MIDWEST SECURITY TRANSFER, INC., 836 N. Main Ave., P.O. Box 1577, Sioux Falls, SD 57101. Representative: A. J. Swanson, P.O. Box 1103, Sioux Falls, SD 57101, (605) 335–1777. Transporting *general commodities* (except classes A and B explosives, commodities in bulk and household goods), between Fargo, ND, and points in MN, SD, those points in IA on and west of U.S. Hwy 59 and those points in NE on and east of U.S. Hwy 81.

MC 152847 (Sub-1), filed February 22, 1983. Applicant: FLOOD, INC., 8134 S. Washtenaw Ave., Chicago, IL 60652. Representative: Michael J. Flood, (same address as applicant), (312) 538–0700. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in IL, IN, IA, KY, MI, MN, MO, NE, ND, OH, TN, and WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 153767 (Sub-1), filed February 17, 1983. Applicant: JET DELIVERY, INC., 750 E. 10th St., Los Angeles, CA 90021. Representative: Thomas M. Loughran, 100 Bush St. 21st Floor, San Francisco, CA 94104, (415) 986–5778. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in AZ, CA and NV.

MC 162237 (Sub-3), filed February 17, 1983. Applicant: SWIFT ENTERPRISES, INC., 7901 4th St., North, Suite 308, St. Petersburg, FL 33704. Representative: Robert J. Gallagher, 1000 Connecticut Ave., NW., Suite 1200, Washington, DC 20036, (202) 785–0024. Transporting *household goods*, between points in AL, AZ, AR, CA, IL, CO, CT, DE, FL, GA, ID, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY, and DC.

MC 166146 (Sub-1), filed February 22, 1983. Applicant: ALL FREIGHT TRUCKING, INC., P.O. Box 780, Sturbridge, MA 01566. Representative: David M. Marshall, Sixth Floor, 95 State St., Springfield, MA 01103 (413) 732–1136. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Monsanto Plastics and Resins Co. of Deep River, CT, and Purex Corporation of Lakewood, CA.

MC 166277, filed February 16, 1983. Applicant: JOHN J. BURGESS d.b.a., BURGESS PIGGYBACK SERVICE, P.O. Box 1002, 718 Glennaddie Ave., Anniston, AL 36202. Representative: George M. Boles, 629 Frank Nelson Bldg., Birmingham, AL 35203, (205) 251–6602. Transporting *general commodities* (except commodities in bulk) (1) between points in Lee, Elmore, Montgomery, Autauga, Chilton, Bibb, Tuscaloosa, Jefferson, Walker, Blount, Shelby, Coosa, Tallapoosa, Chambers, Randolph, Clay, Talladega, Cleburne,

Calhoun, St. Clair, Cullman, Morgan, Lawrence, Madison, Marshall, Jackson, DeKalb, Etowah, Limestone and Cherokee Counties, AL, and (2) between points in the named counties in (1) above, on the one hand, and, on the other, points in Hamilton County, TN, and Fulton, Douglas, Cobb and DeKalb Counties, GA. Condition: To the extent the certificate to be issued 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 issue.

MC 166356, Filed February 22, 1983. Applicant: FALCON EXPRESS, INC., 9130 15th Place South, Seattle, WA 98108. Representative: Robert L. Geddes, (same address as applicant), (206) 763–3840. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AZ, CA, CO, ID, MT, NM, NV, OR, TX, UT, WA and WY.

[FR Doc. 83-6121 Filed 3-9-83; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions

Motor Common and Contract Carriers of Property (fitness-only); Motor Common Carriers of Passengers (fitness-only); Motor Contract Carriers of Passengers; Property Brokers (other than household goods). The following applications for motor common or contract carriage of property and for a broker of property (other than household goods) are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** on December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common or contract carriage of passengers filed on or after November 19, 1982, are governed by Subpart D of the Commission's Rules of Practice. See 49 CFR Part 1160, Subpart D, published in the **Federal Register** on November 24, 1982, at 49 FR 53271. For compliance procedures, see 49 CFR 1160.86. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E.

These applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative 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 applications involving duly noted problems (e.g., unresolved common control, fitness, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it 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. This presumption shall not be deemed to exist where the application is opposed. 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 opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication 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.

Agatha L. Mergenovich,
Secretary.

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."

Please direct status inquiries to Team 2, (202) 275–7030.

Volume No. OP2–089

Decided: February 28, 1983.

MC 5623 (Sub-63), filed February 4, 1983. Applicant: ARROW TRUCKING CO., 4230 South Elwood, P.O. Box 7280, Tulsa, OK 74105. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101, (703) 893–3050. Transporting for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except HI).

MC 165982, filed February 1, 1983. Applicant: MAINOR'S BUS SERVICE, 4205 Kaywood Dr. #A–1, Mount Rainier, MD 20712. Representative: Charles B. Mainor, (same address as applicant), 301–779–3247. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

Volume No. OP2–091

Decided: March 1, 1983.

MC 128772 (Sub-22), filed February 7, 1983. Applicant: STAR BULK TRANSPORT, INC., 821 North Front St., New Ulm, MN 56073. Representative: Val M. Higgins, 1600 TCF Tower, 121 So. 8th St., Minneapolis, MN 55402, 612–333–1341. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except HI).

[FR Doc. 83-6122 Filed 3-9-83; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier; Permanent Authority Decisions; Restriction Removals

The following restriction removal applications are governed by 49 CFR 1165. Part 1165 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747 and redesignated at 47 FR 49590, November 1, 1982.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1165.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

Agatha L. Mergenovich,

Secretary.

Please direct status inquiries to Team 3, at (202) 275-5223.

Volume No. OP3-72

Decided: March 2, 1983.

MC 109104 (Sub-8)X, filed January 14, 1983. Applicant: GREAT SOUTHERN COACHES, INC., 900 Burke Ave., Jonesboro, AR 72401. Representative: Robert J. Brooks, 1828 L St., NW., Suite 1111, Washington, D.C. 20036, (202) 466-3892. Lead, Sub 5 and Deviation Nos. 2, 3 and 4. (1) To authorize service at all intermediate points on passenger carrier's specified routes in lead certificate (a) between West Memphis, AR and Hoxie, AR, (b) between West Memphis, AR and Memphis, TN, and remove restriction against pick-up and discharge on same route, (c) between Advance, MO and St. Louis, MO and eliminate limitations on service at Chester, IL and (d) between Clarkston, MO and Gideon, MO; (2) to authorize service at all intermediate points on applicant's specified routes in Sub-No. 5 (a) between Little Rock, AR and Newport, AR, (b) between Beebe, AR, Searcy, AR, and Judsonia, AR and junction of their branch routes with U.S. Hwy 67, and (c) eliminate service restrictions at Jacksonville, AR and at intermediate points between Jacksonville and Little Rock, AR; (3) authorize service at all intermediate points on deviation routes between (a) St. Louis, MO and Perryville, MO, (b) Memphis, TN and Gilmore, AR, and (c) Perryville, MO and Cape Girardeau, MO; (4) remove restriction limiting pick-up of passengers at St. Louis destined to Cape Girardeau and vice versa on deviation route between Cape Girardeau and Perryville; (5) remove for operating convenience only limitation on deviation routes.

Volume No. OP3-77

Decided: March 3, 1983.

MC 135294 (Sub-3)X, filed February 18, 1983. Applicant: WILLIES BOAT MOVING LTD., 14257 64th Ave., Surrey, BC, Canada V3W. Representative: Jim Pitzer, 15 South Grady Way-Suite 321, Renton, WA 98055 (206) 235-1111. Sub 1 Certificate: (1) broaden port of entry at or near Blaine, WA, to read "ports of entry on the International Boundary line between the United States and Canada, in WA"; (2) broaden Seattle, WA, to "points in King, Pierce, Kitsap and Snohomish Counties, WA"; and (3) change one-way to radial authority.

Volume No. OP3-84

Decided: March 4, 1983.

MC 141385 (Sub-8)X, filed February 18, 1983. Applicant: PENNER FEED & SUPPLY, INC., Inman Industrial Park, P.O. Box 476, Inman, KS 67546. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904 (201) 572-5551. Subs 1, 3F, 6F, and 7F Permits, (a) broaden (1) Sub 1 to "chemicals and related products" from paints and coating (except in bulk), (2) Subs 3F and 6F to "food and related products" from (a) feed and feed products (except in bulk), and (b) flour, flour products, and baker ingredients and supplies, (B) Subs 1, 3F, 6F, and 7F broaden the territorial description to between points in the U.S. (except AK and HI), under continuing contract(s) with named shippers, and (C) Subs 1, 3F, and 7F, remove commodity restriction "except in bulk."

For the following, please direct status calls to Team 4 (202) 275-7669.

Volume No. OP4-125

Decided: March 3, 1983.

MC 16536 (Sub-8)X, filed February 18, 1983. Applicant: STANDARD FORWARDING CO., INC., 2925 Morton Dr., East Moline, IL 61244. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602, (312) 236-5944. Lead and Sub 5 permits: (1) broaden Lead (a) from agricultural implements, farm machinery, and materials and supplies used in the manufacture, sale, or distribution of agricultural implements and farm machinery, agricultural-implement and farm machinery show displays, and experimental types of the above to "machinery, lumber and wood products, transportation equipment, fabricated metal products, pulp, paper, and related products, furniture and fixtures, printed matter, rubber and plastic products, instruments, photographic goods and optical goods, watches and clocks and miscellaneous products of manufacturing", and (b) from tractors, internal combustion engines, pumping jacks, non-self-propelling vehicles, and parts to "machinery and transportation equipment"; (2) remove bulk restriction in Sub 5; and (3) broaden territorial description to in Lead between points in the U.S. under continuing contract(s) with persons whose business is the manufacture or sale of agricultural implements and farm machinery, for the transportation of the commodities indicated and in the manner specified in part (1)(a) above, under contract with unnamed shippers in part (b), and in Sub 5 under contract with a named shipper.

[FR Doc. 83-6127 Filed 3-9-83; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 346; Sub-12]

Petition to Exempt Storage Leases of Norfolk and Western

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: In response to a petition filed by Norfolk and Western Railway Company, the Commission is exercising its authority under 49 U.S.C. 10505 to exempt the leasing of surplus covered hopper cars from regulation to permit N&W to compete more effectively with private car companies in the leasing of these idle cars for storage purposes.

EFFECTIVE DATE: March 10, 1983.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) (275-7245).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's full decision. To purchase a copy of the full decision, contact T. S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, D.C. 20423, or call 289-4357 (D.C. Metropolitan area) or toll free (800) 424-5403.

Decided: March 2, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-6124 Filed 3-9-83; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 393; Sub-1]

Standards for Railroad Revenue Adequacy

AGENCY: Interstate Commerce Commission.

ACTION: Proposed Revision to Existing Standards for Determination of Revenue Adequacy of Railroads.

SUMMARY: The purpose of this proceeding is to improve the standards adopted in Ex Parte No. 393, *Standards for Railroad Revenue Adequacy*, 364 I.C.C. 803 (1981) (46 FR 20806, April 7, 1981), for determining railroad revenue adequacy. We indicated in our decision an intent to consider major modifications in our revenue adequacy proceedings. The time now seems appropriate to re-examine and resolve issues deferred by our previous decision, and certain principles and procedures adopted with dispatch to comply with the mandatory time limits specified in the Staggers Rail Act of 1980.

Specific proposed revisions in present standards addressed in this proceeding are: (1) Calculation of Return on Investment (ROI) to consider exclusively all transportation elements of income, expense, and investment; (2) Use of normalized or weighted normalized data to compute ROI; (3) Computation of ROI on a consolidated basis to include railroad affiliates; and (4) Conversion from an original cost investment base to one based on current or replacement costs in revenue adequacy determinations, and use of current cost information in other regulatory proceedings.

DATE: Written responses and accompanying data should be filed with the Commission within 60 days from the publication in the **Federal Register.**

COPIES: Copies of the full decision are available from the Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, D.C. 20423, Phone (202) 275-7428.

ADDRESS: An original and 10 copies of any comment should be sent to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275-7489.

SUPPLEMENTARY INFORMATION: The purpose of this revision is to resolve those issues left pending in Ex Parte No. 393, *Standards for Railroad Revenue Adequacy*, 364 ICC 803 (1981).

The most significant change proposed is the adoption of inflation adjusted accounting procedures employing specific inflation indices developed internally by the Commission. Other changes to be considered include refining definitions of the railroad net investment base and operating income to include all transportation related elements and exclude non-transportation related items. In addition, it is proposed that normalized data be used over a four year period, in lieu of single year data to determine revenue adequacy. Finally, it is proposed to consider the inclusion of railroad affiliates in determining the revenue needs of railroad systems.

We seek comments from the parties on each of these issues to assist us in resolving them in this proceeding. Additionally, we request comments on possible implications of the Economic Recovery Tax Act of 1981 (ERTA) on future revenue adequacy determinations.

Regulatory Flexibility Act

The Commission certifies that these proposed standards will not have a significant economic impact on a substantial number of small entities. The rule changes considered in this proceeding affect only information already supplied by Class I railroads or available to them from their subsidiaries.

We seek comments on the various issues and approaches contained in this notice. In addition, while this action does not appear to affect significantly the quality of the human environment or conservation of energy resources, we invite comments on these subjects.

(49 U.S.C. 10321, 10701(e), 10704(a); section 205(a)(1), Pub. L. 96-448; 4 U.S.C. 553.)

Decided: February 18, 1983.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Commissioner Sterrett dissented in part with a separate expression. Commissioner Andre dissented with a separate expression. Vice Chairman Gilliam did not participate.

Agatha L. Mergenovich,

Secretary.

Commissioner Sterrett, dissenting in part:

The Commission's revenue adequacy standards have taken on greatly increased significance because a majority of the Commission is proposing, in Ex Parte No. 347 (Sub-No. 1), to use revenue adequacy as a constraint on pricing. Thus, it is imperative that the Commission be particularly careful in proposing changes to the existing revenue adequacy standards.

The Commission's stated purpose in this proceeding is "to provide a more accurate reflection of the profitability of railroad operations." Yet, three of the proposals made here would distort the real picture by including in the determination of a rail carrier's profitability (1) the financial results of certain non-carrier, but "transportation-related" affiliates; (2) the financial results of other railroads, related only by common control; and (3) the rail carrier's past financial results, instead of just its current performance. In short, whether a railroad is revenue adequate would be determined by considering the financial performance of non-carriers and other carriers, over past years. I question whether this is either legally or practically justifiable.

Commissioner Andre, dissenting

On the whole, the notice approved by the majority proposed worthwhile changes in the method of determining railroad return on investment.

I must, however, dissent from the majority's proposal to retreat from current use of the nominal (without inflation adjustment) cost of capital in determining the proper level of earnings. The majority proposes to reduce the nominal cost of capital to what it considers to be the "real" cost of capital by subtracting from the nominal cost of capital an estimate of the future rate of inflation. In my dissenting vote in the Notice of Rulemaking in Ex Parte No. 274 (Sub-No. 5), *Revision of Abandonment Regulations* (unprinted, served October 1, 1982), I opposed a similar deduction of an inflation estimate.

Briefly, I submit that sound policy requires us to focus upon the railroads' true opportunity cost of capital when we are setting their allowable return on investment. The railroads' opportunity cost of capital is the sum that the railroads must forgo by keeping their assets in railroad use instead of investing them elsewhere. It is the value of the railroads' investment multiplied by a percentage return figure which is a reasonable estimate of the return that a railroad could get by investing its funds elsewhere.

The railroads' investment is currently determined on a book or original cost basis. The use of original cost assumes that an investment in real assets is like a deposit of cash in an interest-bearing bank account, in that money value of the original investment does not change. An asset value at original cost, like a sum of money in a bank, will not increase in nominal value (or even real value) due to inflation.

In the real world, however, railroads put their money into real assets. Real assets can increase in nominal value due to inflation. (The majority would give proper recognition to inflationary changes in value by the proposal to use index numbers to develop an acceptable proxy for depreciated reproduction cost values.) Moreover, in the real world, a railroad could (in the absence of regulatory restraint) sell its assets at their (inflation-influenced) reproduction cost values and invest the proceeds *at market rates of return*, with no inflation adjustment of the type proposed by the majority. The sum that the railroads would receive if they were to do this is the true opportunity cost of capital, i.e., what other sectors of the economy are sacrificing when rail assets are kept in rail use.

The majority, however, ignores the true cost of capital when it uses the inflation rate deduction to allow less than the actual market rate of return to be used as the cost of

capital. In my vote in Ex Parte No. 274 (Sub-No. 5), supra, I explained why this deduction is not necessary to prevent railroads from "double counting" the effect of inflation on rate of return. The same reasoning applies here.

[FR Doc. 83-6123 Filed 3-9-83; 8:45 am]
BILLING CODE 7035-01-M

[Nos. MC-F 15157; OP4F-124]

Alaska Terminals, Inc.; Control Exemption; Alaska Sea Van, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Pursuant to 49 U.S.C. 11343(e), and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1), *Procedures for Handling Exemptions Filed by Motor Carriers of Property Under 49 U.S.C. 11343*, 367 ICC 113 (1982), Alaska Terminals, Inc. (No. MC-118491) and Golden North Van Lines, Inc. (No. MC-140586), both motor common carriers, seek an exemption from the requirement under section 11343 of prior regulatory approval for the transfer of control of Alaska SeaVan, Inc. (No. MC-136038), a regulated carrier doing business as Mitchell Moving and Storage, through the purchase by Alaska Terminals, Inc. from Golden North Van Lines, Inc. of all capital stock of Alaska SeaVan, Inc.

DATE: Comments must be received within 30 days after the date of publication in the **Federal Register.**

ADDRESSES: Send comments to:

(1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423

and

(2) Petitioners' representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101.

Comments should refer to No. MC-F-15157.

FOR FURTHER INFORMATION CONTACT: Warren C. Wood, (202) 275-7949.

SUPPLEMENTARY INFORMATION: Please refer to the petition for exemption, which may be obtained free of charge by contacting petitioners' representative. In the alternative, the petition for exemption may be inspected at the Offices of the Interstate Commerce Commission during usual business hours.

Decided: March 3, 1983.

By the Commission, Herber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-6130 Filed 3-9-83; 8:45 am]
BILLING CODE 7035-01-M

[No. MC-F-15144]

Baker Truck Service, Inc.; Purchase Exemption; Shoemaker Trucking Company (Lorean Wetzel, Trustee in Bankruptcy)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Exemption.

SUMMARY: Pursuant to 49 U.S.C. 11343(e), and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1), *Procedures—Handling Exemptions Filed by Motor Carriers*, 367 I.C.C. 113 (1982), Baker Truck Service Inc. (Baker) MC-138652) and Shoemaker Trucking Company (Shoemaker) (MC-138875) seek an exemption from the requirement of prior regulatory approval of the purchase of a portion of Shoemaker's operating rights (Subs 296, 297, 309X, and 312X), authorizing the transportation of general and specified commodities between points in all or specified portions of the United States.

DATE: Comments must be received within 30 days after the date of publication in the **Federal Register.**

ADDRESSES: Send comments to:

(1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423,

and

(2) Petitioner's representative: David E. Wishney, P.O. Box 837, Boise, ID 83701.

Comments should refer to No. MC-F-15144

FOR FURTHER INFORMATION CONTACT: Warren C. Wood, (202) 275-7949.

SUPPLEMENTARY INFORMATION: Please refer to the petition for exemption, which may be obtained free of charge by contacting petitioner's representative. In the alternative, the petition for exemption may be inspected at the offices of the Interstate Commerce Commission during usual business hours.

Decided: March 4, 1983.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-6129 Filed 3-9-83; 8:45 am]
BILLING CODE 7035-01-M

[No. MC-F-15125]

Dutton Trucking, Inc.; Purchases Exemption; Grand Island Express, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Exemption.

SUMMARY: Pursuant to 49 U.S.C. 11343(e), and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1), *Procedures—Handling Exemptions Filed by Motor Carriers*, 367 I.C.C. 113 (1982), Dutton Trucking, Inc. (No. MC-153281) seeks an exemption from the requirement of prior regulatory approval for its proposed acquisition of a portion of the operating authority of Grand Island Express, Inc. (No. MC-135283). This authority authorizes the transportation of malt beverages and empty malt beverage containers between specified points in Minnesota, Illinois, and Nebraska.

ADDRESSES: Send comments to:

(1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423

and

(2) Petitioner's representative: Jack L. Shultz, Nelson & Harding, P.O. Box 82028, Lincoln, NE 68501.

Comments should refer to No. MC-F-15125.

FOR FURTHER INFORMATION CONTACT: Warren C. Wood, (202) 275-7949.

SUPPLEMENTARY INFORMATION: Please refer to the petition for exemption, which may be obtained free of charge by contacting petitioner's representative. In the alternative, the petition for exemption may be inspected at the offices of the Interstate Commerce Commission during usual business hours.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-6131 Filed 3-9-83; 8:45 am]
BILLING CODE 7035-01-M

[No. MC-F-15116]

Five Star Trucking, Inc.; Purchase Exemption; Chism, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Pursuant to 49 U.S.C. 11343(e), and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1), *Procedures for Handling Exemptions Filed by Motor Carriers of Property under 49 U.S.C. 11343*, 363 I.C.C. 113 (1982), Five Star Trucking Inc. (No. MC-140889) seeks an exemption from the requirement under section 11343 of prior regulatory approval of the purchase of all authorities issued to Chism, Inc. (No. MC-156329). Authority is also sought by

Five Star to temporarily lease Chism's operating rights pending disposition.

DATE: Comments must be received within 30 days after the date of publication in the **Federal Register.**

ADDRESSES: Send comments to:

(1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423

and

(2) Petitioners' representatives: Max W. Lilley, Esq., Lilley & Cowan, P.C., Suite 221, Woodruff Building, P.O. Box 1305, S.S.S., Springfield, MO 65805

and

David M. O'Boyle, Esq., Wick, Rich, Fluke & Streiff, 1610 Two Chatham Center, Pittsburgh, PA 15219.

Comments should refer to No. MC–15116.

FOR FURTHER INFORMATION CONTACT: Warren C. Wood, (202) 275–7949.

SUPPLEMENTARY INFORMATION: Please refer to the petition for exemption, which may be obtained free of charge by contacting petitoner's representative. In the alternative, the petition for exemption may be inspected at the offices of the Interstate Commerce Commission during usual business hours.

Decided: March 4, 1983.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-6133 Filed 3-9-83; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-F-15138]

Rowley Interstate Transportation Company, Inc.; Purchase (Portion) Exemption; Sawyer Transport, Inc. (Nathan Yorke, Trustee-In-Bankruptcy)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Exemption.

SUMMARY: Pursuant to 49 U.S.C. 11343(e), and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1), *Procedures—Handling Exemptions Filed by Motor Carriers*, 367 ICC 113 (1982), Rowley Interstate Transportation Company, Inc., (Rowley) (Nos. MC–114028 and MC–147718) seeks an exemption from the requirement under section 11343 of prior regulatory approval for the purchase of a portion of the operating rights of Sawyer Transport, Inc., (MC–123407), authorizing generally the transportation of metal products between points in specified counties, on the one hand, and, on the other, points in the United States. An application for temporary authority has been filed.

DATE: Comments must be received within 30 days after the date of publication in the **Federal Register.**

ADDRESSES: Send comments to:

(1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, DC 20423

and

(2) Petitioner's representative: Carl L. Steiner, 135 South LaSalle St., Chicago, IL 60603.

Comments should refer to No. MC–F–15138.

FOR FURTHER INFORMATION CONTACT: Warren C. Wood, (202) 275–7977.

SUPPLEMENTARY INFORMATION: Please refer to the petition for exemption, which may be obtained free of charge by contacting petitioner's represenative. In the alternative, the petition for exemption may be inspected at the offices of the Interstate Commerce Commission during usual business hours.

Decided: March 3, 1983.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-6132 Filed 3-9-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30106]

Burlington Northern Railroad Company; Abandonment Exemption; in Greene County, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts Burlington Northern Railroad Company from 49 U.S.C. 10903 *et seq.* in connection with 0.04 mile of rail line in Greene County, IL, subject to employee protective conditions.

DATES: This exemption is effective on April 8, 1983. Petitions to stay the effectiveness of this decision must be filed by March 21, 1983, and petitions for reconsideration must be filed by March 30, 1983.

ADDRESSES: Send pleadings to:

(1) Rail Section, Room 5349, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Thomas A. Ehlinger, 176 E. Fifth St., St. Paul, MN 55101

Pleadings should refer to Finance Docket No. 30106.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to TS InforSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423 or call 289–4357 (D.C. Metropolitan area) or toll free (800) 424–5203.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-6125 Filed 3-9-83; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

[Redelegation of Authority No. 93.1, Amdt. No. 1]

Associate Assistant to the Administrator for Management; Redelegation of Authority Regarding the Directorate for Program and Management Services

Pursuant to the authority delegated to me by the Agency for International Development Delegations of Authority Nos. 36, 40, 41, 56, 57, 64, 67, 93, 99, 110, 122, and 137, I hereby amend the redelegations thereunder to substitute "Associate Assistant to the Administrator" for "Deputy Assistant to the Administrator" wherevery it appears.

Except as provided herein these Redelegations of Authority remain unchanged and continue in full force and effect.

This amendment is effective immediately.

Dated: February 25, 1983.

R. T. Rollis, Jr.,

Assistant to the Administrator for Management.

[FR Doc. 83-6144 Filed 3-9-83; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF JUSTICE

Proposed Consent Decree In Action To Enforce the Clean Air Act; Lehigh Carting Co.

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on February 22, 1983, a proposed consent decree in *United States* v. *Lehigh Carting Company, Inc.*, Civil Action No. 83–C–2213 was lodged with the United States

District Court for the Eastern District of New York.

The proposed consent decree provides for compliance with both the New York State Implementation Plan (SIP) and the Clean Air Act. The decree enjoins open burning and waste incineration, requires the company to comply with future requests for information made by the Environmental Protection Agency pursuant to its statutory authority, grants EPA access to the company's property for inspection purposes, and orders payment by the company of a $4,000 civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this notice written comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Lehigh Carting Company, Inc.*, D.J. No. 90-5-2-1-565.

A proposed consent decree may be examined at the Office of the United States Attorney, Eastern District of New York, U.S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York 11201; and the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Carol E. Dinkins,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 83-6089 Filed 3-9-83; 8:45 am]

BILLING CODE 4410-01-M

Office of Juvenile Justice and Delinquency Prevention

Coordinating Council on Juvenile Justice and Delinquency Prevention; Meeting

Notice is hereby given that the Coordinating Council on Juvenile Justice and Delinquency Prevention will meet on Thursday, March 24, 1983 at the Department of Housing and Urban Development, 451 7th Street, SW., Room 10233, Washington, D.C. 20410. This meeting will be open to the public and will begin at 9:00 a.m.

The meeting will be concerned with an overview of the Office's Program Plan as well as a review of the Coordinating Council Program Plan.

For further information, contact Mr. William Modzeleski, Office of Juvenile Justice and Delinquency Prevention, Department of Justice, 633 Indiana Avenue, NW., Room 1102, Washington, D.C. 20531, telephone (202) 724-7655.

Alfred S. Regnery,

Acting Administrator, Office of Juvenile Justice and Delinquency, Prevention.

[FR Doc. 83-6159 Filed 3-9-83; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Music Advisory Panel (Solo Recitalists); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Solo Recitalists) to the National Council on the Arts will be held on March 24-25, 1983, from 9:00 a.m.-5:30 p.m. in room 1426 of the Columbia Plaza Office Complex, 2401 E Street, NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

March 2, 1983.

[FR Doc. 83-6150 Filed 3-9-83; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Issuance of Amendment To Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 53 to Facility Operating License No. DPR-61 issued to Connecticut Yankee Atomic Power Company (the licensee), which revised the Technical Specifications for operation of the Haddam Neck Plant (the facility) located in Middlesex County, Connecticut. This amendment is effective as of its date of issuance.

The amendment approves changes to the Appendix A Technical Specifications to allow hydrostatic and leak testing of the primary system at lower temperatures.

The application for 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 1, 1982, and a revision thereto dated February 28, 1983, (2) Amendment No. 53 to License No. DPR-61, 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 Russel Library, 119 Broad Street, Middletown, Connecticut 16457. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C., 2055, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 4th day of March 1983.

For the Nuclear Regulatory Commission.

Thomas V. Wambach,

Acting Chief, Operating Reactors Branch #5, Division of Licensing.

[FR Doc. 83-6165 Filed 3-9-83; 8:45 am]

BILLING CODE 7590-01-M

[ASLB No. 78-389-03 OL, 80-429-02 SP; Docket Nos. 50-329 OM, 50-330 OM; Docket Nos. 50-339 OL, 50-330 OL.]

Consumers Power Co. (Midland Plant, Units 1 and 2); Rescheduled Evidentiary Hearings

March 4, 1983.

Notice is hereby given that, as announced at a recent evidentiary hearing (Tr. 12182), hearings on QA/QC issues, previously scheduled for April 12–16 and 18–22, 1983 (see Order dated January 7, 1983), have been rescheduled for April 26–30 and May 2–6, 1983. The hearings will be held at Room E, Quality Inn, 1815 S. Saginaw Road, Midland, Michigan.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 83-6166 Filed 3-9-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322-OL]

Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1); Schedule and Location for Resumption of Evidentiary Hearing

March 7, 1983.

As discussed with the affected parties during the conference call of March 2, 1983, the evidentiary hearing in this operating license proceeding will resume on Tuesday, April 5, 1983, at 10:30 a.m., at the: Riverhead Suffolk County Center, Legislative Hearing Room, Center Drive, Riverhead, New York 11901.

The hearing will continue until the completion of systems interaction and safety classification issues raised by Mr. Conran's affidavit, on a Tuesday through Friday schedule.

For the one day of Thursday, April 7, 1983, the hearing will be held at the: Riverhead Town Hall, 200 Howell Avenue, Riverhead, New York 11901.

The hearing will commence at 10:30 a.m. on Tuesdays, and at 9:00 a.m. on other days.

For the Atomic Safety and Licensing Board.

Lawrence Brenner,

Chairman, Administrative Judge.

March 7, 1983.

[FR Doc. 83-6167 Filed 3-9-83; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-277 and 50-278]

Philadelphia Electric Co., et al; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 89 and 89 to Facility Operating Licenses Nos. DPR-44 and DPR-56, issued to Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, which revised Technical Specifications (TSs) for operation of the Peach Bottom Atomic Power Station, Units Nos. 2 and 3 (the facility) located in York County, Pennsylvania. The amendments are effective as of the date of issuance.

The changes to the TSs reduce the Reactor Vessel Differential Pressure Alarm setpoint to permit proper alarm operation for detection of Core Spray Sparger pipe breaks within the reactor vessel annulus area.

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 October 1, 1981, (2) Amendment No. 89 to License No. DPR-44 and Amendment No. 89 to License No. DPR-56 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania. 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 1st day of March 1983.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch #4, Division of Licensing.

[FR Doc. 83-6168 Filed 3-9-83; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-277 and 50-278]

Philadelphia Electric Co., et al., Issuance of Amendments To Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 90 and 90 to Facility Operating Licenses Nos. DPR-44 and DPR-56, issued to Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, which revised Technical Specifications (TSs) for operation of the Peach Bottom Atomic Power Station, Units Nos. 2 and 3 (the facility) located in York County, Pennsylvania. The amendments are effective as of the date of issuance.

The revised TSs provide operability and surveillance requirements for the scram discharge volume vent and drain isolation valves.

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 December 15, 1982, (2) Amendment No. 90 to License No. DPR-44 and Amendment No. 90 to License No. DPR-56, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the

Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania. 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 1st day of March 1983.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch #4, Division of Licensing.

[FR Doc. 83-6189 Filed 3-9-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-445, 50-446]

Texas Utilities Generating Co., et al. (Comanche Peak Steam Electric Station, Units 1 and 2); Resumed Evidentiary Hearing

March 4, 1983.

I

Please take notice that the evidentiary hearing in this operating license proceeding will be resumed on Monday, April 4, 1983 at 8:30 a.m., local time, at the Metro Center Hotel, 600 Commerce Street, Fort Worth, Texas 76102 and will continue through April 8, 1983. The hearing will address matters in controversy that have not been completed, including both issues and evidentiary or testimonial proof previously described in our Memorandum and Order dated January 4, 1983.

The NRC Staff is hereby directed and ordered to prepare and serve subpoenas for the appearance as Board Witnesses, at 9 a.m. Monday, April 4, 1983, of the following persons: Richard Ice, Jim Hawkins, Donna Lewellen, Randy Smith, Gordon Purdy, Tom Brandt, Ron Tolson, David Chapman, Albert Boren and Chet Wright.

All parties to this proceeding and their attorneys, representatives and persons in privity with them are hereby directed to refrain from conferring with, discussing, talking to, or "preparing" any of these witnesses on matters related, directly or indirectly, to the Charles A. Atchison allegations concerning his wrongful discharge as a QC inspector at Comanche Peak facility, his job performance, the NRC investigation of the Atchison allegations, the evidentiary hearing on alleged illegal discharge conducted by the Department of Labor (DOL) resulting in a Recommended Decision in Case No. 82-ERA-9 filed by an Administrative Law Judge on December 3, 1982, and the evidence or testimony adduced at such DOL evidential hearing. The subpoenaed witnesses listed herein above are also directed to refrain from discussing the facts involved in the above-described Atchison allegations and hearings with each other, or with the parties to this proceeding and the parties' counsel or representatives, until after all such witnesses have testified before the Board as Board Witnesses on April 5, 1983.

II

The reasons for taking evidence from these Board Witnesses and the Board's own determination of its informational needs in that regard in order to resolve important factual and credibility issues, were set forth in our Orders dated January 4, 1983, September 30, 1982 and August 4, 1982. The Board has concluded that the circumstances surrounding the investigation and testimony of an NRC investigator that allegations of the wrongful discharge of a QC inspector were not substantiated (Staff Exhibits 197-199), should "be fully aired and resolved," regardless of "whether or not the parties are themselves otherwise interested in pursuing those matters." [1]

Some clarification is required as to the controversy between the legal Staff and the Board. The dispute is over the production of documents as ordered by the Board. These documents are the original, unaltered, signed witness statements taken by the NRC investigator when he interviewed the ten witnesses listed above. Theses witnesses are not Staff witnesses, and their identities were not dug up by the Staff investigation. They were chiefly supplied to the investigator by the original "whistleblower," Mr. Atchison, when he alleged that he had been wrongfully fired as a QC inspector at Comanche Peak because he tried to report serious construction defects and practices at the site.

The Licensing Board is well aware, as the Appeal Board found,[2] that the identities of the ten interviewees "had become public knowledge through the inequivocal testimony of a highly reliable applicants' witness." [3] However, it is necessary to develop a complete record in order to make findings concerning the adequacy and reliability of NRC investigations of serious safety allegations by a discharged QC inspector. The production for Board review of the original, signed witness statements would assist in developing a full record. The Staff's offer of heavily blacked out and thus censored copies is an unacceptable substitute for the original, unaltered documents.

Public confidence in the ability and willingness of NRC to investigate QC allegations by "whistleblowers" is very important to perceptions of the integrity of our adjudicatory process. As we have previously stated, it would be anomalous to have DOL and NRC investigators coming to opposite conclusions regarding the wrongful firing of a QC inspector when based upon substantially the same evidence or witness' statements.[4] Clearly the Board should be able to take additional direct evidence itself on these important matters of credibility without running into an "* * * 'unnecessary,' delay grounded in a Staff desire to perpetuate a now academic disagreement with the Licensing Board" (ALAB-716 at 7). In any event, the Board would not be perpetuating any dispute with the Staff, as it already has the names of the ten witnesses it wants to subpoena and interrogate directly. The Staff is required only to perform the ministerial task of preparing and serving subpoenas.[5] Most of the names of these witnesses were furnished initially by Mr. Atchison, and they were not the result of any Staff investigation or original promises of confidentiality. The latter argument appears to be a belated and self-serving effort by the Staff to obstruct the Board from determining whether or not QC "whistleblowers" were improperly fired, as found by the DOL Administrative Law Judge after a full adjudicatory hearing. Such finding, which was subsequent to the Staff's initial and continued refusal to furnish witness statements or names, constitutes additional necessity for the Board to clear the air by making an independent record on the issue of discharge of a QC inspector allegedly for disclosing construction defects. It should also be noted that a large number of I&E reports have been admitted into evidence at the request of both the Staff and Intervenor CASE. It will be necessary for the Board to determine the adequacy of such investigations as they relate to the QA/QC program. In that context, an

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[1] Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155, at 177, footnote 87 (1978).

[2] ALAB-714 (February 24, 1983), Slip Opinion at 6-7, 15-18.

[3] *Id.*, at 17.

[4] Memorandum and Order dated January 4, 1983, at 2-5.

[5] If the Commission does not grant the Staff's Application For A Stay Of The Effectiveness of ALAB-714, filed March 1, 1983, in such a manner as to relieve the Staff of its duty to produce unaltered witness statements, the Board will require the Staff to produce copies of the signed witness statements as expressly directed in its prior orders.

examination of the contemporaneous witness statements as well as the witnesses themselves will help the Board evaluate the quality of such investigations and the validity of their conclusions.

An independent examination of Board witnesses will enable the balance of the hearing on disputed contentions to proceed expeditiously without impacting adversely on the balance of the hearing schedule. This procedure, by providing for an early hearing of the Board's witnesses, takes into account the Licensing Board's concern that "the progress of this operating license proceeding might well be impeded" (ALAB-716, Slip Op. at 6). There is also no question that there is "a manifest need to avoid unnecessary delay in the completion of the proceeding" (*ibid*).

The procedure of directing all witnesses not to discuss the subject of their testimony in advance of their appearance as Board witnesses, was successfully followed in *Consumers Power Company* (Midland Plant, Units 1 and 2) (Remand Proceeding), LBP-81-63, 14 NRC 1968 (1981). The views of the Commission on disclosure in that proceeding are set forth in the Statement of the Commission, CLI-83-3 (February 18, 1983), which for convenience is attached hereto as Appendix 1. In addition, this procedure is not contrary to the so-called *Summer* doctrine regarding restrictions on expert witnesses being called by licensing boards, because a finding of necessity has been made by the Board. Also, the Staff has not offered to supply the testimony itself as it did in *Summer*, but rather has refused to do so.[6]

Finally, the Applicants and the Staff are hereby directed to file with the Board, and with the appropriate NRC Public Document Room, one copy each of the Transcript of the DOL evidentiary hearing in Case No. 82-ERA-9, wherein Charles A. Atchison was the complainant and Brown and Root, Inc., was the respondent on allegations of illegal discharge. Copies of the material core exhibits admitted into evidence by the DOL shall also be furnished if not unduly bulky or expensive. These documents and transcripts shall be filed and in the hands of the Board at its Bethesda, Maryland office by March 21, 1982.

It is so ordered.

Dated at Bethesda, Maryland this 4th day of March, 1983.

For the Atomic Safety and Licensing Board.

Marshall E. Miller,

Chairman, Administrative Judge.

[FR Doc. 83-6170 Filed 3-9-83; 8:45 am]

BILLING CODE 7590-01-M

[6] South Carolina Electric & Gas Company (Virgil C. Summer Nuclear Station, Unit 1), ALAB-663, 14 NRC 1140 (1981); ALAB-710, 16 NRC—(Jan. 13, 1983).

[Docket Nos. 50-445 and 50-446]

Texas Utilities Generating Co., et al. (Comanche Peak Steam Electric Station, Units 1 and 2); Receipt of Petition

Notice is hereby given that the Citizens Association for Sound Energy has filed a request for action pursuant to 10 CFR 2.206 with respect to the Comanche Peak Station which is being constructed by the Texas Utilities Generating Co. under construction permits issued by the Nuclear Regulatory Commission. The petition alleges that the company's failure to have certain design documents within its possession constitutes a violation of NRC regulations. Consequently, the petitioner requests that the Director, Office of Inspection and Enforcement issue an order to show cause why the licensee should not be found in violation of NRC regulations or, in the alternative, produce the documents.

In accordance with 10 CFR 2.206, appropriate action will be taken on the petition within a reasonable time. Copies of the petition are available for public inspection in the Commission's public document room at 1717 H Street, NW., DC 20555, and in the local public document rooms for the Comanche Peak Station at the Somerville County Public Library, On the Square, P.O. Box 1417, Glen Rose, Texas 76043 and the University of Texas Library, Arlington, Texas 76019.

Dated at Bethesda, Maryland this 3rd day of March 1983.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

[FR Doc. 83-6171 Filed 3-9-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-280 and 50-281]

Virginia Electric and Power Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 84 to Facility Operating License No. DPR-32 and Amendment No. 85 to Facility Operating License No. DPR-37 issued to Virginia Electric and Power Company (the licensee), which revised Technical Specifications for operation of the Surry Power Station, Unit Nos. 1 and 2, respectively (the facilities), located in Surry County, Virginia. The amendments are effective as of the date of issuance.

The amendments revise the Technical Specifications to remove a restriction on moving a spent fuel cask into the Fuel Building. Requirements are added to install cask impact pads in the spent fuel pool and to not store spent fuel decayed less than 150 days in the first three rows of fuel racks adjacent to the Fuel Building Trolley Load Block.

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 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 application for amendments dated September 23, 1982, as supplemented January 17, 1983, (2) Amendment Nos. 84 and 85 to License Nos. DPR-32 and DPR-37, 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 Swem Library, College of William and Mary, Williamsburg, Virginia 23185. 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 4th day of March 1983.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch #1, Division of Licensing.

[FR Doc. 83-6172 Filed 3-9-83; 8:45 am]

BILLING CODE 7590-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Reports, Recommendations; Availability

Reports Issued:

Marine Accident Report: Collision of the U.S. Barge Carrier SS DELTA NORTE and the Liberian Freighter M/V AFRICAN PIONEER in the Gulf of Mexico about 115 Nautical Miles Southeast of Galveston, Texas, February 19, 1982 (NTSB-MAR-82-8).

Aircraft Accident Report: Reeve Aleutian Airways Nihon YS-11A, N169RV, King Salmon, Alaska, February 16, 1982 (NTSB-AAR-82-14).

Pipeline Accident Report: The Gas Company of New Mexico, Natural Gas Explosion and Fire, Portales, New Mexico, June 28, 1982 (NTSB-PAR-83-1).

Aircraft Accident Reports: Brief Format, U.S. Civil Aviation Issue Number 9 of 1981 Accidents (NTSB-BA-82-11).

Aircraft Accident Reports: Brief Format, U.S. Civil Aviation Issue Number 11 of 1981 Accidents (NTSB-BA-82-13).

Recommendations to:

Aviation—*Federal Aviation Administration: Feb. 24: A-83-1:* Amend TSO C-100 to permit the use of any infant or child restraint device bearing a label in conformance with 49 CFR 571.213, S5.5.2(e) aboard aircraft during takeoff, landing, and in-flight operations, until such time as the Federal Aviation Administration and the National Highway Traffic Safety Administration issue standards for devices acceptable for use in both motor vehicles and aircraft.

Highway—*State of Arkansas: Jan. 20: H-83-1:* Develop a coordinated program with the railroad companies that operate within the State, to extend the Operation Lifesaver program to the rural communities where the majority of trackage and unprotected grade crossings are located by working directly with local officials, farm bureaus, and farming cooperative associations to promote grade crossing safety within rural communities. *H-83-2:* Encourage all railroad companies that operate within the State to develop a near miss data system that will permit them to promptly report to the State authorities all violators of grade crossing safety laws.

Missouri Pacific Railroad: Jan. 20: H-83-3: Expand the company's ongoing near miss reporting program in the Louisiana division to require that operating and engine crews also report vehicles other than hazardous material trucks and schoolbuses that violate grade crossing safety laws. *H-83-4:* Encourage company operating employees in all districts to increase their participation in the Operation Lifesaver program in order to disseminate to a wider section of the public their experiences with near misses and accidents that occur along the train line over which they operate.

American Association of Community and Junior Colleges: Feb. 24: H-83-5: Advise your members of the circumstances of the truck accident involving 66 students in Lynchburg, Virginia, on Oct. 6, 1982. *H-83-6:* Urge your members to establish a policy for the transportation of student groups to and from offcampus events that would: (1) Prohibit the use of trucks and other nonpassenger-carrying vehicles, (2) discourage the use of drivers who are members of the student group being transported, and (3) advocate the use of buses and trained, for-hire drivers.

Railroad—*Southern Pacific Transportation Company: Jan. 28: R-83-1:* Review, and modify if necessary, the evaluation process concerning track inspection defect data for tracks carrying passenger trains or trains with hazardous materials to better assure that rails having defects which might result in catastrophic failure are replaced. *R-83-2:* Improve current Total Operations Processing System Procedures to better assure that traincrews of trains carrying hazardous materials are furnished accurate information regarding the train consist and the appropriate emergency response for the hazardous material. *R-83-3:* Initiate procedures to require that waybills for Trailer-On-Flat-Car and Container-On-Flat-Car shipments containing hazardous material include accurate information regarding the contents of the trailer and/or containers. *R-83-4:* Require train crewmembers to review carefully all shipping documentation in their possession to determine whether any hazardous materials are present on the train.

Research and Special Programs Administration: Jan. 28: R-83-5: Require that all shipping papers accompanying hazardous materials in Trailer-On-Flat-Car or Container-On-Flat-Car shipments identify the originating shipper of the hazardous materials in order to facilitate access to technical emergency response information in the event of a hazardous material incident. *R-83-6:* In conjunction with the Association of American Railroads, the American Trucking Associations, Inc., the Federal Highway Administration, and the Federal Railroad Administration, develop, validate, and urge implementation of a model plan for use by railroads and motor carriers to make certain that waybills for Trailer-On-Flat-Car and Container-On-Flat-Car shipments containing hazardous materials include accurate information regarding the contents of the trailers and/or containers.

Association of American Railroads: Jan. 28: R-83-7 through -9: Inform its membership of the facts, conditions, and circumstances of the accident which occurred at Thermal, California, on January 7, 1982, and recommend to its member railroads that they: Review, and modify if necessary, their evaluation process concerning track inspection defect data for tracks carrying passenger trains or trains with hazardous materials to better assure that rails having defects which might result in catastrophic failure be replaced. (R-83-7) Assess their procedures to make certain that traincrews of trains carrying hazardous materials have in their possession accurate documentation of, and emergency response information for, all hazardous materials being carried. (R-83-8) In conjunction with the American Trucking Associations, Inc., the Federal Highway Administration, the Federal Railroad Administration, and the Research and Special Programs Administration, develop, validate, and urge implementation of a model plan for use by railroads and motor carriers to make certain that waybills for Trailer-On-Flat-Car and Container-On-Flat-Car shipments containing hazardous materials include accurate information regarding the contents of the trailers and/or containers. (R-83-9)

American Short Line Railroad Association: Jan. 28: R-83-10 and -11: Inform its membership of the facts, conditions, and circumstances of the accident which occurred at Thermal, California, on January 7, 1982, and recommend to its member railroads that they: Review, and modify if necessary, their evaluation process concerning track inspection defect data for tracks carrying passenger trains or trains with hazardous materials to better assure that rails having defects which might result in catastrophic failure be replaced. (R-83-10) Assess their procedures to make certain that traincrews of trains carrying hazardous materials have in their possession accurate documentation of, and emergency response information for, all hazardous materials being carried. (R-83-11)

American Trucking Associations, Inc.: Jan. 28: R-83-12: Inform its membership of the facts, conditions and circumstances of the accident which occurred at Thermal, California, on January 7, 1982, and recommend to its membership that they assess their procedures to make certain that waybills for Trailer-On-Flat Car and Container-On-Flat-Car shipments containing hazardous material include accurate information regarding the contents of the trailers and/or containers. *R-83-13:* In conjunction with the Association of American Railroads, the Federal Highway Administration, the Federal Railroad Administration, and the Research and Special Programs Administration, develop, validate, and urge implementation of a model plan for use by railroads and motor carriers to make certain that waybills for Trailer-On-Flat Car and Container-On-Flat-Car shipments containing hazardous materials include accurate information regarding the contents of the trailers and/or containers.

Federal Railroad Administration: Jan. 28: R-83-14: Develop, validate, and implement a model plan of recommended inspection practices containing clearly defined limits of allowable track structure conditions for the use of industry employed railroad track inspectors to facilitate uniform and knowledgeable appraisals of defective track structure conditions. *R-83-15:* In conjunction with the Association of American Railroads, the Federal Highway Administration, the American Trucking Association, Inc., and the Research and Special Programs Administration, develop, validate and urge implementation of a model plan for use by railroads and motor carriers to make certain that waybills for Trailer-On-Flat Car and Container-On-Flat-Car shipments containing hazardous materials include accurate information regarding the contents of the trailers and/or containers. *R-83-16:* In

conjunction with the Federal Highway Administration, initiate a regulatory compliance study which samples Trailer-On-Flat Car and Container-On-Flat-Car shipments designated as Freight-All-Kind to determine if those shipments contain hazardous materials and take enforcement action as required in those cases of noncompliance.

Federal Highway Administration: Jan. 28: R–83–17: In conjunction with the Federal Railroad Administration, initiate a regulatory compliance study which samples Trailer-On-Flat Car and Container-On-Flat-Car shipments designated as Freight-All-Kind to determine if those shipments contain hazardous materials and take enforcement action as required in those cases of noncompliance. *R–83–18:* In conjunction with the Association of American Railroads, the Federal Railroad Administration, the Research and Special Programs Administration, and the American Trucking Associations, Inc., develop, validate, and urge implementation of a model plan for use by railroads and motor carriers to make certain that waybills for Trailer-On-Flat Car and Container-On-Flat-Car shipments containing hazardous materials include accurate information regarding the contents of the trailers and/or containers.

Burlington Northern Railroad Company: Feb. 28: R–83–19: Adopt a system of professionally gathered and evaluated meteorological information to better assure timely knowledge of climatic conditions that may affect the safe operations of train movements. *R–83–20:* Review and revise, where necessary, the training provided to employees whose responsibilities may affect the protection of train movements during conditions of severe weather, to enable those employees to better assess climatic threats to safe train movements.

National Railroad Passenger Corporation (Amtrak): Feb. 28: R–83–21: Adopt a system of professionally gathered and evaluated meteorological information to better assure timely knowledge of climatic conditions that may affect the safe operation of passenger train movements for all Amtrak routes. *R–83–22:* Require that those railroads under contractual agreement to operate passenger trains adopt a system of professionally gathered and evaluated meteorological information to better assure timely knowledge of climatic conditions that may affect the safe operation of those passenger train movements. *R–83–23:* Provide copies of Amtrak's Emergency Evacuation Procedures booklet to all emergency response organizations not possessing those procedures from the original distribution, along all designated passenger train routes. *R–83–24:* Review and revise, where necessary, the training and retraining programs for onboard employees in emergency procedures, including the operation of emergency exits, to improve onboard employee competence to render effective assistance to passengers in emergency situations. *R–83–25:* Evaluate and modify, as necessary, emergency lighting systems in passenger-carrying cars to better protect the functioning of emergency lights in emergency situations. *R–83–26:* Formulate and implement an onboard briefing program for onboard passengers in methods of emergency evacuation.

Pipeline—*Research and Special Programs Administration: Jan. 27: P–83–1:* Discontinue its planned withdrawal of rulemaking in Docket PS–61 and expedite rulemaking to require pipeline operators to maintain maps and records necessary for the safe operation of their systems.

Gas Company of New Mexico: Jan. 27: P–83–2: Include accurate information on its system maps to identify the existence and location of all service lines. *P–83–3:* Revise its construction, maintenance, and emergency procedures and its training program, and develop explicit instructions for its employees to follow when repairing damaged gas facilities. Particular emphasis should be placed on investigating and testing for unseen pipe separation.

American Gas Asociation, the National L.P. Gas Association, and the American Public Gas Association: Jan. 27: P–83–4: Notify its member companies of the circumstances of the accident in Portales, New Mexico, on June 28, 1982, and urge them to include accurate information on their system maps sufficient to identify the existence and location of all their pipeline facilities, and to emphasize to their employees the importance of checking for unseen damage where their facilities have been damaged by excavation operations.

American Public Works Association: Jan. 27: P–83–5: Notify its members of the circumstances of the accident in Portales, New Mexico, on June 28, 1982, and urge them to cooperate with the pipeline operator in determining the extent of damage when pipeline facilities have been damaged.

City of Pryor, Oklahoma: Feb. 4: P–83–6: Immediately advise citizens to notify the gas company should they detect the odor of gas in a building and advise them regarding appropriate emergency procedures. Additionally, cause buried residential gas service lines to be inspected for corrosion damage and require the replacement of lines found to be hazardous. *P–83–7:* Develop a program to require periodic inspection of all buried residential service lines.

Marine—*U.S. Coast Guard: Feb. 16: M–83–1:* Review from a realistic, professional firefighting viewpoint the minimum number of self-contained breathing apparatus and spare charges that should be required on board cargo vessels which operate on international voyages and, based upon the results, amend the appropriate sections of Title 46, Code of Federal Regulations to reflect a more realistic quantity of that equipment required on board U.S. cargo vessels and work within the framework of the International Maritime Organization to obtain acceptance of a more realistic international standard as to the minimum number of self-contained breathing apparatus on cargo vessels. *M–83–2:* Within the framework of the International Maritime Organization, work to develop an international standard for conducting more meaningful shipboard fire drills. *M–83–3:* Propose adoption of a resolution by the International Maritime Organization to the effect that operating instructions for vital emergency equipment and vital ship data, such as stability information, be printed in a language which is readily understood by the ship's officers. *M–83–4:* Expedite the development of guidelines to Captains of the Port for coordinating multijurisdictional planning for various port disasters. *M–83–5:* Take the initiative in promoting the availability of a more rapid response to a shipboard fire in remote areas on the Columbia River with major firefighting resources. *M–83–6:* Require that COTP fire contingency plans define the lines of authority and responsibility for actually fighting a shipboard fire and that a pre-arranged, written agreement be formulated with the various local firefighting authorities within the COTP zone. *M–83–7:* Establish and execute a policy whereby private firefighting and marine salvage firms are summoned to take control of firefighting activities if the immediate extinguishment of a shipboard fire is beyond the capabilities of the local fire department, or if the fire occurs while the ship is located outside a municipal fire jurisdiction.

U.S. Coast Guard: Feb. 28: M–83–8: Expedite the promulgation of regulations regarding personnel qualifications and manning standards for mobile offshore drilling units. *M–83–9:* Require that the master and the person-in-charge of a mobile offshore drilling unit be licensed and that their licenses be endorsed as qualifed in mobile offshore drilling operations, including knowledge of U.S. Coast Guard regulations, stability characteristics of mobile offshore drilling units, the operation of ballast systems on mobile offshore drilling units, and the use of lifesaving equipment peculiar to mobile offshore drilling units. *M–83–10:* Require that the person-in-charge of a mobile offshore drilling unit also be a certified lifeboatman. *M–83–11:* Require that the station bill on mobile offshore drilling units identify by name the certified lifeboatmen required by the U.S. Coast Guard Certificate of Inspection. *M–83–12:* Provide guidance to officers-in-charge of marine inspection which relates the manning requirement for certificated lifeboatmen on a MODU to the size of the lifeboats and the number of nonmarine crew aboard a mobile offshore drilling unit and not to the mode of operation of the unit. *M–83–13:* Require that a control room operator on self-propelled and nonself-propelled semisubmersible mobile offshore drilling units be certificated or licensed and be qualified in the stability characteristics and ballasting procedures of mobile offshore drilling units and as a certificated lifeboatman. *M–83–14:* Require that the operating manual for a self-propelled or nonself-propelled semisubmersible mobile offshore drilling unit include guidance regarding: (1) Accidental flooding of empty or partially empty lower hull compartments or tanks and the appropriate countermeasures; (2) any limitations in the functioning of the ballast pumps due to trim or heel; and (3) precautions for preventing downflooding into chain lockers from wave action. *M–83–15:* Revise the stability standard for semisubmersible mobile offshore drilling units to include the capability of the drilling units to survive the flooding of any two

adjacent lower hull compartments or tanks and to pump out any of lower hull tanks after the assumed flooding. *M–83–16:* Urge that the International Maritime Organization review and amend or extend, as necessary, the following particulars of its 1979 Code for the Construction and Equipment of Mobile Offshore Drilling Units (MODU): (1) The stability standard for column stabilized units to include the capability of surviving flooding of any two adjacent lower hull compartments or tanks and to pump out any lower hull tanks after the assumed flooding; (2) requirements for lifeboat launching systems on MODU's; (3) inclusion in the lifesaving requirements for MODU's assignment at all times of a suitable vessel capable of retrieving persons from the water under severe weather conditions; and (4) inclusion in operating manuals guidance on the accidental flooding of empty or partially empty lower hull compartments or tanks on column stabilized units and the appropriate countermeasures. *M–83–17:* Evaluate the suitability of currently approved lifeboat, liferaft, and other launching systems, such as free fall lifeboats, under severe weather conditions on mobile offshore drilling units and require modifications if currently approved systems are found inadequate. *M–83–18:* Determine what caused the buoyancy chambers on the OCEAN RANGER liferafts to separate and upgrade U.S. Coast Guard liferaft specifications, as necessary. *M–83–19:* Review current Coast Guard instructions regarding approval of lifesaving equipment to determine if adequate safeguards exist to prevent equipment from being approved before the prototype has been approved and make appropriate modifications, if necessary. *M–83–20:* Require that a suitable vessel, capable of retrieving persons from the water under adverse weather conditions, be assigned to all U.S. mobile offshore drilling units at all times for the purpose of evacuating personnel from the unit in an emergency. *M–83–21:* Establish a system to determine when Certificates of Inspection of U.S. vessels are about to expire and to notify owners accordingly. *M–83–22:* Cancel the proposal to amend 46 CFR 107.269 which would discontinue reinspections of mobile offshore drilling units in international service and withdraw the policy guidance that suspended reinspections of mobile offshore drilling units in international service as of January 7, 1982. *M–83–23:* Evaluate the adequacy of existing standards for portlight installations in ballast control rooms and other critical locations in columns of semisubmersible mobile offshore drilling units and require that modifications be made, if necessary.

Ocean Drilling and Exploration Company: Feb. 28: M–83–24: Require that the station bill on ODECO mobile offshore drilling units identify by name the certificated lifeboatmen required by the U.S. Coast Guard Certificate of Inspection. *M–83–25:* Require that all regular and relief masters and the persons-in-charge be fully instructed and qualified in the operation of the ballast control system of semisubmersible mobile offshore drilling unit to which assigned. *M–83–26:* Define in detail the nonindustrial duties and responsibilities of the master and the person-in-charge on all ODECO mobile offshore drilling units in all modes of operation. *M–83–27:* Define in detail the necessary qualifications for ballast control room operators on ODECO semisubmersible mobile offshore drilling units, and require that the qualifications be met and that potential control room operators attend a stability school before being assigned to a MODU as a control room operator.

M–83–28: Review and revise the operating manuals for self-propelled and nonself-propelled semisubmersible mobile offshore drilling units to include general guidance on the duties of ballast control room operators and specific guidance regarding: (1) Accidental flooding of empty or partially empty lower hull compartments or tanks and the appropriate countermeasures; (2) any limitations in the functionings of the ballast pumps due to trim or heel; (3) precautions for preventing flooding into chain lockers from wave action; (4) the effect of random seas on the drilling unit's roll period; and (5) duties and responsibilities of ballast control room operators. *M–83–29:* Install a permanent pumping system to dewater the chain lockers on all new and existing mobile offshore drilling units. *M–83–30:* Include in the operating manuals for semisubmersible mobile offshore drilling units detailed operating instructions for emergency operation of the ballast system in the event that the primary control system fails. *M–83–31:* Install internal draft gauges with direct readouts in the ballast control rooms on semisubmersible mobile offshore drilling units. *M–83–32:* Establish procedures to ensure that requests to the U.S. Coast Guard for renewal of U.S. Coast Guard Certificates of Inspection are initiated in time to avoid lapse of U.S. Coast Guard Certificates of Inspection for mobile offshore drilling units, especially those operating in international service. *M–83–33:* Establish procedures to ensure that U.S. Coast Guard approved liferafts are serviced only at approved servicing facilities.

Mobil Oil Canada, Ltd.: Feb. 28: M–83–34: Require that vessels engaged as standby boats for mobile offshore drilling units be equipped with apparatus for recovering persons from the water under adverse sea conditions and that the crews of standby boats be provided with exposure suits designed for rescue operations. *M–83–35:* Revise the Contingency Plans and Emergency Procedures Manual for mobile offshore drilling units to include a detailed disaster action plan for heavy weather damage similar to the disaster action plans for fire, explosion, or collision.

American Bureau of Shipping: Feb. 28: M–83–36: Revise the stability criteria contained in the Rules for Building and Classing Mobile Offshore Drilling Units to require that semisubmersible mobile offshore drilling units include the capability to survive the flooding of any two adjacent lower hull compartments or tanks and to pump out any of the lower hull tanks after the assumed flooding.

International Association of Drilling Contractors: Feb. 28: M–83–37: Recommend that members review the suitability of lifeboat, liferaft, and other launching systems on mobile offshore drilling units under severe weather conditions, and promote the development of improved launching systems if the current systems are found inadequate.

Note.—Reports may be ordered from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, for a fee covering the cost of printing, mailing, handling, and maintenance. For information on reports call 703–487–4650 and to order subscriptions to reports call 703–487–4630. Single copies of recommendation letters (identified by recommendation number) are free on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

Dated: March 3, 1983.

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

[FR Doc. 83-5915 Filed 3-9-83; 8:45 am]

BILLING CODE 4910-58-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Regional Conservation and Electric Power Plan; Additional Hearings

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council.

ACTION: Notice of additional hearings.

SUMMARY: On January 26, 1983, the Pacific Northwest Electric Power and Conservation Planning Council ("the Council") adopted a draft regional conservation and electric power plan. The Council issued public notice of its hearings and opportunity to comment on the draft plan in the **Federal Register** (48 FR 5406) on February 4, 1983. Because of oversubscription of the scheduled public hearings, the Council has scheduled additional hearings to provide an opportunity for public comment to as many individuals and organizations as possible.

DATES AND ADDRESSES: The Council has scheduled additional hearings as follows:

1. March 17, 1983—Salem, Oregon, Employment Building Auditorium, 875 Union Street, N.E. (in Capitol Mall area), 9 a.m. to 5 p.m. and 7 p.m. to 9:30 p.m.;

2. March 17, 1983—Seattle, Washington, South Auditorium, Federal Building, 915 Second Avenue, 1 p.m. to 5:00 p.m. and 7 p.m. to 9:30 p.m.;

3. March 21, 1983—Portland, Oregon, Portland Hilton Hotel, 921 S.W. Sixth, 9 a.m. to 5:00 p.m. and 7 p.m. to 9:30 p.m.

Depending upon subscription at these additional hearings, the Council may continue the hearing at the Portland location beyond March 21 to accommodate those who cannot be

heard at the earlier hearings. Requests for time slots at any of the hearings should be made by calling Ms. Janie Pearcy at 1-800-222-3355 (toll free in Montana, Idaho, Washington and California), 1-800-452-2324 (toll free in Montana, Idaho, Washington and California), 1-800-452-2324 (toll free in Oregon) or 503-222-5161. Written requests should be directed to Ms. Pearcy at the Council's central office, 700 S.W. Taylor Street, Suite 200, Portland, Oregon 97205. Time slot requests must be received by the Council at least five (5) weekdays prior to the day of the hearing at which a time slot is requested, and in no case later than 5 p.m. Friday, March 11, 1983.

As explained in the previous public notice, all written comments on the Council's draft energy plan must be received in the Council's central office by 5 p.m. Monday, March 21, 1983. In the event additional hearings are held beyond that date, the Council's administrative record will be held open only to receive oral comments made at those hearings.

FOR FURTHER INFORMATION CONTACT: Ms. Torian Donohoe, Director of Public Involvement, 700 S.W. Taylor, Suite 200, Portland, Oregon 97205 (toll free 1-800-222-3355 in Montana, Idaho, Washington and California; 1-800-452-2324 toll free in Oregon; or 503-222-5161).

SUPPLEMENTARY INFORMATION: The Council welcomes public comments on its draft energy plan, and has scheduled these additional hearings to accommodate public participation. The Council urges speakers to use their hearing time to summarize written comments. Each interested agency, organization or individual will be permitted to speak at only one of the hearings. The Council reserves the right to limit or consolidate testimony in order to expedite the hearings. Council members will chair the additional hearings scheduled for Salem and Seattle. Council staff members will chair the additional hearing in Portland. Court reporters will compile a verbatim transcript of oral testimony at all public hearings on the Council's draft plan. Those transcripts will become part of the Council's administrative record, and copies will be available for review and copying between 9 a.m. and 4:30 p.m. at the Council's central office, 700 S.W. Taylor Street, Suite 200, Portland, Oregon 97205.

(Sec. 4 Pub. L. 96-501, 16 U.S.C. 839b)

Edward Sheets,
Executive Director.

[FR Doc. 83-6078 Filed 3-8-83; 8:45 am]
BILLING CODE 0000-00-M

PENSION BENEFIT GUARANTY CORPORATION

Pendency of Request for Exemption From Bond/Escrow Requirement Relating To Sale of Assets by an Employer That Contributes To a Multiemployer Plan; Heinemann's, Inc. et al.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation has received a joint request from Heinemann's, Inc. and Davidson's, Inc. for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974. Section 4204(a)(1) provides that the sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for a five plan year period beginning after the sale. The PBGC is authorized to grant individual and class exemptions from this requirement. Prior to granting an exemption, the PBGC is required to give interested persons an opportunity to comment on the exemption request. The effect of this notice is to advise interested persons of this exemption request and to solicit their views on it.

DATE: Comments must be submitted on or before April 25, 1983.

ADDRESSES: All written comments (at least three copies) should be addressed to: Assistant Executive Director for Policy and Planning (140), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006. The request for exemption and the comments received will be available for public inspection at the PBGC Public Affairs Office, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: James M. Graham, Office of the Executive Director, Policy and Planning (140), Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006; (202) 254-4862. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 (ERISA), 29 U.S.C. 1384, provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)-(C), are that—

(A) The purchaser has an obligation to contribute to the plan for sustantially the same number of contribution base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred; and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. The granting of an exemption or variance from the requirements of section 4204(a)(1)(B) does not constitute a finding by PBGC that a particular

transaction satisfies the other requirements of section 4204(a)(1).

Under § 2643.3(a) of the PBGC's regulation on procedures for variances for sales of assets (46 FR 46127 (1981)), the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Request

The PBGC has received a joint request from the purchaser, Heinemann's, Inc. ("Heinemann"), and the seller, Davidson's, Inc. (now known as Thorndale Corp.) ("Davidson") (collectively referred to as the "Parties") for an exemption from the requirement of ERISA section 4204(a)(1)(B). In the request, the Parties represent, among other things, that:

1. Effective August 2, 1982, Davidson sold its assests to Heinemann.

2. Heinemann has assumed the responsibilities of Davidson under a collective bargaining agreement with the United Food and Commercial Workers International Union, Local No. 1550, which required contributions to the United Food and Commercial Workers Unions and Employers Midwest Pension Fund (formerly known as the Retail Clerks Unions and Employers Midwest Pension Plan and Pension Fund) (the "Fund"). Davidson's potential withdrawal liability to the Fund has been estimated to be $47,662.

3. The amount of the bond or escrow reguired under ERISA section 420 (a)(1)(B) is $21,118 (the annual contribution required to be made by Davidson for the 1981 plan year, the plan year preceding the sale).

4. In the sale contract, Davidson agreed that, if the purchaser withdraws and fails to pay withdrawal liability within five years of the date of the sale, Davidson would be secondarily liable for any withdrawal liability it would have had to the Fund but for the operation of ERISA section 4204.

5. A copy of Heinemann's audited financial statements for the three fiscal years preceding the sale were submitted as part of the application. However, Heinemann has asseted that the financial information is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)(4), and PBGC regulations, 29 CFR 2603.18).

6. The Parties assert that the request for a variance should be granted on a *de minimis* basis. Based on information provided by the fund, the average annual contributions made by all employers to the Fund for the three plan years preceding the plan year in which the sale occurred was $18.3 million. The amount of the bond/escrow ($21,118) which would be required in the absence of a variance is approximately one-eighth of one percent (0.12%) of that amount. Accordingly, the parties conclude that relief is warranted under section 4204(c). PBGC is considering granting this request for a variance on a *de minimis* basis.

7. A copy of this request has been sent by the Parties to the Fund and the collective bargaining representative of the seller's former employees.

Comment

All interested persons are invited to submit written comments on the pending class exemption to the above address, on or before April 25, 1983. All comments will be made a part of the record. Comments received, as well as the relevant information submitted in support of the application for exemption, will be available for public inspection at the address set forth above.

Issued at Washington, D.C. on this 4th day of March 1983.

Charles Tharp,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 83-6113 Filed 3-9-83; 8:45 am]

BILLING CODE 7708-01-M

POSTAL RATE COMMISSION

[Docket No. A83-17]

John and Mildred Ernst, et al., Petitioners; Notice and Order of Filing of Appeal

March 1, 1983.

On February 22, 1983, the Commission received a letter from John and Mildred Ernst ("petitioners"), Grand Pass, Missouri 64501, indicating their opposition to the alleged plans of the United States Postal Service to close the Grand Pass, Missouri post office. Although the letter makes no reference to the Postal Reorganization Act and does not technically conform to the requirements of our Rules of Practice and Procedure, we believe it should be construed as a petition for review pursuant to section 404(b) of the Postal Reorganization Act (39 U.S.C. 404(b)). In our view, the petition sets forth the Potal Service action complained of in sufficient detail to warrant further inquiry to determine whether the Postal Service has complied with the applicable law and regulations relating to closings and consolidations of post offices.[1]

Specifically, the petitioners assert their belief that the needs of the Grand Pass citizens have not been fully considered. They point out that Grand Pass is a small community and that the post office facility is used both as a daily gathering place and also for the posting of community notices. Further, the petitioners suggest that the Postal Service should have considered alternatives to closing the post office, such as instituting shorter business hours.

In the interest of expediting this proceeding under the 120-day decisional deadline set forth by 39 U.S.C. 404(b)(5), the Postal Service is advised that the Commission reserves the right to request a legal memorandum from the Service on any issues of law disclosed by our review in this proceeding. In the event that the Commission finds such memorandum necessary, it will make its request by order, specifying the issues to be addressed. Following the issuance of such a request, the memorandum shall be due within 20 days and a copy of the memorandum shall be served upon the petitioners and all intervenors.

The Commission's rules of practice require that the Postal Service file the Administrative Record of the case within 15 days after the date upon which the petition for review has been filed with the Commission.[2]

A procedural schedule of the various phases of this docket is set forth as an appendix.

The Commission orders:

A. The letter received from John and Mildred Ernst constitutes a petition for review pursuant to section 104(b) of the Postal Reorganization Act (39 U.S.C. 404(b)).

B. The Secretary of the Commission shall publish this Notice and Order in the **Federal Register.**

By the Commission.

David F. Harris,

Secretary.

[1] The Commission has also received several other letters from residents of Grand Pass, some of which arguably constitute petitions for review. Therefore, we are consolidating those letters with the present appeal.

[2] 39 CFR 3001.113(a).

APPENDIX

Feb. 22, 1983	Filing of Petition.
Mar. 1, 1983	Notice and Order of Filing of Appeal.
Mar. 14, 1983	Last day for filing of petitions to intervene (*see* 39 CFR 3001.111(b)).
Mar. 24, 1983	Petitioners' Initial Brief (*see* 39 CFR 3001.115(a)).
Apr. 8, 1983	Postal Service Answering Brief (*see* 39 CFR 3001.115(b)).
Apr. 25, 1983	(1) Petitioners' Reply Brief should Petitioners choose to file one (*see* 39 CFR 3001.115(c)). (2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument.
June 22, 1983	Expiration of 120-day decisional schedule (*see* 39 U.S.C. 404(b)(5)).

[FR Doc. 83-6154 Filed 3-9-83; 8:45 am]

BILLING CODE 7715-01-M

POSTAL RATE COMMISSION

[Docket No. A83-18; Order No. 489]

Madras, Georgia 30254 (Mrs. H. H. Rooks, Petitioner); Notice and Order of Filing of Appeal

Issued: March 1, 1983.

On February 20, 1983, the Commission received a petition from Mrs. H. H. Rooks of Madras, Georgia (hereinafter "petitioner") concerning the alleged United States Postal Service (hereinafter "Postal Service" or "Service") intent to consolidate Madras, Georgia post office. The petitioner contends that the Postal Service failed to consider the effect on the community and the level of service to be provided, in its proposal to consolidate the Madras, Georgia, post office.

The Act requires that the Service provide the affected community with at least 60 days notice prior to issuance of its Final Decision. The requirement is to "* * * ensure that such persons will have an opportunity to express their views." [1] The petition does not mention whether this notice was provided. Moreover, there is no explicit mention in the petition of any hearings, nor is there any indication of any Final Determination, in this matter, pursuant to 39 U.S.C. 404(b)(3).[2] Furthermore, petitioner has neither attached a copy of the Postal Service's Final Determination to his petition as is required by Commission rules of practices, nor made any specific reference to 39 U.S.C. 404(b), which gives the Postal Rate Commission jurisdiction in the matter.

However, the document does clearly indicate that petitioner is requesting the type of review provided by statute. Furthermore, petitioner has made a sufficient statement to enable the Commission to assume jurisdiction in this matter. Thus, we conclude that petitioner has substantially complied with Commssion rules of practice and his petition will be considered a petition for review pursuant to Section 404(b) of the Postal Reorganization Act (hereinafter "Act").

Applicable Law in This Proceeding

The Postal Reorganization Act states:

> The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small postal office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities.[3]

Section 404(b)(2)(C) of the Act specifically includes consideration of this goal in determination by the Postal Service to close or consolidate post offices. The effect on the community is also a mandatory consideration under Section 404(b)(1)(A) of the Act.

Upon preliminary inspection, the petitioners appear to raise the following issues of law:

1. Is the Postal Service's proposed closing of this post office consistent with the "maximum degree of effective and regular postal services" standard of Section 404(b)(2)(C)?

2. Has Postal Service adequately considered the effect of this proposed consolidation on the Madras, Georgia, community, as is required by Section 404(b)(2)(A)?

3. Must the Postal Service consider that the alternative post offices may be inaccessible to a number of Madras postal patrons as part of its treatment of the "maximum degree of effective and regular postal services" standard of Section 404(b)(2)(C)?

Other issues of law may become apparent when the Commission has had an opportunity to examine the determination made by the Postal Service. Such additional issues may emerge during Commission review of the Service's determination. Conversely, the determination may be found to resolve adequately one or more of the issues described above.

Commission Procedure in This Docket

In view of the statutory requirements, and in the interest of expedition of this proceeding under the 120-day decisional deadline imposed by section 404(b)(5), the Postal Service is advised that the Commission reserves the right to request a legal memorandum from the Service on one or more of the issues described above, and/or any further issues of law disclosed by the determination made in this case. In the event that the Commission finds such memorandum necessary to explain or clarify the Service's legal position or interpretation on any such issue, it will, within 20 days of receiving the Determination and record pursuant to section 113 of the rules of practices [4] make the request by order specifying the issues to be addressed. When such a request is issued, the memorandum shall be due within 20 days of the issuance, and a copy of the memorandum shall be served on Petitioner by the Service.

In addition, the Commission's rules of practice require the Postal Service to file the administrative record of the case within 15 days after the date on which the petition for review is filed with the Commission.[5]

In briefing the case, or in filing any motion to dismiss for want of prosecution, in appropriate circumstances, the Service may incorporate by reference all or any portion of a legal memorandum filed pursuant to such an order.

The Act does not contemplate appointment of an Officer of the Commission in section 404(b) cases, and noe is being appointed.[6]

(A) The petition from Mrs. H. H. Rooks shall be construed as a petition for review pursuant to section 404(b) of the Act (39 U.S.C. 404(b)).

(B) The Secretary of the Commission shall publish this Notice and Order in the **Federal Register.**

(C) The Postal Service shall file the administrative record in this case on or before March 9, 1983, pursuant to the Commission's rules of practice (39 CFR 3001.112(a)).

By the Commission.

David F. Harris,

Secretary.

[1] 39 U.S.C. 404(b)(1).

[2] Petitioner has not supplied a copy of the Postal Service's Final Determination, if indeed one is in existence.

[3] 39 U.S.C. 101(b).

[4] 39 CFR 3001.113.

[5] 39 CFR 3001.113(a). The Postal Rate Commission informs the Postal Service of its receipt of such an appeal by issuing PRC Form No. 56 to the Postal Service upon receipt of each appeal.

[6] In the matter of Gresham, S.C., Route #1, Docket No. A78-1 (May 11, 1978).

APPENDIX

Feb. 22, 1983	Filing of Petition.
Mar. 1, 1983	Notice and Order of Filing of Appeal.
Mar. 9, 1983	Filing of Record by Postal Service (*see* 39 CFR 3001.113(a)).
Mar. 14, 1983	Last day for filing of petitions to intervene (*see* 39 CFR 3001.111(b)).
Mar. 24, 1983	Petitioners' Initial Brief (*see* 39 CFR 3001.115(a)).
Apr. 8, 1993	Postal Serive Answering Brief (*see* 39 CFR 3001.115(b)).
Apr. 25, 1983	(1) Petitioners' Reply Brief should Petitioners choose to file one (*see* 39 CFR 3001.115(c)). (2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and juit decision may require, in scheduling or dispensing with oral argument.
June 22, 1983	Expiration of 120-day decisional schedule (*see* 39 U.S.C. 404(5)).

[FR Doc. 83-6155 Filed 3-9-83; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 13064; 811-2129]

American Industry Share, Inc.; Application Filing

March 3, 1983.

In the matter of: AMERICAN INDUSTRY SHARES, INC., 405 Central Avenue, St. Petersburg, FL 33701; (811-2129); Notice of filing of an application pursuant to section 8(f) of the Act for an order declaring that applicant has ceased to be an investment company. Notice is hereby given that American Industry Shares, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, non-diversified, management investment company, filed an application on December 14, 1982, and an amendment thereto on January 14, 1983, for an order pursuant to Section 8(f) of the Act declaring that applicant has ceased to be an investment company as defined in the Act. Interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant was organized as a Florida corporation. Applicant represents that it was originally registered under the Act as Qualidex Fund, Inc., and filed a registration statment pursuant to the Securities Act of 1933 with respect to 10,000 shares of its common stock. That registration became effective on July 31, 1972, and Applicant commenced the intial offering of its shares on October 1, 1972.

Applicant further represents that, on August 20, 1982, its board of directors adopted Articles of Merger and approved the proposed merger of Applicant into American Shares, Inc. ("American Shares"), which was ratified by Applicant's shareholders on September 22, 1982. Pursuant to the Articles of Merger, on November 1, 1982, all assets and liabilities of Applicant and Applicant's shares were exchanged for shares of American Shares on the basis of Applicant's net asset value per share on October 29, 1982. In addition, Applicant distributed as a dividend to its shareholders of record on October 29, 1982, all its undistributed, taxable net investment income for the 28-day period ended October 29, 1982.

According to the application, Applicant has taken the steps necessary to dissolve itself in accordance with the provisions of Florida law and now seeks an order of the Commisson terminating its registration as an investment company under the Act.

Applicant represents that it has no assets, liabilities or securityholders, and that it is not a party to any litigation or administrative proceedings. Applicant further represents that it is not now engaged, nor does it propose to engage, in any business activities.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 28, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-6099 Filed 3-9-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13072, 812-5429]

Dean Witter Developing Growth Securities Trust; Application Filing

March 4, 1983.

In the matter of Dean Witter Developing Growth Securities Trust, Five World Trade Center, New York, NY 10048; (812-5429); notice of filing of application for an order pursuant to Section 6(c) of the Act granting exemptions from the provisions of Sections 2(a)(32), 2(a)(35), 22(c), and 22(d) and Rule 22c-1 thereunder.

Notice is hereby given that Dean Witter Developing Growth Securities Trust ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on January 18, 1980, requesting an order pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and Rule 22c-1 thereunder, to the extent necessary to permit Applicant to assess a contingent deferred sales charge on redemptions of its initial and future series of shares, and to permit Applicant to waive the contingent deferred sales charge under certain circumstances. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below and to the Act for the text of the provisions from which applicants seek to be exempted.

According to the application, Applicant was organized as a business trust under the laws of the Commonwealth of Massachusetts on December 28, 1982. Although Applicant presently consists of one initial series, and has no current intention to create and issue any additional series, it requests that the proposed exemptive relief extend to its initial series of shares and any additional series or classes of shares that may at any time hereafter be offered on substantially the same basis.

According to the Applicant, mutual funds sold with a sales charge have traditionally imposed a front-end charge, so that purchase payments are invested after the deduction of any applicable sales charge. Applicant proposes to offer its shares without

initial sales charge so that investors will have the entire amount of their purchase payments fully invested when made. However, Applicant also proposes to pay to the distributor a contingent deferred sale charge from the proceeds of certain redemptions of Applicant's shares. Applicant states that in no event could the amount of such charges, in the aggregate, exceed 5% of the aggregate purchase payments made by the investor.

Applicant represents that the contingent deferred sales charge would be imposed if an investor redeems an amount which causes the value of the investor's account with Applicant to fall below the total dollar amount of purchase payments made by the investor during the preceding six years. According to the application, no contingent sales charge is imposed to the extent that the net asset value of the shares redeemed does not exceed (i) the current net asset value of shares purchased more than six years prior to the redemption, plus (ii) the current net asset value of shares purchased through reinvestment of dividends or capital gains distributions, plus (iii) increases in the net asset value of the investor's shares above the total amount of payments for the purchase of Applicant's shares made during the preceding six years. Applicant also proposes that the imposition of the contingent deferred sales charge be waived on the following redemptions: (i) redemptions following the death or disability, as defined in Section 72(m)(7) of the Internal Revenue Code (the "Code"), of a shareholder, and (ii) redemptions in connection with certain distributions from Individual Retirement Accounts ("IRA's") or other qualified retirement plans.

Applicant states that in determining the applicability of a contingent deferred sales charge to each redemption, the amount which represents an increase in the net asset value of the investor's shares above the amount of the total payments for the purchase of shares within the last six years will be redeemed first. In the event the redemption amount exceeds such increase in value, Applicant states that the next portion of the amount redeemed will be the amount which represents the net asset value of the investor's shares purchased more than six years prior to the redemption and/or purchased through reinvestment of dividends or distributions. Any portion of the amount redeemed which exceeds an amount which represents both such increase in value and the value of shares purchased through reinvestment of dividends or distributions will be subject to a contingent deferred sales charge. Where a contingent deferred sales charge is imposed, the amount of the charge will depend on the number of years since the investor made the purchase payment from which an amount is being redeemed, according to the following table:

Year since purchase payment made	Contingent deferred sales charge as a percentage of amount redeemed
First	5.0
Second	4.0
Third	3.0
Fourth	2.0
Fifth	2.0
Sixth	1.0
Seventh and thereafter	None

The amount of the contingent deferred sales charge (if any) is calculated by determining the date on which the purchase payment which is the source of the redemption was made, and applying the appropriate percentage to the amount of the redemption subject to the charge.[1] The application contains the following example illustrating the operation of the proposed contingent deferred sales charge. Assuming an investor makes a purchase payment of $10,000 and that 2½ years later the value of the investor's account has grown through investment performance and reinvestment of distributions to $14,000, the investor may then redeem up to $4,000 ($14,000 minus $10,000) without incurring a contingent deferred sales charge. If the investor should redeem $5,000, and such redemption is not made either following the death or disability of the investor or is not a distribution from an IRA or other qualified retirement plan of the type described below, a contingent deferred sales charge will be imposed on $1,000 (the amount by which the value of the investor's shares after the redemption fell below the amount of the purchase payment). Since the redemption takes place in the third year after the purchase, the contingent deferred sales charge is imposed at the rate of 3.0% and amounts to $30.00.

Applicant states that in determining the rate of any applicable contingent deferred sales charge, it will be assumed that a redemption is made of shares held by the investor for the longest period of time within the applicable six year period. Applicant represents that this will result in any such charge being imposed at the lowest possible rate.

Applicant believes that the imposition of the contingent deferred sales charge is fair and is in the best interests of its shareholders. Applicant submits that the proposed transaction permits shareholders to have the advantages of greater investment dollars working for them from the time of their purchase of Applicant's shares. Moreover, Applicant states that because the contingent deferred sales charge applies only to redemptions of amounts representing purchase payments (during the first six years after the payments), it does not apply to increases in the value of a shareholder's account through increases in net asset value per share, or to amounts representing reinvestment of distributions.

Applicant proposes to finance its own distribution expenses pursuant to a distribution plan adopted under Rule 12b–1 under the Act. Under the proposed distribution plan, Applicant will pay an annual fee to its underwriter/distributor, Dean Witter Reynolds Inc. ("Dean Witter"), as reimbursement for expenses incurred by Dean Witter in connection with the offering of Applicant's shares. According to the application, these expenses include advertising and promotional costs, sales administration and related sales expenses, including the costs of printing and distributing prospectuses to prospective investors, and sales commissions and incentive compensation. Applicant's distribution fee is calculated on the basis of 1.0% per annum of aggregate purchase payments (subject to a cap at 1.0% of net assets). Thus, under the proposed plan, the annual distribution fee to be borne by Applicant is equal to 1.0% of the lessor of (i) aggregate gross sales of Applicant's shares since Applicant's inception (not including reinvestment of dividends or capital gain distributions), less the aggregate net asset value of Applicant's shares redeemed since Applicant's inception upon which a contingent deferred sales charge has been imposed or upon which such charge has been waived (as provided below), or (ii) Applicant's daily net assets. Applicant states that Dean Witter also will receive the proceeds of the contingent deferred sales charge imposed upon any redemption.

[1] Applicant states that solely for purposes of determining the number of years from the time of any payment for the purchase of shares, all payments during a month will be aggregated and deemed to have been made on the last day of the month.

Where amounts attributable to purchase payments are redeemed (and thus no longer contribute to the annual distribution charge) applicant believes that it is fair (1) to impose on the withdrawing shareholder a lump sum payment reflecting approximately the amount of distribution expense which has not been recovered through payments by Applicant and (2) to remove the assets on which the contingent deferred sales charge was imposed from the base amount on which Applicant's distribution fee is calculated. Applicant asserts that the amount, computation and timing of the contingent deferred salses charge thus are designed to promote fair treatment of all shareholders, while permitting Applicant to offer investors the advantage of having purchase payments fully invested on their behalf immediately. Applicant states that, in their review of its distribution plan pursuant to Rule 12b–1, Applicant's trustees will also consider the use by Dean Witter of revenues raised by the contingent deferred sales charge.

Applicant proposes to waive the contingent deferred sales charge on any redemption following the death or disability of a shereholder. An individual will be considered disabled for this purpose if he meets the definition thereof in Section 72(m)(7) of the Code, which in pertinent part defines a person as disabled if such person "is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-contained and indefinite duration."[2] Applicant states that the waiver is applicable where the decedent or disabled person is either an individual shereholder or owns the shares with his or her spouse as a joint tenant with right of survivorship, and where the redemption is made within one year of the death or initial determination of disability. This waiver of the contingent deferred sales charge applies to a total or partial redemption but only to redemptions of shares held at the time of the death or initial determination of disability.

Applicant also proposes to waive the contingent deferred sales charge when a total or partial redemption is made in connection with certain distributions from IRA's or other qualified retirement plans. It is proposed that the charge be waived for any redemption in connection with a lump-sum or other distribution following retirement or, in the case of an IRA or Keogh Plan or a custodial account pursuant to Section 403(b)(7) of the Code, after attaining age 59½. The charge also would be waived on any redemption which results from the tax-free return of an excess contribution pursuant to Section 408(d)(4) or (5) of the Code, or from the death or disability of the employee.

Applicant argues that the proposed contingent deferred sales charge is consistent with all provisions of the Act and that, but for the provision that the charge be waived on certain types of redemptions as specifically detailed above, no exemptive relief would be required in order to implement the proposed transactions. However, to avoid any possibility that questions may be raised as to the potential applicability of various definitional and regulatory sections of the Act and to permit the charge to be waived in connection with redemptions following the death or disability of a shareholder and redemptions in connection with certain distributions from an IRA or other qualified retirement plan, Applicant requests exemptions to the extent necessary, from the provisions of the Act detailed below.

Applicant submits the imposition of the proposed contingent deferred sales charge would not cause shares of Applicant to fall outside the definition of "redeemable securit(ies)" in Section 2(a)(32) of the Act, and Applicant believes, therefore, that it qualifies as an open-end company under Section 5(a)(1) of the Act. Applicant further believes that imposition of the proposed contingent deferred sales charge will in no way restrict a shareholder from receiving his proportionate share of Applicant's current net assets, but merely defers the deduction of a sales charge and makes it contingent upon an event which may never occur. Although the proposed contingent deferred sales charge is not a redemption charge in the ordinary sense, Applicant submits that the conditions of Section 10(d) of the Act contemplate that an investment company may both be an open-end company and impose a discount from net asset value on redemption of its shares. However, in order to avoid uncertainty in this regard, Applicant requests an exemption from the operation of Section 2(a)(32) of the Act to the extent necessary to permit implementation of the proposed contingent deferred sales charge.

Applicant asserts that the proposed contingent deferred sales charge is consistent with the intent of the definition of sales load contained in Section 2(a)(35) of the Act. The contingent deferred sales charge is paid to the underwriter/distributor to reimburse it solely for expenses related to offering Applicant's shares for sale to the public, and, therefore, Applicant submits that this arrangement is within the Section 2(a)(35) definition of sales load, but for the timing of the imposition of the charge. Applicant contends that the deferral of the sales charge, and its contingency upon the occurrence of an event which might not occur, does not change the basic nature of this charge, which is in every other respect a sales charge. However, Applicant requests an exemption from the provisions of Section 2(a)(35), to the extent necessary to implement the proposed charge.

Applicant asserts that implementation of the proposed contingent deferred sales charge is in no way violative of Section 22(c) or Rule 22c–1 thereunder. When a redemption of shares of Applicant is effected, the price of the shares on redemption will be based on current net asset value. The contingent deferred sales charge will merely be deducted at the time of redemption in arriving at the shareholder's proportionate redemption proceeds. However, in order to avoid any possibility that questions might be raised as to the potential applicability of Section 22(c) and Rule 22c–1, Applicant requests an exemption from the operation of the provisions of Rule 22c–1 to the extent necessary or appropriate to permit Applicant to implement the proposed contingent deferred sales charge.

Applicant contends that notwithstanding the fairness and rationality of imposing the contingent deferred sales charge with respect to all redemptions subject thereto, Applicant and Dean Witter have determined that it would be fair and equitable and in the public interest and in the interest of shareholders for the contingent deferred sales charge to be waived on certain types of redemptions. In each situation in which the charge would be waived, the redeeming shareholder is a member of a class of shareholders which is favored under the tax laws or the securities laws. Applicant further asserts that the proposed waiver is consistent with the purposes of Applicant. As stated in its prospectus, Applicant is designed for long-term investors, including those who wish to use its shares as the funding vehicle for IRA's or other tax-deferred retirement

[2] While applicant does not specifically adopt the balance of the Code definition which pertains to furnishing the Secretary of Treasury with such proof as he may require, Applicant contends that Dean Witter will require satisfactory proof of death or disability before it determines to waive the contingent deferred sales charge.

plans. The prospectus further states that Applicant is not designated for investors who intend to liquidate their investments after a short period. Applicant states that in situations in which the contingent deferred sale charge will be waived, the redemption is either unforeseen by the shareholder at the time of purchase (i.e., resulting from the extraordinary circumstances of death or disability) or is fully intended at the time of purchase (i.e., ordinary retirement plan). Accordingly, Applicant contends that neither situation would be inconsistent with Applicant's purpose or the investor's initial intention of making a long-term investment in Applicant.

Applicant submits that the requested order is fair to remaining shareholders because the Applicant will not be charged with any revenue lost as a result of waiver of the contingent deferred sales charge in the above circumstances. According to the application, amounts redeemed are removed from the base of aggregate purchase payments for purposes of calculating the distribution fee in connection with Applicant's proposed distribution plan where the redemption results in imposition of the contingent deferred sales charge. Applicant asserts this is because the charge is designed to recover through a lump sum payment the amount of distribution expense which has not been recovered through payment of distribution fees by Applicant with respect to the redeemed amount. As with all redemptions subject to the contingent deferred sales charge, Applicant represents that its distribution plan pursuant to Rule 12b–1 provides that amounts on which a contingent deferred sales charge would have been imposed but for the waiver of such charge pursuant to this provision are also removed from the base of purchase payments.

Applicant further contends that the waiver of the contingent deferred sales charge in the extraordinary circumstance of death or total disability of the investor is justified on basic considerations of fairness. Applicant asserts that waiving the charge on certain distributions from a qualified retirement plan is fully consistent with the policies reflected in (i) the Code provisions granting favored tax treatment to accumulations under such plans and imposing additional taxes on early distributions from IRA's and other plans and (ii) Rules 22d–1(a)(3) and 22d–1(b)(3) under the Act, which permit quantity discounts to plans qualified under Code Section 401, and Rule 22d–1(f) under the Act, which permits variations in the sales load for qualified and non-qualified employee benefit plans (which need not be based on realization of economies where the plans are qualified under Section 401 of the Code).

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant assets that the exemptions it requests are appropriate and in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the Act. Applicant further submits that waiver of the contingent deferred sales charge under the above-described circumstances will not harm Applicant or its remaining shareholders or unfairly discriminate among shareholders or purchasers. Additionally, Applicant represents that it will fully disclose the waiver provision in its prospectus. Applicant therefore requests that the Commission issue an order under Section 6(c) as requested.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 28, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-6106 Filed 3-9-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13071; 812–5148]

E. W. Axe & Co., Inc, et al.; Application Filing

March 4, 1983.

In the matter of E. W. Axe & Co., Inc., Axe Securities Corporation, Axe-Houghton Income Fund, Inc., Axe-Houghton Fund B, Inc., Axe-Houghton Stock Fund, Inc., 400 Benedict Avenue, Tarrytown, New York 10591; (812–5148); Notice of filing of application pursuant to section 6(c) of the act for an amended order exempting application from the provisions of section 22(d) of the act and rule 22d–1 thereunder.

Notice is hereby given that Axe-Houghton Income Fund, Inc., Axe-Houghton Fund B, Inc., and Axe-Houghton Stock Fund, Inc. (the "Funds"), each of which is registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, E. W. Axe & Co., Inc. ("E. W. Axe"), the Fund's investment adviser and Axe Securities Corporation ("Axe Securities"), their principal underwriter (collectively the "Applicants"), filed an application on January 13, 1983, pursuant to Section 6(c) of the Act, for an order of the Commission amending an order previously issued by the Commission (Investment Company Act Release No. 12540, July 8, 1982). That order, pursuant to Section 6(c) of the Act, exempted from the provisions of Section 22(d) of the Act and Rule 22d–1 thereunder the offer and sale of the Funds' shares at prices which reflected reductions in the usual schedule of sales charges disclosed in the prospectus of each of the Funds. All interested persons are referred to the application on file with the commission for a statement of the representations contained therein, which are summarized below. Such persons are also referred to the Act and the Rules thereunder for the complete text of those provisions therein from which an exemption is being sought.

The application for the amended order states that, except as otherwise specifically indicated, all the facts and circumstances set forth in the prior notice (Investment Company Act Release No. 12479, June 10, 1982) and the prior order continue to be as stated in the prior application filed on March 30, 1982, and in such prior notice and order. Applications represent that the Funds currently offer their shares to the public at net asset value plus sales charges in accordance with the schedule of charges set forth in the proposectus of each Fund, and that Axe Securities, a wholly-owned subsidiary of E. W. Axe, acts as

the principal underwriter for each of the Funds pursuant to underwriting agreements which provide that Axe Securities, as agent, will use its best efforts to sell shares of the Funds.

The application states that since July 8, 1982, the effective date of the prior order, shares of the Funds have been acquired by persons associated with the National Rural Electric Cooperative Association ("NRECA") who are eligible to participate in a retirement program sponsored by NRECA ("Program Participants") at a reduced sales charge pursuant to the exemption provided by the prior order under the same terms as those which apply to purchases made by persons acquiring Fund shares through an "Eligible Retirement Program" as defined in the supplement dated March 29, 1982, to the prospectus of each of the Funds. Applicants state that approximately 90 Program Participants purchased shares of the Funds after March 28, 1982, and before July 8, 1982, in the mistaken belief that they qualified for the reduced sales charge of .5 percent. The application states that such Program Participants have informed Applicants that their erroneous belief resulted from statements made to them by the sales representative of Axe Securities, who was a vice president of Axe Securities and who negotiated the arrangement under which the offering of the Funds' shares was made to persons associated with NRECA by Axe Securities. The application further states that the officer left the employ of E. W. Axe and Axe Securities without notice in late October, 1982.

The application also states the E. W. Axe and Axe Securities belief that they have a moral and perhaps a legal obligation to "make whole" such Program Participants because, although the statements relied upon appear to have been inaccurate, they were made by a person upon whom the Program Participants were entitled to rely. It is represented that E. W. Axe and Axe Securities therefore wish to purchase from the Funds and creditto the accounts of the approximately 90 Program Participants who purchased shares of the Funds prior to the effective date of the prior order (but not earlier than March 29, 1982) that number of shares of the Funds as is equal to the number of shares that would have been credited to the account of each such Program Participant had a sales charge of .5 percent been applied to their purchases. The application states that counsel has advised Applicants, however, that to do so might be deemed inconsistent with the terms of the prior order, and therefore could be deemed a violation of Section 22(d) of the Act.

Section 6(c) of the Act provides that the Commission may conditionally or unconditionally exempt any person or transaction from any provision or provisions of the Act and the rules promulgated thereunder if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Pursuant to section 6(c) of the Act, Applicants requested and received the prior order of the Commission permitting sales of shares of the Funds to Program Participants at a reduced sales charge. Applicants now request that such order be amended so as to permit E. W. Axe and Axe Securities to effect the remedy described above. In support of their application, Applicants represent that all expenses incurred in connection with the application and the actions contemplated thereby will be borne by E. W. Axe and/or Axe Securities and that neither the Funds not their shareholders will bear any expense related to this matter. Applicants further agree that the foregoing representations may be made a condition to the amended order.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 29, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon the Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-6106 Filed 3-9-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13066; 812-5455]

Kuparuk Transportation Capital Corp.; Application Filing

March 3, 1983.

In the matter of Kuparuk Transportation Capital Corporation, c/o Atlantic Richfield Company, 515 South Flower Street, Los Angeles, California 90071; (812-5455); Notice of filing of an application pursuant to section 6(c) of the act for an order exempting applicant from all provisions of the act.

Notice is hereby given that Kuparuk Transportation Capital Corporation, a Delaware corporation ("Applicant"), filed an application on February 14, 1983, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), for an order of the Commission exempting Applicant from all the provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that its only securities presently outstanding are one hundred shares of its capital stock, all of which are owned by Kuparuk Pipeline Company, a Delaware corporation ("Kuparuk") which is a wholly-owned subsidiary of Atlantic Richfield Company, a Pennsylvania corporation ("Atlantic"). Upon the formal creation of Kuparuk Transporation Company (the "Partnership"), a general partnership expected shortly to be formally created under the laws of the State of Alaska, all such shares shall be transferred by Kuparuk to the Partnership. The three general partners (the "Partners") of the Partnership will be BP Alaska Pipelines Inc., Kuparuk and Sohio Alaska Transportation Company. Each is a Delaware corporation. The Partners are wholly owned subsidiaries, respectively, of The British Petroleum Company p.l.c., an English corporation ("BP"), Atlantic, and The Standard Oil Company, an Ohio corporation ("Sohio"). BP, Atlantic and Sohio are integrated petroleum companies principally engaged in the exploration, production, transportation, refining and marketing of crude oil and its products.

The application states that the Partnership will be organized to construct, own and operate a 24-inch common carrier pipeline approximately 27 miles in length, smaller connecting pipelines and related facilities on the North Slope of Alaska (the "Pipeline") to transport crude oil from the Kuparuk River Unit Field to the existing Trans Alaska Pipeline System Pump Station No. 1. The currently projected cost of the

Pipeline is approximately $115,000,000 (including interest during construction). The Partnership anticipates that the Pipeline will be operational in December 1984.

Applicant states that it is a special purpose corporation formed to assist in financing the Pipeline and its only business will be the issuance of debt securities from time to time (the "Debt Securities") and the lending of the proceeds thereof to the Partnership. Loans by Applicant to the Partnership will be evidenced by one or more master notes ("Partnership Notes"). The principal of, premium, if any, and interest on the Partnership Notes will be equal to the principal of, premium, if any, and interest on Applicant's Debt Securities. All expenses of Applicant will be reimbursed to it by the Partnership.

Applicant further states that each series of Debt Securities issued by it will be secured, among other things, by the pledge of one or more Partnership Notes. The Partnership Notes will be secured by the several obligations of BP Alaska Exploration Inc., a Delaware corporation, ARCO Alaska, Inc.,[1] a Delaware corporation, and Sohio Alaska Petroleum Company, a Delaware corporation (collectively hereinafter called the "Throughput Obligors") under a Throughput and Deficiency Agreement (the "Throughput and Deficiency Agreement") to be entered into by the Throughput Obligors and the Partnership. The Throughput Obligors are, respectively, wholly owned subsidiaries of BP, Atlantic and Sohio. According to the application, each of BP, Atlantic and Sohio is guaranteeing the performance by its subsidiary of such subsidiary's obligations under the Throughput and Deficiency Agreement. Under the Throughput and Deficiency Agreement, if for any reason, whether prior to or after completion of construction of the Pipeline, the Partnership has a cash deficiency on the date that any payment is due with respect to debt service on the Partnership Notes, each Throughput Obligor will be severally and unconditionally obligated to advance in cash its percentage share of such cash deficiency.

Applicant represents that the initial series of its Debt Securities will be short term notes issued under a Trust Agreement between it and Morgan Guaranty Trust Company of New York, a banking corporation organized and existing under the laws of the State of New York, as trustee for the noteholders (the "Trustee"). Such notes will be issued in denominations of not less than $100,000, although the usual denomination is expected to be significantly larger. Such notes will not be advertised for sale to the general public but will be sold to Salomon Brothers Inc. or by Salomon Brothers Inc., in the commercial paper market only to institutional investors and other entities which normally purchase commercial paper in large denominations. Such notes will be issued as either discount or interest-bearing obligations payable to bearer with a maturity at the time of issuance not to exceed nine months, exclusive of days of grace. Such notes will not contain any provisions for payment on demand or for automatic "roll over". It is expected that these notes will be accorded the highest commercial paper rating by two nationally recognized rating agencies. The Partnership, through Applicant, may also issue intermediate or long-term debt securities, as market conditions permit or dictate, in the public or private debt markets.

Applicant further states that as security for the initial series of its Debt Securities (i) a related Partnership Note will be pledged to the Trustee and (ii) the rights of the Partnership under the Throughput and Deficiency Agreement and the related performance guarantees of BP, Atlantic and Sohio will be assigned to the Trustee. Future similar security arrangements with respect to other issues of Debt Securities of Applicant will be made on a *pari passu* basis without restriction and, as to assignments, without priority by reason of time of assignment or perfection or on a subordinated basis.

Applicant states that it may be deemed to be an "investment company" as defined in the Act (i) by reason of its proposed acquisition and holding of the Partnership Notes, which will constitute substantially all its assets, and (ii) because securities (other than short term notes) which it intends to offer may be held by more than 100 persons. Section 6(c) of the Act provides, in part, that the Commission may, by order upon application, exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

The application states that the sole purpose and only business of Applicant is to serve as a vehicle to facilitate debt financing for the Partnership. Applicant will not hold shares of capital stock of any other corporation. Once it has been formally established, the Partnership will maintain sole ownership of all the shares of Applicant's capital stock. Since Applicant's Debt Securities will be secured by the pledge of the related Partnership Notes, and by the assignment of the Parternership's rights under the Throughput and Deficiency Agreement and the related guarantees of BP, Atlantic and Sohio, it is contended that purchase of Applicant's Debt Securities will be substantially equivalent to a purchase of direct obligations of the Throughput Obligors, severally guaranteed by BP, Atlantic and Sohio as to the respective subsidiaries of each. It is further contended that, since it is intended that (i) the only significant assets of Applicant will be the Partnership Notes, (ii) Applicant will not sell, trade or otherwise deal in the Partnership Notes and will not sell, trade or otherwise deal in other securities (with the possible exception of purchases of its own securities to satisfy sinking fund obligations), (iii) none of the securities of Applicant (other than its Debt Securities) will be held by anyone other than the Partnership, and (iv) the purchase of Applicant's Debt Securities by investors will allegedly be substantially equivalent to purchasing obligations of BP, Atlantic and Sohio, it is not necessary or appropriate in the public interest or consistent with the protection of investors to regulate Applicant within the meaning of the Act.

Applicant agrees to the insertion in an exemptive order of one or more of or all the following conditions:

(1) Applicant will file with the Commission within 120 days after the close of its first fiscal year (a) information with respect to (i) persons in a control relationship with it (except with respect to persons under common control with it), (ii) persons and number of persons owning equity securities of Applicant and (iii) directors, officers, employees and legal counsel required by Items 11 and 12 of Form N–2 under the Act, and (b) a statement of financial position as of the close of such fiscal year, including a statement of income, paid-in surplus and retained earnings, and a schedule of investments as of the close of such fiscal year, and will notify the Commission promptly of any

[1] By letter dated February 22, 1983, counsel for Applicant advised that ARCO Kuparuk Shipping Company has been substituted for ARCO Alaska, Inc.

material change in such information or statement.

(2) Applicant will file with the Commission within 120 days of the close of its first fiscal year a schedule of the number of holders of its short-term or other bearer securities and of its securities in registered form as of the close of such fiscal year and the number of transfers of such registered securities during such fiscal year, and will notify the Commission promptly of any material change in such schedule.

(3) Applicant will not sell any equity securities other than to the Partnership or sell any Debt Securities other than debt securities which are to be held by the Partnership, the Partners, the Throughput Obligors, BP, Atlantic or Sohio, or which (i) are secured by a pledge of corresponding debt securities or other obligations of the Partnership which in turn are secured by an assignment of rights and proceeds under the Throughput and Deficiency Agreement and the performance guarantees hereinabove referred to and (ii) are (A) offered and sold in transactions not involving any public offering to institutions, located in the United States and elsewhere, which are not "underwriters" of the securities within the meaning of the Securities Act of 1933, (B) sold in offerings outside the United States pursuant to agreements and procedures reasonably designed to prevent such debt securities from coming into the hands of a United States national or resident, or (C) notes which arise out of current transactions or the proceeds of which have been or are to be used for current transactions, and which have a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, unless Applicant shall have first given written notice to the Commission describing the proposed issuance of such additional debt securities (including notice of a proposed filing of a registration statement under the Securities Act of 1933, as amended, pursuant to Commission Rule 415) not less than 60 days prior to the date of such proposed issuance, subject, however, to the right of the Commission, upon request of Applicant, to decrease such number of days. Applicant further agrees that if the Commission shall, after receipt of said written notice, determine that a substantial question exists as to whether or not the exemption granted by the order requested in the application should continue and the Commission shall, within 30 days after receipt by the Commission of such written notice from Applicant, mail or otherwise give notice to that effect to Applicant, in care of Kuparuk Pipeline Company, 515 South Flower Street, Los Angeles, CA 90071, Attention: Treasurer. Applicant will not issue such additional debt securities unless, after receipt by Applicant of such notice from the Commission and not less than 30 days prior to the issuance of such additional debt securities, Applicant shall mail or otherwise give written notice to the Commission stating its intention to issue such additional debt securities, and upon the giving of such notice by Applicant, the order requested in the application shall be deemed to have terminated as of the date the Applicant shall have mailed or otherwise given such notice to the Commission.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 28, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-6102 Filed 3-9-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13068; 812-5438]

Mount Isa Mines Ltd.; Application Filing

March 3, 1983.

In the matter of: Mount Isa Mines (Coal Finance) Limited c/o Cravath, Swaine & Moore, One Chase Manhattan Plaza, New York, New York 10005 (812-5438); Notice of filing of application pursuant to section 6(c) of the act exempting applicant from all provisions of the act.

Notice is hereby given that Mount Isa Mines (Coal Finance) Limited (the "Company") filed an application on January 24, 1983, for an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting the Company from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Company states that it is organized under the laws of the Australian Capital Territory and that its only securities currently outstanding are shares of its capital stock, all of which are beneficially owned by Mount Isa Mines Limited ("Isa"), a limited liability company organized under the laws of the State of Queensland, Australia. The Company states that Isa is a diversified mineral, coal and metal producer in Australia and that Isa is wholly-owned by M.I.M. Holdings Limited, a publicly-held limited liability company organized under the laws of the State of Queensland, Australia.

The Company represents that Isa intends to expand its existing coal mining operations in Collinsville, Queensland, Australia, and to develop, mine and exploit certain mining leases in Newlands, Queensland, Australia, for coal (the "Project"). The Company maintains that the current projected net outlay on the Project is approximately $832,000,000 (Australian dollars), including interest during construction and credit for net cash flow generated during construction. The Company further maintains that Isa anticipates that the Project will be completed in April, 1984. The completed Project, including existing coal mining operations in Collinsville, will have a production capacity of 6.3 million metric tons of coal per annum, most of which will be sold under long-term export contracts to non-Australian consumers.

The Company asserts that its sole purpose is to assist Isa in financing the Project by making loans to Isa, which loans will in turn be financed by (1) loans ("Project Loans") to be made to the Company be several groups of international banks (the "Project Loan Banks") and (2) issuances and sales by the Company of debt securities ("Bank Guaranteed Notes"), which will have the benefit of guarantees or letters of credit ("Project Credits") issued (or participated in) by other groups of United States and foreign banks ("the Project Credit Banks") for the account of the Company. The Company states that proceeds of the Project Loans and Bank Guaranteed Notes are currently expected to finance three-quarters of the $832,000,000 (Australian dollars) projected net outlay of the Project. The Company states further that, in

consideration of the Company lending to Isa the proceeds of Project Loans and of Bank Guaranteed Notes, Isa will agree, on a limited recourse basis, to discharge directly the Company's payment and reimbursement obligations, in respect of Project Loans, Bank Guaranteed Notes and all other costs and expenditures incurred by the Company in assisting in the financing of the Project.

The Company currently plans that the Project Loans will consist of borrowings from several bank groups in various currencies and that the Bank Guaranteed Notes will initially take the form of debt securities issued through a short-term revolving Euronote program in London, England, and a commercial paper program in the United States. The Company states that the sale of Bank Guaranteed Notes through each of these programs will be made possible by the Project Credits of the Project Credit Banks supporting the Company's payment obligations in respect of such Notes. The Company indicates that separate bank groups will issue or participate in the Project Credits issued in connection with the Euronote program and the commercial paper program. The Company may have the option to reduce the size of the Euronote program and/or the commercial paper program and to issue other types of Bank Guaranteed Notes in other markets similarly supported by Project Credits.

The Company states that a Production Loan and Credit Agreement (the "Credit Agreement") among the Company, Isa, the Project Credit Banks and the Project Loan Banks (jointly, the "Project Banks") will contain, among other things, (1) the commitments of the Project Banks to the Company to make Project Loans and to issue Project Credits, (2) the Company's agreement to make loans to Isa to assist Isa in financing the Project, and (3) Isa's agreement to be responsible, on a limited recourse basis, for the costs and expenditures incurred by the Company in so assisting Isa. The Company maintains that neither the Company's obligations to the Project Banks nor Isa's obligations to the Company, under the Credit Agreement, will be separately evidenced by a note or other instrument, except that a note will be issued by Isa to the Company to evidence the indebtedness from Isa to the Company arising from loans made by the Company to Isa out of the proceeds of the sale of commercial paper and a similar note may be issued in connection with the Euronote program (such notes are hereinafter called the "Isa Secured Notes"). The Company states that the principal and interest on each Isa Secured Note will be equal to the principal of and interest on the Company's outstanding Bank Guaranteed Notes to which such Isa Secured Note relates.

The Company represents that the Project Banks will have only limited recourse to the Company and Isa in respect of the Project Loans and the unreimbursed disbursements made by the Project Credit Banks under the Project Credits (which will be automatically converted into Project Loans), and the Company will have only limited recourse to Isa in respect of its loans to Isa (including but not limited to those evidenced by the Isa Secured Notes). The obligations of the Company and Isa to the Project Banks will, however, be secured by security documents ("Security Agreements"), pursuant to which Isa, together with certain of its affiliates (including the Company), will grant a security interest in certain Project assets, which may include coal sales contracts under which Isa will market Project coal and the shares of capital stock of the Company (the "Project Collateral"). The Company states that the Security Agreements will also secure the obligations of Isa in respect of the Isa Secured Notes *pari passu* with the Company's and Isa's obligations to the Project Banks.

The Company's United States commercial paper (the "Notes") will be issued under the Credit Agreement and an agreement between the Company and a United States bank, acting as issuing agent and depositary thereunder. The Company states that the Notes will (1) have muturities not exceeding 180 days, (2) be issued in denominations of not less than $100,000 (United States dollars), with the average denomination expected to be significantly larger, (3) not be advertised for sale to the general public and (4) be sold in the commercial paper market only to institutional investors or other entities which normally purchase commercial paper in large denominations. The Company states that the Notes will be supported by irrevocable letters of credit issued by a major United States bank (and unconditionally participated in by certain Project Credit Banks). The Company states that it will pledge the relevant Isa Secured Note to a commercial paper trustee as additional security for holders of the Notes. The Company states further that it will pledge the relevant Isa Secured Note, if any, to a Euronote trustee as additional security for the Euronote holders. According to the application, it is expected that the Notes will be accorded the commercial paper ratings of the bank which issues the letters of credit (currently the highest ratings granted). The Company represents that the Notes will be exempt from registration under the Securities Act of 1933 (the "1933 Act") pursuant to Section 3(a)(2) thereof.

In connection with the issuance and sale of the Notes, the Company will appoint a corporate entity which normally acts in such capacity to accept service of process in any action commenced in any State or Federal court in the United States by any holder of the Notes against the Company based on the Notes. The Company will expressly accept the jurisdiction of any State or Federal court in the City and State of New York in respect of any such action. Such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Notes shall be paid. The Company represents that it will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of the Notes.

The Company states that it may be deemed an "investment company" as defined by the Act because its only substantial assets will be its advances to Isa (evidenced in part by one or more Isa Secured Notes), which may be deemed to be securities under Section 2(a)(36) of the Act. Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securilties, or transactions, from any provision of the Act or of any rule or regulation under the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

The Company maintains that the exemption requested is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. The Company asserts that its sole purpose and only business is to serve as a vehicle to facilitate the funding of debt financing for the Project for Isa on favorable terms (the Project credit risk being borne by the Project Banks and the Bank Guaranteed Notes being essentially an additional funding mechanism). The Company further asserts that it will not

deal with the Isa Secured Notes after they have been pledged as security for the benefit of the holders of the Company's Bank Guaranteed Notes. The Company avers that it will not make any investment decisions on behalf of the holders of Bank Guaranteed Notes or the Project Banks.

The Company represents that it will not hold shares of capital stock of any other corporation. The Company represents further that since the Company's Bank Guaranteed Notes will have the benefit of the guarantees or letters of credit furnished by the Project Credit Banks, which Banks should they be called upon to honor such guarantees or letters of credit will have reimbursement rights which have the benefit of the Project Collateral, purchases of Bank Guaranteed Notes will be substantially the equivalent of purchasing bank-guaranteed limited recourse obligations of Isa.

The Company agrees that the following conditions may be imposed in any order of the Commission granting the exemptive relief requested:

(1) The Company will file with the Commission within 120 days after the close of the first fiscal year of the Company (a) information with respect to persons in a control relationship with the Company (except with respect to persons under common control with the Company), persons and number of persons owning equity securities of the Company and directors, officers, employees and legal counsel required by Items 11 and 12 of Form N–2 under the Act, (b) a statement of financial position as of the close of such fiscal year, including a statement of income, paid-in surplus and retained earnings, and (c) a schedule of investments as of the close of such fiscal year, and thereafter notify the Commission promptly of any material change in such information, statement or schedule.

(2) The Company will file with the Commission within 120 days of the close of the first fiscal year of the Company a schedule of the number of holders of its short-term or other bearer securities and of its securities in registered form as of the close of such fiscal year and the number of transfers of such registered securities during such fiscal year, and thereafter notify the Commission promptly of any material change in such schedule.

(3) The Company will not sell any equity securities other than to Isa or sell any debt securities other than debt securities (a) which are to be held by Isa, M.I.M. Holdings Limited or its affiliates, or (b) which (i) have the benefit of Project Collateral or the guarantees or letters of credit furnished by the Project Credit Banks (which Banks should they be called upon to honor such guarantees or letters of credit will have reimbursement rights which have the benefit of the Project Collateral) and (ii) are (A) offered and sold in transactions not involving any public offering to institutions, located in the United States and elsewhere, which are not "underwriters" of the securities within the meaning of the 1933 Act, (B) sold outside the United States pursuant to agreements and procedures reasonably designed to prevent such debt securities from coming into the hands of a United States national or resident, or (C) are exempt from the provisions of the 1933 Act by virtue of Section 3(a)(2) or Section 3(a)(3) thereof, unless the Company shall have first given written notice to the Commission describing the proposed issuance of such additional debt securities (including notice of a proposed filing of a registration statement under the 1933 Act, pursuant to Commission Rule 415 or otherwise) not less than 60 days prior to the date of such proposed issuance, subject, however, to the right of the Commission, upon request of the Company, to decrease such number of days. The Company further agrees that if the Commission shall, after receipt by the Commission of such written notice, determine that a substantial question exists as to whether or not the exemption granted by the requested order should continue and the Commission shall, within 30 days after receipt by the Commission of such written notice from the Company, mail or otherwise give notice to that effect to the Company, in care of Cravath, Swaine & Moore, One Chase Manhattan Plaza, New York, New York 10005, the Company will not issue such additional debt securities unless, after receipt by the Company of such notice from the Commission and not less than 30 days prior to the issuance of such additional debt securities, the Company shall mail or otherwise give written notice to the Commission stating its intention to issue such additional debt securities, and upon the giving of such notice by the Company the requested order shall be deemed to have terminated as of the date the Company shall have mailed or otherwise given such notice to the Commission.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 25, 1983, at 5:30 p.m. do so by submitting a written request setting forth the nature of his/her interest, the reasons for his/her request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-6103 Filed 3-9-83; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22–12297]

Standard Oil Company (an Indiana Corporation); Application and Opportunity for Hearing

March 4, 1983.

Notice is hereby given that Standard Oil Company, an Indiana corporation ("Standard") has filed an application pursuant to clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939, as amended (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Citibank, N.A. ("Citibank") under an indenture between Standard and Citibank, as trustee, dated as of August 1, 1977 (the "1977 Indenture"), which was heretofore qualified under the Act, and the trusteeship by Citibank under an indenture among Amoco Australia Limited ("Amoco Australia"), Amoco Holdings Pty. Limited ("Holdings"), as Guarantor, and Citibank, as Trustee (the guarantee of Holdings being jointly and severally guaranteed by Standard and Amoco International Finance Corporation ("AIFC")), dated as of February 1, 1983 (the "1983 Indenture"), is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Citibank from acting as trustee under the 1977 Indenture.

In support of its application, Standard alleges that:

(1) Standard has outstanding on the date hereof $400,000,000 aggregate principal amount of its 7⅞% Debentures Due 2007 (the "7⅞% Debentures") issued under the 1977 Indenture executed by Standard and Citibank, as Trustee. The 7⅞% Debentures were registered under the Securities Act of

1933, as amended (File No. 2-59457), and the 1977 Indenture was qualified under the Trust Indenture Act of 1939, as amended (File No. 22-9282). Citibank is currently acting as trustee under the 1977 Indenture.

(2) Pursuant to the 1983 Indenture and the Guarantee Agreement, Amoco Australia issued $50,000,000 aggregate principal amount of 9⅞% Bearer Notes due 1990, which are guaranteed by Holdings (the "Guaranteed Notes"), which guarantee is jointly and severally guaranteed by Standard and AIFC (the "Joint and Several Guarantee"). Inasmuch as the Guaranteed Notes have been offered and sold outside the United States, its territories and possessions, to persons who are not nationals or residents thereof, the Guaranteed Notes have not been registered under the Securities Act of 1933 and the 1983 Indenture has not been qualified under the Act.

(3) Section 7.08 of the 1977 Indenture provides in part as follows:

Section 7.08 *Conflicting Interest of Trustee.* (a) If the Trustee has or shall acquire any conflicting interest, as defined in this Section 7.08, it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign in the manner and with the effect specified in Section 7.10.

(b) In the event that the Trustee shall fail to comply with the provisions of subsection (a) of this Section 7.08, the Trustee shall, within ten days after the expiration of such ninety-day period, transmit notice of such failure to all holders of Debentures, as the names and addresses of such holders appear upon the registration books of the Company.

(c) For the purposes of this Section 7.08 the Trustee shall be deemed to have a conflicting interest if

(1) The Trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of the Company, are outstanding, unless such other indenture is a collateral trust indenture under which the only collateral consists of Debentures issued under this Indenture; provided that there shall be excluded from the operation of this paragraph any indenture or indentures under which other securities, or certificates of interest or participation in other securities, of the Company, are outstanding if (i) this Indenture and such other indenture or indentures are wholly unsecured and such other indenture or indentures are hereafter qualified under the Trust Indenture Act of 1939, unless the Securities and Exchange Commission shall have found and declared by order pursuant to subsection (b) of Section 305 or subsection (c) of Section 307 of the Trust Indenture Act of 1939 that differences exist between the provisions of this Indenture and the provisions of such other indenture or indentures which are so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such under this Indenture and such other indenture or indentures, or (ii) the Company shall have sustained the burden of proving, on application to the Securities and Exchange Commission and after opportunity for hearing thereon, that the trusteeship under this Indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such under one of such indentures;"

(4) Execution of the 1983 Indenture could involve Citibank in a conflict of interest within the meaning of Section 7.08 of the 1977 Indenture since the 1983 Indenture is not qualified under the Act and is not the subject of any other proceeding of the Commission.

(5) The 1977 Indenture and the 1983 Indenture are wholly unsecured. The Joint and Several Guarantee given pursuant to the 1983 Indenture ranks equally with Standard's other unsecured and unsubordinated indebtedness, including the 7¾% Debentures. The primary differences between the 1977 Indenture and the 1983 Indenture, and between the rights of the holders of the 7¾% Debentures and the holders of the Guaranteed Notes as beneficiaries of the Joint and Several Guarantee, relate to aggregate principal amounts, dates of issue, denominations, events of default, maturity and interest payment dates, interest rates, places of payment of interest and principal, form of registration, redemption or prepayment procedures, Trustee's reports, restrictions on transferability, provisions relating to the non-United States offering of the Guaranteed Notes and other provisions of a similar nature. Any such difference and any other difference in the provisions of the 1977 Indenture and the 1983 Indenture and Guarantee Agreement are not so likely to involve any material conflict of interest between the respective trusteeships of Citibank under these Indentures so as to make it necessary in the public interest or for the protection of investors to disqualify Citibank from acting as trustee under the 1977 Indenture.

(6) Standard is not in default under the 1977 Indenture, the 1983 Indenture or the Guarantee Agreement.

Standard has filed an application which is on file in the offices of the Commission at 450 5th Street, NW., Judiciary Plaza, Washington, D.C. 20549, with respect to the matters of fact and law asserted herein.

Notice is further given that an order granting the application may be issued by the Commission at any time on or after April 1, 1983, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939, as amended. Any interested person may, not later than April 1, 1983, at 5:30 P.M., Eastern Standard Time, in writing, submit to the Commission, his views or any additional facts bearing upon this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Judiciary Plaza, Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert.

For the Commission, by the Division of Corporate Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-6104 Filed 3-9-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-19556; File No. SR-Amex-82-27]

Self-Regulatory Organization; Proposed Rule Change by American Stock Exchange, Inc.; Relating to Amendment of Exchange Rule 950(k) Regarding Restrictions on Options Specialists

Pursuant to Section 19(b)(1) of the Securites Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 30, 1982, the American Stock Exchange filed with the Securites and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange is proposing to amend Rule 950(k) to permit a member organization which is affiliated with an options specialist to:

- Engage in non-material business transactions with the issuer or insiders of the issuer of a stock underlying a specialty option,
- Accept unsolicited orders in specialty options from pension and profit sharing funds with assets of less than five million dollars, and
- Perform certain types of research and advisory services with respect to stocks underlying options, provided certain conditions are met.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received

on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) *Purpose.* For many years the Exchange has had rules restricting certain activities of a specialist so as to minimize potential conflicts of interest between the specialist's agency and dealer functions as well as to help assure fair and orderly markets. Amex rule 190 governing a specialist's transactions with public customers is one such rule.

At the inception of the Exchange's options program in the mid-1970's, these rules were applied to options specialists, with only minor changes. (Rule 190 was made applicable to options specialists by Rule 950(k)). At that time the Exchange expressed to the staff of the Securities and Exchange Commission its concern that specialist restrictions developed specifically for stocks might have to be revised or eliminated in the light of experience gained by trading options. In particular, it was stated that if these restrictions unnecessarily impinged upon the ability of the Exchange to attract major retail firms to specializing, the Exchange would reconsider their application to options.

The Exchange has concluded that Rule 950(k) indeed operates as a disincentive to diversified firms acting, or contemplating acting, as an options specialist. Among other things, this Rule prohibits such firms from engaging in any business transactions with the issuer (or its insiders) of a stock underlying a specialty option, from making recommendations for the purchase or sale of both the option and the underlying stock, and from accepting orders in specialty options from institutions. None of the other options exchanges impose equivalent restrictions.

Several months ago Exchange representatives met with Division of Market Regulation staff to discuss the problems experienced by options specialist firms and to review the ideas for the rule changes which are the subject of this filing.

A. Business Transactions

Rule 950(k) prohibits an options specialist firm from engaging in *any* business transaction with the issuer of an underlying stock or any of its insiders. This prohibition was specifically adopted to prevent the establishment of a relationship through which a specialist firm could obtain non-public corporate information from an issuer, or an issuer could obtain non-public market information from a specialist.

However, the scope of this Rule is so broad that, particularly when applied to options specialists, it precludes the establishment of specialist-issuer relationships in which the potential for abuse is, at best, remote. For example, because of the "business transactions" prohibition the Exchange has advised options specialists that they could not engage in the following activities:

- Handling brokerage accounts for the issuer, etc., whether or not the brokerage orders are for specialty or non-specialty securities,
- Handling a commodities trading account for an issuer,
- Allowing an account executive to continue to deal with a long standing customer who had become the chief executive officer of an issuer in whose options the firm specialized.

In each of the examples listed above the potential that one of the parties might obtain non-public information is remote because the transactions are not material in value to either party, and do not otherwise give either of the parties access to material, non-public information. The potential for abuse is further minimized by the very nature of options trading. Since options are derivative securities they respond primarily to price changes in the underlying security, and it is more difficult for an options specialist to affect short-term price movements in the option. Thus, there are compelling reasons in favor of the Exchange's modifying the business transaction prohibition with respect to its options specialists. The Exchange believes that it can accomplish this change without sacrificing its underlying need to bar the flow of non-public information between issuers and specialists.

Accordingly, the Exchange has amended the business transactions restriction so as to permit an options specialist firm to engage in non-material business transactions with the issuer of a stock underlying a specialty option or its insiders. A material transaction is defined as one which (a) is material in value to either party, or (b) provides access to material non-public information relating to the issuer or the specialist. By so defining materiality the Exchange will be able to preclude the establishment of specialist-issuer relationships in which there is a realistic potential for improper disclosure of inside information, while permitting those relationships which do not give rise to such a concern. It should be noted that even with this change, options specialist firms will still be prohibited from accepting option orders from the issuer of the underlying stock or its insiders.

B. Recommending Underlying Securities

Another long-standing restriction on a stock specialist is the prohibition against recommending the purchase or sale of a specialist security. This prohibition was enacted to avoid the resulting conflict that would be created between a specialist's marketmaking and other business activities. When options trading commenced, the Exchange not only applied this prohibition to options specialists—i.e. specified that they could not issue a recommendation in their specialty options—but expanded it so as to also preclude them from issuing recommendations in underlying securities. It is this expansion of the Rule which has engendered business difficulties for options specialist firms, particularly in light of the fact that the Rule applies not only to the individual specialists, but also to their firms, parent companies, and all of the officers, directors and employees associated with such firms.

The difficulties caused by the application of this restriction to options specialist firms can be broken down into two primary categories. The first is the inability of such firms to provide comprehensive research coverage of the industries which include their underlying securities. Thus, the Amex specialist in Gulf options cannot prepare an analysis of the oil industry which would include a discussion of Gulf. Inevitably, the research coverage provided by options specialist firms will suffer in comparison to that offered by other firms, a fact which will not go unnoticed by the investing public. The second difficulty engendered by this restriction is that an account executive, even acting in the absence of a firm-wide recommendation, cannot solicit orders in underlying stocks from *any* of his customers. This forces options specialist firms to include underlying securities on restricted lists and creates yet another competitive disadvantage for them.

The Exchange believes that the differences between stock and options trading are such that the regulatory interest served in maintaining this restriction in its present form is outweighed by the competitive

disadvantage it has placed upon options specialists firms. The Exchange therefore believes that it is appropriate to lift the absolute prohibition against recommendations in underlying securities if, as discussed below, the specialist firm adopts adequate procedures which will satisfy the Exchange's regulatory needs.

In view of the above, the Exchange has amended Rule 950(k) to permit an options specialist firm to make recommendations in underlying securities provided that the firm adopts procedures (which first must be filed with and approved by the Exchange) to preclude the flow of information between the individual specialist and the relevant non-specialist areas of the firm. These procedures—tantamount to a "Chinese wall"—must assure that the research and marketing areas of a firm will be precluded from gaining information concerning positions taken by the options specialist, and, conversely, that the specialist would be barred from obtaining information about his firm's forthcoming recommendations which might influence his market-making activities. The Exchange is confident that a structurally sound "Chinese wall," such as those which many firms have used for years to separate retail and investment banking functions, will serve to substantially reduce the possibility that information might flow between the specialist and other areas of a firm.

At a minimum, the procedures submitted for review must be sufficiently specific so as to enable the Exchange to evaluate their effectiveness in terms of the firm's structural and functional operation, and the maintenance and surveillance of the procedures must be specifically allocated to senior management within the firm. Any firm receiving Exchange approval will be required to fully disclose its status as specialist in any form of recommendation it makes, and will be apprised that its adoption of a "Chinese wall" will not insulate it from liability under the securities laws or the Exchange's own rules. For those firms which choose not to establish such procedures, and thus not to recommend underlying securities, the current restrictions will remain in place. The current restriction against recommendation of specialty options will also remain unchanged for all options specialist firms.

The Exchange will monitor compliance with this Rule change through its options surveillance program. The Exchange's surveillance procedures are designed to detect instances of trading on inside information, and will be used to check for breaches of the "Chinese wall." The Exhange's Trading Analysis Division which routinely reviews specialists' options and underlying stock activity will have primary responsibility for this surveillance. The Exchange will carefully monitor its surveillance program and will make any enhancements which may be necessary to ensure that this new procedure is not abused.

C. Orders From Small Pension and Profit-Sharing Plans

The final change which the Exchange has made relates to the prohibition against a specialist's accepting orders in his specialty securities from an institutional customer. This restriction was adopted to prevent a specialist from giving—or being pressured into giving—favored treatment to such orders. As applied to options trading, this restriction relates only to specialty options, i.e., it does not prohibit a specialist from accepting an institutional order in the underlying security. The Exchange has carved out a limited exception to this prohibition which would permit an options specialist to accept *unsolicited* orders in specialty options from pension and profit-sharing plans with assets of less than five million dollars.

Several factors support this change. First, plans of this size are too small to exercise coercive pressure on a specialist. Further, such plans are typically established for the benefit of an individual or small group of individuals (such as a doctor's profit-sharing or KEOGH plan) and are thus in reality more akin to individual accounts than institutional ones. This limited change will thus enable an options specialist firm to accept customer orders which raise no regulatory concern.

(b) *Basis.* The proposed amendments are consistent with Section 6(b) of the Exchange Act in general and further the objectives of Section 6(b)(5) in particular in that they are designed to remove impediments to, and perfect the mechanism of, a free and open market and to protect investors and the public interest by removing barriers to entry into specializing and encouraging competition in specializing.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule changes are intended to reduce burdens on competition which were excessive since they created disincentives to options specializing without any offsetting regulatory benefits. Rule 950(k), as amended, does impose certain burdens on competition, but only for the purpose of satisfying the Exchange's regulatory interest. If necessary at a later date, the Exchange will readdress the Rule to ensure that this competitive balance is maintained.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th 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 in the caption above and should be submitted within 30 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 1, 1983.

George A. Fitzsimmons,

Secretary.

Exhibit A—American Stock Exchange, Inc.

Proposed Amendment to Rule 950(k)

It is proposed that Rule 950(k) be amended as set forth below. [Brackets [ ] indicate words to be deleted; italics indicate words to be added.]

Rule 950. (k) The provisions of Rule 190 and Commentary thereto shall apply to the trading of option contracts with the addition of the following commentary:

* * * Commentary

.02 With respect to a specialist registered in one or more clases of options:

(1) Paragraph (a) of this Rule shall be deemed to prohibit any *material* business transactions with the company which is the issuer of the underlying stock that is the subject of any such class of options or with any officer, director or 10% stockholder of any such company. [; and] *A material transaction for purposes of this Commentary .02 is one which is material in value either to the issuer or the specialist; would provide access to material non-public information relating to the issuer; or would give rise to a control relationship between the issuer and the specialist.*

(2) Paragraph (b) of this Rule shall be deemed to prohibit the acceptance of any order for the purchase or sale of an option contract of any such class directly (1) from the company which is the issuer of the underlying stock that is the subject of any such class of options, (2) from any officer, director or 10% stockholder of any such company, (3) from any pension or profit-sharing fund *with assets exceeding $5,000,000*, or (4) from any bank, trust company, insurance company, investment company or similar institution. This Rule shall not be deemed to prohibit the acceptance of orders for the purchase or sale of the underlying stock from pension and profit-sharing funds, banks, trust companies, investment companies and similar institutions.

(3) It is contrary to good business practice for specialist or his member organization, or any member, officer, employee or approved person therein to make any recommendation in any such class of options or in the underlying stock that is the subject of any such class of options, except that recommendations in the underlyuing stock shall not be prohibited if the specialist organization has established and obtained Exchange approval of procedures designed (A) to preclude the flow of information regarding the activities and positions of the specialist and the activities of relevant non-specialist lines of business between the individual specialist and any member, officer, employee or approved person associated with the specialist who might, in the oridinary course of business, have knowledge of such recommendations and (B) to assure disclosure in connection with any such recommendation of the specialist's status as such in such class of options.

Any such proposed procedures submitted for the Exchange's approval shall, at a minimum provide:

(i) sufficient specificity to establish a basis for the Exchange to evaluate their effectiveness in the context of the specialist organization's structural and functional operation; and

(ii) specificity regarding responsiblity within the organization for maintenance and surveillance of such procedures.

[FR Doc. 83-6101 Filed 3-9-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19562]

Proposed Rule Change Submitted by the National Securities Clearing Corporation ("NSCC"); Order Approving Proposed Rule Change

March 2, 1983.

On November 24, 1982, NSCC submitted a proposed rule change (SR–NSCC–82–27) under Section 19(b)(2) of the Securities Exchange Act of 1934 (the "Act") that would modify NSCC's rules regarding the terms of issuance of irrevocable letters of credit issued by banks to secure participants' clearing fund obligations. The Commission published notice of the proposal in the **Federal Register** on December 30, 1982, and invited persons to comment.[1] No letters of comment were recieved. NSCC received one letter of comment.[2]

Currently, NSCC's Rule 4, Section 1 provides that NSCC participants may secure, in part, the non-cash portion of their clearing fund contributions ("open account indebtedness") by depositing with NSCC irrevocable letters of credit.[3] NSCC accepts, under that Rule, letters of credit from qualified banks that execute contractual agreements with NSCC governing the terms and conditions of such letters of credit. More specifically, each agreement provides that the bank will establish irrevocable letters of credit in favor of NSCC, for the account of an NSCC participant, with an expiration date expressly stated in the agreement.[4] In addition, the agreement establishes a stated dollar amount that is payable to NSCC upon the presentation of a sight draft accompanied by a certification signed by NSCC stating that the claimed amount does not exceed the participant's liabilities to NSCC.[5] Finally, the agreement will be governed by Article 5 of the New York Uniform Commercial Code.

The proposed rule change would modify NSCC's rules to allow NSCC to accept an additional category of letters of credit. Under the proposal, NSCC would be authorized for the first time to accept letters of credit that can be terminated at the issuer's request, provided the issuer gives NSCC five days written notice.[6] As discussed above, NSCC currently accepts only letters of credit that cannot be terminated prior to their expiration date. More specifically, under the proposal NSCC would amend its contractual agreements to provide that letters of credit (i) can be terminated upon written notice from the issuing bank; and (ii) can be drawn down by NSCC at any time within five business days after NSCC's receipt of the banks termination notice. Moreover, in the event of such early termination, the issuer would not require NSCC to certify in writing that the participant, on whose behalf the letter of credit was issued, had defaulted in certain of its obligations to NSCC. The proposed rule change also would require that the participant replace the terminated letter of credit with other suitable collateral within such time as NSCC specifies upon its receipt of the termination notice. In addition, the proposal sets forth conforming amendments to NSCC's agreement with issuing banks.

NSCC stated in its filing that it believes the proposed rule change is necessary in view of changing industry practices. As a result of those changing

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[1] Securities Exchange Act Release No. 19359, (December 21, 1982), 47 FR 58419 (December 30, 1982).

[2] Leonard Mayer of Mayer and Schweitzer, Inc. (a market maker firm), in a letter dated November 28, 1982, to NSCC, endorsed NSCC's proposal, citing cost efficiencies in the use of letters of credit for clearing members' contributions to the clearing fund and the need to accommodate issuers of letters of credit so that NSCC participants can obtain letters of credit for clearing fund purposes in the future.

[3] Under NSCC's existing rules, participants may secure their open account indebtedness by the pledge of (i) certain unmatured bearer bonds issued and guaranteed by the United States or a state or one of its subdivisions ("qualifying bonds"); (ii) letters of credit issued by a bank approved by NSCC; and (iii) certain corporate and debt securities [*See* Securities Exchange Act Release No. 19496, (February 9, 1983), 48 FR 7020 (February 17, 1983).

[4] The expiration date may not be more than twelve months from the date of issuance.

[5] Under NSCC's Rules and Procedures, NSCC may draw down a letter of credit issued in its behalf when the participant that has obtained the letter of credit defaults in its obligations to NSCC. The liability of NSCC's participants is determined in accordance with NSCC's Rules and Procedures. Under the Agreement, such obligations can be satisfied first from that participant's cash and/or qualifying bonds contributions to the Clearing Fund before NSCC may also draw down on deposited letters of credit. NSCC may also draw down an expiring letter of credit, under the agreement, if the participant fails, within 10 calendar days prior to expiration, to make a substitution for that letter of credit, as required by NSCC's Rules.

[6] The Options Clearing Corporation ("OCC") currently permits letters of credit issued for OCC margin purposes to be revoked by issuers upon two full days' notice to OCC.

practices, NSCC has been advised recently by issuers of letters of credit that they will no longer issue letters of credit unless NSCC permits such letters of credit to be terminated prior to the stated expiration date at the option of the issuing bank. NSCC further stated that the continued availbility of letters of credit to secure, in part, participants' clearing fund open account indebtedness is important because using letters of credit is less costly than using qualifying bonds.

The Commission believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act. NSCC, as stated *supra*, has been advised that unless NSCC agrees to accept letters of credit that can be terminated by the issuer prior to the stated expiration date, those issuers will cease to issue new letters of credit on behalf of NSCC. It is particularly important that letters of credit continue to remain available to NSCC participants for clearing fund proposes, in light of the significant advantages that letters of credit afford both NSCC and its participants. Letters of credit provide participants with a means of securing clearing fund obligations at significant costs savings relative to other forms of collateral.[7] At the same time, NSCC's letter of credit program includes important regulatory controls that enable NSCC to accept certain letters of credit safely and efficiently.[8]

Furthermore, the Commission believes that the proposal provides important benefits to NSCC without exposing NSCC or its participants to any appreciable increase in risk. NSCC's proposal ensures that in the event an issuer of a letter of credit chooses to exercise its right to terminate an outstanding letter of credit, NSCC will nonetheless have time to secure alternative clearing fund deposits from the affected participant. Issuing banks will be obligated to notify NSCC five days prior to terminating the letter of credit. In addition, if substitute collateral is not obtained, NSCC will be permitted, during the five day period, to draw down immediately the letter of credit by presenting a sight draft to the issuer, without having to present accompanying documents that are ordinarily necessary.

In accordance with the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, and, in particular, the requirements of Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

By the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-6100 Filed 3-9-83; 8:45 am]

BILLING CODE 8010-01-M

[7] A letter of credit may be obtained at a fraction of the cost of a cash clearing fund deposit. It should be noted, however, that clearing members that choose to deposit letters of credit must deposit $50,000 in cash, instead of the usual $10,000 deposit. *See* Securities Exchange Act Release No. 18772, (May 28, 1982), 47 FR 25085 (June 9, 1982) and Securities Exchange Act Release No. 16878 (June 6, 1982), 45 FR 40270, (June 13, 1980).

[8] Among other things, letters of credit, unlike government securities, are not subject to market fluctuation, and therefore, NSCC is adequately protected without having to reevaluate periodically the value of the deposited collateral. In contrast, during periods of rising interest rates, the market value of municipal and government securities can decline as interest rates rise. Because this loss of market value has the effect of reducing the liquidation value of clearing fund contributions that consist of municipal and government securities, NSCC must periodically reevaluate the sufficiency of those clearing fund contributions and ask for additional contributions when necessary.

[File No. 1-3314]

Alaska Airlines, Inc.; Application To Withdraw From Listing and Registration

March 4, 1983.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. The common stock of Alaska Airlines, Inc. ("Company") is listed and registered on the Amex. Pursuant to a Registration Statement on Form 8-A which became effective on February 4, 1983, the Company is also listed and registered on the New York Stock Exchange ("NYSE"). The Company has determined that the direct and indirect costs and expenses do not justify maintaining the dual listing of the common stock on the Amex and the NYSE.

2. This application relates solely to withdrawal of the common stock from listing and registration on the Amex and shall have no effect upon the continued listing of such stock on the NYSE. The Amex has posed no objection to this matter.

Any interested person may, on or before March 25, 1983, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should by imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-6212 Filed 3-9-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13062; (812-5441)]

Allied Capital Corp. and Allied Investment Corp.; Filing of Application

March 2, 1983.

In the matter of Allied Capital Corporation and Allied Investment Corporation, 1625 Eye Street, NW., Washington, D.C. 20006.

Notice is hereby given that Allied Capital Corporation ("ACC"), a closed-end, internally-managed investment company registered under the Investment Company Act of 1940 ("Act"), and its wholly-owned subsidiary, Allied Investment Corporation ("AIC"), a closed-end, internally-managed investment company licensed as a small business investment company under the Small Business Investment Act of 1958 (together, the "Applicants") filed an application on February 1, 1983, and an amendment thereto on February 15, 1983, for an order of the Commission pursuant to Sections 17(b) and 17(d) and Rule 17d-1 thereunder, exempting Applicants' proposed transaction from the provisions of Sections 17(a) and 17(d). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and the rules thereunder for further information as to the provisions to which the exemption applies.

AIC has developed an opportunity to arrange a $2,500,000 debenture financing

for Southern Systems, Inc. ("Southern Systems") upon the terms summarized below. AIC has the capacity and proposes to participate in such financing to the extent of $500,000. Other venture capital investment entities who have agreed to participate in the financing, to the extent listed after their names, are the following:

Atlantic Venture Partners	$500,000
Heritage Capital Corporation	300,000
Kitty Hawk Capital, Ltd	200,000
Teribe S.A	1,000,000
Total	2,000,000

Since one of the participants in the Applicants' proposed transaction includes Teribe S.A. ("Teribe"), a Panamanian corporation and the parent of Alcap, Limited ("Alcap"), and since Alcap holds 17.7% of ACC's outstanding capital Stock, Teribe may be deemed an affiliate or an affiliate of an affiliate of ACC pursuant to Section 2(a)(3) of the Act.

Of ACC's outstanding capital stock, 237,000 shares (17.7%) are held by Alcap, a British Virgin Islands corporation, which is a wholly-owned subsidiary of Teribe. Teribe, in turn, is a second-tier subsidiary of Enterprises Quilmes, S.A. ("EQ"), a Luxembourg holding company listed on the Paris and Luxembourg Stock Exchange. Mr. Willem F.P. de Vogel, a vice president of Three Cities Research, Inc., New York, another EQ affiliate ("Three Cities"), serves as a director of ACC's and AIC's boards of directors. Under an agreement dated October 30, 1980, pursuant to which Alcap acquired its investment in ACC, Alcap has the right to nominate two persons for election to ACC's board of directors, but to date has chosen to nominate only one person, Mr. de Vogel. As a matter of practice, ACC elects all members of its own board of directors to constitute the board of directors of AIC.

The Applicant's proposed transaction involves Southern Systems, a Florida corporation primarily engaged in the business of manufacturing and selling impact printers, page printers, and interface electronics for printers to users of electronic data processing equipment. On November 30, 1982, Southern Systems had assets of approximately $4,227,700 and a net worth of approximately $792,100; for the year then ended it had sales of approximately $9,040,300 and its pre-tax earnings amounted to approximately $123,400. Mr. J. Joseph Horn, Jr., of Fort Lauderdale, Florida, who is Southern Systems' chief executive officer, and his spouse, own all of Southern Systems' outstanding capital stock. As part of its financing plan, Southern Systems has obtained a $2,000,000 secured, revolving line of credit from North Carolina National Bank, which is not affiliated with any other party to this transaction. The financing plan contemplates further that Southern Systems will sell to the participants of this proposal two series of debentures. The debentures of both series will bear interest at the rate of 13% per annum, payable monthly. During the first 36 months from closing, Southern Systems will, on the amount disbursed, pay interest only; in each of the succeeding 48 months it will pay an amount calculated to amortize the principal and interest in level payments over the four year period. The debentures will mature in any event at the end of seven years after closing, but may be prepaid in whole or in part at any time.

The debentures of the first series, in the aggregate principal amount of $1,500,000, are issuable at the closing. They will be convertible at any time through November 30, 1985, into a number of common shares of Southern Systems equal to 25% of its common equity after giving effect to the conversion. Thereafter, these debentures in part or in whole will be convertible into a percentage of Southern Systems' equity determined in accordance with a scale as a function of Southern Systems' earnings for its fiscal year ended November 30, 1985, varying from $500,000 principal amount of debentures for 35% of the equity if such earnings are less than $3,367,000 to $1,500,000 principal amount of debentures for 25% of the equity if such earnings are greater than $6,690,000. Such conversion right remains in effect for seven years after the closing and may be execised through the application of cash to the extent of payments on account of the debentures' principal prior to exercise. The debentures of the second series, in the aggregate principal amount of $1,000,000, are not convertible and are issuable only upon the attainment of certain sales targets prior to November 30, 1983.

The participants in the financing will participate in both series of debentures and the conversion privilge pro rata to their total commitment, as follows:

	Convertible debentures	Convertible into percent of equity	Non-convertible debentures
Allied Investment Corp. [1]	$300,000	5	$200,000
Atlantic Venture Partners	300,000	5	200,000
Heritage Capital Corp	180,000	3	120,000
Kitty Hawk Capital, Ltd	120,000	2	80,000
Teribe S.A. (1)	600,000	10	400,000
Total	1,500,000	[2]25	1,000,000

[1] Subject to the order requested herein.
[2] Subject to adjustment as previously described.

The investment agreement will contain provisions protecting the investors' equity in the event of a sale or outside offer to purchase the outstanding shares of Southern Systems or its assets; first refusal rights to participants in additional equity financing; demand and "piggy-back" registration rights; provisions for collateral, in which the rights of the debentureholders will be subordinated to those of North Carolina National Bank; and other representations, warranties, and covenants. Southern Systems will be required to pay all legal fees incident to the transaction and, in addition, a $20,000 financing fee to AIC which will not be shared with the other participants in the transaction regardless of whether AIC participates therein. Southern Systems will also pay as a fee to North Carolina National Bank an amount equal to 5% of each amount disbursed by the participants in the debenture financing. The Applicants state that the payment to AIC of a financing fee for services rendered by it in structuring and negotiating the transaction does not make the basis of its participation less advantageous than that of the other participants in contravention of Rule 17d–1.

Applicants acknowledge that participation by AIC in a transaction in which Teribe also participates might be considered a participation by AIC and Teribe in a joint enterprise in contravention of Section 17(d) of the Act and Rule 17d–1 thereunder unless authorized by order of the Commission. Applicants state that the terms of the transaction require disbursement of at least $1,500,000 of the financing around March 1, 1983. Realizing that the requested order could not be issued prior to that date, Teribe has agreed to buy for its own account the participation proposed for AIC, and to resell such participation to AIC at cost plus accrued interest (as long as the order is issued prior to March 31, 1983). Such resale would, however, contravene Section 17(a)(1) of the Act unless exempted therefrom by order of the Commission pursuant to Section 17(b).

Applicants represent that the proposed transaction meets the standards for exemption of both Section

17(b) and Rule 17d–1 and that an order of the Commission should therefore be issued authorizing the transaction.

Applicants represent that the board of directors of AIC (which is identical in composition with the board of directors of ACC) unanimously approved the proposed transaction and that the boards of directors include one representative of Alcap, one representative of another institutional investor not involved in the proposed transaction, and nine others. The ten directors unaffiliated with and not interested in Alcap, EQ, Teribe, Three Cities, or Southern Systems personally own, in the aggregate, a number of shares greater than the number owned by Alcap.

Applicants assert that the terms of the proposed transaction may be presumed to be fair and reasonable because they have been negotiated at arms-length by parties who are independent of one another. Applicants acknowledge that Nutter, McClennen & Fish ("NMF") represented the investor participants in the proposed transaction, that NMF currently represents ACC and its subsidiaries before the Commission, and that NMF has from time to time acted as special counsel to Teribe and its affiliates. Applicants submit that none of the participants in the proposed transaction has the economic power or other influence to overreach any of the other parties.

Applicants represent that the terms of AIC's participation in the Southern Systems financing are on a basis identical to that of the participation of all the other investors, with the exception of the payment to AIC of a financing fee for services rendered in structuring the transaction. As noted earlier, Applicants contend that such a financing fee does not make AIC's basis of participation less advantageous than that of the other participants.

Applicants submit that the proposed investment is consistent with the fundamental investment policies of AIC and, hence, of ACC (included in AIC's fundamental policies is the policy to make loans to and purchase convertible debentures from small business concerns as contemplated by the Small Business Investment Act of 1958). Applicants further submit that the proposed transaction is consistent with the general purposes of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 28, 1983, at 5:30 p.m. do so by submitting a written request setting forth the nature of his/her interest, the reasons for his/her request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-6306 Filed 3-9-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22869; (70–5899)]

Columbia Gas System, Inc., Proposed Issuance of Common Stock Pursuant To Tax Reduction Employee Stock Ownership Plan

March 4, 1983.

In the matter of the Columbia Gas System, Inc., 20 Montchanin Road, Wilmington, Delaware 19807.

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, has filed a post-effective amendment to a declaration previously filed with this Commission pursuant to Sections 6 and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder.

By prior order dated August 16, 1979 (HCAR No. 21189), this Commission authorized Columbia to issue shares of common stock pursant to its tax reduction employee stock ownership plan ("Plan") in which all domestic, wholly-owned subsidiaries of Columbia participate (collectively, the "System"). Provisions of the Internal Revenue Code have allowed special investment tax credits to provide the funds for this type of plan. With respect to the 1977 through 1983 Plan Years, Columbia was previously authorized to issue one million shares, 500,000 funded by a one percent investment tax credit and 500,000 by a combination of a one half percent credit and matching employee contributions. Columbia now seeks authorization to increase the number of shares provided for issuance for the 1982 Plan Year by 200,000 and to issue an additional 600,000 shares with respect to a new, payroll-based Plan in the years 1983 to 1987.

Under Columbia's current Plan, as well as the new, proposed Plan, the number of shares issued in any given year is determined by dividing the amount of the available tax credit by the average of the closing prices of Columbia's common stock on the New York Stock Exchange Composite tape for the twenty consecutive trading days immediately preceding the date of issue on which the stock in contributed to the Plan. In no case are shares issued for less than the $10 par value.

Of the 500,000 shares previously authorized with respect to the noncontributory feature of the current Plan, 108,793 shares remain. However, it is now estimated that 170,300 shares will be required to be issued for the 1982 Plan Year. This estimate is based on an available one percent tax credit of approximately $5,108,000 and an assumed average issue price of $30 per share. With respect to the contributory feature of the Plan, 147,010 shares remain. It is estimated that 170,300 shares will be required to be issued under this one half percent tax credit matched by voluntary empolyee contributions. In order to provide for possible changes in its estimates, such as variations in the common stock price, Columbia requests that the Commission authorize the issuance of an additional 100,000 shares of each feature of the current Plan for the 1982 Plan Year.

Beginning with the 1983 Plan Year, the investment tax credits of the current Plan have been terminated due to a change in federal tax laws and will be replaced by a new tax credit based on total payroll. For purposes of this credit, employee contributions are no longer permitted. For the 1983 and 1984 Plan Years the new credit will amount to 0.50% of employee compensation, and for the 1985–1987 Plan Years, the percentage will increase to 0.75%. It is estimated that System contributions for 1983 through 1987 will amount to aproximately $13,000,000. At an assumed average issuance price of $30 per share, 435,000 shares of stock would be required for issuance. To provide for possible changes in issuance price or in the amount of payroll, Columbia requests an additional 600,000 shares be authorized for issuance with respect to the years 1983–1987.

Dividends on shares held in the Plan will continue to be paid currently to the beneficial owners. As is presently the case, the trustee of the Plan will not be permitted to vote the shares it holds unless it shall have received voting instructions from participating employees.

The declaration, as amended by the post-effective amendment, and any further amendments are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 29, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant ot delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-6202 Filed 3-9-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13063; (812-5425)]

Mellon Bank Canada, Filing of Application

March 2, 1983.

In the matter of Mellon Bank Canada c/o Mellon Bank, N.A., Mellon Square, Room 3415, Pittsburgh, Pennsylvania 15230.

Notice is here given that Mellon Bank, N.A. ("Applicant"), a banking association organized under the laws of the United States and a wholly-owned subsidiary of Mellon National Corporation ("MNC"), a Pennsylvania corporation that is registered as a bank holding company under the Bank Holding Company Act of 1956, as amended, filed an application on January 17, 1983, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") on behalf of Mellon Bank Canada ("MBC"), a corporation to be formed by Applicant under the laws of Canada, for an order of the Commission exempting MBC from all provisions of the Act, and the rules and regulations thereunder. All interested persons are referred to the application on file with the commission for a statement of the representations contained therein, which are summarized below.

Applicant states that all of the capital stock of MBC will be held by Mellon Bank International ("MBI"), a wholly-owned subsidiary of Applicant. It is stated that on July 26, 1982, the Board of Governors of the Federal Reserve System consented to the ownership of MBC by MBI, that Applicant has applied to the Canadian Government to establish MBC, and that approval of such application is expected in the first quarter of 1983. Applicant represents, in addition, that MNC is a one-bank holding company organized in August, 1971 under the laws of the State of Pennsylvania, having as of September 30, 1982 total assets of $21,709,278,000 and equity capital of $1,046,660,000, and that as of that date MNC was the 14th largest bank holding company in the United States in terms of assets, the 17th largest such entity in terms of deposits, and the 15th largest in terms of capital. It is stated further that Applicant, which with its predecessors has been engaged in business since 1869, and which became the principal wholly-owned subsidiary of MNC in November, 1972, ranked as the 14th largest U.S. commercial bank as of June 30, 1982, in terms of total assets, and the 16th largest in terms of total deposits. Applicant represents that it engages in worldwide commercial banking, trust banking and investment services as well as domestic retail banking, that it is a member of the Federal Reserve System, and that its deposits are insured by the Federal Deposit Insurance Corporation to the extent required by law.

Applicant also states that other wholly-owned subsidiaries of MNC engage in consumer financing, equipment leasing, mortgage banking and real estate financing. It is further stated that as of September 30, 1982, MNC had 113 domestic branches, seven domestic representative offices; international branches in Frankfurt, Grank Cayman, Hong Kong, London and Tokyo; international representative offices in eight countries and 151 domestic non-banking offices; and more than 7,500 employees and 8,000 shareholders world-wide.

Applicant represents, in addition, that on July 30, 1982, MNC and the Girard Company ("Girard"), a registered bank holding company, entered into a Plan of Merger whereby Girard would be merged into MNC. Applicant states that as of September 30, 1982, Girard had total assets of $4,662,749,000 and equity capital of $295,720,000. On November 8, 1982, Applicant states, the proposed merger was approved by the shareholders of MNC and Girard, subject to certain regulatory approvals.

Applicant states that as a United States national bank, it is subject to pervasive regulation by the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation. It is stated further that the statutory source of this regulatory system is a series of federal statutes pertaining to national banks, banks that are members of the Federal Reserve System and banks with insured deposits.

Upon its formation, Applicant states, MBC will operate as a wholesale banking organization servicing Canadian companies by providing working capital financing, medium-term (5–8 year) financing for capital expansion, loans to Canadian importers and exporters in connection with their international trade financing, and short- and medium-term financing to Canadian energy companies. MCB, Applicant states, will operate and be chartered as a Canadian Bank.

Applicant states that as a bank under Canadian law, MBC will be regulated pursuant to the Banks and Banking Law Revision Act 1980, by the Canadian Federal Government, which has for many years exercised exclusive jurisdiction over the banking industry, and that such jurisdiction is exercised principally by the Bank of Canada and the Inspector General of Banks. It is further stated that the Bank of Canada, which is Canada's government-owned central bank, is charged with the principal function of regulating Canada's money supply and credit. Its primary tools for meeting these objectives, Applicant states, are adjusting the rate charged on funds loaned to chartered banks and imposing reserve requirements on bank deposits, functions which are similar to some of those undertaken by the Board of Governors of the Federal Reserve System in the United States. The Inspector General of Banks, it is also stated, is charged with, among other things, insuring that all banks are prudently managed and examining each bank at least annually.

Applicant further states that MBC proposes to issue and sell in Canada and the United States unsecured commercial paper notes ("notes"), which will be unconditionally guaranteed by Applicant. As direct liabilities of MBC, Applicant states, the notes will rank prior to equity securities and *pari passu* among themselves and equally with all other unsecured, unsubordinated indebtedness, including liabilities to depositors, except amounts due to the Government of Canada or to any province thereof, in trust or otherwise, which would rank above the notes. It is further stated that the notes will be prime quality and sold in minimum

denominations of $100,000, either directly by MBC, or through commercial paper dealers to institutional investors who normally purchase commercial paper in large quantities. Applicant represents that MBC will act to assure that the notes will not be advertised or otherwise offered for sale to the general public, that MBC and each dealer in the notes will provide each offeree, prior to purchase, with a memorandum describing Applicant's business as well as that of MBC and MNC, including the most recent publicly available fiscal year-end balance sheets and income statements for MBC and MNC and that these financial statements, shall have been audited in such manner as is customarily done for MNC by its United States auditors, and for MNC by its Canadian auditors. Such memorandum, Applicant states, will describe differences which are material to investors, if any, between Canadian accounting principles applicable to MBC and "generally accepted accounting principles" as employed by United States banks. Applicant further represents that such memorandum will be at least as comprehensive as those customarily used by United States banks or bank holding companies in offering commercial paper in the United States and will be updated promptly to reflect material changes in the financial condition of MBC and MNC.

It is stated, in addition, that the notes will be exempt from registration under the Securities Act of 1933 ("Securities Act") pursuant to Section 3(a)(2) thereof, which specifically exempts from registration the sale of notes "guaranteed by a bank" (e.g., Applicant). Applicant further states that although the notes will be prime quality, negotiable commercial paper, they will not necessarily qualify for the exemption from registration provided by Section 3(a)(3) of the Securities Act, which provides an exemption from registration for certain securities arising out of current transactions and having maturities limited to nine months. Applicant further represents that it will not issue and sell the notes until it has received an opinion of its United States counsel to the effect that, under the circumstances of the proposed offering, the notes would be entitled to an exemption from the Securities Act pursuant to Section 3(a)(2). It is also stated the MCB does not request Commission review or approval of United States counsel's opinion letter regarding the availability of an exemption under Section 3(a)(2) of the Securities Act.

Applicant represents, in addition, that the presently proposed issue of notes and all future issues of securities in the United States by MBC shall have received prior to issuance one of the three highest investment grades issued by one nationally recognized investment rating organization, and Applicant undertakes that either Applicant or MBC will certify to MBC's United States counsel that such a rating has been obtained prior to the issuance of the notes.

Applicant states that MBC will appoint Applicant or another bank in the United States to serve as its authorized agent to issue the notes in the United States, from time to time. MBC, it is further stated, will appoint Applicant, an affiliate, or some other United States person which normally acts in such capacity to accept any process which may be served in any action based on any note or with respect to the offer and sale of any note by means of the offering memorandum and instituted by the holder of such note in any State or Federal court. Applicant further states that MBC will expressly accept the jurisdiction of any State or Federal court in the City of Pittsburgh in the State of Pennsylvania in respect of any such action. It is stated further that such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the notes have been paid. MBC, Applicant states, will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering or otherwise. It is stated that the authorized agent will not be a trustee for the noteholders and will not have any responsibilities or duties to act for such holders as would a trustee.

Applicant represents, in addition, that MBC may, from time to time in the future offer other debt securities unconditionally guaranteed by Applicant (but not shares of MBC's capital stock). Further offerings by MBC of securities in the United States, Applicant states, will be made only pursuant to an applicable exemption from registration under the Securities Act, or pursuant to an effective registration statement under the Securities Act, and in general in accordance with the terms and conditions to which Applicant has agreed in connection with the presently proposed offering.

Section 3(a)(3) of the Act defines investment company to mean "any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percent of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

Section 6(c) of the Act provides, in pertinent part, that the Commission by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation under the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant requests an order pursuant to Section 6(c) of the Act exempting it from all provisions of the Act because of uncertainty as to whether a foreign commercial bank such as MBC would be considered an investment company as defined in the Act. Applicant asserts that, among other things, compliance by MBC with various provisions of the Act would conflict with its operation as a bank and would therefore effectively prevent MBC from selling securities in the United States if it were required to register as an investment company. Applicant further submits that an exemptive order pursuant to Section 6(c) of the Act would benefit institutional and other sophisticated investors in the United States because these investors would otherwise be precluded from purchasing MBC's commercial paper notes. Applicant additionally argues that the activities of MBC are extensively regulated by Canadian banking authorities and that the provisions of such banking laws will provide substantial protection to investors in its debt securities. As a closely regulated commercial bank, Applicant contends, MBC is different from the type of institution which Congress intended the Act to regulate, and that abuses of the type that the Act is designed to eliminate are not inherent in the business of commercial banking.

Applicant also asserts that it would be inequitable to permit the existence of impediments to the sale of securities in the United States by foreign banks under circumstances in which such impediments do not exist for domestic banks. Any such inequity, it is further asserted, would directly conflict with the purpose of the International Banking Act of 1978, which, it is stated, was intended to place domestic and foreign

banks on a basis of competitive equality in their transactions in the United States. It is noted, in addition, that the securities of MBC will be guaranteed by Applicant, a United States national bank subject to regulation by the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation. Applicant therefore concludes that granting its requested exemptive order pursuant to Section 6(c) of the Act would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 28, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for his/her request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-6211 Filed 3-9-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22868; (70-6792)]

Montaup Electric Co., et al.; Proposed Issuance and Sale of Short-Term Notes to Banks

March 4, 1983.

In the matter of Montaup Electric Co., P.O. Box 391, Fall River, Massachusetts 02722; Eastern Edison Co., 110 Mulberry Street, Brockton, Massachusetts 02403; Blackstone Valley Electric Co., Washington Highway, P.O. Box 1111, Lincoln, Rhode Island 02865.

Eastern Edison Company ("Eastern Edison"), Montaup Electric Company ("Montaup"), and Blackstone Valley Electric Company ("Blackstone"), electric utility subsidiaries of Eastern Utilities Associates, a registered holding company, have filed with this Commission a post-effective amendment to a declaration, previously filed and amended, pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(2) promulgated thereunder.

By order dated December 22, 1982 (HCAR No. 22796), the Commission authorized Montaup, Eastern Edison, and Blackstone to issue and sell up to $26 million, $13 million, and $6 million, respectively, of short-term notes to banks from time to time until December 31, 1983. The terms of the bank credit line agreements include: (1) Borrowing at the prime rate or money market rates, if lower, with no formal compensating balances; (2) borrowing at the prime rate or money market rates, if lower, with compensating balances not exceeding 10%; and (3) borrowing at the prime rate or money market rates, if lower, together with a commitment fee not exceeding 8% of the prime rate on the credit line.

By post-effective amendment Eastern Edison and Montaup propose to increase their short-term borrowings from $13 million to $15 million and from $26 million to $35 million, respectively. The terms of the borrowings will remain the same as authorized in the order of December 22, 1982 (HCAR No. 22796). Under such terms and assuming full usage and a prime rate of 11.5%, the effective interest cost of the proposed borrowings would not exceed 12.8% resulting from compensating balances of 10%. Eastern Edison and Montaup are seeking the increases because in the period since the filing of the declaration in this matter in October 1982, certain changes have occurred with respect to the assumptions regarding 1983 construction expenditures and the 1983 financing program of the holding company system of Eastern Utilities Associates. First, the lead participant in the ongoing construction of two nuclear generating units at Seabrook, New Hampshire, in which Montaup has a 2.90% interest, announced substantial increases in the construction cost estimates of the units. Second, it is now expected that a major bond financing of Eastern Edison, which had been proposed for completion in April, will not be completed until May of 1983.

The funds to be derived by Eastern Edison and Montaup from the issuance of the Bank Notes will be applied, together with other funds available to these companies, to: (1) Renew outstanding notes payable to banks, as they become due; (2) finance their respective 1983 cash construction expenditures which are estimated to be approximately $11,300,000 in the case of Eastern, and $59,700,000 in the case of Montaup, and (3) provide funds to meet certain bond maturities and sinking fund requirements in the case of Eastern Edison.

The declaration as amended by the post-effective amendment and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 28, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as amended by the post-effective amendment or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-6204 Filed 3-9-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19564]

National Association of Securities Dealers, Inc.; Order Granting Extension of Exemption

March 3, 1983.

On March 23, 1982, the Commission issued an order granting the National Association of Securities Dealers, Inc. ("NASD"), among other things, two temporary exemptions from Rule 11Ac1-1 under the Securities Exchange Act of 1934 ("Act")[1] with respect to those over-the-counter ("OTC") securities that are designated as national market system securities ("NMS Securities")[2] pursuant to Rule 11Aa2-1 under the Act ("NMS Securities Rule").[3] Specifically, the

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[1] Securities Exchange Act Release No. 18585 (March 23, 1982), 47 FR 13285.

[2] NMS Securities are "reported securities" as that term is defined in Rule 11Ac1-1(a)(6). As reported securities, NMS Securities are subject to, among other things, the Commission's quotation reporting and dissemination requirements contained in Rule 11Ac1-1.

[3] The NMS Securities Rule employs a two-tiered approach to determine which OTC securities are to be designated as NMS Securities. In this respect,

Commission granted the NASD a temporary exemption from making available to securities information vendors quotations and size for each market maker in an NMS Security until October 1, 1982, or until such time as: (1) A vendor has requested this data, (2) a suitable agreement with the vendor is negotiated, (3) appropriate charges are established, and (4) the NASDAQ system is modified accordingly, whichever comes first.[4]

On October 12, 1982, the Commission extended the NASD's temporary exemption from the requirement of making information available to vendors until March 1, 1983, in response to a NASD request. The Commission noted at that time its serious concern about the NASD's failure to complete the steps necessary to make information available despite the timely request for the information by the Institutional Network's Corporation ("Instinet"). The Commission also noted the potential conflict of interest inherent in the NASD's role, through its NASDAQ subsidiary, as a neutral exclusive processor of NMS Securities data, and its role as a retail vendor of this data in competition with Instinet, and the Commission acknowledged its responsibility to ensure that the NASD negotiated in good faith with potential competitors. Nonetheless, the Commission decided to extend the NASD's exemption in view of the Commission's deferral of the implementation of Tier 2 until February 1, 1983, and to provide additional time for full discussions between the NASD and Instinet. The Commission indicated, however, that it would monitor these negotiations.

Although the negotiations between the NASD and Instinet have made some progress since October, 1982, they have not resulted in the agreement on an acceptible fee structure. Nor, in view of this lack of agreement, has the NASD made the necessary technical modifications to make NMS quotation information available. Consequently, on February 25, 1983, the NASD requested a further extension of the exemption until June 30, 1982,[5] arguing that the NASD's program to improve the reliability of the NASDAQ system had delayed the other modifications and prevented the NASD from completing these changes by the expiration of the exemption.

The Commission recognizes the importance of attaining improved NASDAQ service. Accordingly, the Commission has determined to grant the NASD a further extension of the temporary exemption until June 30, 1983. This extension is granted, however, for the sole purpose of allowing the NASD to complete its technical preparations to make the information available. Given the NASD's two prior extensions, the Commission cannot foresee any circumstances that would justify further extension of this exemption beyond June 30, 1983, and the Commission fully expects that, on or before that date, the NASD will provide to Instinet (or any other vendor who desires to receive the data) full quotation information, as envisioned by the Act and required pursuant to the NMS Securities Rule and Rule 11Ac1–1.

The Commission is extremely concerned regarding the lack of progress in the negotiations, particularly in light of the statutory duty imposed on the NASD to provide access to this information in at least a non-discriminatory manner and at a cost which does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this connection, the Commission believes that any fees imposed regarding this information must be set at levels reasonably related to the costs entailed in providing the information to Instinet and other interested vendors. The Commission notes that lack of progress in the negotiations with Instinet or other vendors can not be used by the NASD as an excuse for failing to complete the preparations for making this information available, for the NASD is required by Commission rule to make the information available irrespective of any prior agreement with vendors. Notwithstanding this fact, however, the Commission urges the NASD and Instinet to complete their negotiations promptly to ensure cooperation in designing the means of providing the required data to vendors.

For the reasons discussed above, the Commission has determined that granting the NASD an extension of its temporary exemption from Rule 11Ac1–1 is consistent with the public interest, the protection of investors and the removal of impediments to, and perfection of the mechanisms of, a national market system.

Accordingly, the NASD is granted an extension of its temporary exemption from making available to quotation vendors quotations and size for each market maker in an NMS Security until June 30, 1983 or such earlier time as: (1) A vendor has requested this data, (2) a suitable agreement with the vendor is negotiated, (3) appropriate charges are established, and (4) the NASDAQ system is modified accordingly.

This exemption is subject to modification or revocation at any time if the Commission determines that such action is necessary or appropriate in light of progress made toward a national market system or otherwise in furtherance of the purposes of the Act.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-6206 Filed 3-9-83; 8:45 am]

BILLING CODE 8010-01-M

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pursuant to the Tier 1 criteria, which became effective on April 1, 1982, the most actively traded OTC securities were designated automatically as NMS Securities. In addition, the Rule currently permits those securities meeting the less stringent Tier 2 criteria to be designated as NMS Securities on or after February 1, 1983, if the issuers of those securities so elect. As of March 1, 1983, 184 OTC securities have been designated as NMS securities.

[4] Securities Exchange Act Release No. 19118 (October 12, 1982).

[5] Letter from Frank Wilson, Executive Vice President and General Counsel, NASD, to George A. Fitzsimmons, Secretary, SEC, dated February 25, 1983.

[Release No. 22866, (70–6111)(31–606)]

Northern States Power Co.; Plan for Simplification of Holding Company System

March 3, 1983.

In the matter of Northern States Power Co., 414 Nicollet Mall, Minneapolis, Minnesota 55401.

Northern States Power Company, Inc. ("Northern States"), a holding company registered for the limited purpose of achieving compliance with Section 11(b)(2) of the Public Utility Holding Company Act of 1935 ("Act") and Lake Superior District Power Company ("Lake Superior"), an electric utility subsidiary of Northern States, have filed a joint plan pursuant to Section 11(e) of the Act, providing for the retirement of the minority interest in the common stock of Lake Superior. Pursuant to a Commission order dated December 23, 1981 (HCAR No. 22334), Northern States acquired 97.18% of the common stock of Lake Superior by a tender offer to exchange 0.48 shares of Northern States common stock for one share of Lake Superior common stock. Lake Superior has outstanding 1,336,149 shares of common stock. There remain outstanding 37,724 unexchanged shares, held by 320 record owners. The minority stock will be retired on the same terms as under the tender offer, 0.48 shares of Northern States common stock for each share of Lake Superior common stock.

The plan provides for an effective date of the exchange, which shall be no

later than 30 days after expiration of the time for the appeal of the District Court's order approving and enforcing the plan pursuant to Section 11(e) of the Act. On the effective date, the holders of Lake Superior common stock, other than Northern States, shall cease to be shareholders of Lake Superior, and become owners of Northern States common stock under the terms of the plan. On surrender of the certificates for Lake Superior stock, the holder thereof shall be entitled to receive Northern States common shares plus accrued dividends and other distributions since the effective date of the plan. No fractional shares will issued, and cash will be paid therefor.

At least once a year for five years from the effective date of the plan, Northern States shall solicit, at their last known address, the holders of certificates for common stock of Lake Superior who have not surrendered these certificates for exchange, and will take other appropriate steps to locate holders of unsurrendered stock certificates of Lake Superior. After the fifth anniversary of the effective date, Northern States shall be entitled, with the approval of the Commission, to apply to the District Court, for an order finding that these actions have been taken and declaring the neither Northern States nor Lake Superior shall have any further obligation to solicit or locate holders of unsurrendered certificates. On the fifteenth anniversary of the effective date, such holders will have no claims against Northern States, Lake Superior, or any other person.

The plan and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 31, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law raised by the plan. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the plan, as amended or as it may be further amended, may be approved as provided in Section 11(e) of the Act or the Commission may take such other action as it may deem appropriate.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-6203 Filed 3-9-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22867; (70-6832)]

Ohio Power Co. and Central Ohio Coal Co.; Proposed Capital Investments in Coal Mining Subsidiary and Issuance of Long-Term Notes by Subsidiary

March 3, 1983

In the matter of Ohio Power Co., Central Ohio Coal Co., 301 Cleveland Avenue, S.W., Canton, Ohio 44702.

Ohio Power Company ("Ohio Power"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, and Central Ohio Coal Company ("COCO"), a coal mining subsidiary of Ohio Power, have filed with this Commission an application-declaration and an amendment thereto pursuant to Sections 6, 7, 9, 10, and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(3) promulgated thereunder.

Ohio Power has requested authorization to make additional capital investments totaling $20 million in COCO, its coal mining subsidiary. Such additional investments will be represented, in part, by unsecured promissory notes to be issued by COCO to Ohio Power.

COCO was incorporated in Ohio in 1946 for the purpose of conducting surface coal mining operations for Ohio Power. COCO operates the Muskingum Mine, a large surface coal mine which is located in the Ohio counties of Morgan, Muskingum and Noble, on lands owned or controlled by Ohio Power. In its surface mining operations, COCO utilizes equipment, known as draglines, to remove overburden at the mining site, thus enabling smaller equipment to load exposed coal. A major component of one dragline, a large base support structure, requires extensive overhaul or replacement. In light of various factors, including expected efficiencies, extended useful life of the machinery and a reduction in mining downtime, it has been determined that purchase of a new support structure is preferable to major overhaul. It is proposed that Ohio Power supply the necessary financing, estimated to be $9.2 million, which includes the cost of the support structure, related parts, labor, freight and provisions for contingencies.

The balance of the proposed capital investment, $10.8 million, would provide COCO with an increase in working capital required to operate the Muskingum mine at current levels. It is stated that COCO's increase in working capital needs results in part from normal inflation in operating cost and from the implementation of a new mining plan which requires handling a larger volume of overburden to maintain current production levels. Costs incurred to remove overburden are deferred as an element of inventory, and expensed when the exposed coal is actually mined. The average deferred costs applicable to the coal inventory are estimated to be $6.5 million.

The remaining working capital requirements, totaling $4.3 million, are attributable to the deferral of strike costs and to an increase in the material and supply inventory that COCO is required to maintain in connection with its modified mining plan. COCO has found it necessary to add a significant number of pieces of support equipment to implement the modified mining plan, and, in connection therewith, to maintain an inventory of production materials and spare parts.

It is proposed that Ohio Power's additional investment in COCO be represented by a combination of long-term loans and cash capital contributions in proportions equal to the debt-equity ratio of Ohio Power as of December 31, 1982. The ratio as of that date was 54.4% for debt and 45.6% for preferred and common equity. A method for calculating Ohio Power's imputed capital costs to the debt and equity components of the additional investments has been designed to reflect current costs of capital, whether or not Ohio Power has actually sold long-term debt or preferred stock contemporaneously with the making of such additional investment. This method, as hereinafter detailed, has been proposed in the instant case due to the sharp decline in capital costs since Ohio Power's last issuance of mortgage bonds and preferred stock in March 1982. Ohio Power also intends to employ this method of imputing capital costs to future investments in this subsidiary.

Each long-term loan by Ohio Power to COCO will be evidenced by an unsecured promissory note of COCO, payable December 31, 2012. The annual interest rate for each note will be determined as follows:

(1) If Ohio Power has issued and sold first mortgage bonds within a period of thirty days preceding or thirty days following any additional investment in COCO, then the rate per annum on the note issued by COCO shall equal the effective cost to Ohio Power of such

series of first mortgage bonds (the interest rate may initially be estimated and later adjusted when the precise effective rate is determined);

(2) If no such series of Ohio Power's first mortgage bonds have been issued and sold, then the rate per annum on each note shall equal the average effective cost of comparable quality first mortgage bonds issued and sold by other electric utility companies within the thirty-day period preceding each additional investment in COCO; if no such sales have occurred during this period, then reference shall be made to sales within the thirty-day period following each additional investment in COCO.

Each note issued by COCO may be repaid at any time without penalty.

The return on equity applicable to the proposed capital contribution of Ohio Power to COCO shall be based on, and shall equal, the weighted average of the effective costs of Ohio Power's preferred stock and the rate of return on common equity determined and allowed by the Federal Energy Regulatory Commission ("FERC") in the most recent wholesale rate proceeding involving Ohio Power. The effective cost of Ohio Power's preferred stock shall be equal to the cost determined in the following manner:

(1) If Ohio Power has issued and sold a series of preferred stock within a period of thirty days preceding or thirty days following any additional equity investment in COCO, then the effective cost of Ohio Power's preferred stock shall equal the effective cost of Ohio Power of such series of preferred stock (the effective cost may initially be estimated and later adjusted when the precise effective cost is determined);

(2) If no such series of Ohio Power's preferred stock has been sold, then the effective cost of Ohio Power's preferred stock shall equal the average effective cost of comparable quality series of preferred stock issued and sold by other electric utility companies in the thirty-day period preceding each equity investment in COCO; if no such sales have occurred within this period, then reference shall be made to sales within the thirty-day period following each additional investment in COCO.

Certificates filed pursuant to Rule 24 following each additional investment by Ohio Power in COCO will describe in reasonable detail the manner in which Ohio Power has imputed capital costs to the debt and equity components of each additional investment in COCO in accordance with the foregoing.

Calculation of the allowable return on the equity capital of COCO, excluding retained earnings, shall be based ordinarily on the latest FERC allowed return on common equity of Ohio Power as of the beginning of each calendar year. Because there is presently no such applicable order, and until such time, it is proposed that the return on equity shall be based on the return on common equity of Ohio Power allowed by the Public Utilities Commission of Ohio ("PUCO") in the most recent retail electric rate proceeding as of the beginning of each calendar year. Accordingly, it is proposed that for 1983 the rate of return on common equity be 15%, which does not exceed the most recent return allowed by PUCO. The return with repect to any particular calendar year would be at a single rate, to be adjusted only if necessary on Januray 1 of each succeeding calendar year.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 28, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so request will be notified of any hearing, if so ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as amended, or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-6210 Filed 3-9-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-19559; File No. SR PHLX 83-8]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 18, 1983, Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to By-Laws 27-2 and 27-3, and Circular 82-1, the Philadelphia Stock Exchange, Inc., (Exchange) proposes to fix and impose a foreign currency options (FCO) user's fee of $1,000 per annum on a calendar year basis.

The FCO user's fee will be payable semi-annually in advance on January 1 (except for 1983) and July 1. In 1983, the first installment, pro rated, is to be payable on and after January 10th.

The user's fee is to be paid to the Exchange by each foreign currency options participant (FCOP) for the use of the equipment and facilities of the Exchange and for the particular services and privileges afforded.

Notwithstanding the foregoing, the yearly dues paid to the Exchange during a particular year by a member who is also an FCOP, shall be credited in their entirety against the FCO user's fee assessed against such a member during that year.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C), below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis, for the Proposed Rule Change

The purpose of the rule change is to meet, in part, the costs of operating a foreign currency options market by imposing a fee on participants in the market for the use of the equipment, facilities and services of the Exchange. Since FCO participants who are also Exchange members will be supporting the Exchange financially by the payment of yearly membership dues, such dues paid by members are to be credited in their entirety against the FCO user's fee

assessed against those members during the same year.

The basis for the rule change is consistent with Section 6(b)(4) of the Act which requires exchange rules to provide for equitable allocation of reasonable fees among its members and other persons.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes no burden on competition because the level of the fee is modest and reasonable in relation to the services and facilities afforded.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments were solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Secruities Exchange Act of 1934 and subparagraph (e) of the Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Copies of submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th 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 submission should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-6207 Filed 3-9-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13065; (811-3222)]

PWC Money Market Fund, Inc.; Filing of Application

March 3, 1983.

In the matter of PWC Money Market Fund, Inc., 600 Cleveland Street, Clearwater, FL 33515.

Notice is hereby given that PWC Money Market Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on January 3, 1983, for an order of the Commission pursuant to Section 8(f) of the Act declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

On July 13, 1981, Applicant, a Maryland corporation, filed its registration statement pursuant to Section 8(b) of the Act. Applicant represents that it has never made, and does not propose to make, a public offering of its securities.

Applicant represents that it has no debts or other outstanding liabilities and is not a party to any litigation or administrative proceeding. Applicant states that within the last 18 months it has not for any reason transferred any of its assets to a separate trust. Finally, Applicant states that it is not now engaged, and does not propose to engage, in any business activity.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order, the registration of such company under the Act shall cease to be in effect.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 28, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-6206 Filed 3-9-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22870; (70-6842)]

Southern Co., et al.; Proposed Issuance and Sale of Notes to Banks and Commercial Paper to Dealers; Notes to Holding Company; Capital Contributions to Subsidiaries; Exception From Competitive Bidding

March 4, 1983.

In the matter of the Southern Company, 64 Perimeter Center East, Atlanta, Georgia 30346; Mississippi Power Company, 2992 West Beach, Gulfport, Mississippi 39501; Gulf Power Company, 75 North Pace Boulevard, Pensacola, Florida 32520; Southern Electric International, Inc., 41 Perimeter Center East, Atlanta, Georgia 30346.

The Southern Company ("Southern"), a registered holding company, and three of its subsidiaries, Mississippi Power Company ("Mississippi"), Gulf Power Company ("Gulf"), and Southern Electric International, Inc. ("International"), have filed an application-declaration, and an amendment thereto, pursuant to Sections 6, 7, and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45, 50(a)(2), and 50(a)(5) promulgated thereunder.

Southern, Mississippi, and Gulf propose to issue and sell from time to time, prior to April 1, 1984, short-term notes to banks and commercial paper to dealers up to the aggregate principal amounts at any one time outstanding of $100 million for Southern, $65 million for Gulf and $98 million for Mississippi.

As funds are required, it is proposed that notes be issued, and if required,

renewed from time to time prior to April 1, 1984. The maximum short-term debt authorized for Gulf and Mississippi will be reduced by the amount of net-cash proceeds that these companies receive from the sale of long-term debt and/or preferred stock from April 1, 1983 to March 31, 1984. However, the short-term debt authorization will not be reduced below those amounts authorized under Section 6(b) of the Act.

Southern has obtained commitments aggregating $100 million consisting of $40 million from Barclays Bank International Limited and $20 million each from Credit Suisse, Swiss Bank Corporation and Union Bank of Switzerland. Each commitment currently matures December 31, 1983 and is subject to renewal in accordance with its term. A commitment fee of ⅛% per annum on undrawn amounts is payable for each commitment. At Southern's option, borrowings will bear interest at an effective rate of (a) ½% per annum over the lender's floating prime rate or (b) a margin over the London Interbank Offered Rate ("LIBOR"). Swiss Bank Corporation also offers borrowings at ½% per annum over its prime rate on the date of the advance, fixed for 90 days.

Borrowings under option (a) are prepayable by Southern at any time, without premium or penalty. In connection with option (b), advances from Credit Suisse and the Union Bank of Switzerland are not prepayable and advances from Barclays International Limited and the Swiss Bank Corporation are prepayable only if amounts prepaid are accompanied by a compensatory premium, usually equal to the amount by which interest that would have been earned on the amount prepaid through scheduled maturity exceeds that amount of interest either bank could earn on relending such amount through scheduled maturity.

Except in the case of the Swiss Bank Corporation, advances bearing interest at a rate related to the lender's floating prime rate may be for any term provided that they mature no later than the earlier of one year or the then current expiration date for the commitment. Advances by Swiss Bank Corporation based on its floating prime rate are to mature within 180 days but in any event no later than the date of expiration of the commitment.

A summary of the margins over LIBOR at which advances are available from these banks and the tenor of advances bearing interest based on LIBOR are as follows:

Bank	Margin over LIBOR (percent)	Tenor
Barclays Bank International Ltd.	⅝	Periods of 30 to 180 days.
Credit Suisse	⅞	Periods of 30, 60 or 90 days.
Swiss Bank Corp.	⅝	Periods of 30 to 180 days.
Union Bank of Switzerland.	⅝	Periods of 1 to 6 months.

Assuming 50% usage of the commitment of each bank, a prevailing prime interest rate and a LIBOR of 10%, the effective cost of borrowings (including commitment fees) under these facilities would be 10.75% from each bank under option (a), and option (b), 10.75% from Union Bank of Switzerland and 11.00% from the other banks. Southern would not use option (b) unless the LIBOR was such that the related cost was less than the cost under option (a).

In addition to the above-described specific bank borrowing arrangements, Mississippi and Gulf propose to borrow from other banks within the authorized limits. These bank borrowings will be evidenced by either notes dated as of the borrowing date or the initial borrowing date for master notes. The notes will mature 9 months or less after the date of issue, will be prepayable in whole or in part without penalty or premium, and will be at the prevailing prime rate plus the maintenance of compensating balances of up to 10% of the undrawn amounts and up to 20% of amounts borrowed (or comparable fees in lieu of balances). The maximum effective interest cost of amounts so borrowed under such a facility would be 12.5% based on an assumed prevailing prime interest rate of 10%. A list of these banks and the principal amount of borrowing from each bank will be provided to the Commission.

Southern, Mississippi, and Gulf propose to issue and sell commercial paper with the aggregate principal limit set forth above for each company. The commercial paper will be in the form of promissory notes of the issuing company with varying maturities not to exceed 270 days. Actual maturities will be determined by market conditions, the effective interest costs and the company's anticipated cash flow, including the proceeds of bank borrowings, at the time of issuance. The commercial paper notes will be issued in denominations of not less than $50,000 and not more than $5,000,000 and will not by their terms be prepayable prior to maturity.

The commercial paper will be sold by each of the issuers directly to or through a dealer (the "dealer"), The First Boston Corporation for Southern and A.G. Becker & Co., Incorporated for Gulf and Mississippi. The discount rate (or the interest rate in the case of interest bearing notes), including any commissions, will not be in excess of the discount rate per annum (or equivalent interest rate) prevailing at the date of issuance for prime commercial paper of comparable quality of the particular maturity sold by issuers thereof to commercial paper dealers; provided, however, no commercial paper notes will be issued having a maturity of more than 90 days at an effective interest cost which exceeds the effective interest cost at which the issuer could borrow from banks in an amount at least equal to the principal amount of such commercial paper.

No commission or fee will be payable in connection with the issuance and sale of commercial paper, except for a commission not to exceed ⅛ of 1% per annum payable to the dealer in respect of commercial paper sold through the dealer as principal for the issuing applicant. The dealer will reoffer such commercial paper at a discount rate of ⅛ of 1% per annum less than the prevailing interest rate to the issuer or at an equivalent cost if sold on an interest bearing basis.

The commercial paper of each company will be offered by the dealer to not more than 200 customers of the dealer identified and designated in a nonpublic list prepared in advance by the dealer. Such list will include commercial banks, insurance companies, corporate pension funds, investment trusts, foundations, colleges and universities, municipal and state benefit funds, and eleemosynary and non-financial corporations which invest surplus funds in commercial paper. No sale will be made to any such customer unless and until it has received from the dealer a current report as to the financial position of the issuer. No additions will be made to such list of customers. It is expected that the commercial paper of the companies will be held by customers to maturity; but, if they wish to resell prior thereto, the dealer will repurchase the commercial paper pursuant to a verbal repurchase agreement and reoffer the same to others on the customer lists.

International proposes to issue and sell unsecured notes to Southern, from time to time prior to April 1, 1984, with maturities no later than December 31, 1999, in an aggregate principal amount not to exceed $1,000,000 for the purpose of meeting its working capital requirements.

To the extent necessary, Southern proposes to use the proceeds of its borrowings, together with treasury funds and the proceeds from other external sources to make additional equity investments in the form of capital contributions through March 31, 1984 not to exceed $30 million to Gulf and $25 million to Mississippi, as well as not to exceed $120 million to Alabama Power Company and $395 million to Georgia Power Company, two other electric utility subsidiaries of Southern. Southern will also make loans to Southern Company Services, Inc. and International and for other corporate purposes.

The proceeds from short-term borrowings will be used by Gulf and Mississippi for lawful corporate purposes, including the financing in part of their future construction programs. Except as may be otherwise authorized by the Commission, part or all of the net proceeds of any long-term financing will be applied to pay or reduce the principal amount of outstanding short-term borrowings.

Except as may be otherwise authorized by the Commission, any short-term borrowings of the applicants outstanding hereunder after March 31, 1984 will be retired from internal cash resources, the proceeds of equity financings, or, in the case of Gulf and Mississippi, the proceeds of long-term debt.

The applicant-declarants seek an exception from the competitive bidding requirements of Rule 50(b) pursuant to subparagraph (a)(5) thereof for the issuance of commercial paper because the commercial paper will have maturities not in excess of 270 days, current commerical paper rates for prime borrowers are published in daily financial publications and it is impractical to invite competitive bids for commercial paper.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 28, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarants at the addresses specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-6309 Filed 3-9-83; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 850]

Agency Forms Submitted for OMB Review

AGENCY: Department of State.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980, the Department has submitted proposed collections of information to the Office of Management and Budget for review.

PURPOSE: The proposed information collections are for use by the Bureau of Politico-Military Affairs, Office of Munitions Control in the control of commercial exports, imports or sales of Munitions List articles; and the reporting of commissions paid in connection with the sale of defense articles or services.

SUMMARY: The following summarizes the information collection proposal submitted to OMB:

(1) Type of request—extension.

(2) Number of forms submitted—one.

(3) Form number—DSP-5.

(4) Title of information collection—Application/License for Permanent Export of unclassified Defense Articles and Related Unclassified Technical Data.

(5) Frequency—On occasion.

(6) Respondents—Exporters of items on the U.S. Munitions List.

(7) Estimated number of respondents—30,641.

(8) Estimated total number of hours needed to fill out form—7,660. The following summarizes the information collection proposal submitted to OMB:

(1) Type of request—extension.

(2) Number of forms submitted—one.

(3) Form number—DSP-9.

(4) Title of information collection—Application for Registration.

(5) Frequency—On occasion.

(6) Respondents—Manufacturers of and exporters of items on the U.S. Munitions List.

(7) Estimated number of respondents—1,754.

(8) Estimated total number of hours needed to fill out form—438. The following summarizes the information collection proposal submitted to OMB:

(1) Type of request—extension.

(2) Number forms submitted—one.

(3) Form number—DSP-61.

(4) Title of information collection—Application/License for Temporary Import of Unclassified Defense Articles.

(5) Frequency—On occasion.

(6) Respondents—Temporary importers of items on the U.S. Munitions List.

(7) Estimated number of respondents—2,853.

(8) Estimated total number of hours needed to fill out form—713. The following summarizes the information collection proposal submitted to OMB:

(1) Type of request—extension.

(2) Number of forms submitted—one.

(3) Form Number—DSP-73.

(4) Title of information collection—Application/License for Temporary Export of Unclassified Defense Articles.

(5) Frequency—On occasion.

(6) Respondents—Temporary exporters of items on the U.S. Munitions List.

(7) Estimated number of respondents—3,193.

(8) Estimated total number of hours needed to fill out form—798. The following summarizes the information collection proposal submitted to OMB:

(1) Type of request—extension.

(2) Number of forms submitted—one.

(3) Form number—DSP-83.

(4) Title of information collection—Nontransfer and Use Certificate.

(5) Frequency—On occasion.

(6) Respondents—Exporters of items on the U.S. Munitions List.

(7) Estimated number of respondents—2,500.

(8) Estimated total number of hours needed to fill out form—625. The following summarizes the information collection proposal submitted to OMB:

(1) Type of request—extension.

(2) Number of forms submitted—one.

(3) Form number—DSP-85.

(4) Title of information collection—Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Related Classified Technical Data.

(5) Frequency—On occasion.

(6) Respondents—Exporters/importers of items on the U.S. Munitions List.

(7) Estimated number of respondents—953.

(8) Estimated total number of hours needed to fill out form—238.

The following summarizes the information collection proposal submitted to OMB:

(1) Type of request—extension.

(2) Title of information collection—Political Contributions and Fees or Commissions in Connection with the Sale of Defense Articles or Services.

(3) Frequency—On occasion.

(4) Respondents—Exporters of items on the U.S. Munitions List.

(5) Estimated total number of hours needed to report—264,000.

(6) Estimated number of respondents—1,320. Section 3504(h) of Pub. L. 96–511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed study and supporting documents may be obtained from Gail J. Cook, Departmental Clearance Officer (202) 632–3602. Comments and questions should be directed to (OMB) Francine Picoult (202) 395–7231.

Dated: February 24, 1983.

Thomas M. Tracy,

Assistant Secretary for Administration.

[FR Doc. 83-6088 Filed 3-9-83; 8:45 am]

BILLING CODE 4710-05-M

SYNTHETIC FUELS CORPORATION

Clarifications of the Competitive Solicitation for Oil Shale Projects

On January 20, 1983 the U.S. Synthetic Fuels Corporation issued a Competitive Solicitation for Oil Shale Projects (the "Solicitation"). Since that date, the Corporation has held discussions with prospective applicants to the Solicitation. These discussions have highlighted several areas appropriate for clarification which may also be of interest to all applicants. The corporation therefore wishes to notify all interested persons of these clarifications.

1. Definition of "Project"—Appendix A

In order to be eligible for loan or price guarantees under the Solicitation, the upgrading process or processes necessary to achieve the shale oil product specifications set forth in section 1.4 must be integrated with the retorting process or processes proposed at a specific geographic location in the United States.

The Corporation will apply these requirements on a case specific basis. In determining whether processes are "integrated" the Corporation will consider the extent to which the various processes are operationally dependent, including examination of such factors as physical connection, relative capacity and utilization, process flow relationship and management structure. With respect to the determination of whether the facility incorporating the integrated process or processes is "at a specific geographic location", factors the Corporation will consider, among others, are distance, technical and economic reasons for, and interrelationships among, process locations, topological and geographical characteristics of the area, infrastructure requirements, environmentals, socioeconomic and permitting needs.

2. Definition of "Project"—Appendix A

In order to be eligible for any form of financial assistance under the Solicitation, facilities for expanded production, must meet all specifications included in the Solicitation and sponsors must submit the information required by Appendix B to the Solicitation with respect to the entire project, including such expansion facilities. The Corporation must be able to make the required findings and determinations with respect to the entire project, including without limitation, with respect to the committment of sponsors. All documentation with respect to Corporation financial assistance will address the entire project.

3. Maximum Loan Guarantees—Sections C.2.1 and C.3.2

The Maximum Corporation Liability refers to the maximum liability of the Corporation to guaranteed lenders arising out of the guaranteed loan. This limitation applies to the sum of (a) the Corporation's liability for principal (including funds borrowed to pay interest capitalized during construction and startup) and (b) a reserve for the amount of accrued but unpaid interest (up to a nine month period between the date of the last interest payment and the date of payment on the guarantee). Applicants for loan guarantees must include this total amount of liability in their competitive parameter; in no event can it exceed 75% of the Baseline Cost Estimate.

4. Resources

In accordance with section 112(18)(A)(ii) of the Act only land and mineral rights required directly for use in connection with the facilities for the production of synthetic fuels can be included in the synthetic fuel project. Therefore only such land and mineral rights Synthetic fuel project. Therefore only such land and mineral rights (which may include mineral rights necessary for reasonable contingency reserves) as are required for the life of the project for which assistance is applied for under the Solicitation may be included. To the extent that such interests are contributed by persons with an ownership or profit interest in the project, section 131(m) of the Act requires that they be valued at the lower of fair market value (exclusive of any value attributable to the prospect of receiving financial assistance from the Corporation) or cost to the project. Such valuation will be determined by the Corporation on the factors and circumstances specifically applicable to each project.

5. Section 1.3—Project Scale

10,000 barrels per stream day nominal design capacity means that the plant has been designed, specified and will be constructed for the purpose and intent of producing 10,000 barrels of Eligible Product each operating day of the plant based on the average grade of the shale to be mined over the project life.

6. Appendix B—Section B.6.1

The requirement for proposers to provide information on the "Source of each proposed technology and status of licensing" means that proposers should list or tabulate the proposed processing technologies intended to be utilized to:

—Convert oil shale into specification grade product.

—Process all incoming utilities streams.

—Process all effluent solid, liquid and gaseous streams.

For each listed technology, proposer should indicate whether proprietary or otherwise commercial, the licensor of the proprietary technology and the status of licensing agreements from technology owners. If the proposer owns a technology, that should be so stated.

Dated: March 7, 1983.

United States Synthetic Fuels Corporation.

Charles A. Cowan, Jr.,

Senior Vice President for Projects.

[FR Doc. 83-6201 Filed 3-9-83; 8:45 am]

BILLING CODE 0000-00-M

Competitive Solicitation for Oil Shale Projects

AGENCY: U.S. Synthetic Fuels Corporation.

ACTION: Issuance of clarifications of the competitive solicitation for oil shale projects.

SUMMARY: Notice is hereby given that on March 7, 1983, the United States Synthetic Fuels Corporation issued a Statement of Clarifications of the Competitive Solicitation for Oil Shale Projects issued by the Corporation on January 20, 1983.

EFFECTIVE DATE: March 7, 1983.

FOR FURTHER INFORMATION CONTACT: Ralph L. Bayrer, Vice President for Projects, United States Synthetic Fuels

Corporation, 2121 K Street, NW., Washington, D.C. 20586; (202) 822-6436.

For Copies of the Clarifications of the Solicitation, Contact: Catherine McMillan, Director of Public Disclosure, United States Synthetic Fuels Corporation, 2121 K Street, NW., Washington, D.C. 20586; (202) 822-6460.

Dated: March 7, 1983.

United States Synthetic Fuels Corporation.

Jimmie R. Bowden,

Executive Vice President.

[FR Doc. 83-6200 Filed 3-9-83; 8:45 am]

BILLING CODE 0000-00-M

DEPARTMENT OF TRANSPORATATION

Federal Aviation Administration

[Summary Notice No. PE-83-6]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before March 30, 1983.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ——, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rule Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C. on March 4, 1983.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought
23480	San Juan Airlines	14 CFR 135.244	To permit petitioner to apply operating experience obtained in the Cessna 207 toward experience gained in the Cessna 172 and 182 aircraft.
23299	Bell Helicopter, Textron, Inc.	14 CFR 133.1(b) & 133.45(a)(3)	To permit petitioner to operate its helicopters in external-load operations to exercise the Dallas/Ft. Worth Metroplex Helicopter Emergency Lifesaver Plan (HELP). This operation involves lifting personnel in a suspended Billy Pugh safety net.
23538	Southern Air Transport, Inc.	14 CFR 65.71(a)(2)	To permit James B. Barrow to apply for a mechanic certificate and associated ratings although he does not meet the specific eligibility requirements. Mr. Barrow is a deaf mute.
21773	Hawaiian Air Tour Service	14 CFR 135.158	Renewal of Exemption 3379 to permit petitioner to operate its DeHavilland 114-2X aircraft without an operable pitot heat indicating system.
23537	Frank B. Angarola	14 CFR 61.16(b)	To permit petitioner to apply for an airline transport pilot certificate with a rotocraft rating although he has not flown 1,200 hours of flight time as pilot within the past 8 years.
22532	Squadron Aviation, Inc.	14 CFR 159.53	To allow a person to operate a civil aircraft at Dulles Int'l. Airport, including touch and go operations, without the necessity of that person holding at least a private pilot certificate.

Dispositions of Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
23242	Stephen A. Fellows	14 CFR 91.47	To permit petitioner to use a Lockheed L-18 aircraft for the purpose of sport parachute jumping, carrying 24 properly equipped and trained parachute jumpers and 2 crewmembers. *Denied 2/25/83.*
19692	American Airlines Training Corp	§ 141.33(a)(3)	To renew Exemption 2920, as amended, to permit petitioner to use instructors who do not possess flight instructor certificates for flight or ground instruction in courses approved under Part 141 that lead to the issuance of a type rating, provided they have airline transport pilot certificates with appropriate type rating. *Granted 3/1/83.*
23386	Mid Pacific Airlines, Inc.	14 CFR 121.371(a), & 121.378	To permit petitioner to utilize Toa Domestic Airlines (TDA), an FAA-certified foreign repair station, and Nitto Maintenance Co. for the inspection, overhaul, and repair of its YS-11 aircraft. *Granted 2/28/83.*
23241	Air Tractor, Inc	14 CFR 45.29(b)(1)	To permit all types of aircraft licensed in restricted category and used primarily for agriculture and pest control to display 3-inch registration marks. *Denied 2/28/83.*
20646	Braniff Airways, Inc.	14 CFR Part 121, portion of Appendix H	To extend current Exemption No. 3147 to permit petitioner to conduct training and checking as permitted under the Phase II simulator requirements without meeting the continuous minimum visual field-of-view requirement. *Granted 2/28/83.*

DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
16787	Petroleum Helicopters Inc	14 CFR 133.1(b) & 122.34(a)	To amend Exemption 2534, as amended, to permit petitioner to use, for hire, its Bell 212 and Puma SA-330 helicopters to lower and hoist harbor pilots on an external hoist, to and from ships at sea, on a test basis. The amendment would include petitioner's Bell 214ST helicopter. *Granted 3/2/83.*
23465	Everts Air Fuel	14 CFR 91.31(a)	To permit petitioner to operate its DC-6B aircraft, N151, at a 5 percent increase in zero fuel and landing weight for the purpose of transporting diesel fuel to isolated native villages and seismic exploration teams in the Alaskan back country. *Granted 3/2/83.*
22359	Kenn-Air, Inc	14 CFR 135.261	To extend the December 31, 1982, termination date of Exemption 3468 to allow petitioner to continue to operate helicopters in emergency medical evacuation service from Shands Teaching Hospital, Gainesville, FL, without complying with the flight and duty time requirements of the section. *Granted 3/2/83.*
22506	Guyana Airways Corp. (GAC)	14 CFR 11.25(b)(1)	To amend Exemption 3434A to reinstate the inclusion of a leased U.S.-registered B-707-321B Advanced aircraft, N880PA, the use of which was terminated on December 31, 1982. Exemption 3434A permits GAC to operate certain aircraft using an FAA-approved minimum equipment list (MEL). *Granted 2/25/83.*

[FR Doc. 83-6097 Filed 3-9-83; 8:45 am]
BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Study Group on Airborne Thunderstorm Detection Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Study Group on Airborne Thunderstorm Detection Equipment to be held on April 5-6, 1983 in RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Second Meeting Held on February 8-9, 1983; (3) Review Initial Draft of Study Group Report; (4) Develop Recommendations to the RTCA Executive Committee; and (5) other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005; (202) 682-0266. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C. on March 4, 1983.

Karl F. Bierach,
Designated Officer.

[FR Doc. 83-6096 Filed 3-9-83; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Clarke-Oconee Counties, Georgia

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 Clarke-Oconee Counties, Georgia.

FOR FURTHER INFORMATION CONTACT: James Erickson, District Engineer, Federal Highway Administration, Suite 700, 1422 West Peachtree Street, NE., Atlanta, Georgia 30309, telephone (404) 881-4758, or Peter Malphurs, State Environmental Analysis Engineer, Georgia Department of Transportation, Office of Environmental Analysis, 65 Aviation Circle, Atlanta, Georgia 30336, telephone (404) 696-4634.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Georgia Department of Transportaion (Georgia DOT) will prepare an environmental impact statement (EIS) on a proposal to construct the Athens South Bypass. The Bypass is proposed to be a partially controlled access, four-lane divided highway with a 40' median, beginning at S.R. 10 (U.S. 78) and the Athens North Bypass (U.S. 29), and extending in a southeasterly and easterly direction on new location for approximately 7.78 miles, terminating at S.R. 72 (U.S. 441) just east of Whitehall Road. Access points are proposed at public roads only in accordance with the Department's policy. Timothy Road is proposed to be grade separated over the Bypass Mainline with no access provided. An interchange will be completed at the beginning and ending of this project. Right-of-way width of 200' to 300' will be required throughout portions of this project.

Alternatives under consideration include: one build alternate, and a no-build alternate.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. No formal scoping meeting have been scheduled at this time, on the local level. A series of public meetings will be held, if requested, during the progress of the proposed project. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing.

To ensure that the full range of issues related to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

The Catalog of Federal Domestic Assistance Program Number is 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.

James Erickson,
District Engineer, Atlanta, Georgia.

[FR Doc. 83-6087 Filed 3-9-83; 8:45 am]
BILLING CODE 4910-22-M

Environmental Impact Statement; Jefferson, Bullitt, Spencer, Nelson Counties, Kentucky

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 is being prepared for a proposed highway project in Jefferson, Bullitt, Spencer, Nelson Counties, Kentucky.

FOR FURTHER INFORMATION CONTACT: Robert E. Johnson, Division Administrator, Federal Highway Administration, 330 West Broadway, Frankfort, Kentucky 40601 or Donald L. Ecton, Director, Division of Project Development, Kentucky Transportation Cabinet, 419 Ann Street, Frankfort, Kentucky 40622.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Kentucky Transportation Cabinet, is preparing an environmental impact statement for a highway project located in Jefferson, Bullitt, Spencer, and Nelson Counties, Kentucky. The proposed improvement involves the reconstruction of US 31E/150 from southeast of Louisville in Jefferson County, southward to northern Nelson County, a distance of approximately 14 miles. Improvements to the corridor are considered necessary to provide for existing and future traffic demand as well as for safety needs. An integral part of the proposal is a bypass of the city of Mount Washington in Bullitt County.

Possible alternatives under consideration include the (1) do-nothing alternative, (2) alternative transportation modes, (3) project postponement, (4) design alternatives within the corridor with various design options.

This project has been under development for several years and public meetings, and Interdisciplinary Team Meetings have been held. The project has been coordinated with various federal, state, and local agencies and officials and other private organizations and parties identified as being impacted by this project or having an interest in its development. No formal scoping meeting is planned. A combination corridor/design public hearing will be held.

It is estimated that the Draft EIS will be ready for public review and comment in late April 1983.

Issued on: March 3, 1983.

Robert E. Johnson,

Division Administrator, Frankfort, Kentucky.

[FR Doc. 83-6086 Filed 3-9-83; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Honolulu, Hawaii

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 Honolulu, Hawaii.

FOR FURTHER INFORMATION CONTACT: H. Kusumoto, Division Administrator, Federal Highway Administration, Box 50206, Honolulu, Hawaii 96850.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Hawaii Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve Kahekili Highway (FAP 83) in Honolulu, Hawaii. The proposed improvement would involve the widening of the existing FAP 83 between Kamehameha Highway and Likelike Highway for a distance of about 4 miles. Also included in this proposal is the construction of an interchange with Likelike Highway. These improvements are considered necesary to provide for the existing and projected traffic demand.

Alternatives under consideration other than widening the existing roadway include (1) taking no action; and (2) improving alternate corridors.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. A series of public meetings will be held in Kaneohe during 1983 and early 1984. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

H. Kusumoto,

Division Administrator, Honolulu, Hawaii.

[FR Doc. 83-6142 Filed 3-9-83; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration

Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Materials Transportation Bureau, DOT

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 FR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATE: Comment period closes March 24, 1983.

ADDRESS: Address comments to: Dockets Branch, Office of Regulatory Planning and Analysis, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
1862-X	Greer Hydraulics, Inc., Los Angeles, CA.	1862
2000-X	Los Alamos Scientific Laboratory, Los Alamos, NM.	2000
2708-X	Union Carbide Corporation, Danbury, CT.	2708
3051-X	Liquid Air Corporation, Burr Ridge, IL.	3051
3109-X	U.S. Department of Defense, Washington, DC.	3109
3302-X	Liquid Air Corporation, Burr Ridge, IL.	3302
5206-X	Austin Powder Company, Cleveland, OH.	5206
5206-X	Nelson Brothers, Incorporated, Parrish, AL.	5206
5206-X	Gulf Oil Chemicals Company, Houston, TX.	5206
5248-X	The Boeing Company, Seattle, WA.	5248
5643-X	Union Carbide Corporation, Danbury, CT.	5643
5662-X	Dow Chemical Company, Midland, MI.	5662
6126-X	Dow Chemical Company, Midland, MI.	6126
6151-X	Virginia Chemicals Inc., Portsmouth, VA.	6151
6218-X	Welding & Therapy Service, Inc., Louisville, KY.	6218
6218-X	Messer Griesheim Industries, Inc., Valley Forge, PA.	6218
6267-X	Coastal Industries, Incorporated, Carlstadt, NJ.	6267
6432-X	Messer Griesheim Industries, Inc., Valley Forge, PA.	6432
6443-X	Montana Sulphur & Chemical Company, Billings, MT (See Footnote 1).	6443
6557-X	General Fire Extinguisher Corporation, Northbrook, IL.	6557
6686-X	Chilton Metal Products Division, Chilton, WI.	6686
6752-X	Pennwalt Corporation, Philadelphia, PA.	6752
6772-X	Green Chemical Company, Inc., Winchester, VA.	6772
6782-X	Aquaphase Laboratories, Inc., Adrian, MI.	6782
7060-X	Central Skyport Inc., Columbus, OH.	7060
7413-X	Chilton Metal Products Division, Chilton, WI.	7413
7451-X	Union Carbide Corporation, Danbury, CT.	7451
7466-X	Kaiser Aluminum & Chemical Corporation, Erie, PA.	7466
7466-X	Fermenich Incorporated, Princeton, NJ.	7466
7489-X	Micor Company, Inc., Milwaukee, WI.	7489
7513-X	MG Burdett Gas Products Company, Incorporated, Reading, PA.	7513
7725-X	Economics Laboratory, Inc., St. Paul, MN.	7725
7985-X	Process Engineering, Incorporated, Plaistow, NH.	7985
8129-X	Iowa State University, Ames, IA.	8129
8129-X	Triangle Resource Industries, Laurel, MD.	8129
8129-X	University of Maryland, College Park, MD.	8129
8129-X	Kerr-McGee Chemical Corporation, Oklahoma City, OK.	8129
8151-X	Ropak West, Inc., La Mirada, CA.	8151
8152-X	Allied Corporation, Morristown, NJ.	8152
8184-X	Trojan Corporation, Salt Lake City, UT.	8184
8225-X	Hoover Universal, Inc., Beatrice, NB.	8225
8269-X	M-D Trailer Company, Fort Worth, TX (See footnote 2).	8269
8518-X	Pacific Tank and Manufacturing, Long Beach, CA.	8518
8523-X	Dehon Services, Paris, France.	8523
8535-X	Advance Aviation Services, Inc., Mesa, AZ.	8535
8556-X	L'Air Liquide Corporation, Paris, France.	8556
8569-X	U.S. Department of Defense, Washington, DC.	8569
8577-X	Micor Company, Inc., Milwaukee, WI.	8577
8581-X	Northrop Services, Inc., Research Triangle Park, NC (See Footnote 3).	8581
8585-X	Bergen Barrel and Drum Company, Demarest, NJ.	8585
8599-X	Air Products and Chemicals, Inc., Allentown, PA.	8599
8602-X	Minnesota Valley Engineering, Inc., New Prague, MN.	8602
8644-X	Richmond Lox Equipment Company, Livermore, CA.	8644
8679-X	Micro D International, Corona, CA.	8679
8725-X	CNG Fuel Cylinder Corporation, Long Beach, CA (See Footnote 4).	8725
8736-X	Pressure Transport, Inc., Austin, TX (See Footnote 5).	8736
8868-X	Nalco Chemical Company, Oak Brook, IL (See Footnote 6).	8868
8911-X	Olin Corporation, East Alton, IL (See Footnote 7).	8911
8921-X	Hoover Universal, Inc., Beatrice, NE (See Footnote 8).	8921

Application No.	Applicant	Parties to exemption
2587-P	Welding & Therapy Service, Incorporated, Louisville, KY.	2587
2709-P	United Technologies, Sunnyvale, CA.	2709
3004-P	Big Three Industries, Inc., Houston, TX.	3004
3004-P	Liquid Air Corporation, San Francisco, CA.	3004
4108-P	Welding and Therapy Service, Inc., Louisville, KY.	4108
4453-P	PACCO, Inc., Tenino, WA (See Footnote 1).	4453
6530-P	Savage Welding Supplies, Inc., Phoenix, AZ.	6530
6762-P	United Laboratories, Inc., Addison, IL.	6762
6762-P	Suhm Laboratories, Inc., Greendale, WI.	6762
7015-P	Helium Sales, Inc., Amarillo, TX.	7015
7025-P	Helium Sales, Inc., Amarillo, TX.	7025
7526-P	Dow Chemical Company, Freeport, TX.	7526
7849-P	Welding Products of Georgia (HOLOX), Atlanta, GA.	7849
7887-P	Vulcan Systems Inc., Rantoul, IL.	7887
8129-P	CECOS International, Inc., Buffalo, NY.	8129
8129-P	American Scientific Products, McGaw Park, IL.	8129
8129-P	Lion Technology Inc., Lafayette, NJ.	8129
8156-P	Union Carbide Corporation, Danbury, CT.	8156
8196-P	Allied Chemical Company, Morristown, NJ.	8196
8214-P	Mercedes-Benz of North America, Inc., Montvale, NJ.	8214
8308-P	Tradewind Enterprises Inc., Hillsboro, OR.	8308
8511-P	The Chloramone Corporation, Allentown, PA.	8511
8511-P	Coyne Chemical Company, Philadelphia, PA.	8511
8554-P	Florida Explosives, Inc., Hialeah Gardens, FL.	8554
8554-P	Cordeiro Trucking, Dania, FL.	8554
8556-P	Helium Sales, Inc., Amarillo, TX.	8556
8723-P	PACCO, Inc. Tenino, WA (See Footnote 2).	8723
8977-P	Eurotainer, S.A., Paris France.	8977
8982-P	PPG Industries, Inc., Pittsburgh, PA.	8982

[1] Request renewal and to authorize two MC-331 cargo tanks with the option of effecting certain improvements.
[2] To authorize 43 additional cargo tanks under the terms of the exemption.
[3] To renew, and to expand on present packaging requirements and to add additional commodities.
[4] To use NOL ring testing instead of tensile testing and to modify cycling test requirements.
[5] To expand exemption to allow servicing of other pipeline sources.
[6] To reissue exemption to a shipper instead of a carrier.
[7] To remove private carriage restriction, handling of cargo by Olin employees only, limitation of 30 miles radius and to allow an alternate corrugated square drum container.
[8] To authorize water as an additional mode of transportation.
[1] To authorize water as an additional mode of transportation.
[2] Request party status and to authorize water as an additional mode of transportation.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on March 1, 1983.

Joseph T. Horning,

Chief, Exemptions and Approvals Division, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 83-5851 Filed 3-9-83; 8:45 am]

BILLING CODE 4910-60-M

Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATE: Comment period closes April 12, 1983.

ADDRESSES: Address Comment to: Dockets Branch, Office of Regulatory Planning and Analysis, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

New Exemptions

Application number	Applicant	Regulation(s) effected	Nature of exemption thereof
8998-N	Oil-Air Industries, Inc., Brookshire, TX	49 CFR 173.302(a)(1), 175.3	To manufacture, mark and sell seamless hydraulic accumulators having a capacity of not over 40 gallons with a design pressure of either 3,000 psi or 5,000 psi, for shipment of nitrogen, classed as a nonflammable gas. (modes 1, 2, 3, 4)
8999-N	Scott Aviation Div. of Figgie International, Inc., Lancaster, NY.	49 CFR 172.200-172.205(h), 175.30, 175.85	To manufacture, mark and sell an emergency escape breathing device containing an oxidizer, corrosive material and a Class C explosive described as oxidizer, n.o.s. to be shipped without shipping paper; and carried in the cabin of passenger aircrafts. (modes 1, 2, 4, 5)
9001-N	Chesterfield Cylinder Company, Inc., Enid, OK	49 CFR 178.45	To manufacture, mark and sell non-DOT specification steel cylinders similar to DOT Specification 3T except one end is not concaved to pressure, the water capacity is less than 99 pounds, and the wall thickness is 0.21, for shipment of those gases authorized in DOT-3AA and 3T cylinders. (mode 1)
9002-N	PepsiCo, Inc., Purchase, NY	49 CFR 178.210-10	To authorize shipment of certain corrosive liquids, n.o.s. (flavoring components) in four one-gallon Specification 2E container with a tamper-evident plastic cap, overpacked in DOT Specification 12A fiberboard boxes, to be exempt from side drop tests. (modes 1, 2, 3)
9003-N	General Electric Company, San Jose, CA	49 CFR 173.206	To authorize a one-time shipment of sodium metal in non-DOT specification steel portable tanks. (mode 1)
9004-N	Metric Corporation, Tulsa, OK	49 CFR 173.119, 173.304, 173.315	To manufacture, mark and sell mechanical displacement meter proving units affixed to a truck or trailer used to calibrate meters containing liquid hdyrocarbon products. (mode 1)
9005-N	Emerald Air, Austin, TX	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of various Class A, B and C explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment. (mode 4)
9006-N	Inflice Degremont Inc., Richmond, VA	49 CFR 173.268, 175.3	To authorize shipment of not exceeding 70% nitric acid in minute quantities contained in glass ampules/polystyrene clam shell/fiberboard box configuration. (modes 1, 2, 4)
9007-N	U.S. Environmental Protection Agency, Washington, DC.	49 CFR 173.302, 175.3	To authorize shipment of compressed air samples which may or may not contain radioactive materials, in non-DOT specification steel cylinders. (mode 4)
9008-N	Reynolds Manufacturing Company, McAllen, TX	49 CFR 173.119(a)(17), 173.245(a)(30), 173.245(a)(31), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To manufacture, mark and sell non-DOT specification cargo tanks complying generally with DOT Specification MC-307/312 except for bottom outlet valve variations, for transportation of waste flammable, corroeive or poison B liquids or semi-solids. (mode 1)
9009-N	Stauffer Chemical Company, Westport, CT	49 CFR 173.356	To authorize shipment of thiophosgene, poison B, in DOT Specification 5C stainless steel drums. (modes 1, 2, 3)
9010-N	United Technologies Chemical Systems, Sunnyvale, CA.	49 CFR 173.88(a)(2)(ii), 173.92	To authorize shipment of rocket motors, Class B explosive in a specially designed container to be shipped in a propulsive state (mode 1)
9011-N	Inland Steel Container, Chicago, IL	49 CFR 175.3, 178.100-11, 178.115-12, 178.116-12, 178.117-13, 178.118-12, 178.80-13, 178.81-13, 178.82-13, 178.98-11, 178.99-11.	To authorize certain DOT Specification 5, 6 and 17 series drums constructed of stainless steel, nickel or monel to be exempted from certain steel drum test requirements, for shipment of those commodities presently authorized for each drum. (modes 1, 2, 3, 4)
9012-N	Thiokol Corporation, Brigham City, UT	49 CFR 173.182, 173.239a	To authorize shipment of ammonium perchlorate and sodium nitrate, classed as oxidizers in DOT Specification 53 aluminum portable tanks modified to incorporate a pressure equalizing apparatus. (modes 1, 2)
9013-N	Monsanto Company, St. Louis, MO	49 CFR 173.295	To authorize benzyl chloride, corrosive material, in 18 gauge 55-gallon DOT Specification 17E steel drums with a corrosion resistant lining and recently developed triple seam chimes. (modes 1, 2, 3)
9014-N	Hunter Drums Limited, Burlington, Ont., Canada	49 CFR 173.119, 173.125, 173.256, 173.266(b), 178.19, Part 173, Subpart F.	To manufacture, mark and sell non-DOT specification 55-gallon polyethylene drums comparable to DOT Specification 34, for shipment of corrosive liquids authorized in Specification 34, hydrogen peroxide, methyl alcohol solutions or mixtures (thereof, and cleaning compound containing hydrofluoric acid. (modes 1, 2, 3)
9015-N	Monsanto Company, St. Louis, MO	49 CFR 173.217	To authorize shipment of trichloro-s-triazinetrione, classed as an oxidizer, in non-DOT specification flexible semi-bulk bags of 2,000 pound capacity. (modes 1, 2, 3)
9016-N	Van Leer Verpackungen, GmbH, Hamburg, West Germany.	49 CFR 173.127, 173.175, 173.184	To manufacture, mark and sell non-DOT specification fiber drums not to exceed 55-gallon capacity, for shipment of certain flammable liquids and flammable solids. (modes 1, 2, 3)
9017-N	EVA, Eisenbahn-Verkehrsmittel, GmbH, Dusseldort, West Germany.	49 CFR 173.264	To authorize shipment of hydrogen fluoride anhydrous, classed as corrosive material, in non-DOT specification IMO Type portable tank comparable to DOT Specification 51. (modes 1, 2, 3)

NEW EXEMPTIONS—Continued

Application number	Applicant	Regulation(s) affected	Nature of exemption thereof
9018-N	Schering, Aktiengesellschaft, Bergkamen, West Germany.	49 CFR 173.134	To authorize shipment of pyrophoric liquids, n.o.s., classed as flammable liquid, in non-DOT specification IMO Type portable tanks comparable to DOT Specification 51. (modes 1, 2, 3)

This notice of receipt of applications for new exemptions is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on March 2, 1983.

Joseph T. Horning,

Chief, Exemptions and Approvals Division, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 83-5852 Filed 3-9-83; 8:45 am]

BILLING CODE 4910-60-M

Hazardous Materials Regulations; Alcoholic Beverages; Interpretation

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of withdrawal of interpretation.

SUMMARY: The MTB hereby withdraws a letter of interpretation of § 173.118(c) of the Hazardous Materials Regulations (49 CFR 173.118(c)) concerning the regulation of "alcoholic beverages" as that term is defined in the regulations of the Bureau of Alcohol, Tobacco, and Firearms of the Internal Revenue Service (27 CFR 4.10 and 5.11). As written, the letter of interpretation (which was not published in the **Federal Register**) could be construed to apply to numerous products other than beverages and beverage components thereby effectively deregulating them—a regulatory action the MTB believes should only be accomplished in accordance with its rulemaking procedures.

DATE: Withdrawal of the letter of interpretation cited in this document is effective upon publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Alan I. Roberts, Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau, 400 7th Street, SW., Washington, D.C. 20590; telephone (202) 426-0656.

SUPPLEMENTARY INFORMATION: In accordance with MTB's exemption procedures, I notified an exemption applicant on October 1, 1982, of denial of its application for an exemption to permit the transportation of a concentrated flavoring component which includes 65% alcohol in units of one gallon or less as an ORM-E. The reason for the denial was that the exemption was unnecessary since the applicant's commodity was within the exception prescribed in § 178.118(c), and thus not regulated. It has come to the attention of the MTB that this response received wide dissemination among formulators of various products who use alcohol as a primary constituent.

Subsequently, on December 28, 1982, in response to a request for an interpretation of § 173.118(c) designed to expand on the interpretation cited above, I issued, by letter, the following interpretation of the term "alcoholic beverages" (wines and distilled spirits as defined in 27 CFR 4.10 and 5.11) as used in § 172.118(c):

> Under the above-referenced section(s) of Title 27, the Bureau of Alcohol, Tobacco and Firearms of the Internal Revenue Service limits the wine and distilled spirits referenced therein to those "for non-industrial use", i.e., for use as beverages but not those used "in the manufacture of . . . flavoring extracts, syrups, or food products". From a transportation safety perspective, wine and distilled spirits have the same characteristics regardless of end use. Consequently, we interpret section 173.118 to except from the HMR all wines and distilled spirits as defined in the referenced ATF regulations, whether for industrial or non-industrial use.

The intent of this interpretation was to remove the industrial/non-industrial distinction created by the BATF with respect to alcoholic beverages and beverage components only, in recognition that the distinction bore no relationship to transportation safety. However, in removing that distinction, the interpretation had the unintended effect of expanding the exception stated in § 173.118(c) to include, as provided in 27 CFR 2.12,—

(a) Medicinal, pharmaceutical, or antiseptic products, including prescriptions compounded by retail druggists;

(b) Toilet preparations;

(c) Flavoring extracts, syrups, or food products; or

(d) Scientific, chemical, mechanical or industrial products.

As thus expanded, the effects of the interpretation go far beyond the MTB's intent in issuing it. The net result is deregulation of hundreds of formulations containing alcohol. Clearly, such an impact should only be dealt with through rulemaking, and accordingly, the interpretation discussed in this Notice is hereby withdrawn. In taking this action, the MTB is aware that some product formulators may have begun to act in reliance on the interpretation. To help minimize any adverse impacts from such reliance, the MTB will notify each of the operating administrations within DOT having hazardous materials enforcement responsibility that the interpretation was duly issued but has since been withdrawn. For a reasonable period of time, and depending on the merits of a given case, such action should be sufficient to insulate from enforcement action persons who have acted in good faith out of reliance on the interpretation.

Issued: March 4, 1983.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 83-6190 Filed 3-9-83; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Customs Service

[TMK-2 CO:R:E:E]

Application for Recordation of Trade Name "CHAMS DE BARON LTD."

Application has been filed pursuant to § 133.21 Customs Regulations (19 CFR 133.21), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "CHAMS DE BARON LTD.", used by

Chams De Baron Ltd., a corporation organized under the laws of the State of New York, located at 1350 Broadway, New York, New York 10018.

The application states that the trade name is used in connection with the following merchandise which is manufactured in Taiwan, Hong Kong, South Korea and the Philippines: Men's and Women's wearing apparel, including shirts, tops, sweaters, jackets and pants in the U.S. Patent and Trademark Office Class 39. Appropriate acompanying papers were submitted with the application.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Any such submission should be addressed to the Commissioner of Customs, Entry, Licensing and Restricted Merchandise Branch, Washington, D.C. 20229, in time to be received no later than 60 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5765).

Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

Dated: January 28, 1983.

A. Piazza,

Acting Director, Entry Procedures and Penalties Division.

[FR Doc. 83-6122 Filed 3-9-83; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document consists of a revised form. The entry contains the following information: (1) The department or staff office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(H) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the proposed form and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (004A2), Veterans Administration, 810 Vermont Avenue, NW, Washington DC, 20420 (202) 389–2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATE: Comments on the form should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: March 4, 1983.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Revised Form

(1) Department of Medicine and Surgery.

(2) Application for Furnishing Nursing Home Care to Beneficiaries of the VA.

(3) VA Form 10–1170.

(4) Once per applicant.

(5) Any applicant for a nursing home care contract with the VA.

(6) 800 responses per annum.

(7) 800 hours.

(8) Not applicable under 3504(H).

[FR Doc. 83-6130 Filed 3-9-83; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 48
Thursday, March 10, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

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1

CIVIL AERONAUTICS BOARD

[M-376; March 4, 1983]

Short Notice of Closed Meeting for March 7, 1983

TIME AND DATE: 2 p.m., March 7, 1983.

PLACE: Room 1012, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

1. All-cargo Service Between the United States and Peru. (BIA)
2. Discussion of the U.S.-Canada Negotiations. (BIA)

STATUS: Closed.

PERSON TO CONTACT FOR MORE INFORMATION: Phyllis T. Kaylor, (202) 673–5068.

[S-343-83 Filed 3-8-83; 3:54 pm]

BILLING CODE 6320-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, March 18, 1983.

PLACE: 2033 K Street NW., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Briefing

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S-339-83 Filed 3-8-83; 1:52 pm]

BILLING CODE 6351-01-M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, March 11, 1983.

PLACE: 2033 K Street NW., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Briefing

CONTRACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6114.

[S-340-83 Filed 3-8-83; 1:53 pm]

BILLING CODE 6351-01-M

4

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 9417, Friday, March 4, 1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Tuesday, March 15, 1983.

CHANGES IN THE MEETING: The meeting has been postponed to 2 p.m. on March 15, to be held in the 8th Floor Conference Room.

[S-342-83 Filed 3-8-83; 3:54 pm]

BILLING CODE 6351-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Change 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 close meeting held at 2:30 p.m. on Monday, March 7, 1983, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Doyle L. Arnold, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public of the following matter:

Recommendation 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. 45,607-L—Franklin National Bank, New York, New York

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(9)(B), and (c)(10)).

Dated: March 7, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-336-83 Filed 3-8-83; 11:54 am]

BILLING CODE 6714-01-M

6

FEDERAL DEPOSIT INSURANCE CORPORATION

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 open meeting held at 2:00 p.m. on Monday, March 7, 1983, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Doyle L. Arnold, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

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. 45,603-L—American City Bank &Trust Company, National Association, Milwaukee, Wisconsin

Case No. 45,608—The Greenwich Savings Bank New York, New York

Case No. 45,609-NR—Penn Square Bank, National Association, Oklahoma City, Oklahoma

Case No. 45,616-L—Banco Credito y Ahorro Ponceno, Ponce, Puerto Rico

By the same majority vote, the Board further determined that no earlier notice of the changes in the subject matter of the meeting was practicable.

Dated: March 7, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. S-337-83 Filed 3-8-83; 11:54 am]

BILLING CODE 6714-01-M

7

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, March 15, 1983, 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the plublic.

MATTERS TO BE CONSIDERED:

Compliance. Personnel. Litigation. Audits.

* * * * *

DATE AND TIME: Thursday, March 17, 1983, 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C. (fifth floor).

STATUS: This meeting will be open to the plublic.

MATTERS TO BE CONSIDERED:

Setting of dates for future meetings
Correction and approval of minutes
Proposed notice of rulemaking for general election regulations
Finance Committee report
Routine Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, telephone 202–523–4065.

Marjorie W. Emmons,

Secretary of the Commission.

[S-341-83 Filed 3-8-83; 3:54 pm]

BILLING CODE 6715-01-M

8

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 9125, March 3, 1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9 a.m., March 9, 1983.

CHANGE IN THE MEETING: Addition of the following item to the closed session:

2. Petition of Trans Freight Lines for investigation of rates on military cargoes charged by Sea-Land Service and United States Lines.

[S-334-83 Filed 3-8-83; 10:39 am]

BILLING CODE 6730-01-M

9

LEGAL SERVICES CORPORATION

Meeting of the Board of Directors

STATUS OF MEETING: Open (Portion of Meeting is to be closed to discuss personnel and litigation matters under 45 CFR 1622.5 (a)(3) and (h). Vote and certification of authorization for closing are as follows:

The Executive Session in item 1 of this agenda is called pursuant to the vote of the five Directors presently in office to adopt the following resolution:

"Upon motion of Board member, Robert McCarthy, duly seconded, the Legal Services Corporation hereby closes the initial portion of the Board Meeting of March 15, 1983, pursuant to the provisions of 45 CFR 1622.6, in order to discuss matters falling under 45 CFR 1622.5 (a), (e), and (h)."

The members of the Board voted as follows:

Frank Donatelli, aye
Robert McCarthy, aye
Milton Masson, aye
Daniel Rathbun, aye
Donald Santarelli, aye

Certification

As General Counsel of the Legal Services Corporation, I hereby certify that a majority of the members of the Board of Directors of the Legal Services Corporation have approved closing the initial portion of the Board meeting to be held March 15, 1983, to discuss internal personnel procedures and personnel matters and litigation concerning the Corporation. I hereby certify that in my opinion the closing of this portion of the meeting is authorized by the Government in Sunshine Act, 5 U.S.C. 552b(c) (2), (6) and (10), and under the Legal Services Corporation relations, 45 CFR 1622.5 (a), (e) and (h).

Alan R. Swendiman,

General Counsel.

Dated: March 7, 1983.

PLACE:

Executive Session: Legal Services Corporation, 733 15th Street NW., Washington, D.C. 20005;
Public Portion: GSA Central Office Auditorium, 18th and F Streets NW., Washington, D.C.

TIME AND DATE: Executive Session: 9:30 a.m., Public Portion: 10:30 a.m., Tuesday, March 15, 1983.

MATTERS TO BE CONSIDERED:

1. Adoption of Agenda.
2. Election of Chairman and Vice Chairman.
3. Public Ratification of Meeting Closure/Report from Executive Session.
4. Approval of Minutes.
5. Organization of Committees.
6. Report from President—Hill Testimony.
7. Report from General Counsel/Approval of Final Lobbying Regulations.
8. Report from Office of Government Relations.
9. Report on Field Programs by Acting Director of Office of Field Services and Acting Director of Information Management.
10. Report from Comptroller:
   A. Budget Review/Modification.
   B. Appointment of Independent Accountants.
11. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: LeaAnne Bernstein, Secretary of the Corporation, (202) 272–4040.

Dated: March 7, 1983.

Donald P. Bogard,

President.

[S-335-83 Filed 3-8-83; 10:39 am]

BILLING CODE 6820-35-M

10

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

(Northwest Power Planning Council)

ACTION: Meeting notice.

STATUS: Open.

TIME AND DATE: At the conclusion of daytime session of scheduled public hearing (approximately 5 p.m.), March 14, 1983.

PLACE: North Shore Hotel, North Star Plaza, Coeur d'Alene, Idaho.

MATTERS TO BE CONSIDERED:

- Selection of Fish Propagation Panel members.
- Ratification of Council comments on responses to Bonneville Power Administration Notice of Program Interest.
- Ratification of Intergovernmental Agreement with Bonneville Power Administration.
- Approval of Council minutes.
- Council administrative matters.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Wong (503) 222–5161.

Edward Sheets,

Executive Director.

[S-336-83 Filed 3-8-83; 1:35 pm]

BILLING CODE 0000-00-M

federal register

Thursday
March 10, 1983

Part II

Department of Transportation

Research and Special Programs Administration

Requirements for Transportation of Radioactive Materials

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 175, 176, 177, and 178

[Docket No. HM-169; Amdt. Nos. 171-71, 172-78, 173-162, 174-42, 175-26, 176-15, 177-57, 178-75]

Requirements for Transportation of Radioactive Materials

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: This final rule revises requirements of the Hazardous Materials Regulations concerning radioactive materials to make them compatible with the latest revised international standards for transport of radioactive materials as promulgated by the International Atomic Energy Agency (IAEA). A parallel amendment by the U.S. Nuclear Regulatory Commission (NRC), to Title 10 CFR Part 71, "Packaging of Radioactive Materials for Transport and Transportation of Radioactive Materials Under Certain Conditions" will be published in the **Federal Register** at a future date.

EFFECTIVE DATE: July 1, 1983, unless otherwise specified by the regulations adopted under this rulemaking, except for revised proper shipping names and identification numbers appearing in § 172.101 which may be used immediately, and except for §§ 173.415, 173.425 (b) and (c), 173.441(c), 173.477(b) and 173.478 (b) and (c) which contain information collection requirements which are under review at OMB. This effective date may be extended depending on the publication and effective date of corresponding amendments to 10 CFR, Part 71, by the Nuclear Regulatory Commission.

FOR FURTHER INFORMATION CONTACT: R. R. Rawl, Office of Hazardous Materials Regulation, Materials Transportation Bureau, U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590, Telephone (202) 426-2311.

SUPPLEMENTARY INFORMATION:

I. Background

In keeping with MTB's commitment to maintain harmony between the international and U.S. regulations for the transportation of hazardous materials, this docket changes the requirements pertaining to radioactive materials. These changes will ensure essential uniformity between the Hazardous Materials Regulations dealing with radioactive materials and the latest international regulations, the International Atomic Energy Agency's (IAEA) "Regulations for the Safe Transport of Radioactive Materials, Safety Series No. 6, 1973 Revised Edition (as amended)." Detailed information of the U.S. participation in the development of these international regulations was given in the preambulatory text of the notice of proposed rulemaking (NPRM) for this docket (44 FR 1852, January 8, 1979).

Since certain aspects of the transportation of radioactive materials are regulated by the NRC, changes in their regulations necessary to maintain compatibility will be published in the future in the **Federal Register.** Those changes to 10 CFR Part 71 will deal with Type B and fissile radioactive materials packages and NRC licensee requirements.

The NPRM for this docket contained several proposed requirements which met with substantial objection by the commenters. In some cases a review of the costs and safety benefits involved has resulted in either modification or deletion of the proposed requirement. In another case, a provision has been made to eliminate unnecessary duplicative requirements for import and export shipments which must meet both DOT and IAEA requirements.

II. Substantive Changes

The first four of the substantive changes adopted in this amendment follow closely the proposed requirements in the notice. The other substantive changes are either modified versions of the proposed requirements or are new. Any new changes included here have been determined to have a very positive effect on reducing the cost of complying with the regulations with no adverse effect on transportation safety.

A. Individualized Type A Quantities

The system by which radionuclides have been divided, for the purpose of specifying the number of curies permitted in Type A packages, into seven transport groups according to their radiotoxicity has been eliminated. Under the previous system, the allowable number of curies for each radionuclide in a group or radionuclides is the same as the allowable number of curies for the most restrictive radionuclide. In some cases the least restrictive nuclides have a maximum permissible body burden more than ten times that of the most radiotoxic members.

The amendments have deleted the concept of transport groups. Instead, for each radionuclide two values, A_1 and A_2, are assigned which represent the maximum number of curies pemitted in Type A packages in special form and normal form, respectively. The A_1 and A_2 values for various radionuclides are listed in § 173.435. Methods by which these values were established are described in IAEA Safety Series No. 37, "Advisory Material for the Application of the IAEA Transport Regulations."

The value of A_1 for special form material is based on the possible external radiation dose to individuals if the contents of the package are released, except that an upper limit of 1,000 curies is imposed. Under the revised regulations, special form material must also be nondispersible, as determined by certain stringent criteria (which differ somewhat from present criteria for special form) described in § 173.469.

The bases for the A_2 value for normal form material (that is, all forms other than special form) are: (1) an accident of moderate severity might release 0.1% of the contents of a Type A package, and 0.1% of the amount released might then be taken into the body of a human being in the vicinity; this intake should not exceed half the maximum permissible annual intake for workers as given in IAEA Safety Series No. 9, 1967 Edition; and (2) A_2 shall not exceed A_1. Intake values are based on International Commission on Radiological Protection (ICRP) 1966 recommended limits for radiation exposure. It is expected that the IAEA will be producing new A_1 and A_2 values based on the latest ICRP data and models and these will be published at a later date for comment.

This change will sometimes permit a single Type A package to replace two or more present packages. Also, some of the small Type B packages with contents near the lower limit for Type B could be reclassified as Type A. The net effect of this clarification is expected to be insignificant with respect to the number of Type A packages or the total amount of material in Type A packages.

For special form material, some limits are increased and some are decreased. As a result of a number of comments, the previously specified value has been retained for americium and plutonium contained in special form americium-beryllium or plutonium-beryllium neutron sources or in nuclear-powered pacemakers which will not be exported. There are a large number of special form sources in existence which were fabricated to the 20 curie limit and have been safely transported in Type A packages. It is believed that the expense involved in transporting these sources in Type B packages or replacing them with sources of lower content is not justified

in light of the marginal safety gains. Consequently, for domestic shipments the existing 20 curie limit is retained for these types of neutron sources. For import and export shipments, however, the IAEA limits, which are lower, have been adopted to foster compliance with the IAEA regulations which are applied in all other major countries. The exception for domestic special form neutron sources is found in § 173.435, footnote 1. Consequently, the changes in the number of such packages should be small.

B. Requirements for Special Form Radioactive Material

The qualification tests for special-form radioactive material have been modified, primarily by adding a bending test, providing more detailed instructions for the immersion or leaching procedure, and changing the maximum loss by leaching to 0.05 microcurie in each of two determinations rather than the present 0.005% by weight for a single determination. Long, slender objects are more likely to suffer bending under rough handling or accident conditions than are short or large-diameter objects. A minimum length of 10 centimeters and a minimum length-to-width ratio of 10 have been selected for application of the bending test. The leaching test specified by the IAEA regulations has been selected as suitable and should yield uniform results. An absolute amount of activity leached is better related to the hazard than is a fixed percentage of weight. Although 0.05 microcurie is much smaller than any of the A_1 quantities, in this case it is specified as a measure of the indispersibility and is equivalent to the maximum permissible nonfixed surface contamination on 500 square centimeters of a package surface.

Previous regulations required that "special form radioactive material" have either: (1) No dimension less than 0.5 millimeters, or (2) at least one dimension greater than 5 millimeters. It is now required that special form radioactive material must have at least one dimension not less than 5 millimeters. The first option has been removed because of the possible difficulty of identifying, for safe handling, an object as small as 0.5 millimeters in every dimension.

The proposed definition for special form would have required all encapsulations to be "so constructed that it can be opened only by destructive means." This phrase was intended to clarify the IAEA requirement which states that an encapsulation must be "so constructed that it can be opened only by destroying the capsule". Comments received indicated that IAEA wording was less subject to varying interpretations and so it has been incorporated in the definition of special form. Commenters pointed out some difficulties which would result from performing cutting and welding or brazing operations in the closed environment of a glove-box or hot cell, but these objections were not quantified to any degree and are routinely performed in certain industries. It was not established by the commenters that the proposed requirement could not be met or that it would be too costly to meet the requirement.

An option has been added to the requirements dealing with leak testing of special form capsules. The proposal only specified a leaching assessment method whereby the test specimen is immersed in water and stored in air with subsequent water immersion. The activity leached by the water immersion determines if the source is leakfree. As an option to this test, which takes over one week, a volumetric leak rate of 10^{-4} torr-liter/second for solids and 10^{-6} torr-liter/second for liquid and gaseous contents is specified as being equivalent to passing the leaching test. However, this volumetric leak test is only suitable for sources with an internal void volume of at least 0.10 milliliter and is restricted to these source designs. Providing this optional acceptance criteria allows the tester to utilize a number of different testing methods which are sensitive enough to detect volumetric leak rates of this magnitude.

A phase out period of two years has been provided in § 173.403(z) for special form capsule designs which are not requalified under the special form requirements in order to provide for the construction of additional capsules to existing designs. These capsules may continue to be transported to the end of their useful life. Two years following the effective date of this publication all new designs and all new construction must meet the current requirements.

C. Addition of Lead-201

In response to a petition for rulemaking by Diagnostic Isotopes, Inc., to the NRC, lead-201 (201-Pb) is added to the table of radionuclides found in § 173.435. The daughter radionuclide resulting from the decay of 201-Pb is thallium-201 which is useful in nuclear medicine and clinical diagnosis. The details of the calculations for the A_1 and A_2 values for 201-Pb are found in Appendix B of the Environmental Impact Appraisal of Changes to Radioactive Material Packaging and Transportation Regulations, prepared by the NRC.

D. Metrication

The metric system, as represented by the International System of Units (SI), has been employed to the extent practicable in the revised regulations. Rounded-off values of equivalents for the English system are given in parentheses, except in a few cases where the conversion seems unnecessary or inappropriate. In some cases conventional units have been retained to prevent the confusion which would result from using SI units which are used very little as of this date, e.g., the millirem is retained instead of converting to Sieverts.

E. Low Specific Activity (LSA) Materials and Low Level Solid (LLS) Materials

The proposed regulations for LSA and LLS were in accord with the 1973 IAEA regulations in many regards but would have imposed more stringent packaging requirements. Many commenters objected to the increased costs which would have been incurred in upgrading or phasing out many existing package designs. Several commenters were of the opinion that more stringent packaging requirements and the associated costs would not significantly improve the safety of these materials in transportation.

Additionally, the NRC, with MTB cooperation, is studying the regulatory requirements and basis for LSA and LLS materials. This study is addressing the hazards, packaging requirements and costs involved in shipping these materials.

The IAEA has proposed an extensive revision of the LSA and LLS requirements including the imposition of additional radiation level limitations and more stringent packaging. These proposals are not expected to be adopted before mid-1984.

As a result of these current activities concerning LSA, MTB believes that the most prudent course of action is to make no substantive changes in the LSA packaging requirements at this time. Subsequently, the packaging requirements and any other identified concerns pertaining to LSA will be addressed in a future rulemaking. Consequently, this HM-169 final rule is greatly simplified over its proposal as many LSA requirements which were proposed have been deleted including the LLS category and such defined terms as the "transport index for low specific activity material or low level solid material transported as a full load. . . ."

The definition of LSA materials has been modified since the transport group system of radionuclide classification has been replaced by the A_1/A_2 system. LSA materials which are not specifically listed by name are classified according to the A_2 value for the nuclide or nuclides present in the LSA. For uniform mixtures of nuclides the following formula will determine if the mixture is defined as LSA:

$$\frac{APG_1}{0.0001} + \frac{APG_2}{0.005} + \frac{APG_3}{0.3} < 1$$

Where:

APG_1 = the total activity per gram of material of all nuclides present with an A_2 value of less than 0.05 curie.

APG_2 = the total activity per gram of material of all nuclides present with an A_2 value of more than 0.05 but less than 1.0 curie.

APG_3 = the total activity per gram of material of all nuclides present with an A_2 value exceeding 1.0 curie.

If the above summation for a given uniform mixture is less than or equal to 1 then the mixture may be classified as LSA.

The breakpoint values of 0.05 and 1.0 curie have been chosen to maintain as closely as possible the results obtained using the old transport group system with those obtained under the A_1/A_2 system.

F. Empty Packaging

A modification has been made to the provisions for shipping radioactive materials packagings which have been emptied of contents but still contain some residual material. Previously, § 173.29(b) prescribed the conditions under which packages could be shipped as "empty." These requirements in many respects were the same as for "limited quantities," that is, no significant external contamination and no radiation levels exceeding 0.5 millirem per hour at the packaging surface. In keeping with the excepted nature of these empty packagings the total residual radioactivity with the packaging was not to exceed a limited quantity as previously specified in § 173.391(a).

This presented a serious problem to shippers of these packagings in that in many instances it is not practical to determine the exact amount of residual radioactive material in the packaging. This is particularly true when the internal contamination is a combination of removable and fixed contamination. The removable constituents can be quantified by smear or wipe sampling but the fixed contamination is extremely difficult to quantify accurately unless the exact radionuclide mix is known. Consequently, there were only a few instances when it was possible to ship packages as empty.

The IAEA has adopted criteria for empty packages which eliminate this problem, while still ensuring that these packages represent no significant hazard during transportation, by placing limits on the:

(1) Removable external surface contamination;

(2) Removable internal contamination; and,

(3) Radiation level at the external surface of the packaging.

These three controls make it unnecessary to limit the total radioactivity present per se. The removable contamination limits ensure safety in handling and limit consequences in the event the packaging is damaged or opened. The radiation level limits ensure that exposures are extremely low and effectively places a limit on the amount of fixed contamination that may be present.

MTB believes that the IAEA criteria, as adopted in § 173.427, will provide for the continued safe shipping of empty packagings while providing needed flexibility in making these shipments.

G. Import/Export Shipments

Section 171.12 has been revised to permit the shipment of radioactive materials packages, in international commerce, which conform with the IAEA "Regulations for the Safe Transport of Radioactive Materials, Safety Series No. 6, 1973 Revised Edition" (as amended) with certain restrictions. Prior to this amendment, such provisions were only available to packages not exceeding a Type A quantity, low specific activity radioactive materials, and non-fissile radioactive materials. Extending this authorization to fissile radioactive materials and shipments requiring a Type B packaging will greatly facilitate the through movement of these packages by reducing the administrative burden on shippers and carriers to comply with varying requirements between the U.S. and the international community, without a sacrifice in safety. However, certain requirements designed to aid in emergency response activities do remain—detailed shipping papers and placarding for "highway route controlled quantities" (see H., below) for example. In addition, for a shipper to qualify under this section its packages must be certified as being approved for use by the country of origin and foreign-designed packages must be revalidated or endorsed by MTB as is already required. This certification process addresses activity limits, authorized contents, suitability of package design, special handling controls, and other areas which focus on the acceptability of packages for shipment, thereby assuring their ability to safely contain radioactive materials in transport. The MTB revalidation procedure is being maintained in order to ensure essentially equivalent levels of safety between import shipments and domestic shipments. MTB believes that this change will not decrease safety in any way because many of the differences still existing between the 1973 IAEA regulations and this rulemaking result from the IAEA regulations being too restrictive or imposing what MTB believes to be unnecessary requirements. One example is large freight container placarding. The U.S. regulations require placarding only under the three conditions presented in § 172.504, Table 1. The IAEA requires large freight container labeling and placarding for all radioactive materials except for limited quantities. However, in cases like this it is believed that there is no detriment in displaying the labels and placards and the provisions of § 171.12 relieve a significant burden on the shipper who otherwise must add or remove placards and labels at the border. The other existing differences between the U.S. and IAEA regulations are of a similar nature and allowing import and export shipments to move with minimal delay and expense with no detrimental effect on safety is believed to be in the public interest.

H. Designation of Highway Route Controlled Quantities

The adoption of the A_1/A_2 system to replace the transport group system of classifying radionuclides has removed the basis on which the term "large quantity" (§ 173.389(b)) was defined. The term "large quantity" was originally used to: (1) designate quantities of radioactive materials which generate sufficient decay heat to warrant consideration of heat dissipation in the package design and approval; and (2) identify packages whose contents are sufficient to require supplemental operational controls such as periodic venting of pressure or use of an active cooling system. This concept was embodied in the 1961, 1964 and 1967 IAEA transport regulations. Consequently the term was still in the Hazardous Materials Regulations as a vestige of the earlier IAEA versions.

Present practice in the U.S. is that all Type B packages are approved for specified contents and are limited to these specific contents. Decay heat rejection is one of the considerations taken into account in approving the

contents for a package design. This is a superior approach to the earlier, somewhat arbitrary establishment of "across the board" large quantity designations because decay heat rejection is in fact a contents *and* package dependent consideration. For example, a relatively small heat source could be thermally degraded if the package was an extremely good insulator and did not allow the generated heat to be rejected. Current practice in the U.S. is in line with the current (1973) IAEA approach which is to consider heat removal in *all* Type B package approvals.

The use of operational controls is another concept which has essentially been abandoned in the U.S. as well as world-wide. Current practice is to require that the package itself be capable of maintaining its integrity and meeting the hypothetical accident conditions without human intervention.

As a result of the evolution of the package approval process over the last 15 years the concept of a "large quantity" package design is now superfluous as it pertains to Type B package designs, approvals, and contents limitations. Currently, all Type B package designs meet the criteria which were, at one time, required only for high activity content packages.

The only remaining use for the term "large quantity" has been as a result of Docket HM-164 (46 FR 5298, January 19, 1981) which established rules governing the highway routing of radioactive materials shipments. Any vehicle transporting a Type B package containing a "large quantity" of radioactive materials is subject to additional requirements including specific routing criteria. Obviously, some provisions must be made for the continuity of this rule, a fact that was noted at the time the HM-164 rule was proposed (See 45 FR 7152, January 31, 1980) as well as when the final HM-164 rule was published (See 46 FR 5298, January 19, 1981).

The MTB, in conjunction with the NRC, has selected new criteria based on the A_1/A_2 system which will duplicate the "large quantity" criteria as closely as practical. The criteria selected also reflect some of the IAEA criteria for determining which shipments shall be subjected to additional administrative controls. The following criteria determine whether a particular amount of radioactive material within a single package shall be subjected to the additional administrative controls required by the HM-164 rules:

(1) $3{,}000 \times A_1$ for special form material;

(2) $3{,}000 \times A_2$ for normal form material; or

(3) 30,000 curies, whichever is least.

For any particular radionuclide or mixture, these values correspond to 3,000 times the contents permitted in a Type A package, or in the case of nuclides with an A_1 or A_2 (as appropriate) value of more than 10 curies, a designation of 30,000 curies as the value. In order to make these values as easy to understand and use as possible, the term "highway route controlled quantity" has been adopted. MTB believes that the term avoids confusion with the previously used term "large quantity" which means different things to different people and which is now obsolete.

There are some differences between the old values for "large quantity" and the new values for "highway route controlled quantity." The most significant differences occur for special form materials and alpha-emitting transuranic elements. For most special form materials, the new values are higher than the old value of 5,000 curies. This reflects the fact that the new values are directly related to the radiation source strength rather than an "across-the-board" value based on decay heat generation. The majority of special form shipments which will be relieved from specific routing requirements are medical and industrial shipments of cobalt-60 and cesium-137 irradiation sources. These sources typically fall into the range of 5,000–10,000 curies and are used in a variety of medical and industrial applications where medium strength sources are needed. It should be noted that while these sources are of significant activity when compared to "normal form" values, special form materials are essentially nondispersible. The integrity of the sources is high since the capsules themselves must be capable of withstanding severe accident conditions (30 foot drop, 1,475°F heat, percussion and immersion). This provides what is essentially a "Type B within a Type B" package, thus ensuring an extremely high level of integrity. Of the 140 shipments reported to MTB by October 31, 1982, as required by § 173.22(c), 42 of these would be relieved from the HM-164 routing and reporting requirements. The MTB believes this is a justified reduction of costs and delays given the integrity of the materials and in some cases the time-critical nature of the shipments. It should be noted that no irradiated reactor fuel is expected to fall into this category and be relieved from these requirements.

For some normal form alpha-emitting nuclides the new A_2 values are lower than the old 20 curie limit for Transport Group I nuclides. There are 9 of these nuclides which will have lower highway route controlled quantities than before and some additional shipments of these materials would be subjected to the HM-164 requirements. Except for the thorium and plutonium nuclides, the affected nuclides which have lower values are not frequently shipped and the effect of lowering the values will be very small. For the thorium and plutonium isotopes, the result of the new values will also be small because these nuclides are generally shipped in mixtures which are very high in activity and will simply continue to be covered by HM-164 requirements or are in forms which are of such low specific activity that they are not covered under either the new or old criteria.

There are some shipments of normal form materials which have been reported to MTB which would be relieved from HM-164 requirements and these can be characterized as research related. These materials are generally mixtures destined for analysis or further research and generally fall into the range of 20 to 1,000 curies. The number of these shipments is low by virtue of their nature.

The MTB is convinced that the new highway route controlled quantities are superior to the old large quantity values for the purpose of HM-164 requirements. The new values more accurately reflect a uniform level of hazard for the contents. It is recognized that while some values will go higher and some will be lower, the net result will be a positive safety benefit and more accurately relates the package contents to the additional administrative controls imposed by HM-164.

III. Minor Changes

A. Marking of Limited Quantities and Devices

The Notice contained proposals concerning marking limited quantities and devices as required by the 1973 IAEA regulations. Several commenters objected to this, basically for two reasons:

(1) For limited quantities, the proposal that the packaging bear the marking "Radioactive" in such a manner as to be visible upon opening would require marking in several places since the shipper has no control over how the package is opened; and

(2) For radioactive devices, it is highly impractical to mark many devices (such as electron tubes) which contain minute amounts of radioactive material.

The MTB agrees with these comments and has removed the proposed marking

requirements for these materials, retaining the previously existing marking requirements (§ 173.391(a)) which are reasonable. Export or import shipments which need to comply with the 1973 IAEA regulations may be so marked and exported or imported in accordance with § 171.12(e).

B. DOT Specification 55 Packaging

As amended herein, the use of existing DOT Specification-55 (Spec 55) packages will be discontinued two years after the effective date of these amendments. As a result of prior rulemaking in Docket HM-111 (39 FR 45238), published on December 31, 1974, construction of Spec. 55 packages after March 31, 1975, has not been authorized. As was stated in the preamble to the notice of proposed rulemaking in Docket HM-111 (39 FR 29483, October 25, 1973), the Department announced its intention to phase out the Spec. 55 as a "limited Type B" packaging at some later date. Future use of such packagings two years after the effective date of this amendment to Part 173 will be contingent upon the user either requalifying the package design as a DOT Specification 7A (for Type A shipments), using the existing Specification 55's in conjunction with DOT Specification 20 WC or 21 WC wooden or wooden/steel outer packagings, or having the packaging approved by the NRC. This change from the proposal will still result in the phase out of Specification 55 packagings per se but will allow their continued use when requalified, reapproved, or used in conjunction with 20 WC and 21 WC outer packaging. The existence of these options significantly reduce the cost of this discontinuance and yet will ensure that the Spec 55's will meet the performance standards required of all other packages in order to ensure public safety.

C. DOT Specification 7A Packaging

Since the tests required for Specification 7A packagings are somewhat different than the previously required tests, a two year period has been established for shippers to adapt to the new test requirements.

Existing packagings may continue to be used as long as they will meet the previously existing Specification 7A test requirements. New packagings may be constructed to existing designs for a period of two years from the effective date of the amendment. The provisions allow for the continued use of existing packagings throughout their useful life and allows construction of new packagings to the "old" designs for two years.

Two years following the effective date of this publication all new packaging designs and all new packaging construction must meet the requirements of § 178.350 adopted herein and, consequently, the test requirements of § 173.465.

D. Labeling Requirements

In keeping with MTB's objective of simplifying and clarifying the regulations whenever possible, § 172.403 has been rewritten to include a table for use in determining the proper label to place on radioactive materials packages. The requirements pertaining to labeling have not been changed but the tabular presentation is believed to be an improvement over the previous text.

E. Redesignation of Subpart I in Part 173

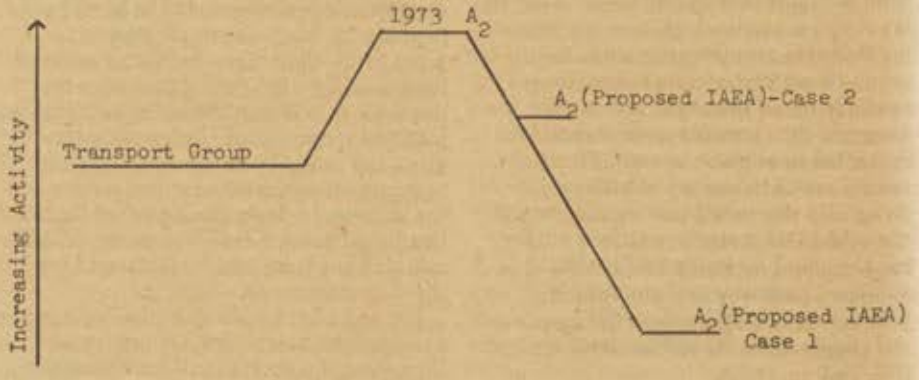
Although the notice of proposed rulemaking considered reissuance of the radioactive materials regulations in a new Part 127 it has subsequently been determined to retain these requirements in Part 173, but in a separately identified subpart. Subpart I is the most logical choice since the regulations pertaining to radioactive materials will retain their same relative position in the Hazardous Materials Regulations with respect to the other hazard classes, and since the Special Requirements for Certain Rail Shipments or Movements will have greater visibility in Subpart A. Consequently, §§ 173.426 and 173.432 are recodified at §§ 173.9 and 173.10, respectively. The heading of Subpart I is changed to read "Radioactive Materials."

F. Type A Limits for Certain Beta-Emitting Radionuclides

The IAEA, as part of its effort to maintain the continued adequacy of the regulations, has adopted a modified system for determining A_1 and A_2 values. This new system will be incorporated in the 1984 revision of the IAEA regulations which is being prepared. The system was adopted in principle by the IAEA at the March 1982, Advisory Group on the revision and it was subsequently refined by a special Working Group which met in August 1982. When the IAEA circulates the "3rd Draft" version of the regulations, DOT will be making it available and will seek public comment.

It has become apparent to MTB that the new system incorporates a radiological exposure pathway which has not been considered previously. This pathway involves consideration of the dose to the skin of a person contaminated with a radionuclide. For most radionuclides this is not a limiting pathway as other considerations in both the present and proposed systems are generally more limiting. Examples of the other more limiting considerations are radiation levels from unshielded material and internal pathways such as inhalation. For some beta-emitting nuclides, however, the contaminated skin consideration is limiting. In some cases the Type A limits calculated under the newly adopted system are significantly lower than the previously accepted A_2 values and some are even lower than the earlier Transport Group values.

The MTB believes that it cannot ignore the contribution that the contaminated skin consideration makes toward a complete system for calculating Type A values. This is particularly true for radionuclides which have high A_2 values under the 1973 IAEA regulations and would have considerably lower A_2 values under the new IAEA system due to their potential for significant dose to contaminated skin. Of the radionuclides which would have lower values under the new IAEA system, some have values below the old transport group values (case 1) and some have values between the old transport group and the 1973 IAEA values (case 2). These two cases can be represented graphically as:



The MTB believes that it is prudent to both accept this new pathway as necessary to provide a complete system for setting Type A values and to minimize unnecessary fluctuations in the Type A limits. While there is some uncertainty as to the exact values which will result from the final, accepted new IAEA system the MTB is confident that the values now available are conservative and will most probably not be lowered. Therefore, for those nuclides which are limited by the skin exposure pathway values have been selected as follows:

Case 1: The transport group values are adopted as the new A_2 values.

Case 2: The values now available are adopted in lieu of the 1973 IAEA values.

The radionuclides which are affected in case 1 are:

Ag-111	Nd-147	Si-31
As-77	Nd-149	Sm-153
Au-198	Os-193	Te-127M
Cd-115	Pd-109	Te-127
Ce-143	Pm-149	Te-129
Dy-165	Pr-143	W-187
Er-171	Pt-197m	Zn-69m
Gd-159	Pt-197	Zn-69
In-115m	Re-186	
Mo-99	Sc-47	

The radionuclides which are affected in case 2 are:

Au-199	Eu-155	Rh-105
Br-77	Hf-181	Ru-103
C-14	Hg-203	S-35
Ca-45	I-133	Sb-125
Ce-141	In-111	Sr-89
Cl-36	Ir-192	Tb-160
Cs-134m	K-43	Tc-99
Cs-135	Lu-177	Te-129m
Cs-137	N-13	Th-231
Cu-64	Np-239	Tl-204
Cu-67	O_s-191	Tm-170
Er-169	Pm-147	W-185
Eu-152	Rb-81	Yb-175

In both cases the values adopted herein are no lower than the previously existing transport group values and yet are lower than the previously proposed 1973 IAEA A_2 values. For the radionuclides listed under case 1, the A_2 is set at the old limit of 20 curies as each nuclide was previously in transport group IV which had this limit. The nuclides listed in case 2 have been assigned the currently available values under the new IAEA system. These values are between the old transport group and the 1973 IAEA values. When the new IAEA system is fully implemented by the IAEA and the skin exposure pathway is taken into due account then MTB expects to complete the alignment of A_2 values between the U.S. and the IAEA.

IV. Classification of Rule; Reporting Requirements; and Impact on Small Entities

A. Non-major rule

The Materials Transportation Bureau has determined that this regulatory amendment is not a major rule under terms of Executive Order 12291 or significant under DOT regulatory procedures (44 FR 11034) and does not require a Regulatory Impact Analysis, nor does it require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 et. seq.).

This determination is made on the basis that: (1) The final rule will have an annual effect on the economy not exceeding $100 million, (2) there will be no major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies, or geographic regions, and (3) it will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Department has determined under Council of Environmental Quality guidelines not to prepare an environmental impact statement for the amendment herein.

Concurrently with the publication of this rulemaking document, the Department is making available in its Dockets Branch at the address indicated above, an "Environmental Impact Assessment of Changes to Radioactive Materials Transport Regulations" intended to support a negative declaration. This assessment was prepared by the U.S. Nuclear Regulatory Commission in support of its changes to 10 CFR Part 71 which are to be published in a subsequent issue of the **Federal Register**. Its analyses and conclusions are considered directly applicable to the proposals by the Department herein, in support of this negative declaration.

B. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96-511), certain reporting or recordkeeping provisions that are included in this regulation have been submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained and the public notified to that effect through a technical amendment to this regulation. Other information collection requirements contained in this regulation (§§ 173.471 (a), (d), and (f), 173.472 (b) and (e), 173.473(a), 173.476 (a) and (b), and 173.478(a)) have been approved by OMB and assigned control numbers indicated in the regulatory text of this document.

C. Impact on Small Entities

Based on limited information available concerning size and nature of entities likely to be affected, I certify that this amendment will not, as promulgated, have a significant economic impact on a substantial number of small entities. Small businesses potentially affected include manufacturers, distributors, carriers, and users of: (1) Radiopharmaceuticals; (2) measuring, detecting, and calibrating devices which employ radioactive materials; and (3) packagings specifically designed for use in the transportation of radioactive materials. The economic impact on such small entities will be minimal.

V. List of Subjects

49 CFR Part 171

Exports, hazardous materials transportation, Imports.

49 CFR Part 172

Hazardous materials transportation, Labeling.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

49 CFR Part 174

Hazardous materials transportation, Railroad safety.

49 CFR Part 175

Hazardous materials transportation, Air carriers, Radioactive materials.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers.

49 CFR Part 177

Hazardous materials transportation, Motor carriers.

49 CFR Part 178

Hazardous materials transportation, Packaging and containers.

In consideration of the foregoing, Parts 171, 172, 173, 174, 175, 176, 177, and 178 of Title 49, Code of Federal Regulations are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. In § 171.7, paragraphs (c)(15), (d)(10) and (d)(11) are revised to read as follows, and paragraph (c)(25) is removed and reserved.

§ 171.7 Matter incorporated by reference.

* * * * *

(c) * * *

(15) IAEA: International Atomic Energy Agency, Wagramerstrasse 5, P.O. Box 100, A–1400, Vienna, Austria

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(25) [Reserved]

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(d) * * *

(10) IAEA "Regulations for the Safe Transport of Radioactive Materials, Safety Series No. 6, 1973 Revised Edition (as amended)."

(11) United States Nuclear Regulatory Commission (USNRC) 10 CFR Part 71, "Packaging of Radioactive Material for Transport and Transportation of Radioactive Material Under Certain Conditions."

* * * * *

2. In § 171.8, the entry for "full load" is removed, a definition for "IAEA" is added in its proper alphabetical sequence, and the following definitions are revised to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

"IAEA" means International Atomic Energy Agency.

* * * * *

"Package" or "Outside Package" means a packaging plus its contents. For radioactive materials, see § 173.403 of this subchapter. "Packaging" means the assembly of one or more containers and any other components necessary to assure compliance with the minimum packaging requirements of this subchapter and includes containers (other than freight containers or overpacks), portable tanks, cargo tanks, tank cars, and multi-unit tank car tanks. For radioactive materials, see § 173.403 of this subchapter.

* * * * *

"Preferred route" or "Preferred highway" is a highway for shipment of "highway route controlled quantities" of radioactive materials so designated by a State routing agency, and any Interstate System highway for which an alternative highway has not been designated by such State agency as provided by § 177.825(b) of this subchapter.

* * * * *

"Radioactive materials" See § 173.403 of this subchapter for definitions relating to radioactive materials.

* * * * *

2a. In § 171.11, paragraph (d)(6)(ii), is amended by removing section reference "§ 173.393(b)" and inserting in its place "§ 173.471, 173.472 and 173.473"; paragraph (d)(6)(iii) is amended by removing section reference "173.393 (p)(q) and (r)(3)" and inserting in its place "173.448 (e)(f) and (g)(3)"; paragraph (d)(6)(iv) is amended by removing section reference "§ 173.391" and inserting in its place "§§ 173.421, 173.422 or 173.424, as appropriate"; and paragraph (d)(6)(v) is revised to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

* * * * *

(d) * * *

(6) * * *

(v) Type A package contents shall be limited in accordance with § 173.431 of this subchapter.

* * * * *

3. In § 171.12, paragraph (e) is revised to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(e) Radioactive materials being imported into or exported from the United States, or passing through the United States in the course of being shipped between places outside the United States, may be offered and accepted for transportation when packaged, marked, labeled and otherwise prepared for shipment in accordance with IAEA "Regulations for the Safe Transport of Radioactive Materials, Safety Series No. 6, 1973 Revised Edition (as amended)", if:

(1) The radioactive material is offered and accepted in accordance with the requirements of Subparts C and F of Part 172 of this subchapter pertaining to shipping papers and placarding;

(2) For fissile materials and Type B packages, the competent authority certifiction and any necessary revalidation is obtained from the appropriate competent authorites as specified in §§ 173.471, 173.472 and 173.473 of this subchapter; and all requirements of the certificates and revalidations are met;

(3) Type A package contents shall be limited in accordance with § 173.431 of this subchapter; and

(4) The country of origin for the shipment has adopted the IAEA "Regulations for the Safe Transport of Radioactive Materials, Safety Series No. 6, 1973 Revised Edition (as amended)."

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

4. The Hazardous Materials Table to § 172.101 is amended as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101 Hazardous Materials Table

(1)	(2)	(3)	(3A)	(4)	(5)		(6)		(7)		
					Packaging		Maximum net quantity in one package		Water shipments		
+EAW	Hazardous materials descriptions and proper shipping names	Hazard class	Identification number	Label(s) required (if not excepted)	Exceptions	Specific requirements	Passenger carrying aircraft or railcar	Cargo only aircraft	Cargo vessel	Passenger vessel	Other requirements
					(a)	(b)	(a)	(b)	(a)	(b)	(c)
	Deletions										
	*	*	*	*	*		*	*			
	Plutonium nitrate, solution	Radioactive Material	NA9185	Radioactive (See 172.403).	173.393	173.396			1,2	1,2	
	*	*	*	*	*		*	*			

(1)	(2)	(3)	(3A)	(4)	(5)		(6)		(7)		
					Packaging		Maximum net quantity in one package		Water shipments		
+EAW	Hazardous materials descriptions and proper shipping names	Hazard class	Identification number	Label(s) required (if not excepted)	Exceptions	Specific requirements	Passenger carrying aircraft or railcar	Cargo only aircraft	Cargo vessel	Passenger vessel	Other requirements
					(a)	(b)	(a)	(b)	(a)	(b)	(c)
	Radioactive device, n.o.s.	Radioactive Material	UN2911	None	173.391				1,2	1,2	
	*	*	*	*	*		*	*			
	Revisions										
	*	*	*	*	*		*	*			
	Radioactive material, empty packages.	Radioactive Material	UN2908	Empty	173.427				1,2	1,2	
	Radioactive material, fissile, n.o.s.	Radioactive Material	UN2918	Radioactive	173.453	173.417			1,2	1,2	
	Radioactive material, instruments and articles.	Radioactive Material	UN2911	None	173.422 173.424				1,2	1,2	
	Radioactive material, limited quantity, n.o.s.	Radioactive Material	UN2910	None	173.421				1,2	1,2	
	Radioactive material, low specific activity or LSA, n.o.s.	Radioactive Material	UN2912	Radioactive	173.421 173.422 173.424	173.425			1,2	1,2	
	Radioactive material, n.o.s.	Radioactive Material	UN2982	Radioactive	173.421 173.422 173.424	173.415 173.416			1,2	1,2	
	Radioactive material, special form, n.o.s.	Radioactive Material	UN2974	Radioactive	173.421 173.422	173.415 173.416			1,2	1,2	
	*	*	*	*	*		*	*			
	Thorium metal, pyrophoric.	Radioactive Material	UN2975	Radioactive and Flammable Solid.	None	173.418	Forbidden	2.5 pounds	1,2	1,2	
	Trorium nitrate	Radioactive Material	UN2976	Radioactive and Oxidizer.	None	173.419	Forbidden	25 pounds	1,2	1,2	Separate longitudinally by a complete hold or compartment from explosives.
	*	*	*	*	*		*	*			
	Uranium hexafluroide, fissile (*containing more than 0.72% U-235*).	Radioactive Material	UN2977	Radioactive and Corrosive.	173.453	173.417			1,2	1,2	
	Uranium hexafluoride, low specific activity.	Radioactive Material	UN2978	Radioactive and Corrosive.	173.421	173.425			1,2	1,2	
	Uranium metal pyrophoric.	Radioactive Material	UN2979	Radioactive and Flammable solid.	None	173.418	Forbidden	Forbidden	1,2	1,2	
E	Uranyl acetate (RQ-5000/2270).	Radioactive Material	NA9180	Radioactive	173.421 173.425	173.415 173.416			1,2	1,2	
E	Uranyl nitrate hexahydrate solution (RQ-5000/2270.	Radioactive Material	UN2980	Radioactive and Corrosive.	173.421 173.425	173.415 173.416 173.417			1,2	1,2	
E	Uranyl nitrate, solid (RQ-5000/2270.	Radioactive Material	UN2981	Radioactive and Oxidizer.	None	173.419	Forbidden	25 pounds	1,2	1,2	Separate longitudinally by an intervening hold or compartment from explosives.
	*	*	*	*	*		*	*			

5. In § 172.203, paragraph (d)(1)(i) is amended by removing section reference "§ 173.390" and inserting in its place "§ 173.435"; paragraph (d)(1)(vi)(A) is amended by removing section reference "§ 173.396(a)" and inserting in its place "§ 173.453"; paragraph (d)(1)(vi)(B) is amended by removing section reference "§ 173.389(a)" and inserting in its place "§ 173.455"; paragraph (d)(1)(vii) is amended by removing the phrases "U.S. Energy Research and Development Administration (ERDA)" and "ERDA", and inserting in their appropriate place "U.S. Department of Energy (DOE)" and "DOE", and by removing section reference "§ 173.393a" and inserting in its place "§ 173.471"; paragraph (d)(1)(viii) is amended by removing section reference "§ 173.393b(a)(3)" and inserting in its place "§ 173.473"; paragraph (d)(1)(ix) is removed; and the last sentence of paragraph (d)(1)(iii) is amended to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(d) * * *

(1) * * *

(iii) * * * For the shipment of a package containing a highway route controlled quantity of radioactive

materials (see § 173.403(1) of this subchapter), the words "Highway route controlled quantity" must be entered in association with the basic description.

* * * * *

§ 172.204 [Amended]

6. In § 172.204, paragraph (c)(4) is amended by removing section reference "§ 173.391(a)(b) or (c)" and inserting in its place "§§ 173.421, 173.422, 173.424."

§ 172.310 [Amended]

7. In § 172.310, paragraph (a)(2) is amended by removing section reference "§§ 173.389(j) and (k) and 173.398(b) and (c)" and inserting in its place "§ 173.403"; and paragraph (a)(3) is amended by removing section reference "§§ 173.393a and 173.393b" and inserting in its place §§ 173.471, 173.472, and 173.473."

8. In § 172.400, paragraph (b)(10) is revised to read as follows:

§ 172.400 General labeling requirements.

* * * * *

(b) * * *

(10) Package of low specific activity radioactive material, when being transported in a transport vehicle assigned for exclusive use of the consignor under § 173.425(b) of this subchapter.

* * * * *

9. In § 172.403, paragraph (a) is amended by removing section reference "§ 173.391 or § 173.392" and inserting in its place "§§ 173.421 through 173.425"; paragraph (g)(1) is amended by removing section reference "§ 173.390" and inserting in its place "§ 173.435"; paragraph (g)(2) is amended by removing the phrase "Number of curies" and inserting in its place "Activity"; paragraph (g)(3) is amended by removing the section reference "§ 173.389(i)" and inserting in its place "§ 173.403"; paragraph (d) is removed and reserved; and paragraphs (b) and (c) are revised to read as follows:

§ 172.403 Radioactive material.

* * * * *

(b) The proper label to affix to a package of radioactive material is based on the radiation level at the surface of the package, the transport index (§ 173.403 of this subchapter) and, if appropriate, the fissile characteristics of the package. The proper category of label shall be determined in accordance with paragraph (c) of this section. The label to be applied shall be the highest category required for any of the three determining conditions for the package. Radioactive White-I is the lowest category and Radioactive Yellow-III is the highest. For example: a package with a transport index of 0.8 and a maximum surface radiation level of 60 millirem per hour which contains no fissile material must bear a Radioactive Yellow-III label.

(c) Category of Label to be Applied to Radioactive Materials Packages:

Transport index (T.I.)	Radiation level at package surface (RL)	Fissile criteria	Label category.[1]
T.I. = 0	RL ≤ 0.5 millirem per hour (mrem/h).	Fissile class I only, no fissile class II or III.	White-I.
T.I. ≤ 1.0	0.5 mrem/h < RL ≤ 50	Fissile class I, fissile class II, with T.I. ≤ 1.0, no fissile class III.	Yellow-II.
1.0 < T.I.	50 mrem/h < RL	Fissile class II with 1.0 < T.I., fissile class III.	Yellow-III.

[1] Any package containing a "highway route controlled quantity" (§ 173.403 of this subchapter) must be labeled as Radioactive Yellow-III.

(d) [Reserved]

* * * * *

§ 172.504 [Amended]

10. In § 172.504, footnote 5 to Table 1 is amended by removing section reference "§§ 173.389(c) and 173.389(o)" and inserting in its place "§ 173.403", and by removing section reference "§ 173.392(b)" and inserting in its place "§ 173.425(b)".

10a. Section 172.507 is revised to read as follows:

§ 172.507 Special placarding provisions: Highway.

Each motor vehicle used to transport a package of highway route controlled quantity radioactive materials (see § 173.403(l) of this subchapter) must have the required RADIOACTIVE warning placard placed on a square background as described in § 172.527.

§ 172.510 [Amended]

10b. In § 172.510, paragraph (d) is amended by removing section reference "173.426" and inserting, in its place, "173.9".

§ 172.527 [Amended]

10c. In § 172.527, paragraph (a) is amended by removing the term "large quantity" and inserting in its place "highway route controlled quantity".

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

§ 173.7 [Amended]

10d. In §173.7, paragraph (d) is amended by removing section reference "§§ 173.393a and 173.394 through 173.396" and inserting in its place, "§§ 173.416 and 173.417".

§ 173.22 [Amended]

10e. In § 173.22, paragraph (c) is amended by removing the phrase "large quantity packages of radioactive material (see § 173.389 of this subchapter)" and inserting in its place "highway route controlled quantity packages of radioactive materials (see § 173.403)"; and paragraph (d) is amended by removing the phrase "large quantity of radioactive material (see § 173.389(b))" and inserting in its place "highway route controlled quantity of radioactive material (see § 173.403(1))".

§ 173.29 [Amended]

11. In § 173.29, paragraph (b) is removed and reserved.

§ 173.121 [Amended]

11a. In § 173.121, paragraph (a)(6) is amended by removing section reference "173.432" and inserting in its place "173.10."

§ 173.123 [Amended]

11b. In § 173.123, paragraph (a)(5) is amended by removing section reference "173.432" and inserting in its place "173.10".

§ 173.226 [Reserved]

12. Section 173.226 is removed and reserved.

§ 173.389 through 173.398 [Reserved]

13. Sections 173.389 through 173.398 are removed and reserved.

§ 173.9 [Redesignated from § 173.426]

13a. Section 173.426 is transferred to Subpart A and redesignated as § 173.9.

§ 173.10 [Redesignated from § 173.432]

13b. Section 173.432 is transferred to Subpart A and redesignated as § 173.10.

14. Subpart I is revised to read as follows:

Subpart I—Radioactive Materials

Sec.

173.401 Scope.
173.403 Definitions.
173.411 General design requirements.
173.412 Additional design requirements for Type A packages.
173.413 Requirements for Type B packages.
173.415 Authorized Type A packages.
173.416 Authorized Type B packages.
173.417 Authorized packaging—fissile materials.
173.418 Authorized packaging—pyrophoric radioactive materials.
173.419 Authorized packaging—oxidizing radioactive materials.
173.421 Limited quantities of radioactive materials.

Sec.
173.422 Exceptions for instruments and articles.
173.423 Table of activity limits—excepted quantities and devices.
173.424 Excepted article containing natural uranium or thorium.
173.425 Transport requirements for low specific activity (LSA) radioactive materials.
173.427 Empty radioactive materials packaging.
173.431 Activity limits for Type A and Type B packages.
173.433 Requirements for determination of A_1 and A_2 values for radionuclides.
173.435 Table of A_1 and A_2 values for radionuclides.
173.441 Radiation level limitations.
173.442 Thermal limitations.
173.443 Contamination control.
173.444 Labeling requirements.
173.446 Placarding requirements.
173.447 Storage incident to transportation—general requirements.
173.448 General transportation requirements.
173.451 Fissile materials—general requirements.
173.453 Fissile materials—exceptions.
173.455 Classification of fissile materials packages.
173.457 Transportation of Fissile Class III shipments—specific requirements.
173.459 Mixing of fissile material packages.
173.461 Demonstration of compliance with tests.
173.462 Preparation of specimens for testing.
173.463 Packaging and shielding—testing for integrity.
173.465 Tests for proposed packagings designed for normal conditions of transportation.
173.466 Additional tests for Type A packagings designed for liquids and gases.
173.467 Tests for demonstrating the ability of Type B and fissile radioactive materials packagings to withstand accident conditions in transportation.
173.469 Tests for special form radioactive materials.
173.471 Requirements for U.S. Nuclear Regulatory Commission approved packages.
173.472 Requirements for exporting DOT specification Type B and fissile packages.
173.473 Requirements for foreign-made packages.
173.474 Quality control for construction of packaging.
173.475 Quality control requirements prior to each shipment of radioactive materials.
173.476 Approval of special form radioactive materials.
173.477 Approval for export shipments.
173.478 Notification to competent authorities for export shipments.

Subpart I—Radioactive Materials

§ 173.401 Scope.

(a) This subpart sets forth requirements for the transportation of radioactive materials by carriers and shippers subject to this subchapter. The requirements prescribed in this subpart are in addition to, but not in lieu of, other requirements set forth in this subchapter and in 10 CFR Part 71 for the packaging and transportation of radioactive materials.

(b) This subpart does not apply to—

(1) Radioactive materials produced, used, transported, or stored within an establishment other than during the course of transportation.

(2) Radioactive materials contained in a medical device, such as a heart pacemaker, which is implanted in a human being or live animal.

(3) Radiopharmaceuticals that have been injected into, or ingested by, and are still in human beings or live animals.

§ 173.403 Definitions.

In this subpart:

(a) "A_1" means the maximum activity of special form radioactive material permitted in a Type A package.

(b) "A_2" means the maximum activity of radioactive material, other than special form or low specific activity radioactive material, permitted in a Type A package. These values are either listed in § 173.435 or may be derived in accordance with the procedure prescribed in § 173.433.

(c) "Closed transport vehicle" means a vehicle equipped with a securely attached exterior enclosure that during normal transportation restricts the access of authorized persons to the cargo space containing the radioactive materials. The enclosure may be either temporary or permanent, and in the case of packaged materials may be of the "see-through" type, and must limit access from top, sides, and ends.

(d) "Containment system" means the components of the packaging intended to retain the radioactive contents during transportation.

(e) "Conveyance" means any vehicle, aircraft, vessel, freight container, or hold, compartment or defined deck area of an inland waterway craft or seagoing vessel.

(f) "Depleted uranium" means uranium containing less uranium-235 than the naturally occurring distribution of uranium isotopes.

(g) "Design" means the description of a special form material, a package, or a packaging, that enables those items to be fully identified. The description may include specifications, engineering drawings, reports showing compliance with regulatory requirements, and other relevent documentation.

(h) "Enriched uranium" means uranium containing more uranium-235 than the naturally occurring distribution of uranium isotopes.

(i) "Eclusive use" (also referred to in other regulations as "sole use" or "full load") means the sole use of a conveyance by a single consignor and for which all initial, intermediate, and final loading and unloading are carried out in accordance with the direction of the consignor or consignee.

(j) "Fissile material" means any material consisting of or containing one or more fissile radionuclides. Fissile radionuclides are plutonium-238, plutonium-239, plutonium-241, uranium-233 and uranium-235. Neither natural nor depleted uranium are fissile material. Fissile materials are classified according to the controls needed to provide nuclear criticality safety during transportation, as provided in § 173.455. Certain exclusions are provided in § 173.453.

(k) "Freight container" means a reusable container having a volume of 1.81 cubic meters (64 cubic feet) or more, designed and constructed to permit being lifted with its contents intact and intended primarily for containment of packages in unit form during transportation. A small freight container is one which has either one outer dimension less than 1.5 meters (4.9 feet) or an internal volume of not more than 3.0 cubic meters (106 cubic feet). All other are designated as "large freight containers."

(l) "Highway route controlled quantity" means a quantity within a single package which exceeds:

(1) 3000 times the A_1 value of the radionuclides as specified in § 173.433 for special form radioactive material;

(2) 3000 times the A_2 value of the radionuclides as specified in § 173.433 for special form radioactive material; or

(3) 30,000 curies, whichever is least.

(m) "Limited quantity of radioactive materials" means a quantity of radioactive material not exceeding the limits given in § 173.423.

(n) "Low specific activity material (LSA)" means any of the following:

(1) Uranium or thorium ores and physical or chemical concentrates of those ores.

(2) Unirradiated natural or depleted uranium or unirradiated natural thorium.

(3) Tritium oxide in aqueous solutions provided the concentration does not exceed 5.0 millicuries per milliliter.

(4) Material in which the radioactivity is essentially uniformly distributed and in which the estimated average concentration per gram of contents does not exceed:

(i) 0.0001 millicurie of radionuclides for which the A_2 quantity is not more than .05 curie;

(ii) 0.005 millicurie of radionuclides for which the A_2 quantity is more than .05 curie, but not more than 1 curie; or

(iii) 0.3 millicurie of radionuclides for which the A_2 quantity is more than 1 curie.

(5) Objects of nonradioactive material externally contaminated with radioactive material, provided that the radioactive material is not readily dispersible and the surface contamination, when averaged over an area of 1 square meter, does not exceed 0.0001 millicurie (220,000 disintegrations per minute) per square centimeter of radionuclides for which the A_2 quantity is not more than .05 curie, or 0.0001 millicurie (2,200,000 disintegrations per minute) per square centimeter for other radionuclides.

(o) "Multilateral approval" means approval by both the appropriate competent authority of the country of origin and of each country through or into which the shipment is to be transported. This definition does not imply approval from countries over which radioactive materials are carried in aircraft, if there is no scheduled stop in that country.

(p) "Natural thorium" means thorium with the naturally occuring distribution of thorium isotopes (essentially 100 weight percent thorium-232).

(q) "Natural uranium" means uranium with the naturally occuring distribution of uranium isotopes (approximately 0.711 weight percent uranium-235 and the remainder essentially uranium-238).

(r) "Non-fixed radioactive contamination" means radioactive contamination that can be readily removed from a surface by wiping with an absorbent material. Non-fixed (removable) radioactive contamination is not significant if it does not exceed the limits specified in § 173.443.

(s) "Normal form radioactive material" meams radioactive material which has not been demonstrated to qualify as "special form radioactive material."

(t) "Package" means, for radioactive materials, the packaging together with its radioactive contents as presented for transport.

(u) "Packaging" means, for radioactive materials, the assembly of components necessary to ensure compliance with the packaging requirements of this subpart. It may consist of one or more receptacles, absorbent materials, spacing structures, thermal insulation, radiation shielding, and devices for cooling or absorbing mechanical shocks. The vehicle, tie-down system, and auxiliary equipment may sometimes be designated as part of the packaging.

(v) "Radiation level" means the radiation dose-equivalent rate expressed in millirem per hour (mrem/h). Neutron flux densities may be converted into radiation levels according to Table 1:

TABLE 1.—NEUTRON FLUX DENSITIES TO BE REGARDED AS EQUIVALENT TO A RADIATION LEVEL OF 1 MILLIREM PER HOUR (MREM/H)[1]

Energy of neutron	Flux density equivalent to 1 mrem/h (Neutrons per square centimeter per second)(n/cm²/s)
Thermal	268.0
5 keV	228.0
20keV	112.0
100 keV	32.0
500 keV	12.0
1 MeV	7.2
5 MeV	7.2
10 MeV	6.8

[1] Flux densities equivalent for energies between those listed above may be obtained by linear interpolation.

(w) "Radioactive article" means any manufactured device such as an instrument, clock, electronic tube or apparatus, or similar device having radioactive material as a component part.

(x) "Radioactive contents" means the radioactive material, together with any contaminated liquids or gases, within the package.

(y)"Radioactive material" means any material having a specific activity greater than 0.002 microcuries per gram (uCi/g)(see definition of "specific activity").

(z) "Special form radioactive material" means radioactive material which satisfies the following conditions:

(1) It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(2) The piece or capsule has at least one dimension not less than 5 millimeters (0.197 inch); and

(3) It satisfies the test requirements of § 173.469. Special form encapsulations designed in accordance with the requirements of § 173.389(g) in effect on June 30, 1983, and constructed prior to July 1, 1985 may continue to be used. Special form encapsulations either designed or constructed after June 30, 1985 must meet the requirements of this paragraph.

(aa) "Specific activity" of a radionuclide, means the activity of the radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the activity per unit mass of the material.

(bb) "Transport index" means the dimensionless number (rounded up to the first decimal place) placed on the label of a package to designate the degree of control to be exercised by the carrier during transportation. The transport index is determined as follows:

(1) The number expressing the maximum radiation level in millirem per hour at one meter (3.3 feet) from the external surface of the package; or

(2) For Fissile Class II packages or packages in a Fissile Class III shipment, the number expressing the maximum radiation level at one meter (3.3 feet) from the external surface of the package, or the number obtained by dividing 50 by the allowable number of packages which may be transported together, whichever is larger.

(cc) "Type A package" means a Type A packaging together with its limited radioactive contents. A Type A package does not require competent authority approval, since its contents are limited to A_1 or A_2.

(dd) "Type B package" means a Type B packaging together with its radioactive contents.

(ee) "Type B(M)" means a Type B packaging, together with its radioactive contents, that for international shipments requires multilateral approval of the package design, and may require approval of the conditions of shipment. Type B(M) packages are those Type B package designs which have a maximum normal operating pressure of more than 7 kilograms per square centimeter (100 pounds per square inch) gauge or a relief device which would allow the release of radioactive material to the environment under the hypothetical accident conditions specified in 10 CFR Part 71.

(ff) "Type B(U) package" means a Type B packaging, together with its radioactive contents, that for international shipments, requires unilateral approval only of the package design and of any stowage provisions that may be necessary for heat dissipation.

(gg) "Type A packaging" means a packaging designed to retain the integrity of containment and shielding required by this part under normal conditions of transport as demonstrated by the tests set forth in §§ 173.465 or 173.466, as appropriate.

(hh) "Type B packaging" means a packaging designed to retain the integrity of containment and shielding required by this part when subjected to the normal conditions of transport and hypothetical accident test conditions set forth in 10 CFR Part 71.

(ii) "Uncompressed gas" means, for the purposes of this subpart, gas at a pressure not exceeding the ambient

atmospheric pressure at the time and location the containment system is closed. All other radioactive gases are considered to be compressed.

(jj) "Unilateral approval" means approval by the competent authority of the country of origin only.

(kk) "Unirradiated thorium" means thorium containing not more than 10^{-7} grams uranium-233 per gram of thorium-232.

(ll) "Unirradiated uranium" means uranium containing not more than 10^{-6} grams plutonium per gram of uranium-235 and a fission product activity of not more than 0.25 millicuries of fission products per gram of uranium-235.

§ 173.411 General design requirements.

Except for a package that contains a limited quantity or excepted device under §§ 173.421 through 173.424, each package used for shipment of radioactive materials shall be designed so that—

(a) The package can be easily handled and properly secured in or on a conveyance during transport;

(b) A package with a gross weight exceeding 10 kilograms (22 pounds) and up to 50 kilograms (110 pounds) has a means for manual handling;

(c) A package with a gross weight of 50 kilograms (110 pounds) or more can be safely handled by mechanical means;

(d) Each lifting attachment on the package, when used in the intended manner, with a minimum safety factor of three, does not impose an unsafe stress on the structure of the package. In addition, the lifting attachment shall be so designed that failure under excessive load would not impair the ability of the package to meet all other requirements of this subpart. Each attachment or other feature on the outer surface of the packaging that could be used to lift the package must be removable or otherwise capable of being made inoperable for transport, or shall be designed with strength equivalent to that required for lifting attachments;

(e) The external surface, as far as practicable, may be easily decontaminated;

(f) The outer layer of packaging will avoid, as far as practicable, pockets or crevices where water might collect; and

(g) Each feature that is added to the package at the time of transport, and that is not a part of the package, will not reduce the safety of the package.

§ 173.412 Additional design requirements for Type A packages.

In addition to meeting the general design requirements prescribed in § 173.411, each Type A packaging shall be designed so that:

(a) The smallest overall external dimension of the package is not less than 10 centimeters (4 inches);

(b) The outside of the packaging incorporates a feature, such as a seal, that is not readily breakable, and that, while intact, is evidence that the package has not been opened. In the case of packages shipped in exclusive use closed transport vehicles, the cargo compartment may be sealed instead of the individual packages;

(c) As far as practicable, the external surfaces are free from protrusions and are designed and finished so that they can be easily decontaminated;

(d) Containment and shielding would be maintained during transportation and storage in a temperature range of −40°C (−40°F) to 70°C (158°F) with account being taken of the possibility of brittle fracture;

(e) It is able to withstand the effects of any acceleration, vibration, or vibration resonance that may arise during normal transportation, without any deterioration of the effectiveness of closing devices or of the integrity of the package as a whole and without loosening or unintentional release of nuts, bolts, or other securing devices even after repeated use;

(f) It includes a containment system securely closed by a positive fastening device that cannot be opened unintentionally or by pressure that may arise within the package during normal transport. Special form, as demonstrated in accordance with § 173.469 may be considered as a component of the containment system;

(g) The materials of the packaging and any components or structures are physically and chemically compatible with each other and with the contents, taking into account the behavior of each under irradiation;

(h) For each component of the containment system account is taken, where applicable, of radiolytic decomposition of materials and the generation of gas by chemical reaction and radiolysis;

(i) The containment system will retain its radioactive contents under the reduction of ambient pressure to .25 kilograms per square centimeter (3.5 pounds per square inch);

(j) Each valve through which the radioactive contents could otherwise escape is protected against damage and unauthorized operation and, except for a pressure relief device, has an enclosure to retain any leakage;

(k) Any radiation shield that encloses a component of the packaging specified as part of the containment system will prevent the unintentional escape of that component from the shield;

(l) Failure of any tie down attachment on the packaging under excessive load will not impair the ability of the package to meet other requirements of this subpart;

(m) When subjected to the tests specified in § 173.465 or evaluated against these tests by any of the methods authorized by § 173.461(a), the packaging will prevent—

(1) Loss or dispersal of the radioactive contents; and

(2) Any significant increase in the maximum radiation level recorded or calculated at the external surface for the condition before the test;

(n) Each packaging designed for liquids will—

(1) Meet the conditions prescribed in paragraph (m) of this section when subjected to the tests specified in § 173.466 or evaluated against these tests by any of the methods authorized by § 173.461(a);

(2) For any package with a liquid volume not exceeding 50 cubic centimeters (1.7 fluid ounces), have sufficient suitable absorbent material to absorb twice the volume of the liquid contents. The absorbent material shall be compatible with the package contents and suitably positioned to contact the liquid in the event of leakage; and

(3) For any package with a liquid volume exceeding 50 cubic centimeters (1.7 fluid ounces), either;

(i) Have sufficient absorbent material as prescribed in paragraph (n)(2) of this section; or

(ii) Have a containment system composed of primary inner and secondary outer containment components designed to assure retention of the liquid contents within the secondary outer components in the event that the primary inner components leak; and

(o) Each package designed for compressed or uncompressed gases other than tritium or argon-37 not exceeding 200 curies will be able to prevent loss of contents when the package is subjected to the tests prescribed in § 173.466 or evaluated against these tests by any of the methods authorized by § 173.461(a).

§ 173.413 Requirements for Type B packages.

Each Type B(U) or Type B(M) package must be designed and constructed to meet the applicable requirements in 10 CFR Part 71.

§ 173.415 Authorized Type A packages.

The following packages are authorized for shipment, if they do not

contain quantities exceeding A_1 or A_2 as appropriate:

(a) U.S. Department of Transportation (DOT) Specification 7A (§ 178.350 of this subchapter) Type A general packaging. Each shipper of a Specification 7A package must maintain on file for at least one year after the latest shipment, and shall provide to DOT on request, a complete documentation of tests and an engineering evaluation or comparative data showing that the construction methods, packaging design, and materials of construction comply with that specification. Specification 7A packagings designed in accordance with the requirements of § 178.350 in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used. Packagings either designed or constructed after June 30, 1985, must meet the requirements of § 178.350 applicable at the time of their design or construction.

(b) DOT Specification 55 metal-encased shielded packaging constructed before April 1, 1975. Such packaging constructed after March 31, 1975 is not authorized unless it is requalified under DOT Specification 7A. Each packaging designed for liquids must also meet the requirements of § 173.412 (m) and (n). Use of this packaging as DOT Specification 55 is not authorized after June 30, 1985.

(c) Any Type B(U) or B(M) packaging, pursuant to § 173.416.

(d) Any foreign made packaging that bears the marking "Type A" and complies with the regulations of the country of origin applicable to Type A packages.

§ 173.416 Authorized Type B packages.

Each of the following packages is authorized for shipment of quantities exceeding A_1 or A_2, as appropriate:

(a) DOT Specification 55 metal-encased shielded packaging constructed before April 1, 1975, for domestic shipments only of special form radioactive materials of 300 curies or less. Such packaging constructed after March 31, 1975 may not be designated as DOT Specification 55. Use of this packaging is not authorized after June 30, 1985 unless approved in accordance with paragraph (b) of this section.

(b) Any Type B(U) or Type B(M) packaging that meets the applicable requirements in the regulations of the U.S. Nuclear Regulatory Commission (10 CFR Part 71) and that has been approved by that Commission may be shipped pursuant to § 173.471.

(c) Any type B(U) or B(M) packaging that meets the applicable requirements of the regulations of the International Atomic Energy Agency (IAEA) in its "Regulations for the Safe Transport of Radioactive Materials, Safety Series No. 6, 1973 Revised Edition (as amended)" and for which the foreign competent authority certificate has been revalidated by DOT pursuant to § 173.472. Authorized only for export and import shipments.

(d) DOT Specification 6M (§ 178.104 of this subchapter) metal packaging, only for solid or gaseous radioactive materials that will not undergo pressure generating decomposition at temperatures up to 121°C (250° F) and that do not generate more than 10 watts of radioactive decay heat.

(e) For contents in other than special form; DOT Specification 20 WC (§ 178.194 of this subchapter), wooden protective jacket, when used with a single, snug-fitting inner DOT Specification 2R (§ 178.34 of this subchapter), or a DOT Specification 55 container constructed prior to April 1, 1975. Such packagings constructed after March 31, 1975, may not be designated as DOT Specification 55. For liquid contents, the inner packaging must comply with § 173.412 (m) and (n).

(f) For contents in special form only; DOT Specification 20WC (§ 178.194 of this subchapter), wooden protective jacket, with a single snug-fitting inner Type A packaging that has a metal outer wall and conforms to § 178.350 of this subchapter, or an inner DOT Specification 55 packaging constructed prior to April 1, 1975. Such packagings constructed after March 31, 1975, may not be designated as DOT Specification 55. Radioactive decay heat may not exceed 100 watts.

(g) For contents in special form only; DOT Specification 21WC (§ 178.195 of this subchapter), wooden protective overpack, with a single inner DOT Specification 2R (§ 178.34 of this subchapter) or an inner DOT Specification 55 container constructed prior to April 1, 1975. Such packagings constructed after March 31, 1975, may not be designated as DOT Specification 55. Contents shall be loaded within the inner packaging in such a manner as to prevent loose movement during transportation. The inner packaging shall be securely positioned and centered within the overpack so that there will be no significant displacement of the inner packaging if subjected to the 9 meter (30 feet) drop test described in 10 CFR Part 71.

§ 173.417 Authorized packaging—Fissile materials.

(a) Except as provided in § 173.453, fissile materials containing not more than A_1 or A_2 as appropriate, shall be packaged in one of the following packagings:

(1) DOT Specification 6L (§ 178.103 of this subchapter), metal packaging, for materials prescribed in paragraph (b)(1) of this section.

(2) DOT Specification 6M (§ 178.104 of this subchapter), metal packaging, for materials prescribed in paragraph (b)(2) of this section.

(3) Any packaging listed in § 173.415, limited to the following radioactive materials:

(i) 500 grams of uranium-235 in a single shipment as Fissile Class III or not more than 40 grams of uranium-235 per package as Fissile Class II. For Fissile Class II shipments, the transport index assigned to each package shall not be less than 0.4 for each gram of uranium-235 above 15 grams up to the maximum of 40 grams (transport index of 10).

(ii) 320 grams of plutonium-239 as plutonium-beryllium neutron sources in special form. Total radioactivity content may not exceed 20 curies. The transport index to be assigned to each package must be 0.5 of each 20 grams, or fraction thereof, of fissile plutonium.

(4) Any other Type A or Type B packaging for fissile radioactive materials that also meets the applicable standards for fissile materials in the regulations of the U.S. Nuclear Regulatory Commission (10 CFR Part 71), and is used in accordance with § 173.471.

(5) Any other Type A or Type B packaging that also meets the applicable requirements for fissile material packaging in Section VI of the International Atomic Energy Agency "Regulations for the Safe Transport of Radioactive Materials, Safety Series No. 6, 1973 Revised Edition (as amended)", and for which the foreign competent authority certificate has been revalidated by the Associate Director for HMR, in accordance with § 173.472. Authorized only for export and import shipments.

(6) A DOT Specification 6J (§ 178.100 of this subchapter) or 17H (§ 178.118 of this subchapter) 55-gallon steel drum, subject to the following conditions:

(i) The quantity may not exceed 350 grams of uranium-235 in any non-pyrophoric form, enriched to any degree in the uranium-235 isotope.

(ii) Each drum must have a minimum 18 gauge body and bottom head and 16 gauge removable top head with one or more corrugations in the cover near the periphery.

(iii) Closure must conform to § 178.103–5(a) of this subchapter.

(iv) At least four equally spaced 12 millimeter (0.5 inch) diameter vent holes shall be provided on the sides of the drum near the top, each covered with weatherproof tape or equivalent device.

(v) Appropriate primary inner containment of the contents and sufficient packaging material, such as plastic or metal jars or cans shall be provided such that Specification 7A (§ 173.350 of this subchapter) provisions are satisfied by the inner packaging.

(vi) Each inner container shall be capable of venting if subjected to the thermal test described in 10 CFR Part 71.

(vii) Liquid contents shall be packaged in accordance with § 173.412(m) and (n).

(viii) The maximum weight of contents including internal packaging may not exceed 91 kilograms (200 pounds) with fissile material content limited as shown in Table 2:

TABLE 2.—FISSILE MATERIAL CONTENT AND TRANSPORT INDEX FOR SPECIFICATION 6J OR 17H PACKAGES

Maximum U-235 per package (grams)	Minimum transport index per package as Fissile Class II	Maximum packages per transport vehicle as Fissile Class III
350	1.8	72
300	1.0	129
250	0.5	256
200	0.3	500
150	0.1	500
100	0.1	500
50	(1)	(1)

[1] Fissile Class I.

(7) Any metal cylinder that meets the performance requirements of §§ 173.415 and 178.350 of this subchapter for Specification 7A Type A packaging may be used as a Fissile Class I package for the transport of residual "heels" of enriched solid uranium hexafluoride without a protective overpack in accordance with Table 3:

TABLE 3.—ALLOWABLE CONTENT OF URANIUM HEXAFLUORIDE (UF_6) "HEELS" IN A SPECIFICATION 7A CYLINDER

Maximum cylinder diameter		Cylinder volume		Maximum Uranium-235 enrichment (weight percent)	Maximum "heel" weight per cylinder			
					UF_6		Uranium-235	
Inches	Centimeters	Cubic Feet	Liters		kg	(lb)	kg	(lb)
5	12.7	0.311	8.8	100.0	0.045	0.1	0.031	0.07
8	20.3	1.359	39	12.5	0.227	0.5	.019	0.04
12	30.5	2.410	68	5.0	0.454	1.0	.015	0.03
30	76	25.64	725	5.0	11.3	25.0	.383	0.84
48	122	108.9 (10 ton)	3084	4.5	22.7	50	.690	1.52
		142.7 (14 ton)	4041					

(8) DOT Specifications 20PF-1, 20PF-2, or 20PF-3 (§ 178.120 of this subchapter) or Specifications 21PF-1 or 21PF-2 (§ 178.121 of this subchapter) phenolic-foam insulated overpack with snug fitting inner metal cylinders, for materials prescribed in paragraph (b)(5) of this section.

(b) Fissile radioactive materials with radioactive content exceeding A_1 or A_2 shall be packaged in one of the following packagings:

(1) DOT Specification 6L (§ 178.103 of this subchapter), metal packaging. Authorized only for uranium-235, plutonium-239 or plutonium-241, as metal, oxide, or compounds that do not decompose at temperatures up to 149°C (300°F). Radioactive decay heat output may not exceed 5 watts. Radioactive materials in normal form shall be packaged in one or more tightly sealed metal cans or polyethylene bottles within a DOT Specification 2R (§ 178.34 of this subchapter) containment vessel. Packages are authorized as Fissile Class II and III with materials limited in accordance with Table 4:

TABLE 4.—AUTHORIZED CONTENTS IN KILOGRAMS (KG) AND CONDITIONS FOR SPECIFICATION 6L PACKAGES

Uranium-235		Plutonium [1]			
H/X<3 [2]	3<H/X<10	H/X<10	10<H/X<20	Fissile class II transport index	Fissile class III maximum number of packages per transport vehicle
14	[3]3.6	2.5	2.4	1.3 1.8	80 50

[1] Plutonium solutions are not authorized.
[2] H/X is the ratio of hydrogen to fissile atoms in the inner containment with all sources of hydrogen in the containment considered.
[3] Volume not to exceed 3.6 liters.

(2) DOT Specification 6M (§ 178.104 of this subchapter), metal packaging. Authorized only for solid radioactive materials that will not decompose at temperatures up to 121°C(250°F). Radioactive decay heat output may not exceed 10 watts. Radioactive materials in other than special form shall be packaged in one or more tightly sealed metal cans or polyethylene bottles within a DOT Specification 2R (§ 178.34 of this subchapter) containment vessel. For fissile materials:

(i) Fissile Class I packages are limited to the following amounts of fissile radioactive materials: 1.6 kilograms of uranium-235; 0.9 kilograms of plutonium (except that due to the 10-watt thermal decay heat limitation, the limit for plutonium-238 is 0.02 kilograms); and 0.5 kilograms of uranium-233. The maximum ratio of hydrogen to fissile material must not exceed three, including all of the sources of hydrogen within the DOT Specification 2R containment vessel.

(ii) Maximum quantities of fissile material for Fissile Class II and Fissile Class III, and other restrictions are given in Table 5. For a Fissile Class II package, the minimum transport index to be assigned is shown in Table 5 and for a Fissile Class III shipment, the allowable number of similar packages per transport vehicle is shown. Each Fissile Class III shipment is also subject to the requirements in § 173.457. Where a maximum ratio of hydrogen to fissile material is specified in Table 5, only the hydrogen interspersed with the fissile material need be considered. For a uranium-233 shipment, the maximum inside diameter of the inner containment vessel must not exceed 12.1 centimeters (4.75 inches). Where necessary, a tight fitting steel insert shall be used to

reduce a larger diameter inner containment vessel specified in § 178.104–3(b) of this subchapter to the 12 centimeter (4.75 inch) limit.

TABLE 5.—AUTHORIZED CONTENTS FOR SPECIFICATION 6M PACKAGES[1]

Uranium-233[2]			Uranium-235[4,7]			Plutonium[2,3,4]			Fissile class II transport index	Fissile class III maximum number of packages per transport vehicle
Metal or alloy	Compounds		Metal or alloy	Compounds		Metal or alloy	Compounds			
[8] H/X=0	H/X=0	H/X<3	H/X=0	H/X=0	H/X<3	H/X=0	H/X=0	H/X<3		
3.6	4.4	2.9	7.2	7.6	5.3	3.1	4.1	3.4	0.1	1,250
[5] 4.2	5.2	3.5	8.7	9.6	6.4	3.4	4.5	4.1	0.2	625
[5] 5.2	6.8	4.5	11.2	13.9	8.3	4.2		4.5	0.5	250
			13.5	16.0	10.1	4.5			1.0	125
				26.0	16.1				5.0	25
				32.0	19.5				10.0	12

[1] Quantity in kilograms.
[2] Minimum percentage of plutonium-240 is 5 weight percent.
[3] 4.5 kilogram limitation of plutonium due to 10 watt decay heat limitation.
[4] For a mixture of uranium-235 and plutonium an equal amount of uranium-235 may be substituted for any portion of plutonium authorized.
[5] Maximum inside diameter of Specification 2R containment vessel not to exceed 12 centimeter (4.75 inch) (see par. (b)(2)(ii) of this section).
[6] Granulated or powdered metal with any particle less than 6 millimeter (0.25 inch) in the smallest dimension is not authorized.
[7] Maximum permitted uranium-235 enrichment is 93.5 percent.
[8] H/X is the ratio of hydrogen to fissile atoms in the inner containment with all sources of hydrogen in the containment considered.

(3) Type B(U) or B(M) packaging that meets the standards for packaging of fissile materials in 10 CFR Part 71, and is approved by the U.S. Nuclear Regulatory Commission in accordance with § 173.471.

(4) Type B(U) or B(M) packaging that meets the applicable requirements for fissile radioactive materials in Section VI of the IAEA "Regulations for the Safe Transport of Radioactive Materials, Safety Series No. 6, 1973 Revised Edition (as amended)" and for which the foreign competent authority certificate has been revalidated by the Associate Director for HMR in accordance with § 173.472. Authorized only for import and export shipments.

(5) DOT Specification 20PF–1, 20PF–2, or 20PF–3 (§ 178.120 of this subchapter) or Specification 21PF–1 or 21PF–2 (§ 178.121 of this subchapter) phenolic-foam insulated protective overpacks, with snugfitting inner metal cylinders meeting all of the applicable requirements of §§ 173.24, 173.411, and 173.412. Handling procedures and packaging criteria shall be in accordance with U.S. Department of Energy Report No. ORO–651 or ANSI Standard N–14.1–1971. Quantities of uranium; hexafluroide are authorized as shown in Table 6, with each package to be shipped as Fissile Class II, and assigned a minimum transport index as also shown:

TABLE 6.—AUTHORIZED QUANTITIES OF URANIUM HEXAFLUORIDE (UF_6) AS FISSILE CLASS II

Protective overpack specification number	Maximum inner cylinder diameter		Maximum weight of UF_6 contents		Maximum U–235 enrichment (weight percent)	Fissile Class II transport index
	Centimeter	Inch	Kilograms	Pounds		
20PF–1	12.7	5	25	55	100.0	0.1
20PF–2	20.3	8	116	255	12.5	4.0
20PF–3	30.5	12	209	460	5.0	1.1
21PF–1 [1]	[2] 76	[2] 30	2,247	4,950	5.0	5.0
	[3] 76	[3] 30	2,279	5,020	5.0	5.0
21PF–2 [1]	[2] 76	[2] 30	2,247	4,950	5.0	5.0
	[3] 76	[3] 30	2,279	5,020	5.0	5.0

[1] For 76 centimeter cylinders, the maximum permitted H/U atomic ratio is 0.066.
[2] Model 30A inner cylinder (Reference: ORO–651).
[3] Model 30B inner cylinder (Reference: ORO–651).

§ 173.418 Authorized packaging-pyrophoric radioactive materials.

(a) Pyrophoric radioactive materials, as referenced in § 172.101 of this subchapter, in quantities not exceeding A_2 per package shall be packaged in Type A packagings which are constructed of materials which will not react nor be decomposed by the contents. Contents must be:

(1) In solid form and must not be fissile unless excepted by § 173.453;

(2) Contained in sealed and corrosion resistant receptacles with positive closures (friction or slip-fit covers or stoppers are not authorized);

(3) Free of water and any contaminants which would increase the reactivity of the material; and

(4) Made inert to prevent self-ignition during transport by either:

(i) Mixing with large volumes of inerting materials such as graphite or dry sand, or other suitable inerting material, or blended into a matrix of hardened concrete; or

(ii) By filling the innermost receptacle with an appropriate inert gas.

(b) In addition to the applicable requirements of § 173.24 each package must be capable of passing the test conditions of § 173.465 without leakage of contents.

§ 173.419 Authorized packaging-oxidizing radioactive materials.

Certain oxidizing radioactive materials, as referenced in § 172.101 of this subchapter, and which are not fissile materials and not in quantities exceeding A_2, shall be packed in suitable inside packagings of glass, metal or compatible plastic and suitably cushioned with a material which will not react with the contents. Inner packaging and cushioning shall be enclosed within an outside packaging of wood, metal, or plastic. The package shall be capable of meeting the applicable test requirements of § 173.465 without leakage of contents. For shipment by air, the maximum quantity in any package may not exceed 11.3 kilograms (25 pounds).

§ 173.421 Limited quantities of radioactive materials.

Radioactive materials whose activity per package does not exceed the limits specified in § 173.423 are excepted from the specification packaging, marking, and labeling requirements of this subchapter and requirements of this subpart if—

(a) The materials are packaged in strong, tight packages that will not leak any of the radioactive materials during conditions normally incident to transportation;

(b) The radiation level at any point on the external surface of the package does not exceed 0.5 millirem per hour;

(c) The nonfixed (removable) radioactive surface contamination on the external surface of the package does not exceed the limits specified in § 173.443(a);

(d) The outside of the inner packaging or if there is no inner packaging, the outside of the packaging itself bears the marking "Radioactive"; and

(e) Except as provided in § 173.424, the package does not contain more than 15 grams of uranium-235.

§ 173.422 Exceptions for instruments and articles.

Instruments and manufactured articles (including clocks, electronic tubes or apparatus) or similar devices having radioactive materials in gaseous or non-dispersible solid form as a component part are excepted from the specification packaging, marking and labeling requirements of this subchapter and requirements of this subpart, if—

(a) The activity of the instrument or device does not exceed the relevant limit listed in the table in § 173.423;

(b) The total activity per package does not exceed the relevant limit listed in Table 7 in § 173.423;

(c) The radiation level at 10 centimeters (4 inches) from any point on the external surface of any unpackaged instrument or device does not exceed 10 millirem per hour;

(d) The radiation level at any point on the external surface of a package bearing the device or instrument does not exceed 0.5 millirem per hour, or, for exclusive use domestic shipments, 2 millirem per hour;

(e) The nonfixed (removable) radioactive surface contamination on the external surface of the package does not exceed the limits specified in § 173.443(a);

(f) Except as provided in § 173.424, the package does not contain more than 15 grams of uranium-235; and

(g) At least one external dimension of the package is not less than 10 centimeters (4 inches).

§ 173.423 Table of activity limits—excepted quantities and devices.

The limits applicable to instruments, devices, and limited quantities subject to exceptions under §§ 173.421 and 173.422 are shown in Table 7:

TABLE 7.—ACTIVITY LIMITS FOR LIMITED QUANTITIES, INSTRUMENTS, AND DEVICES

Nature of contents	Instruments and devices		Materials package limits
	Instrument and article limits [1]	Package limits	
Solids:			
Special form	$10^{-2}A_1$	A_1	$10^{-2}A_1$.
Other forms	$10^{-2}A_2$	A_2	$10^{-2}A_2$
Liquids:			
Tritiated water:			
<0.1 Ci/liter			1000 Curies.
0.1 Ci to 1.0 Ci/l			100 Curies.
>1.0 Ci/liter			1 Curie.
Other liquids	$10^{-3}A_1$	$10^{-1}A_1$	$10^{-2}A_2$
Gases:			
Tritium [2]	20 Curies	200 Curies	20 Curies.
Special form	$10^{-3}A_1$	$10^{-2}A_1$	$10^{-2}A_1$.
Other forms	$10^{-3}A_2$	$10^{-2}A_2$	$10^{-2}A_2$.

[1] For mixture of radionuclides see § 173.433(b).
[2] These values also apply to tritium in activated luminous paint and tritium adsorbed on solid carriers.

§ 173.424 Excepted articles containing natural uranium or thorium.

Manufactured articles in which the sole radioactive material content is natural or depleted uranium or natural thorium are excepted from the specification packaging, marking and labeling requirements of this subchapter and requirements of this subpart if—

(a) The outer surface of the uranium or thorium is enclosed in an inactive sheath made of metal or other protective material; and

(b) The conditions specified in § 173.421 (b), (c), and (d) are met.

§ 173.425 Transport requirements for low specific activity (LSA) radioactive materials.

In addition to other applicable requirements specified in this subchapter, low specific activity (LSA) materials shall be transported in accordance with paragraph (a) of this section, or if transported as exclusive-use may be transported in accordance with paragraph (b) or (c) of this section.

(a) DOT Specification 7A (§ 178.350 of this subchapter) Type A package. The requirements of § 173.412 (a), (b), (d), and (n) do not apply.

(b) Packaged shipments of LSA material consigned as exclusive use shall either be in accordance with paragraph (a) of this section or shall comply with the following in which case they are excepted from specification packaging, marking and labeling:

(1) Materials must be packaged in strong, tight packages so that there will be no leakage of radioactive material under conditions normally incident to transportation.

(2) Packages must not have any significant removable surface contamination (see § 173.443).

(3) External radiation levels must comply with § 173.441.

(4) Shipments must be loaded by consignor and unloaded by consignee from the transport vehicle in which originally loaded.

(5) There must be no loose radioactive material in the car or vehicle.

(6) Shipment must be braced so as to prevent shifting of lading under conditions normally incident to transportation.

(7) Except for shipments of unconcentrated uranium or thorium ores, the transport vehicle must be placarded with the placards prescribed in accordance with Subpart F of Part 172 of this subchapter, as appropriate.

(8) The exterior of each outside package must be stenciled or otherwise marked "Radioactive—LSA".

(9) Specific instructions for maintenance of exclusive use shipment controls must be provided by the shipper to the carrier. Such instructions must be included with the shipping paper information.

(10) Transportation by aircraft is prohibited.

(c) Unpackaged (bulk) shipments of LSA materials shall be transported only in exclusive use closed transport vehicles and shall comply with the following:

(1) Authorized materials are limited to the following:

(i) Uranium or thorium ores and physical or chemical concentrates of those ores.

(ii) Uranium metal or natural thorium metal, or alloys of these materials.

(iii) Materials of low radioactive concentration, if the average estimated radioactivity concentration does not exceed 0.001 millicurie per gram and the contribution from materials with an A_2 value (see § 173.435) of less than 0.05 curie does not exceed one percent of the total radioactivity.

(iv) Objects of nonradioactive material externally contaminated with radioactive material, if the radioactive material is not readily dispersible and the surface contamination, when averaged over one square meter, does not exceed 0.0001 millicurie per square centimeter of radionuclides for which the A_2 value is less than 0.05 or 0.0001 milicurie per square centimeter of other radionuclides. Such objects must be suitably wrapped or enclosed.

(2) Bulk liquids must be transported in the following: (i) Specification 103CW, 111A60W7 (§§ 179.200, 179.201, 179.202 of this subchapter) tank cars. Bottom openings in tanks prohibited.

(ii) Specification MC 310, MC 311, MC 312, or MC 331 (§§ 178.343 or 178.337 of this subchapter) cargo tanks. Authorized only where the radioactivity

concentration does not exceed 10 percent of the specified low specific activity levels (see § 173.403(n)). The requirements of § 173.412(n) do not apply to these cargo tanks. Bottom fittings and valves are not authorized. Trailer-on-flat-car service is not authorized.

(3) External radiation levels must comply with § 173.441(b).

(4) Shipments must be loaded by the consignor, and unloaded by the consignee from the transport vehicle in which originally loaded.

(5) Except for shipments of unconcentrated uranium or thorium ores, the transport vehicle must be placarded with the placards prescribed in Subpart F of Part 172 of this subchapter, as appropriate.

(6) There must be no leakage of radioactive materials from the vehicle.

(7) Specific instructions for maintenance of exclusive use shipment controls must be provided by the shipper to the carrier. Such instructions must be included with the shipping paper information.

(8) Transportation by aircraft is prohibited.

§ 173.427 Empty radioactive materials packaging.

Any packaging which previously contained radioactive materials and has been emptied of contents as far as practical, is excepted from marking and labeling requirements of this subchapter and from requirements of this subpart, provided that:

(a) It complies with the requirements of § 173.421(b), (c) and (e);

(b) The packaging is in unimpaired condition and is securely closed so that there will be no leakage of radioactive material under conditions normally incident to transportation;

(c) Internal contamination does not exceed 1000 times the limits specified in § 173.443, Table 10; and

(d) Any labels previously applied in conformance with Subpart E of Part 172 of this subchapter are removed, obliterated or covered and the "Empty" label prescribed in § 172.450 is affixed to the packaging.

§ 173.431 Activity for Type A and Type B packages.

(a) A Type A package shall not contain radioactive contents with an activity greater than the following, as listed in § 173.435, or for other materials as determined under § 173.433:

(1) For special form radioactive materials, A_1; or

(2) For all other radioactive materials, A_2.

(b) The limits on activity contained in a Type B(U) and Type B(M) package are those prescribed in § 173.416 or in the applicable approval recertificate under §§ 173.471 and 173.472.

§ 173.433 Requirements for determination of A_1 and A_2 values for radionuclides.

(a) *Single radionuclides.*

(1) For single radionuclides of known identity, the values of A_1 and A_2 are those given in the table in § 173.435. The values of A_1 and A_2 are also applicable for radionuclides contained in (α,n) or (γ,n) neutron sources.

(2) For any single radionuclide of known identity, which is not listed in § 173.435, the values of A_1 and A_2 shall be determined in accordance with the following:

(i) If the radionuclide emits only one type of radiation, A_1 is determined in accordance with paragraphs (A), (B), (C), and (D) of this subparagraph. For radionuclides emitting different kinds of radiation, A_1 is the most restrictive value of those determined for each kind of radiation. However, in both cases, A_1 is restricted to a maximum of 1000 curies. If a parent nuclide decays into a shorter lived daughter, of a half-life not greater than 10 days, A_1 is calculated for both the parent and the daughter, and the more limiting of the two values is assigned to the parent nuclide.

(A) For gamma emitters, A_1 is determined by the expression: $A_1 = 9\,\Gamma$ curie

where Γ is the gamma-ray constant, corresponding to the dose in roentgens per hour at 1 meter per curie; the number 9 results from the choice of 1 rem per hour at a distance of 3 meters as the reference dose-equivalent rate.

(B) For x-ray emitters, A_1 is determined by the atomic number (Z) of the nuclide:

$Z < 55$ $A_1 = 1000$ curies

for $Z > 55$ $A_1 = 200$ curies

(C) For beta emitters, A_1 is determined by the maximum beta energy (E_{max}) according to Table 8:

TABLE 8.—A_1 for Beta Emitters

E_{max} (MeV)	A_1 (curies)
<0.5	1000
0.5-<1.0	300
1.0-<1.5	100
1.5-<2.0	30
>2.0	10

(D) For alpha emitters, A_1 is determined by the expression:

$A_1 = 1000\ A_3$

where A_3 is the value listed in Table 9:

TABLE 9.—A_2 for Alpha Emitters

Atomic number	A_2		
	Half-life less than 1,000 days	Half-life 1,000 days to 10^4 years	Half-life greater than 10^4 years
1 to 81	3 curies	50 millicuries	3 curies.
82 and above.	2 millicuries	2 millicuries	3 curies.

(ii) For assignment of A_2 values, A_2 is the more restrictive of the following values:

(A) The corresponding A_1.

(B) The value A_2 obtained from Table 9.

(3) For any single radionuclide whose identity is unknown, the value of A_1 is 2 curies and the value of A_2 is 0.002 curies. However, if the atomic number of the radionuclide is less than 82, the value of A_1 is 10 curies and the value of A_2 is 0.4 curies.

(b) *Mixture of radionuclides, including radioactive decay chains.*

(1) For mixed fission products, where a detailed analysis of the mixture is not carried out, the following activity limits apply:

(i) $A_1 = 10$ curies.

(ii) $A_2 = 0.4$ curies.

(2) A single radioactive decay chain is considered to be a single radionuclide when the radionuclides are present in their naturally occurring portions and no daughter nuclide has a half-life either longer than 10 days or longer than that of the parent nuclide. The activity to be taken into account and the A_1 or A_2 value to be applied are those corresponding to the parent nuclide of that chain. When calculating A_1 or A_2 values, radiation emitted by daughters must be taken into account. However, in the case of radioactive decay chains in which any daughter nuclide has a half-life either longer than 10 days or greater than that of the parent nuclide, the parent and daughter nuclides are considered to be mixtures of different nuclides.

(3) In the case of a mixture of different radionuclides, where the identity and activity of each radionuclide is known, the permissible activity of each radionuclide $R_1, R_2, \ldots R_n$ must be such that $F_1 + F_2 + \ldots F_n$ is not greater than unity, when—

$$F_1 = \frac{\text{Total activity of } R_1}{A_1(R_1)}$$

$$F_2 = \frac{\text{Total activity of } R_2}{A_1(R_2)}$$

$$F_n = \frac{\text{Total activity of } R_n}{A_1 R_n}$$

Where $A_1 (R_1, R_2 \ldots R_n)$ is the value of A_1 or A_2 as appropriate for the nuclide $R_1, R_2 \ldots R_n$.

(4) When the identity of each radionuclide is known but the individual activities of some of the radionuclides are not known, the formula given in subparagraph (3) of this paragraph must be applied to establish the values of A_1 or A_2 as appropriate. All the radionuclides whose individual activities are not kmown (but whose total activity is known) must be classed in a single group and the most restrictive value of A_1 or A_2 applicable to any one of them shall be used as the value of A_1 and A_2 in the denominator of the fraction.

(5) Were the identity of each radionuclide is known but the individual activity of the radionuclides is not known, the most restrictive value of A_1 or A_2 applicable to any one of the radionuclides present is the applicable value.

(6) When the identity of the radionuclides is not known, the value of A_1 is 2 curies and the value of A_2 is 0.002 curies. However, if alpha emitters are known to be absent, the value of A_2 is 0.4 curies.

§ 173.434 Activity-mass relationships for uranium and natural thorium.[1]

Radioactive material	Curies per gram	Grams per curie
Uranium—(Wt% ^{235}U present):		
0.45	5.0×10^{-7}	2.0×10^{6}
0.72 (natural)	7.06×10^{-7}	1.42×10^{6}
1.0	7.6×10^{-7}	1.3×10^{6}
1.5	1.0×10^{-6}	1.0×10^{6}
5.0	2.7×10^{-6}	3.7×10^{5}
10.0	4.8×10^{-6}	2.1×10^{5}
20.0	1.0×10^{-5}	1.0×10^{5}
35.0	2.0×10^{-5}	5.0×10^{4}
50.0	2.5×10^{-5}	4.0×10^{4}
90.0	5.8×10^{-5}	1.7×10^{4}
93.0	7.0×10^{-5}	1.4×10^{4}
95.0	9.1×10^{-5}	1.1×10^{4}
Natural thorium	2.2×10^{-7}	4.6×10^{6}

[1] The figures for uranium include representative values for the activity of uranium-234 which is concentrated during the enrichment process. The activity for thorium includes the equilibrium concentration of thorium-228.

§ 173.435 Table of A_1 and A_2 values for radionuclides.

Symbol of radionuclide	Element and atomic number	A_1(Ci)	A_2(Ci)	Specific activity (Ci/g)
^{227}Ac	Actinium (89)	1000	0.003	7.2×10
^{228}Ac		10	4	2.2×10^{5}
^{105}Ag	Silver (47)	40	40	3.1×10^{4}
^{110m}Ag		7	7	4.7×10^{5}
^{111}Ag		100	20	1.6×10^{5}
^{241}Am	Americium (95)[1]	8	0.008	3.2
^{243}Am		8	0.008	1.9×10^{-4}
^{37}Ar (compressed or uncompressed)	Argon (18)	1000	1000	1.0×10^{5}
^{41}Ar (uncompressed)		20	20	4.3×10^{3}
^{41}Ar (compressed)		1	1	4.3×10^{3}
^{73}As	Arsenic (33)	1000	400	2.4×10^{4}
^{74}As		20	20	1.0×10^{5}
^{76}As		10	10	1.6×10^{5}
^{77}As		300	20	1.1×10^{5}
^{211}At	Astatine (85)	200	7	2.1×10^{5}
^{193}Au	Gold (79)	200	200	9.3×10^{5}
^{196}Au		30	30	1.2×10^{5}
^{198}Au		40	20	2.5×10^{5}
^{199}Au		200	25	2.1×10^{5}
^{131}Ba	Barium (56)	40	40	8.7×10^{4}
^{133}Ba		40	10	4.0×10^{3}
^{140}Ba		20	20	7.3×10^{4}
^{7}Be	Beryllium (4)	300	300	3.5×10^{5}
^{206}Bi	Bismuth (83)	5	5	9.9×10^{4}
^{207}Bi		10	10	2.2×10^{5}
^{210}Bi (RaD)		100	4	1.2×10^{3}
^{212}Bi		6	6	1.5×10^{5}
^{249}Bk	Berkelium (97)	1000	1	1.8×10^{3}
^{77}Br	Bromine (35)	70	25	7.1×10^{5}
^{82}Br		6	6	1.1×10^{5}
^{11}C	Carbon (6)	20	20	8.4×10^{5}
^{14}C		1000	60	4.6
^{45}Ca	Calcium (20)	1000	25	1.9×10^{4}
^{47}Ca		20	20	5.9×10^{4}
^{109}Cd	Cadmium (48)	1000	70	2.6×10^{3}
^{115m}Cd		30	30	2.6×10^{4}
^{115}Cd		80	20	5.1×10^{5}
^{139}Ce	Cerium (58)	100	100	6.5×10^{3}
^{141}Ce		300	25	2.8×10^{4}
^{143}Ce		60	20	6.6×10^{5}
^{144}Ce		10	7	3.2×10^{3}
^{249}Cf	Californium (98)	2	0.002	3.1
^{250}Cf		7	0.007	1.3×10^{3}
^{252}Cf		2	0.009	6.5×10^{3}
^{36}Cl	Chlorine (17)	300	10	3.2×10
^{38}Cl		10	10	1.3×10^{4}
^{242}Cm	Curium (96)	200	0.2	3.3×10^{3}
^{243}Cm		9	0.009	4.2×10
^{244}Cm		10	0.01	8.2×10
^{245}Cm		6	0.006	1.0×10^{-1}
^{246}Cm		6	0.006	3.6×10^{-1}
^{56}Co	Cobalt (27)	5	5	3.0×10^{4}
^{57}Co		90	90	8.5×10^{3}
^{58m}Co		1000	1000	5.9×10^{4}
^{58}Co		20	20	3.1×10^{4}
^{60}Co		7	7	1.1×10^{3}
^{51}Cr	Chromium (25)	600	600	9.2×10^{4}
^{129}Cs	Cesium (55)	40	40	7.6×10^{3}
^{131}Cs		1000	1000	1.0×10^{5}
^{134m}Cs		1000	10	7.4×10^{5}
^{134}Cs		10	10	1.2×10^{3}

Symbol of radionuclide	Element and atomic number	A_1(Ci)	A_2(Ci)	Specific activity (Ci/g)
^{135}Cs		1000	25	8.8×10^{-4}
^{136}Cs		7	7	7.4×10^{4}
^{137}Cs		30	10	9.8×10
^{64}Cu	Copper (29)	80	25	3.8×10^{4}
^{67}Cu		200	25	7.9×10^{3}
^{165}Dy	Dysprosium (66)	100	20	8.2×10^{4}
^{166}Dy		1000	200	2.3×10^{3}
^{169}Er	Erbium (68)	1000	25	8.2×10^{4}
^{171}Er		50	20	2.4×10^{4}
^{152m}Eu	Europium (63)	30	30	2.2×10^{4}
^{152}Eu		20	10	1.9×10^{3}
^{154}Eu		10	5	1.5×10^{3}
^{155}Eu		400	60	1.4×10^{3}
^{18}F	Fluorine	20	20	9.3×10^{1}
^{52}Fe	Iron (26)	5	5	7.3×10^{4}
^{55}Fe		1000	1000	2.2×10^{2}
^{59}Fe		10	10	4.9×10^{4}
^{67}Ga	Gallium (31)	100	100	6.0×10^{4}
^{68}Ga		20	20	4.0×10^{5}
^{72}Ga		7	7	3.1×10^{4}
^{153}Gd	Gadolinium (64)	200	200	3.6×10^{3}
^{159}Gd		300	20	1.1×10^{4}
^{68}Ge	Germanium (32)	20	10	7.0×10^{2}
^{71}Ge		1000	1000	1.6×10^{3}
^{3}H	Hydrogen (1) See T-Tritium			
^{181}Hf	Hafnium (72)	30	25	1.6×10^{4}
^{197m}Hg	Mercury (80)	200	200	6.6×10^{3}
^{197}Hg		200	200	2.5×10^{3}
^{203}Hg		60	25	1.4×10^{4}
^{166}Ho	Holmium (67)	30	30	6.9×10^{3}
^{123}I	Iodine (53)	50	50	1.9×10^{4}
^{125}I		1000	70	1.7×10^{1}
^{126}I		40	10	7.8×10^{3}
^{129}I		1000	2	1.6×10^{-4}
^{131}I		40	10	1.2×10^{3}
^{132}I		7	7	1.1×10^{5}
^{133}I		30	10	1.1×10^{4}
^{134}I		6	6	2.7×10^{5}
^{135}I		10	10	3.5×10^{4}
^{111}In	Indium (49)	30	25	4.2×10^{3}
^{113m}In		60	60	1.6×10^{1}
^{114m}In		30	20	2.3×10^{1}
^{115m}In		100	20	6.1×10^{2}
^{190}Ir	Iridium (77)	10	10	6.2×10^{3}
^{192}Ir		20	10	9.1×10^{2}
^{194}Ir		10	10	8.5×10^{2}
^{42}K	Potassium (19)	10	10	6.0×10^{3}
^{43}K		20	10	3.3×10^{4}
^{85m}Kr (uncompressed)	Krypton (36)	100	100	8.4×10^{3}
^{85m}Kr (uncompressed)		3	3	8.4×10^{4}
^{85}Kr (uncompressed)		1000	1000	4.0×10^{1}
^{85}Kr (compressed)		5	5	4.0×10^{3}
^{87}Kr (uncompressed)		20	20	2.8×10^{5}
^{87}Kr (uncompressed)		0.6	0.6	2.8×10^{1}
^{140}La	Lanthanum (57)	30	30	5.6×10^{3}
LSA	Low specific activity material—see § 173.403			
^{177}Lu	Lutetium (71)	300	25	1.1×10^{3}
MFP	Mixed fission products	10	0.4	
^{28}Mg	Magnesium (12)	6	6	5.2×10^{4}
^{52}Mn	Manganese (25)	5	5	4.4×10^{3}
^{54}Mn		20	20	8.3×10^{3}
^{56}Mn		5	5	2.2×10^{5}
^{99}Mo	Molybdenum (42)	100	20	4.7×10^{3}
^{13}N	Nitrogen (7)	20	10	1.5×10^{3}
^{22}Na	Sodium (11)	8	8	6.3×10^{3}
^{24}Na		5	5	6.7×10^{4}
^{93m}Nb	Niobium (41)	1000	200	1.1×10^{3}
^{95}Nb		20	20	3.9×10^{1}
^{97}Nb		20	20	2.6×10^{5}
^{147}Nd	Neodymium (60)	100	20	8.0×10^{3}
^{149}Nd		30	20	1.1×10^{5}
^{59}Ni	Nickel (28)	1000	900	8.1×10
^{63}Ni		1000	100	4.6×10
^{65}Ni		10	10	1.9×10^{5}
^{237}Np	Neptunium (93)	5	0.005	6.9×10^{-4}
^{239}Np		200	25	2.3×10^{3}
^{185}Os	Osmium (76)	20	20	7.3×10^{3}
^{191}Os		600	200	4.6×10^{4}
^{191}Os		200	200	1.2×10^{3}
^{193}Os		100	20	5.3×10^{3}
^{32}P	Phosphorus (15)	30	30	2.9×10^{3}
^{230}Pa	Protoactinium (91)	20	0.8	3.2×10^{3}
^{231}Pa		2	0.002	4.5×10^{-3}
^{233}Pa		100	100	2.1×10^{4}
^{201}Pb	Lead (82)	20	20	1.7×10^{3}
^{210}Pb		100	0.2	6.8×10
^{212}Pb		6	5	1.4×10^{3}
^{103}Pd	Palladium, (46)	1000	700	7.5×10^{3}
^{109}Pd		100	20	2.1×10^{4}
^{147}Pm	Promethium (61)	1000	25	9.4×10^{2}
^{149}Pm		100	20	4.2×10^{3}
^{210}Po	Polonium (84)	200	0.2	4.5×10^{3}
^{142}Pr	Praseodymium (59)	10	10	1.2×10^{4}
^{143}Pr		300	20	6.6×10^{1}

Symbol of radionuclide	Element and atomic number	A_1(Ci)	A_2(Ci)	Specific activity (Ci/g)
^{191}Pt	Platinum (78)	100	100	2.3×10^{3}.
^{193m}Pt		200	200	2.0×10^{4}.
^{197m}Pt		300	20	1.2×10^{3}.
^{197}Pt		300	20	8.8×10^{4}.
^{238}Pu	Plutonium (94)[1]	3	0.003	1.7×10.
^{239}Pu		2	0.002	6.2×10^{-3}.
^{240}Pu		2	0.002	2.3×10^{-1}.
^{241}Pu		1000	0.1	1.1×10^{3}.
^{242}Pu		3	0.003	3.9×10^{-3}.
^{223}Ra	Radium (88)	50	0.2	5.0×10^{3}.
^{224}Ra		6	0.5	1.6×10^{3}.
^{226}Ra		10	0.05	1.0.
^{228}Ra		10	0.05	2.3×10^{3}.
^{81}Rb	Rubidium (37)	30	25	8.2×10^{4}.
^{86}Rb		30	30	6.1×10^{4}.
^{87}Rb		Unlimited	Unlimited	6.6×10^{-4}.
Rb (natural)		Unlimited	Unlimited	1.8×10^{-6}.
^{186}Re	Rhenium (75)	100	20	1.9×10^{3}.
^{187}Re		Unlimited	Unlimited	3.8×10^{-3}.
^{188}Re		10	10	1.0×10^{-5}.
Re (natural)		Unlimited	Unlimited	2.4×10^{-6}.
^{103m}Rh	Rhodium (45)	1000	1000	3.2×10^{-1}.
^{105}Rh		200	25	8.2×10^{-5}.
^{222}Rn	Radon (86)	10	2	1.5×10^{-3}.
^{97}Ru	Ruthenium (44)	60	80	5.5×10^{-3}.
^{103}Ru		30	25	3.2×10^{-4}.
^{105}Ru		20	20	6.6×10^{-5}.
^{106}Ru		10	7	3.4×10^{-5}.
^{35}S	Sulphur (16)	1000	60	4.3×10^{3}.
^{122}Sb	Antimony (51)	30	30	3.9×10^{3}.
^{124}Sb		5	5	1.8×10^{4}.
^{125}Sb		40	25	1.4×10^{3}.
^{46}Sc	Scandium (21)	8	8	3.4×10^{3}.
^{47}Sc		200	20	8.2×10^{3}.
^{48}Sc		5	5	1.5×10^{4}.
^{75}Se	Selenium (34)	40	40	1.4×10^{3}.
^{31}Si	Silicon (14)	100	20	3.9×10^{7}.
^{147}Sm	Samarium (62)	Unlimited	Unlimited	2.0×10^{-8}.
^{151}Sm		1000	90	2.6×10.
^{153}Sm		300	20	4.4×10^{3}.
^{113}Sn	Tin (50)	60	60	1.0×10^{3}.
^{119m}Sn		100	100	4.4×10^{3}.
^{125}Sn		10	10	1.1×10^{5}.
^{85m}Sr	Strontium (38)	80	80	3.2×10^{3}.
^{85}Sr		30	30	2.4×10^{3}.
^{87m}Sr		50	50	1.2×10^{3}.
^{89}Sr		100	10	2.9×10^{3}.
^{90}Sr		10	0.4	1.5×10^{2}.
^{91}Sr		10	10	3.6×10^{4}.
^{92}Sr		10	10	1.3×10^{5}.
T (uncompressed)	Tritium (1)	1000	1000	9.7×10^{3}.
T (compressed)		1000	1000	9.7×10^{3}.
T (activated luminous paint)		1000	1000	9.7×10^{3}.
T (adsorbed on solid carrier)		1000	1000	9.7×10^{3}.
T (tritiated water)		1000	1000	9.7×10^{3}.
T (other forms)		20	20	9.7×10^{3}.
^{182}Ta	Tantalum (73)	20	20	6.2×10^{3}.
^{160}Tb	Terbium (65)	20	10	1.1×10^{4}.
^{96m}Tc	Technetium (43)	1000	1000	3.8×10^{3}.
^{96}Tc		6	6	3.2×10^{3}.
^{97m}Tc		1000	200	1.5×10^{3}.
^{97}Tc		1000	400	1.4×10^{-3}.
^{99m}Tc		100	100	5.2×10^{3}.
^{99}Tc		1000	25	1.7×10^{-2}.
^{125m}Te	Tellurium (52)	1000	100	1.8×10^{3}.
^{127m}Te		300	20	4.0×10^{3}.
^{127}Te		300	20	2.6×10^{4}.
^{129m}Te		30	10	2.5×10^{3}.
^{129}Te		100	20	2.0×10^{5}.
^{131m}Te		10	10	8.0×10^{3}.
^{132}Te		7	7	3.1×10^{3}.
^{227}Th	Thorium (90)	200	0.2	3.2×10^{3}.
^{228}Th		6	0.008	8.3×10^{1}.
^{230}Th		3	0.003	1.9×10^{-2}.
^{231}Th		1000	25	5.3×10^{3}.
^{232}Th		Unlimited	Unlimited	1.1×10^{-7}.
^{234}Th		10	10	2.3×10^{3}.
Th (natural)		Unlimited	Unlimited	2.2×10^{-7}.
Th (irradiated)[2]				
^{200}Tl	Thallium (81)	20	20	5.8×10^{4}.
^{201}Tl		200	200	2.2×10^{4}.
^{202}Tl		40	40	5.4×10^{4}.
^{204}Tl		300	10	4.3×10^{3}.
^{170}Tm	Thulium (69)	300	40	6.0×10^{3}.
^{171}Tm		1000	10	1.1×10^{4}.
^{230}U	Uranium (92)	100	0.1	2.7×10^{4}.
^{232}U		30	0.03	2.1×10.
^{233}U		100	0.1	9.5×10^{-3}.
^{234}U		100	0.1	6.2×10^{-3}.
^{235}U		100	0.2	2.1×10^{-6}.
^{236}U		200	0.2	6.3×10^{-3}.
^{238}U		Unlimited	Unlimited	3.3×10^{-7}.
U (natural)		Unlimited	Unlimited	(see § 173.434).

Symbol of radionuclide	Element and atomic number	A_1(Ci)	A_2(Ci)	Specific activity (Ci/g)
$_U$ (enriched) <20%		Unlimited	Unlimited	(see § 173.434).
20% or greater		100	0.1	(see § 173.434).
$_U$ (depleted)		Unlimited	Unlimited	(see § 173.434).
$_U$ (irradiated)[3]				
$^{48}_V$	Vanadium (23)	6	6	1.7×10^3.
$^{181}_W$	Tungsten (74)	200	100	5.0×10^3.
$^{185}_W$		1000	25	9.7×10^{-3}.
$^{187}_W$		40	20	7.0×10^3.
$^{127}_{Xe}$ (uncompressed)	Xenon (54)	70	70	2.8×10^5.
$^{127}_{Xe}$ (compressed)		5	5	2.8×10^5.
$^{131m}_{Xe}$ (compressed)		10	10	1.0×10^3.
$^{131m}_{Xe}$ (uncompressed)		100	100	1.0×10^4.
$^{133}_{Xe}$ (uncompressed)		1000	1000	1.9×10^3.
$^{133}_{Xe}$ (compressed)		5	5	1.9×10^5.
$^{135}_{Xe}$ (uncompressed)		70	70	2.5×10^5.
$^{135}_{Xe}$ (compressed)		2	2	2.5×10^3.
$^{87}_Y$	Yttrium (39)	20	20	4.5×10.
$^{90}_Y$		10	10	2.5×10^3.
$^{91m}_Y$		30	30	4.1×10^1.
$^{91}_Y$		30	30	2.5×10^4.
$^{92}_Y$		10	10	9.5×10^4.
$^{93}_Y$		10	10	3.2×10^4.
$^{169}_{Yb}$	Ytterbium (70)	80	80	2.3×10^3.
$^{175}_{Yb}$		400	25	1.8×10^4.
$^{65}_{Zn}$	Zinc (30)	30	30	8.0×10^3.
$^{69}_{Zn}$		40	20	3.3×10^5.
$^{69}_{Zn}$		300	20	5.3×10^7.
$^{93}_{Zr}$	Zirconium (40)	1000	200	3.5×10^{-2}.
$^{95}_{Zr}$		20	20	2.1×10^4.
$^{97}_{Zr}$		20	20	2.0×10^4.

[1] For shipments solely within the United States the A_1 value is 20 curies for americium and plutonium contained in Am-Be or Pu-Be neutron sources or in nuclear-powered pacemakers.
[2] The values of A_1 and A_2 must be calculated in accordance with the procedure specified in § 173.433 of this subchapter, taking into account the activity of the fission products and of the uranium-233 in addition to that of the thorium.
[3] The values of A_1 and A_2 must be calculated in accordance with the procedure specified in § 173.433 of this subchapter, taking into account the activity of the fission products and plutonium isotopes in addition to that of the uranium.

§ 173.441 Radiation level limitations.

(a) Except as provided in paragraph (b) of this section, each package of radioactive materials offered for transportation shall be designed and prepared for shipment so that under conditions normally incident to transportation the radiation level does not exceed 200 millirem per hour at any point on the external surface of the package, and the transport index does not exceed 10.

(b) Except for shipments by air, a shipment which exceeds the radiation level limits specified in paragraph (a) of this section, may be transported as an exclusive use shipment if the radiation level does not exceed any of the following at any time during transportation:

(1) 200 millirem per hour on the accessible external surface of the package unless the following conditions are met, in which case the limit is 1000 millirem per hour:

(i) The shipment is made in a closed transport vehicle;

(ii) Provisions are made to secure the package so that its position within the vehicle remains fixed during transportation; and

(iii) There are no loading or unloading operations between the beginning and end of the transportation;

(2) 200 millirem per hour at any point on the outer surface of the vehicle, including the upper and lower surfaces, or, in the case of an open vehicle, at any point on the vertical planes projected from the outer edges of the vehicle, on the upper surface of the load, and on the lower external surface of the vehicle;

(3) 10 millirem per hour at any point 2 meters (6.6 feet) from the vertical planes represented by the outer lateral surfaces of the vehicle, or, in the case of an open vehicle, at any point 2 meters from the vertical planes projected from the outer edges of the conveyance; and

(4) 2 millirem per hour in any normally occupied position in the car or vehicle, except that this provision does not apply to private motor carriers when the personnel are operating under a radiation protection program and wear radiation exposure monitoring devices.

(c) For shipments made under the provisions of paragraph (b) of this section, the shipper shall provide specific written instructions for maintenance of the exclusive use shipment controls to the carrier. The instructions shall be included with the shipping paper information.

§ 173.442 Thermal limitations.

Each package of radioactive material shall be designed, constructed, and loaded so that—

(a) The heat generated within the package because of the radioactive contents will not, at any time during transportation, affect the integrity of the package under conditions normally incident to transportation; and

(b) The temperature of the accessible external surfaces of the loaded package will not, assuming still air in the shade at an ambient temperature of 38° C (100° F), exceed either—

(1) 50°C (122°F) in other than an exclusive use shipment; or

(2) 82°C (180°F) in an exclusive use shipment.

§ 173.443 Contamination control.

(a) The level of non-fixed (removable) radioactive contamination on the external surfaces of each package offered for shipment shall be kept as low as practicable. The level of non-fixed radioactive contamination may be determined by wiping an area of 300 square centimeters of the surface concerned with an absorbent material, using moderate pressure, and measuring the activity on the wiping material. Sufficient measurements shall be taken in the most appropriate locations to yield a representative assessment of the non-fixed contamination levels. Except as provided in paragraph (b) of this section, the amount of radioactivity measured on any single wiping material when averaged over the surface wiped shall not exceed the limits given in Table 10 at any time during transport. Other methods of assessment of equal or greater efficiency may be used. When other methods are used the detection efficiency of the method used shall be taken into account and in no case shall the non-fixed contamination on the external surfaces of the package exceed ten times the limits listed in Table 10.

TABLE 10.—REMOVABLE EXTERNAL RADIOACTIVE CONTAMINATION LIMITS

Contaminant	Maximum permissible limits	
	uCi/cm²	dpm/cm²
Beta-gamma emitting radionuclides; all radionuclides with half-lives less than ten days; natural uranium; natural thorium; uranium-235; uranium-238; thorium-232; thorium-228 and thorium-230 when contained in ores or physical concentrates	10^{-5}	22
All other alpha emitting radionuclides	10^{-6}	2.2

(b) Except as provided in paragraph (d) of this section, in the case of packages transported as exclusive use shipments by rail or highway only, the removable (non-fixed) radioactive contamination at any time during transport shall not exceed ten times the levels prescribed in paragraph (a) of this section.

(c) Except as provided in paragraph (d) of this section, each transport vehicle used for transporting radioactive materials as an exclusive use shipment which utilizes the provisions of paragraph (b) of this section shall be surveyed with appropriate radiation detection instruments after each use. A vehicle shall not be returned to service until the radiation dose rate at each accessible surface is 0.5 millirem per hour or less, and there is no significant removable (non-fixed) radioactive surface contamination as specified in paragraph (a) of this section.

(d) Paragraph (b) and (c) of this section do not apply to any closed transport vehicle used solely for the transportation of radioactive material packages with contamination levels that do not exceed 10 times the levels prescribed in paragraph (a) of this section if—

(1) A survey of the interior surfaces of the empty vehicle shows that the radiation dose rate at any point does not exceed 10 millirem per hour at the surface or 2 millirem per hour at 1 meter (3.3. feet) from the surface;

(2) Each vehicle is stenciled with the words "For Radioactive Materials Use Only" in letters at least 76 millimeters (3 inches) high in a conspicuous place on both sides of the exterior of the vehicle; and

(3) Each vehicle is kept closed the except for loading or unloading.

§ 173.444 Labeling requirements.

Each package of radioactive materials, unless excepted by §§ 173.421, 173.422, 173.424, 173.425(b), or 173.427 shall be labeled as provided in Subpart E of Part 172 of this subchapter.

§ 173.446 Placarding requirements.

See Subpart F of Part 172 of this subchapter.

§ 173.447 Storage incident to transportation-general requirements.

The following requirements apply to temporary storage during the course of transportation but not to Nuclear Regulatory Commission or Agreement State licensed facilities or U.S. Government owned or contracted facilities.

(a) The number of packages bearing Radioactive Yellow II or Radioactive Yellow III labels stored in any one storage area, such as a transit area, terminal building, store-room, or assembly yard, shall be limited so that the sum of the transport indexes in any individual group of packages does not exceed 50. Groups of these packages must be stored so as to maintain a spacing of at least 6 meters (20 feet) from other groups of packages containing radioactive materials.

(b) Mixing of different kinds of packages, including Fissile Class I packages with Fissile Class II packages, is authorized in accordance with § 173.459 of this subchapter.

§ 173.448 General transportation requirements.

(a) Each shipment of radioactive materials shall be secured in order to prevent shifting during normal transportation conditions.

(b) Except as may be specifically required by the competent authority in the applicable certificate, a package of radioactive materials may be carried among packaged general cargo without special stowage provisions, if:

(1) The heat output in watts does not exceed 0.1 times the minimum package dimension in centimeters; or

(2) The average surface heat flux of the package does not exceed 15 watts per square meter and the immediately surrounding cargo is not in sacks or bags or otherwise in a form that would seriously impede air circulation for heat removal.

(c) Packages bearing labels prescribed in § 172.403 of this subchapter may not be carried in compartments occupied by passengers, except in those compartments exclusively reserved for couriers accompanying those packages.

(d) Mixing of different kinds of packages, including Fissile Class I packages with Fissile Class II packages, is authorized in accordance with § 173.459.

(e) No person shall offer for transportation aboard a passenger-carrying aircraft any single package with a transport index greater than 3.0 or an overpack with a transport index greater than 3.0.

(f) No person shall offer for transportation aboard a passenger carrying aircraft any radioactive material unless that material is intended for use in, or incident to, research, or medical diagnosis or treatment, or is excepted under the provisions of § 175.10 of this subchapter.

(g) If an overpack is used to consolidate individual packages of radioactive materials, the packages shall comply with the packaging, marking, and labeling requirements of this subchapter, and the following:

(1) The overpack shall be labeled as prescribed in § 172.403 of this subchapter except as follows:

(i) the "contents" entry on the label may state "mixed" unless each inside package contains the same radionuclide(s).

(ii) The "number of curies" entry on the label must be determined by adding together the number of curies of the radioactive materials packages contained therein.

(iii) For a non-rigid overpack, the required label together with required package markings shall be affixed to the overpack by means of a securely attached, durable tag. The transport index shall be determined by adding together the transport indexes of the radioactive materials packages contained therein.

(iv) For a rigid overpack, the transport index shall be determined by—

(A) Adding together the transport indexes of the radioactive materials packages contained in the overpack; or

(B) Except for fissile radioactive materials, direct measurements as prescribed in § 173.403(bb) which have been taken by the person initially offering the packages contained within the overpack for shipment.

(2) The overpack shall be marked as prescribed in Subpart D of Part 172 of this subchapter and § 173.25(a).

(3) The transport index of the overpack shall not exceed 3.0 for passenger-carrying aircraft shipments, or 10.0 for cargo-only aircraft shipments.

§ 173.451 Fissile materials—general requirements.

(a) Except as provided in § 173.453, each package containing fissile radioactive materials must comply with §§ 173.451 through 173.459.

§ 173.453 Fissile materials—exceptions.

The requirements of §§ 173.451 through 173.459 do not apply to—

(a) A package containing not more than 15 grams of fissile radionuclides. If

the material is transported in bulk, the quantity limitation applies to the conveyance;

(b) A package containing irradiated natural or depleted uranium including the products of irradiation if the irradiation has taken place only in the thermal reactor;

(c) A package containing homogeneous solutions or mixtures where:

(1) The minimum ratio of the number of hydrogen atoms to the number of atoms of fissile radionuclides (H/X) is 5200;

(2) The maximum concentration of fissile radionuclides is 5 grams per liter; and

(3) The maximum mass of fissle radionuclides in the package is 500 grams, except for a mixture where the total mass of plutonium and uranium-233 does not exceed 1% of the mass of uranium-235 the limit is 800 grams. If the material is transported in bulk, the quantity limitations apply to the conveyance;

(d) A package containing uranium enriched in uranium-235 to a maximum of 1% by weight, and with a total plutonium and uranium-233 content of up to 1% of the mass of uranium-235, if the fissile radionuclides are distributed homogeneously throughout the package contents, and do not form a lattice arrangement within the package;

(e) A package containing any fissile material if it does not contain more than 5 grams of fissile radionuclides in any 10-liter volume, and if the material is packaged so as to maintain this limit of fissile radionuclide concentration during normal transport;

(f) A package containing not more than one kilogram of plutonium of which not more than 20% by mass may consist of plutonium-239, plutonium-241, or any combination of those radionuclides;

(g) A package containing liquid solutions of uranyl nitrate enriched in uranium-235 to a maximum of 2% by weight, with total plutonium and uranium-233 not more than 0.1% of the mass of uranium-235; or

(h) A package containing thorium or uranium with not more than 0.72% by weight of fissile material used for shipment solely within the United States.

§ 173.455 Classification of fissile materials packages.

(a) Except as provided in § 173.453, each package of fissile materials shall be classified as follows:

(1) *Fissile Class I.* Packages that may be transported in unlimited number, and in any arrangement, and that require no nuclear criticality safety controls during transportation. A transport index is not assigned to Fissile Class I packages for the purposes of nuclear criticality safety control, although, the external radiation levels may require a transport index number.

(2) *Fissile Class II.* Packages that may be transported together in any arrangement but in numbers that do not exceed an aggregate transport index of 50. For the purposes of nuclear criticality safety control, individual packages may have a transport index of not less than 0.1 and not more than 10. However, the external radiation levels may require a higher transport index number. These shipments require no nuclear criticality safety control by the shipper during transportation.

(3) *Fissile Class III.* Shipments of packages of fissile materials that do not meet the requirements of Fissile Class I or Fissile Class II and that are controlled in transportation as prescribed in § 173.457 by appropriate arrangements between the shipper and the carrier.

(b) The numerical values for package assignments as Fissile Class I, the transport indexes for Fissile Class II packages, and the vehicle limitations for Fissile Class III shipments shall be determined in accordance with 10 CFR Part 71.

§ 173.457 Transportation of Fissile Class III shipments-specific requirements.

(a) Fissile Class III shipments shall incorporate transportation controls which are performed by the shipper or carrier, as appropriate, and which:

(1) Provide nuclear criticality safety;

(2) Protect against loading, storing, or transporting that shipment with any other fissile material; and

(3) Include in the shipping papers the description required by § 172.203(d) of this subchapter.

(b) Fissile Class III shipments shall be transported:

(1) In a transport vehicle assigned to the exclusive use of the shipper with a specific restriction for the exclusive use to be provided in the appropriate arrangements between shipper and carrier and with instructions to that effect issued with the shipping papers;

(2) Except for shipments by aircraft, with an escort in a vehicle having the capability, equipment, authority, and instructions to provide administrative controls necessary to assure compliance with this section;

(3) In a transport vehicle containing no other packages of radioactive material that are required to bear one of the labels prescribed in § 172.403 of this subchapter. Specific arrangements must be made between the shipper and the carrier, with instructions to that effect issued with the shipping papers; or

(4) Under any other procedure specifically authorized by the Associate Director for HMR in accordance with Part 107 of this subchapter.

§ 173.459 Mixing of fissile material packages.

Shipments of fissile materials packages and the commingling of fissile materials packages with other radioactive materials packages shall be in accordance with the provisions of this section.

(a) Mixing of fissile material packages with other types of radioactive materials, including Fissile Class I with Fissile Class II packages is authorized if the total transport index in any transport vehicle or storage location does not exceed 50.

(b) For Fissile Class II packages shipped under the exclusive use provisions of § 173.441(b), the transport index number which is calculated for nuclear criticality control purposes shall not exceed 10 for any single package nor a total of 50 for the load.

(c) Fissile Class II packages may be shipped with an external radiation level greater than 10 millirem per hour at 1 meter (3.3 feet), and combined with other packages of the same or different designs in a Fissile Class III shipment, under the conditions prescribed in § 173.457, if:

(1) Each package in the shipment has been assigned a transport index for criticality control purposes in accordance with the Fissile Class II criteria;

(2) The transport index which has been assigned in the package approval for nuclear criticality control purposes does not exceed 10 for any single package;

(3) The total transport index for nuclear criticality control purposes does not exceed 100 for all packages in the shipment;

(4) The shipment complies with § 173.441(b); and

(5) The shipment is not transported by vessel.

(d) A Fissile Class III shipment of packages may be combined with other packages of the same or different design when each package has been assigned a transport index for nuclear criticality control purposes in accordance with Fissile Class II criteria, and may be combined with Fissile Class II packages into a Fissile Class III shipment under the conditions prescribed in § 173.457, if:

(1) The transport index which has been assigned in the package approval for nuclear criticality control purposes

does not exceed 50 for any single package;

(2) The total transport index for nuclear criticality control purposes for all packages in the shipment does not exceed 100;

(3) The shipment satisfies the provisions of § 173.441(b) if any package has a radiation level exceeding 10 millirem per hour at 1 meter (3.3 feet) from any accessible external surface of the package; and

(4) The shipment is not transported by vessel.

§ 173.461 Demonstration of compliance with tests.

(a) Compliance with the test requirements in §§ 173.463 through 173.469 shall be shown by any of the methods prescribed in this paragraph, or by a combination of these methods appropriate for the particular feature being evaluated:

(1) By performance of tests with prototypes or samples of the packaging as normally presented for transportation, in which case the contents of the packaging for the test shall simulate as closely as practicable the expected normal radioactive contents;

(2) By reference to a previous, satisfactory demonstration of compliance of a sufficiently similar nature;

(3) By performance of tests with models of appropriate scale incorporating those features that are significant with respect to the item under investigation, when engineering experience has shown results of those tests to be suitable for design purposes. When a scale model is used, the need for adjusting certain test parameters, such as the penetrator diameter or the compressive load, must be taken into account; or

(4) By engineering evaluation or comparative data.

(b) With respect to the initial conditions for the tests under §§ 173.463 through 173.469, except for the water immersion tests, compliance shall be based upon the assumption that the package is in equilibrium at an ambient temperature of 38°C (100°F).

§ 173.462 Preparation of specimens for testing.

(a) Each specimen (i.e., sample, prototype or scale model) shall be examined before testing to identify and record faults or damage, including:

(1) Divergence from the specifications or drawings;

(2) Defects in construction;

(3) Corrosion or other deterioration; and

(4) Distortion of features.

(b) Any deviation found under paragraph (a) of this section from the specified design shall be corrected or suitably taken into account in the subsequent evaluation.

(c) The containment system of the packaging shall be clearly specified.

(d) The external features of the specimen shall be clearly identified so that reference may be made to any part of it.

§ 173.463 Packaging and shielding—testing for integrity.

After each of the applicable tests specified in § 173.465 and § 173.466, the integrity of the packaging, or of the packaging and its shielding, shall be retained to the extent required by § 173.412(m) for the packaging being tested.

§ 173.465 Tests for proposed packagings designed for normal conditions of transportation.

(a) The proposed packaging must be capable of withstanding the tests prescribed in this section. One prototype may be used for all tests if the requirements of paragraph (b) of this section are complied with.

(b) *Water spray test.* The water spray test must precede each test or test sequence prescribed in this section. The water spray test shall simulate exposure to rainfall of approximately 5 centimers (2 inches) per hour for at least one hour. The time interval between the end of the water spray test and the beginning of the next test shall be such that the water has soaked-in to the maximum extent without appreciable drying of the exterior of the specimen. In the absence of evidence to the contrary, this interval may be assumed to be two hours if the water spray is applied from four different directions simultaneously. However, no time interval may elapse if the water spray is applied from each of the four directions consecutively.

(c) *Free drop test.* The free drop test consists of a fall onto the target in a manner that causes maximum damage to the safety features being tested, and:

(1) For packages weighing 5,000 kilograms (11,000) pounds) or less, the distance of the fall measured from the lowest point of the packaging to the upper surface of the target shall not be less than 1.2 meters (4 feet).

(2) For packages weighing more than 5,000 kilograms (11,000 pounds), the distance of the fall shall not be less than the distance specified in Table 11, for the applicable packaging weight:

TABLE 11.—FREE-FALL DISTANCE FOR PACKAGINGS WEIGHING MORE THAN 5,000 KILOGRAMS

Packaging weight		Free-fall distance	
Kilograms	Pounds	Feet	Meters
5,000 to 10,000	11,000 to 22,000	3	0.9
10,000 to 15,000	22,000 to 33,000	2	0.6
More than 15,000	More than 33,000	1	0.3

(3) For Fissile Class II packagings, the free drop specified in subparagraph (1) or (2) of this paragraph shall be preceded by a free drop from a height of .3 meter (1 foot) on each corner. For cylindrical packagings, the .3 meter (1 foot) drop shall be onto each of the quarters of each rim.

(4) For fiberboard or wood rectangular packages not exceeding 50 kilograms (110 pounds) in weight, a separate specimen of the proposed packaging shall be subjected to a free drop onto each corner from a height of .3 meter (1 foot).

(5) For fiberboard cylindrical packages weighing not more than 100 kilograms (220 pounds) a separate specimen of the proposed packaging shall be subjected to a free drop onto each of the quarters of each rim from a height of .3 meter (1 foot).

(6) The target shall have a flat, horizontal surface of such mass and rigidity that any increase in its resistance to displacement or deformation upon impact by the specimen would not significantly increase the damage to the specimen.

(d) *Compression test.* The compression test shall last for a period of at least 24 hours and consists of a compressive load equivalent to the greater of the following:

(1) Five times the weight of the actual package; or

(2) 1300 kilograms per square meter (225 pounds per square foot) multiplied by the vertically projected area of the package. The compressive load shall be applied uniformly to two opposite sides of the packaging specimen, one of which must be the base on which the package would normally stand.

(e) *Penetration test.* For the penetration test the packaging specimen shall be placed on a rigid, flat, horizontal surface that will not move while the test is being performed. The test shall consist of:

(1) A bar of 3.2 centimeters (1.25 inches) in diameter with a hemispherical end, weighing 6 kilograms (13.2 pounds) being dropped with its longitudinal axis vertical, onto the center of the weakest part of the packaging specimen, so that, if it penetrates far enough, it will hit the

containment system. The bar must not be deformed by the test; and

(2) The distance of the fall of the bar measured from its lower end to the upper surface of the packaging specimen shall not be less than 1 meter (3.3 feet).

§ 173.466 Additional tests for Type A packagings designed for liquids and gases.

(a) In addition to the tests prescribed in § 173.465, Type A packagings designed for liquids and gases shall be capable of withstanding the following tests:

(1) *Free drop test.* The packaging specimen shall fall onto the target in a manner which will cause it to suffer the maximum damage to its containment. The distance of the fall measured from the lowest part of the packaging specimen to the upper surface of the target shall be not less than 9 meters (30 feet).

(2) *Penetration test.* The specimen must be subjected to the test specified in § 173.465(e) except that the distance of the fall shall be 1.7 meters (5.5 feet).

§ 173.467 Tests for demonstrating the ability of Type B and fissile radioactive materials packagings to withstand accident conditions in transportation.

Each Type B packaging or packaging for fissile material shall meet the test requirements prescribed in 10 CFR Part 71 for ability to withstand accident conditions in transportation.

§ 173.469 Tests for special form radioactive materials.

(a) Special form radioactive materials must meet the test requirements of paragraph (b) of this section. Each solid radioactive material or capsule specimen to be tested shall be manufactured or fabricated so that it is representative of the actual solid material or capsule which will be transported with the proposed radioactive content duplicated as closely as practicable. Any differences between the material to be transported and the test material shall be taken into account. In addition:

(1) A different specimen may be used for each of the tests;

(2) The specimen must not break or shatter when subjected to the impact, percussion, or bending tests;

(3) The specimen must not melt or disperse when subjected to the heat test; and

(4) After each test, leaktightness or indispersibility of the specimen shall be determined by a method no less sensitive than the leaching assessment prescribed in paragraph (c) of this section. For a capsule resistant to corrosion by water, and which has an internal void volume greater than 0.1 milliliters, an alternative to the leaching assessment is a demonstration of leaktightness of 10^{-4} torr-1/s (1.3×10^{-4} atm-cm^3/s) based on air at 25°C (77°F) and one atmosphere differential pressure for solid radioactive content, or 10^{-6} torr-1/s (1.3×10^{-6} atm-cm^3/s) for liquid or gaseous radioactive content.

(b) *Test methods:*

(1) *Impact Test.* The specimen must fall onto the target from a height of not less than 9 meter (30 feet). The target must be as specified in § 173.465(c)(6);

(2) *Percussion Test.* (i) The specimen shall be placed on a sheet of lead that is supported by a smooth solid surface, and be struck by the flat face of a steel billet so as to produce an impact equivalent to that resulting from a free fall of 1.4 kilograms (3 pounds) through 1 meter (3.3 feet);

(ii) The flat face of the billet shall be 25 millimeters (1 inch) in diameter with the edges rounded off to a radius of 3 millimeters ±0.3 millimeters (.12 inch ±.012 inch);

(iii) The lead shall be of a hardness within 3.5 to 4.5 on the Vickers scale, and not more than 25 millimeters (1 inch) thick, and shall cover an area greater than that covered by the specimen;

(iv) A fresh surface to lead shall be used for each impact; and

(v) The billet must strike the specimen in a manner that causes maximum damage.

(3) *Bending test.* (i) This test applies only to long, slender sources with a length of 10 centimeters (4 inches) or more and with a length at least 10 times the minimum width;

(ii) The specimen must be securely clamped in a horizontal position so that one half of its length protrudes from the face of the clamp;

(iii) The position of the specimen must be such that it will suffer maximum damage when its free end is struck by the flat face of a steel billet;

(iv) The billet must strike the specimen in a manner that produces an impact equivalent to that resulting from a free vertical fall of 1.4 kilograms (3 pounds) through 1 meter (3.3 feet); and

(v) The flat face of the billet must be 25 millimeters (1 inch) in diameter with the edges rounded off to a radius of 3 millimeters (.12 inch) ±0.3 millimeters (.012 inch).

(4) *Heat test.* The specimen shall be heated in air to a temperature of not less than 800°C (1472°F), held at that temperature for a period of 10 minutes, and then allowed to cool.

(c) *Leaching assessment methods.* (1) For indispersible solid material—(i) The specimen shall be immersed for seven days in water at ambient temperature. The water must have a pH of 6–8 and a maximum conductivity of 10 micromho per centimeter at 20°C (68°F);

(ii) The water and specimen shall then be heated to a temperature of 50°C±5° (122°F±9°) and maintained at this temperature for four hours;

(iii) The activity of the water shall then be determined;

(iv) The specimen shall then be stored for at least seven days in still air with humidity not less than 90 percent at 30°C (86°F);

(v) The specimen shall then be immersed in water with the same pH and maximum conductivity specifications as in subparagraph (1)(i) of this paragraph. The water and specimen must be heated to 50°C±5° (122°F±9°) and maintained at that temperature for four hours;

(vi) The activity of the water shall then be determined. The activities determined in subparagraph (1)(iii) and this subparagraph shall not exceed 0.05 microcuries.

(2) For encapsulated material—(i) The specimen shall be immersed in water at ambient temperature. The water must have a pH of 6–8 and a maximum conductivity of 10 micromho per centimeter. The water and specimen shall be heated to a temperature of 50°C±5° (122°F±9°) and maintained at this temperature for four hours;

(ii) The activity of the water shall then be determined;

(iii) The specimen shall then be stored for at least seven days in still air at a temperature not less than 30°C (86°F);

(iv) Step (i) shall be repeated; and

(v) The activity of the water shall be determined. The activities determined in paragraph (c)(2)(ii) and this paragraph (c)(2)(v) shall not exceed 0.05 microcuries.

§ 173.471 Requirements for U.S. Nuclear Regulatory Commission approved packages.

In addition to the applicable requirements of the U.S. Nuclear Regulatory Commission (USNRC) and Parts 171–177 of this subchapter, any shipper of a Type B or fissile material package that has been approved by the USNRC in accordance with 10 CFR Part 71 shall also comply with the following requirements:

(a) The shipper shall be registered with the USNRC as a party to the approval, and the shipment must be made in compliance with the terms of the approval;

(Approved by the Office of Management and Budget under OMB control number 2137-0512)

(b) The outside of each package shall be durably and legibly marked with the package identification marking indicated in the USNRC approval;

(c) Each shipping paper related to the shipment of the package shall bear the package identification marking indicated in the USNRC approval;

(d) Before the first export shipment of the package, the shipper shall obtain a U.S. Competent Authority Certificate for that package design or if one has already been issued, the shipper shall register with the U.S. Competent Authority as a user of the certificate. Upon registration as a user of the certificate the shipper will be furnished with a copy of it. The shipper shall then submit a copy of the U.S. Competent Authority Certificate applying to that package design to the national competent authority of each country into or through which the package will be transported, unless a copy has already been furnished;

(Approved by the Office of Management and Budget under OMB control numbers 2137-0514 and 2137-0515)

(e) The U.S. Competent Authority responsible for administering the requirements of Section VIII of the IAEA "Regulations for the Safe Transport of Radioactive Materials, Safety Series No. 6, 1973 Revised Edition (as amended)," is the—

Materials Transportation Bureau, Office of Hazardous Materials Regulation (OHMR), U.S. Department of Transportation, Washington, D.C. 20590.

(f) Each request for a U.S. Competent Authority Certificate as required by the IAEA regulations shall be submitted in writing to the address set forth in paragraph (e) of this section. The request shall be in duplicate and include copies of the applicable USNRC approval and a reproducible drawing showing the make-up of the package. Each request is considered in the order in which it is received. To allow sufficient consideration by OHMR, requests should be received at least 45 days before the requested effective date; and

(Approved by the Office of Management and Budget under OMB control number 2137-0514)

(g) Import and export shipments may be made in accordance with § 171,12 of this subchapter.

§ 173.472 Requirements for exporting DOT specification Type B and fissile packages.

(a) Any shipper who exports a DOT specification Type B or fissile material package authorized by §§ 173.416 or 173.417 shall comply with paragraphs (b) through (f) of this section.

(b) The shipper shall register with the U.S. Competent Authority as a user of the appropriate U.S. Competent Authority Certificate and the shipment shall be made in accordance with the certificate;

(Approved by the Office of Management and Budget under OMB control number 2137-0515)

(c) The outside of each package must be durably and legibly marked with the package identification marking indicated in the U.S. Competent Authority Certificate;

(d) Each shipping paper related to the shipment of the package must bear the package identification marking indicated in the U.S. Competent Authority Certificate;

(e) Before the first export shipment of the package, the shipper must submit a copy of the U.S. Competent Authority Certificate applying to that package design to the national competent authority of each country into or through which the package will be transported, unless a copy has already been furnished; and

(Approved by the Office of Management and Budget under OMB control number 2137-0515)

(f) Import and export shipments may be made in accordance with § 171.12 of this subchapter.

§ 173.473 Requirements for foreign-made packages.

In addition to the applicable requirements of Parts 171 through 177 of this subchapter, each shipper of a foreign-made Type B or fissile material package for which a competent authority certificate is required by the IAEA "Regulations for the Safe Transport of Radioactive Materials, Safety Series No. 6, 1973 Revised Edition (as amended)" shall also comply with the following requirements:

(a) Prior to the first shipment of such a package of radioactive materials into or from the U.S., the shipper shall:

(1) Have the foreign competent authority certificate revalidated by the U.S. Competent Authority, unless this has been done previously. The request must be in duplicate and contain all the information required by Section VIII of the IAEA regulations. Each request is considered in the order in which it is received. To allow sufficient consideration by OHMR, requests should be received at least 45 days before the requested effective date;

(2) Submit a copy in English of the foreign competent authority certificate with the request for revalidation;

(3) Register its identity in writing with the U.S. Competent Authority as a user of the package covered by the foreign competent authority certificate and its revalidation. If the shipper is requesting the revalidation, this is automatically done by OHMR; and

(4) Supply to the carrier, upon request, the applicable competent authority certificates. However, the competent authority certificates are not required to accompany the packages to which they apply.

(Approved by the Office of Management and Budget under OMB control number 2137-0517.)

(b) The outside of each package shall be durably and legibly marked with the same competent authority identification marking indicated on the competent authority certificate and revalidation;

(c) Each shipping paper for a shipment of radioactive materials shall bear a notation of the package identification marking indicated on the competent authority certificate or revalidation; and

(d) Import and export shipments may be made in accordance with § 171.12 of this subchapter.

§ 173.474 Quality control for construction of packaging.

(a) Prior to the first use of any packaging for the shipment of radioactive material, the shipper shall determine, that—

(1) The packaging meets the quality of design and construction requirements as specified in this subchapter; and

(2) The effectiveness of the shielding, containment, and, when required, the heat transfer characteristics of the package, are within the limits specified for the package design.

§ 173.475 Quality control requirements prior to each shipment of radioactive materials.

Before each shipment of any radioactive materials package, the shipper shall ensure by examination or appropriate tests, that—

(a) The packaging is proper for the contents to be shipped;

(b) The packaging is in unimpaired physical condition, except for superficial marks;

(c) Each closure device of the packaging, including any required gasket, is properly installed, secured, and free of defects;

(d) For fissile material, each moderator and neutron absorber, if required, is present and in proper condition;

(e) Each special instruction for filling, closing, and preparation of the

packaging for shipment has been followed;

(f) Each closure, valve, or other opening of the containment system through which the radioactive content might escape is improperly closed and sealed;

(g) Each packaging containing liquid in excess of an A_2 quantity and intended for air shipment has been tested to show that it will not leak under an ambient atmospheric pressure of not more than 0.25 atmosphere, absolute, (0.25 kilograms per square centimeter or 3.6 psia). The test must be conducted on the entire containment system, or on any receptacle or vessel within the containment system, to determine compliance with this requirement;

(h) The internal pressure of the containment system will not exceed the design pressure during transportation; and

(i) External radiation and contamination levels are within the allowable limits specified in this subchapter.

§ 173.476 Approval of special form radioactive materials.

(a) Each shipper of special form radioactive materials shall maintain on file for at least one year after the latest shipment, and provide to the MTB on request, a complete safety analysis, including documentation of any tests, demonstrating that the special form material meets the requirements of § 173.469.

(Approved by the Office of Management and Budget under OMB control number 2137-0518.)

(b) Prior to the first export shipment of a special form radioactive material from the United States, each shipper shall obtain a U.S. Competent Authority Certificate for the specific material. Each petition shall be submitted in accordance with § 173.471(e) and must include the following information:

(1) A detailed description of the material or if a capsule, a detailed description of the contents. Particular reference must be made to both physical and chemical states;

(2) If a capsule is to be used, a detailed statement of its design and dimensions, including complete engineering drawings and schedules of material, and methods of construction; and

(3) A statement of the tests that have been made and their results; evidence based on calculative methods to show that the material is able to pass the tests; or other evidence that the special form radioactive material complies with § 173.469.

(Approved by the Office of Management and Budget under OMB control number 2137-0518.)

(c) Paragraphs (a) and (b) of this section do not apply in those cases where A_1 equals A_2 and the material is not described on the shipping papers as "Radioactive Material Special Form, n.o.s."

§ 173.477 Approval for export shipments.

(a) Each export shipment of a package for which an IAEA certificate of competent authority has been issued or revalidated in accordance with §§ 173.471, 173.472, or 173.473 shall have multilateral approval, if the shipment includes—

(1) A vented Type B(M) package;

(2) A Type B(M) packaging containing radioactive materials with an activity greater than 3×10^3 A_1, or 3×10^3 A_2, as appropriate, or 3×10^4 curies, whichever is less;

(3) A Fissile Class III shipment; or

(4) Transportation by special arrangement.

(b) Each application for shipment approval shall contain—

(1) The period of time for which the approval is sought;

(2) A description of the contents, the expected modes of transportation, the type of vehicle to be used, and the proposed route; and

(3) An explanation of how the special precautions and special administrative and operational controls referred to in the package design certificates are to be put into effect.

(c) The packaging and shipment approvals may be combined into a single approval issued in accordance with §§ 173.471, 173.472 or 173.473.

(d) Approval by competent authorities is not required for packagings designed for materials covered by §§ 173.421 through 173.427 nor for Type A packagings designed for non-fissile radioactive materials.

§ 173.478 Notification to competent authorities for export shipments.

(a) Before the first export shipment of any packaging with contents exceeding A_1 or A_2, the shipper shall ensure that copies of each applicable competent authority certificate issued in accordance with §§ 173.471, 173.472, or 173.473 have been submitted to the competent authority of each country through which or into which it is to be transported. The shipper is not required to await an acknowledgment from the competent authority prior to shipping the radioactive material, nor is the competent authority required to acknowledge receipt of the certificate.

(Approved by the Office of Management and Budget under OMB control number 2137-0515.)

(b) For each of the shipments described in this paragraph, the shipper shall notify the competent authority of each country through which or into which the shipment is to be transported. This notification must be received by each competent authority at least 15 days before the shipment starts for the following:

(1) Type B(U) packagings containing radioactive materials with an activity greater than 3×10^3 A_1, 3×10^3 A_2, as appropriate, or 3×10^4 curies, whichever is the least;

(2) Type B(M) packages;

(3) Fissile Class III shipments under Section VIII of the IAEA "Regulations for the Safe Transport of Radioactive Materials, Safety Series No. 6, 1973 Revised Edition (as amended)"; or

(4) Transportation by special arrangements.

(c) The shipper notification must include—

(1) Sufficient information to enable the packaging to be identified, including all applicable certificate numbers and identification marks; and

(2) Information as to the date of shipment, the expected date of arrival, and the proposed routing.

(d) The shipper is not required to send a separate notification if the required information has been included in the application for shipment approval.

PART 174—CARRIAGE BY RAIL

§ 174.208 [Amended]

14a. In § 174.208, paragraph (b) is amended by removing section reference "173.426" and inserting, in its place, "173.9".

15. In § 174.700, paragraph (a) is amended by removing section reference "§ 173.389(c) and § 173.392" and inserting in their respective places "§§173.403 and 173.425"; paragraph (b) is amended by removing section reference "§ 173.389(i)" and inserting in its place "§ 173.403(bb)"; and by removing section references "§§ 173.389(o) and 173.392, 173.393(j), or 173.396(f)" and inserting in their respective places "§§ 173.403, 173.425, 173.441, and 173.457"; paragraph (d) is amended by removing section references "§ 173.389(a)(3) and § 173.396(g)" and inserting in their respective places "§ 173.455(a) (3) and § 173.457"; and a new paragraph (g) is added to read as follows:

§ 174.700 Special handling requirements for radioactive materials.

* * * * *

(g) In the case of packages shipped under the exclusive use provisions of § 173.441(b) for packages with external radiation levels in excess of 200 millirem per hour at the package surface:

(1) The rail car shall meet the requirements for a closed transport vehicle (§ 173.403 of this subchapter); and

(2) Provisions must be made to secure the packages so that their position within the vehicle remains fixed under conditions normally incident to transportation.

§ 174.715 [Amended]

16. In § 174.715, paragraph (a) is amended by removing section reference "§ 173.389(o)" and inserting in its place "§ 173.403"; and by removing section reference "§ 173.397(a)" and inserting in its place "§ 173.443".

§ 174.750 [Amended]

17. In § 174.750, paragraph (a) is amended by removing section reference "§ 173.397" and inserting in its place "§ 173.443."

PART 175—CARRIAGE BY AIRCRAFT

§ 175.710 [Amended]

18. In § 175.10, paragraph (a)(6) is amended by removing section reference "§ 173.391 (a), (b), or (c)" and inserting in its place "§§ 173.421, 173.422, or 173.424."

19. In § 175.700, the section heading is revised; paragraph (b) is amended by removing section reference "§ 173.397" and inserting in its place "§ 173.443"; paragraph (c) is amended by removing section reference "§ 173.391 (a), (b), or (c)" and inserting in its place "§§ 173.421, 173.422, or 173.424"; and a new paragraph (d) is added to read as follows:

§ 175.700 Special limitations and requirements for radioactive materials.

* * * * *

(d) Type B(M) packages may not be offered or accepted for transportation, nor transported, on passenger-carrying aircraft.

20. In § 175.703, paragraph (b) is amended by removing section reference "§ 173.393(r)" and inserting in its place "§ 173.448(g)"; paragraph (c) is amended by removing section reference "§ 173.389(a)(3)" and inserting in its place "§ 173.455(a)(3)"; and paragraphs (d) and (e) are added to read as follows:

§ 175.703 Other special requirements for the acceptance and carriage of packages containing radioactive materials.

* * * * *

(d) No person may offer or accept for transportation, nor transport, by air:

(1) Any Type B(U) or Type B(M) package with an accessible surface temperature in excess of 50°C (122°F);

(2) Continuously vented Type B(M) packages, packages which require external cooling by an ancillary cooling system or packages subject to operational controls during transport; or

(3) Liquid pyrophoric radioactive materials.

(e) Exclusive use shipments of packages having a surface radiation level in excess of 200 millirem per hour may not be transported by air except by special arrangement approved by MTB.

PART 176—CARRIAGE BY VESSEL

21. In Part 176, Subpart M is revised to read as follows:

Subpart M—Detailed Requirements for Radioactive Materials

Sec.

176.700 General stowage requirements.
176.704 Requirements relating to transport.
176.708 Segregation distance table.
176.710 Care following leakage or sifting of radioactive materials.
176.715 Contamination control.

Subpart M—Detailed Requirements for Radioactive Materials

§ 176.700 General stowage requirements.

(a) Radioactive materials must not be stowed in the same hold with mail bags.

(b) A package of radioactive materials which in still air has a surface temperature more than 5°C (9°F) above the ambient air may not be overstowed with any other cargo. If the package is stowed under deck, the hold or compartment in which it is stowed must be ventilated.

(c) Each Fissile Class III shipment must be stowed in a separate hold, compartment, or defined deck area and be separated by a distance of at least six meters (20 feet) from all other Radioactive Category II or III-Yellow labeled packages. For a shipment of radioactive materials requiring supplemental operational procedures, the shipper must furnish the master or person in charge of the vessel a copy of the necessary operational instructions.

(Paperwork requirement excepted from Office of Management and Budget approval)

(d) A person may not remain unnecessarily in a hold or compartment or in the immediate vicinity of any package on deck containing radioactive materials.

§ 176.704 Requirements relating to transport indexes.

(a) The sum of the transport indexes for all packages of radioactive materials not in freight container on board a vessel, may not exceed 200.

(b) Except as provided in paragraph (e) of this section, the sum of transport indexes for packages not in a freight container may not exceed 50 in any hold, compartment, or defined deck area. Each group of radioactive material packages must be separated by a distance of at least six meters (20 feet) at all times.

(c) Except as provided in paragraph (e) of this section, the number of freight containers with packages of radioactive materials contained therein must be limited so that the total sum of the transport indexes in the containers in any hold or defined deck area does not exceed 200, and:

(1) The sum of transport indexes for any individual freight container, or group of freight containers, does not exceed 50; and

(2) Each freight container or group of freight containers is handled and stowed in such a manner that groups are separated from each other by a distance of at least six meters (20 feet).

(d) The limitations specified in paragraphs (a), (b), and (c) of this section do not apply to consignments of low specific activity materials if the packages are marked "RADIOACTIVE LSA" and no Fissile Class II or Fissile Class III radioactive materials are included in the shipment.

(e) For exclusive use shipments, the limitations specified in paragraphs (b) and (c) of this section do not apply if—

(1) For packages not in freight containers, the sum of the transport indexes of Fissile Class II packages does not exceed 50 in each hold;

(2) For packages in freight containers, the radiation level does not exceed 200 millirem per hour at any point on the surface and 10 millirem at two meters (6 feet) from the outside surface of the freight container and the sum of transport indexes of Fissile Class II packages does not exceed 50 in each freight container and 200 in each hold or defined deck area; and

(3) Each group of Fissile Class II packages is separated from other redioactive material by a distance of at least six meters (20 feet) at all times.

(f) The limitations specified in paragraphs (a) through (e) of this section do not apply when the entire vessel is reserved or chartered for use by a single shipper under exclusive use conditions if the number of Fissile Class II and Fissile Class III packages of radioactive

materials aboard the vesssel does not exceed the amount authorized in §§ 173.451 through 173.459 of this subchapter. The entire shipment operation must be approved by the Office of Hazardous Materials Regulation (OHMR) in advance.

§ 176.708 Segregation distance table.

(a) Table III applies to the stowage of packages of radioactive materials on board a vessel with regard to transport index numbers which are shown on the labels of individual packages. Radioactive Category II or III-Yellow labeled packages may not be stowed any closer to living accommodations, regularly occupied working spaces, spaces that may be continually occupied by any person (except those spaces exclusively reserved for couriers specifically authorized to accompany such packages), and undeveloped film than the distance specified to Table III. Where only one consignment of a radioactive substance is to be loaded on board a vessel under exclusive use conditions, the appropriate segregation distance may be established by demonstrating that the direct measurement of the radiation level at regularly occupied working spaces and living quarters is less than 0.75 millirem per hour. More than one consignment may be loaded onboard a vessel with the appropriate segregation distance established by demonstrating that direct measurement of the radiation level at regularly occupied working spaces and living quarters is less than 0.75 millirem per hour, provided that the vessel has been chartered for the exclusive use of a competent person specialized in the carriage of radioactive material. Stowage arrangements shall be predetermined for the entire voyage, including any radioactive substances to be loaded at ports of call enroute. The radiation level shall be measured by a responsible person skilled in the use of monitoring instruments.

TABLE III

Sum of transport indexes of the packages	Minimum distance in feet from living accommodation or regularly occupied working space	Minimum distance in feet from undeveloped film and plates																								
		1 day voyage			2 day voyage			4 day voyage			10 day voyage			20 day voyage			30 day voyage			40 day voyage			50 day voyage		
		Cargo thickness in feet (unit density)																								
	Nil	3	Nil	3	6	Nil	3	6	Nil	3	6	Nil	3	6	Nil	3	6	Nil	3	6	Nil	3	6	Nil	3	6
0.1 to 0.5	5	X	6	X	X	8	X	X	11	X	X	17	4	X	25	6	X	30	7	X	35	8	X	39	9	X
0.6 to 1	6	X	8	X	X	11	X	X	16	4	X	25	6	X	35	8	X	42	10	X	50	12	X	55	13	X
1.1 to 2	9	X	11	X	X	16	4	X	22	5	X	35	8	X	50	12	X	61	14	X	70	17	X	78	19	X
2.1 to 3	10	X	14	X	X	19	5	X	27	6	X	42	10	X	61	14	X	74	18	X	86	20	X	96	23	X
3.1 to 5	13	X	17	4	X	25	6	X	35	8	X	55	13	X	78	19	X	96	23	X	110	26	X	124	29	7
5.1 to 10	19	4	25	6	X	35	8	X	50	12	X	78	19	X	110	26	X	135	33	8	155	37	9	175	42	10
10.1 to 20	26	6	35	8	X	50	12	X	69	17	X	110	26	X	155	37	9	190	46	11	220	53	13	250	59	14
20.1 to 30	32	8	43	10	X	61	14	X	85	20	X	135	32	8	190	45	11	235	56	13	270	65	16	305	72	17
30.1 to 50	42	10	55	13	X	78	19	X	110	26	X	175	42	10	245	58	14	300	73	17	350	84	20	390	94	22
50.1 to 100	59	14	78	19	X	110	26	X	155	37	9	245	59	14	350	82	20	430	105	24	515	118	28	550	130	32
100.1 to 150	72	17	96	23	X	135	32	8	190	48	11	300	72	17	425	100	24	525	125	30	600	145	35	(7)	165	39
150.1 to 200	84	20	110	26	X	155	37	9	200	53	13	350	84	20	490	115	28	600	140	35	(7)	165	40	(7)	190	45
200.1 to 300	105	24	135	32	X	190	46	11	270	64	15	425	105	25	600	145	35	(7)	180	42	(7)	205	49	(7)	230	55
300.1 to 400	120	28	160	37	9	220	53	13	310	75	18	500	120	28	(7)	165	40	(7)	205	49	(7)	235	57	(7)	265	63

Note:
(1) X—indicates that thickness of screening cargo is sufficient without any additional segregation distance.
(2) By using 6 feet of intervening unit density cargo for persons and 10 feet for film and plates, no distance shielding is necessary for any length of voyage specified.
(3) Using 1 steel bulkhead or steel deck—multiply segregation distance by 0.8. Using 2 steel bulkheads or steel decks—multiply segregation distance by 0.64.
(4) "Cargo of Unit Density" means cargo stowed at a density of 1 ton (long) per 36 cubic feet; where the density is less than this the depth of cargo specified must be increased in proportion.
(5) "Minimum distance" means the least in any direction whether vertical or horizontal from the outer surface of the nearest package.
(6) The total consignment on board at any time must not exceed transport indexes totalling 200 except if carried under the provisions of § 176.704(f). The figures below the double line of the table should be used in such a contingency.
(7) Not to be carried unless screening by other cargo and bulkheads can be arranged in accordance with the other columns.

Sum of transport indexes of the packages	Minimum distance in meters from living accommodation or regularly occupied working space	Minimum distance in meters from undeveloped film and plates																								
		1 day voyage			2 day voyage			4 day voyage			10 day voyage			20 day voyage			30 day voyage			40 day voyage			50 day voyage		
		Cargo thickness in meters (unit density)																								
	Nil	1	Nil	1	2	Nil	1	2	Nil	1	2	Nil	1	2	Nil	1	2	Nil	1	2	Nil	1	2	Nil	1	2
0.1 to 0.5	2	X	2	X	X	3	X	X	4	X	X	6	2	X	8	2	X	10	3	X	11	3	X	12	3	X
0.6 to 1.0	2	X	3	X	X	4	X	X	5	2	X	8	2	X	11	3	X	13	4	X	15	4	X	17	4	X
1.1 to 2.0	3	X	4	X	X	5	2	X	7	2	X	11	3	X	15	4	X	19	5	X	22	5	X	24	6	X
2.1 to 3.0	4	X	5	X	X	6	2	X	9	2	X	13	4	X	19	5	X	23	6	X	27	7	X	30	7	X
3.1 to 5.0	4	X	6	2	X	8	2	X	11	3	X	17	4	X	24	6	X	30	7	X	34	8	X	38	9	3
5.1 to 10.0	6	2	8	2	X	11	3	X	15	4	X	24	6	X	34	8	X	42	10	3	48	12	3	54	13	3
10.1 to 20.0	8	2	11	3	X	15	4	X	22	5	X	34	8	X	48	12	3	59	14	4	68	16	4	76	18	5
20.1 to 30.0	10	3	13	4	X	19	5	X	26	7	X	42	10	3	59	14	4	72	17	4	83	20	5	93	22	6

Sum of transport indexes of the packages	Minimum distance in meters from living accommodation or regularly occupied working space		Minimum distance in meters from undeveloped film and plates																						
			1 day voyage			2 day voyage			4 day voyage			10 day voyage			20 day voyage			30 day voyage			40 day voyage			50 day voyage		
30.1 to 50.0	13	3	17	4	X	24	6	X	34	8	X	54	13	3	76	18	5	92	23	6	110	26	7	120	29	7
50.1 to 100.0	18	5	24	6	X	34	8	X	48	12	3	76	18	5	110	25	6	130	32	8	150	36	9	170	40	10
100.1 to 150.0	22	6	30	7	X	42	10	3	59	14	4	93	22	6	130	31	8	160	39	10	185	45	11	(7)	50	12
150.1 to 200.0	26	8	34	8	X	48	12	3	68	16	4	110	26	7	150	36	9	185	43	11	(7)	51	13	(7)	58	14
200.1 to 300.0	32	8	42	10	3	59	14	4	83	20	5	130	32	8	185	44	11	(7)	55	13	(7)	63	15	(7)	70	17
300.1 to 400.0	38	9	48	12	3	68	16	4	95	23	6	150	36	9	(7)	50	13	(7)	63	15	(7)	73	18	(7)	81	20

Note:
(1) X—indicates that thickness of screening cargo is sufficient without any additional segregation distance.
(2) By using 2 meters of intervening unit density cargo for persons and 3 meters for film and plates, no distance shielding is necessary for any length of voyage specified.
(3) Using 1 steel bulkhead or steel deck—multiply segregation distance by 0.8. using 2 steel bulkheads or steel decks—multiply segregation distance by 0.64.
(4) "Cargo of Unit Density" means cargo stowed at a density of 1 ton (metric) per cubic meter; where the density is less than this the depth cargo specified must be increased in proportion.
(5) "Minimum distance" means the least in any direction whether vertical or horizontal from the outer surface of the nearest package.
(6) The total consignment on board at any time must not exceed transport indexes totalling 200, unless carried under the provisions of § 176.704(f). The figures below the double line of the table should be used in such a contingency.
(7) Not to be carried unless screening by other cargo and bulkheads can be arranged in accordance with the other columns.

§ 176.710 Care following leakage or sifting of radioactive materials.

(a) In case of fire, collision, or breakage involving any shipment of radioactive materials, other than materials of low specific activity, the radioactive materials must be segregated from unnecessary contact with personnel. In case of obvious leakage, or if the inside container appears to be damaged, the stowage area (hold, compartment, or deck area) containing this cargo must be isolated as much as possible to prevent radioactive material from entering any person's body through contact, inhalation, or ingestion. No person may handle the material or remain in the vicinity unless supervised by a qualified person.

(b) A hold or compartment in which leakage of radioactive materials has occurred may not be used for other cargo until it is decontaminated in accordance with the requirements of § 176.715.

(c) For reporting requirements, see § 171.15 of this subchapter.

§ 176.715 Contamination control.

(a) Each hold, compartment, or deck area used for the transportation of low specific activity radioactive materials under exclusive use conditions shall be surveyed with appropriate radiation detection instruments after each use. Such holds, compartments, and deck areas may not be used again until the radiation dose rate at any accessible surface is less than 0.5 millirem per hour, and the removable (non-fixed) radioactive surface contamination is not greater than the limits prescribed in § 173.443 of this subchapter.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

§ 177.825 [Amended]

21a. In § 177.825, paragraphs (b), (c), and (d) are amended by removing the phrase "large quantity radioactive material as defined in § 173.389(b)" and inserting in its place "highway route controlled quantity radioactive materials as defined in § 173.403(l)"; and paragraphs (b)(2)(iii) and (d)(2)(iv) are amended by removing the term "large quantity" and inserting in its place "highway route controlled quantity."

22. In § 177.842, paragraph (a) is amended by removing section references "§ 173.389(i), § 173.393(j), § 173.396(f) and § 173.392", and inserting in their respective places "§§ 173.403, § 173.441(b), § 173.457, and § 173.425"; paragraph (c) is amended by removing section references "§ 173.389(c) and § 173.392", and inserting in their respective places §§ 173.403 and § 173.425"; paragraph (f) is amended by removing section references "§ 173.389(a)(3) and § 173.396(g)", and inserting in their respective places "§§ 173.455(a)(3) and 173.457"; and paragraph (g) is added to read as follows:

§ 177.842 Radioactive material.

* * * * *

(g) For shipments transported under exclusive use conditions the radiation dose rate must not exceed 2 millirem per hour in any position normally occupied in the vehicle. For shipments transported as exclusive use under the provisions of § 173.441(b) for packages with external radiation levels in excess of 200 millirem per hour at the package surface, the vehicle must meet the requirements of a closed transport vehicle (§ 173.403 of this subchapter).

23. In § 177.843, paragraph (a) is revised to read as follows:

§ 177.843 Contamination of vehicles.

(a) Each motor vehicle used for transporting radioactive materials under exclusive use conditions in accordance with §§ 173.425(c) or 173.443(c) shall be surveyed with radiation detection instruments afer each use. A vehicle may not be returned to service until the radiation dose rate at each accessible surface is 0.5 millirem per hour or less and the removable (non-fixed) radioactive surface contamination is not greater than the level prescribed in § 173.443(a).

* * * * *

§ 177.861 [Amended]

24. In § 177.861, paragraph (a) is amended by removing section reference § 173.397 and inserting in its place § 173.443.

Appendix A—[Amended]

24a. In Appendix A, all references to "large quantity" throughout Appendix A are changed to read "highway route controlled quantity".

PART 178—SHIPPING CONTAINER SPECIFICATIONS

§ 178.350–2 [Amended]

25. In § 178.350–2, paragraph (a) is amended by removing section references "§ 173.389(j) and § 173.398(b)", and inserting in their respective places §§ 173.403 and § 173.465".

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, App. A. to Part 1)

Issued in Washington, D.C., on February 24, 1983

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 83-5215 Filed 3-9-83; 8:45 am]

BILLING CODE 4910-60-M

federal register

Thursday
March 10, 1983

Part III

Water Resources Council

Repeal of Water and Related Land Resources Planning Principles, Standards and Procedures; and Adoption of Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies

WATER RESOURCES COUNCIL

18 CFR Parts 711, 713, 714, and 716

Water and Related Land Resources Planning Principles, Standards and Procedures; Repeal of Regulations

AGENCY: Water Resources Council.

ACTION: Repeal of rules.

SUMMARY: This document repeals 18 CFR Parts 711, 713, 714, and 716 which contain the Water Resources Council Principles, Standards and Procedures for Water and Related Land Resources Planning. The purpose of the repeal is to reduce the burden on agencies in complying with detailed and legally binding technical rules for formulation and evaluation of water and related land resources plans and projects.

EFFECTIVE DATE: This repeal becomes effective July 8, 1983.

FOR FURTHER INFORMATION CONTACT: Jonathan P. Deason, Department of the Interior (202) 343–3150.

SUPPLEMENTARY INFORMATION:

1. Background

A notice of proposed repeal of the Principles, Standards and Procedures (PS&P) in 18 CFR Part 711, 713, 714 and 716 was published on September 11, 1981, at 46 FR 45368. Many commenters requested the opportunity to review the proposed replacement, the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies (P&G), to assist them in commenting on repeal of the existing rules. In response, the comment period was re-opened on March 22, at which time proposed P&G were published at 47 FR 12297. Comments were requested on repeal of the PS&P and on adoption of the proposed P&G, including the procedures for evaluating national economic development (NED) and environmental quality (EQ). This document contains the discussion of and addresses the comments received on both proposals.

2. Issuance of the P&G

The proposed P&G were reappraised by the Water Resources Council (WRC) in light of comments received during the initial and re-opened public review periods. A discussion of the comments received and WRC responses is presented in Section 4 below.

The P&G, as revised in response to public comments, have been established by the WRC, and a notice announcing their adoption and availability is published in today's **Federal Register**. This action implements the requirement of the Water Resources Planning Act (Pub. L. 89–80) that the WRC establish principles, standards and procedures for planning water and related land resources projects. The Principles and the Guidelines have been approved by the President and the Chairman of the WRC, respectively.

3. Required Analyses

It has been determined that the repeal of the PS&P is not a major rule under Executive Order 12291 and that therefore a regulatory impact analysis is not required. The repeal of the PS&P will reduce the costs attributable to water resources planning by Federal agencies and have an estimated economic effect of significantly less than $100 million. The repeal of the PS&P is not expected to increase costs or prices of goods and services in the private sector, or have other adverse economic effects.

It has also been determined that the repeal of the PS&P will not have a significant economic effect on a substantial number of small entities and that therefore a regulatory flexibility anslysis is not required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The repeal of the PS&P is expected to reduce the type and quantity of data requested from small units of government by Federal water resources agencies, and have only a limited effect on the provision of services by small businesses. The repeal of the PS&P is not expected to significantly affect the type or number of water resources projects that are undertaken.

Based on an environmental assessment prepared in accordance with 40 CFR 1500–1508, the WRC has determined that repeal of the PS&P and issuance of the new P&G will not significantly affect the quality of the human environment.

Copies of the environmental assessment and the finding of no significant impact may be obtained from the Chairman of the Water Resources Council, Department of the Interior, Washington, D.C. 20240.

4. Response to Comments

During the initial and re-opened comment periods, 948 comments were received. The comments addressed subjects ranging from fundamental policy issues to technical corrections in evaluation procedures.

Numerous changes have been made throughout the P&G to improve clarity, correct technical points, and respond to issues raised by the public. Minor changes, including improvements in editorial style and technical corrections, are not individually addressed in the comment summaries and responses that follow.

Many simplifying changes have been made. However, several of the evaluation procedures remain complex and detailed. Where possible, a simplified alternative procedure has been developed for use under limited conditions. The final P&G represent a balance between the need for flexibility and simplicity and the need for theoretically sound and thorough analysis.

The following discussion summarizes significant and/or frequent comments and explains the responses to them reflected in the P&G.

Removal From Status as Regulations

Comment: Many commenters stated that the Principles, Standards and Procedures (PS&P) should be retained as rules. Others supported repeal and stated that the PS&P should never have been made rules.

Response: The task confronting the government has been to develop principles, standards and procedures that relate to functions of a number of agencies. Each agency operates under distinct legislative authorizations and, therefore, the programs for which each is responsible are to some extent unique. The water resource plans to which the principles and standards must apply, therefore, are varied in nature, size and expense, ranging from small soil conservation projects, which can be planned and constructed over a short period of time, to massive regional projects that require years of planning and take years to construct.

The ultimate goal of principles and standards then, is to establish uniform methods by which the agencies will plan and evaluate those projects, while at the same time permit agencies the necessary flexibility to vary the analysis to more appropriately fit the plan under evaluation. Decisionmakers require uniformity to allow appropriate comparisons and to ensure that alternatives have been adequately planned and evaluated. Flexibility is required so that planners may use only those steps and procedures necessary to evaluate a plan. Flexibility also avoids the expenditure of time and money in unnecessary or inappropriate analysis.

Promulgation of principles and standards as regulations provides a basis for uniformity. Such regulations could also provide a basis for flexibility. However, to provide flexibility either they would have to be very complex, or they would have to provide for exceptions that would require only

necessary planning and analysis on any given project.

Flexibility in regulations will also present problems if litigation occurs. Recent history demonstrates that litigation over water projects is frequent. In many cases, the issue of compliance with appropriate regulations is raised. If the necessary flexibility is built into regulations, questions will be raised as to whether appropriate regulations have been followed and whether in the planning it was appropriate for exceptions to have been allowed. These uncertainties change the focus of planners from performing the appropriate analysis to mechanical compliance with regulations to avoid difficulties in litigation. Thus, time and money are expended on matters unnecessary to the planning process.

The purpose of the change from regulations to guidelines is to keep the focus on the performance of appropriate planning and analysis. Uniform, professionally accepted procedures form the general basis of the planning process.

Moreover, they will be flexible because they are guidelines. As guidelines they can be less complex because explicit provision for exceptions to general planning procedures will be unnecessary. The change from regulations to guidelines also removes or reduces the threat of litigation for failure to comply, thus permitting planners to focus on the appropriate task and not on a concern for mechanical compliance with complex and detailed regulations.

Comment: Repeal will result in violation of environmental protection laws and regulations.

Response: This is not a correct assertion. The changes proposed will not affect any environmental laws or regulations. Those laws and regulations remain, so compliance with them is still required.

Comment: The right of the public to enforce the Principles, Standards and Procedures (or Principles and Guidelines) may be impaired. Planners should be held accountable for their analysis.

Response: The P&G will continue to provide a basis to make planners accountable for their analysis. Plans will undergo rigorous review within each responsible agency, by States and other Federal agencies, and in the review process of the Office of Management and Budget. Public enforcement through litigation is not contemplated in the planning process. The P&G permit planners to focus on the task at hand, which is appropriate planning, not avoidance of litigation. Public participation in the formulation and evaluation of alternative plans is not diminished through the proposed change.

Comment: Rather than repeal the PS&P, amend them as necessary to decrease the burden and increase flexibility.

Response: As discussed above, in order to provide the flexibility required in the PS&P as regulations, it would be necessary either to provide separate regulations for each type of planning situation or to provide in the regulations that in appropriate circumstances exceptions could be made. The first method leads to very complex regulations. The second increases uncertainty on the part of planners as to whether they have complied with the regulations. Moreover, since regulations may be subject to litigation, the uncertainty created by either greater complexity or broader exceptions will create greater potential for litigation. With the PS&P as regulations it is difficult to decrease the burdens and yet provide the necessary flexibility.

Comment: Some commenters urged retaining the PS&P as rules to achieve uniformity, a more proper goal than flexibility. Others stated that all uniform planning procedures since 1973 should be disregarded.

Response: The need for uniformity is recognized, and it is not intended that uniformity be foregone. The P&G set forth general uniform requirements for the planning process substantially the same as those in the existing PS&P. The intent is to provide flexibility within those broad guidelines, such as in the scope of data collection or the level of detail required, depending upon the plan being evaluated. Moreover, absolute uniformity fails to account for the differences in the scope and magnitude of the alternative plans that would be studied under the P&G or the PS&P.

Comment: Repeal the procedures but not the P&S, because only the procedures are burdensome.

Response: The procedures, as now issued in the P&G, reflect the fact that they are intended to be a more detailed explication of how to comply with principles and standards (Chapter 1 of the P&G). While repealing only the procedures as rules would permit some greater flexibility, it would not resolve the problem, since consistency is necessary between the principles and standards and these procedures. A greater measure of flexibility results from changing the principles and standards to guidelines.

Comment: Repeal means that future changes in the P&G can be made with no public involvement whatsoever.

Response: Although no particular process is specified, public participation in future revisions to the P&G is not precluded. Continuing public review and comment will assist in consideration of possible future improvements in the P&G.

Comment: The P&G contain professionally accepted methods for formulating and evaluating plans, so compliance should be legally required.

Response: It is agreed that the P&G contain accepted methods for formulation and evaluation of plans. These methods reflect the state of the art in this type of analysis. However, the threat of litigation on minor technical points misdirects the focus of the planner. (See response above concerning accountability.) The change to guidelines permits planners to use those methods as applicable. These are widely accepted technical methods and will be followed by agency planners.

The Single Federal Objective

Comment: Several commenters wrote that the establishment of only one objective for water and related land resources project planning will result in inadequate consideration of environmental values. Conversely, several commenters wrote that the Federal objective of Principle #2 was appropriate.

Response: Principle #2 states that: "The Federal objective of water and related land resources project planning is to contribute to national economic development consistent with protecting the Nation's environment, pursuant to national environmental statutes, applicable executive orders, and other Federal planning requirements."

Thus, the objective is not without constraints; it includes consideration of Federal responsibilities for protecting the Nation's environment, as reflected in Federal law and regulation. This single objective is consistent with the change that reduced the P&G coverage to the four primary water resources development agencies. Planning activities of other programs are not constrained by the P&G. In addition, Principle #5 allows plans to be formulated to address State and local concerns not adequately addressed by the NED plan. These concerns may include environmental concerns.

Comment: Several commenters stated that emphasis upon national economic development in planning will result in projects that are inconsistent with State and local needs.

Response: A fundamental premise of the P&G is that Federal water resources planning is to be responsive to State and

local concerns. This has been explicitly stated in Principle #3. This includes all State and local concerns, not just those related to national economic development. Principle #5 provides increased flexibility for planners to formulate water development plans that address State and local concerns not fully addressed by the NED plan. The P&G and NEPA require development and display of all significant effects of alternative plans, including environmental, regional, and social effects. Also, Chapter I, Paragraph 1.6.2(c), provides that each plan should be formulated in consideration of four criteria: completeness, effectiveness, efficiency, and acceptability. Acceptability is defined as the workability and viability of a plan with respect to acceptance by State and local entities and the public and compatibility with existing laws, regulations, and public policies.

Comment: The principles are not in accord with the congressional statement, contained in Section 209 of the Flood Control Act of 1970, that four objectives (regional economic development, the quality of the total environment, the well-being of the people and national economic development) were to guide water project planning.

Response: The Flood Control Act of 1970 gives no operational definition to its statement of objectives. The P&G define operationally the National Economic Development (NED) objective. The expression of State and local concerns in the planning of individual projects will provide guidance for addressing the other objectives stated in the 1970 Act.

Plan Selection Principle

Comment: Selection of the plan with the "greatest net economic benefit" does not ensure that the recommended plan will make a net overall contribution when all social and environmental costs are considered.

Response: Agree. It is for this reason that the P&G provides for exception to the NED plan selection rule when consideration of effects of a plan indicate that there are overriding reasons for selecting another plan. Changes have been made to ensure that every recommended plan will, in the judgment of the responsible decisionmaker, produce overall beneficial effects that outweigh its overall adverse effects.

Comment: Selection of plans should not involve the Cabinet Council on Natural Resources and Environment.

Response: Neither the March 22, 1982, proposal nor the final P&G envisions a plan selection role for the Cabinet Council on Natural Resources and Environment. An earlier draft proposal did, however, consider such a role.

Comment: The selected plan should be the alternative that "reasonably maximizes" net economic benefits, not the one with the greatest net economic benefits.

Response: The text has been revised to clarify that the plan with the greatest net economic benefits, that is the NED plan, is the one that reasonably maximizes net economic benefit.

Comment: Requiring the recommended plan normally to be the one with the greatest net economic benefits is overly restrictive and does not recognize the State and local concerns addressed in plan formulation. Certainly, such a requirement is inappropriate when the project is to be entirely paid for by nonfederal interests.

Response: The requirement normally to recommend the plan with the greatest net economic benefits emphasizes the commitment of the Federal Government to the economic efficiency criteria in water project planning and selection. The provision for recommendation of another plan when overriding conditions warrant recognizes that concerns of State and local governments are to be fully addressed and balanced against the Federal objective in the planning process. Even if a project is to be paid for entirely by nonfederal interests, the fact that there is Federal involvement requires a balancing of net national economic development benefits and other benefits in selecting the overall best plan.

Comment: Responsibility for plan selection should rest with the responsible regional agency official, not the Secretary of a Department.

Response: The responsible field-level agency official would tentatively recommend a plan in every case under the P&G. If a plan other than the NED plan were recommended, that recommendation would become the agency's position only if the agency head grants an exception. This procedure recognizes that the highest-ranking official of an agency is ultimately responsible for the agency's activities and is to be involved in the selection of plans not fully responsive to the Federal objective.

Comment: Absent guiding criteria or appeal procedures, the exception clause allows the Secretary of a department or head of an independent agency an inordinate amount of discretion.

Response: Because of the subjective nature of the tradeoffs required in deciding whether to grant an exception, no specific criteria are appropriate other than the directive that there be overriding reasons. Chapter I of the Guidelines states that: "The basis for selection of the recommended plan should be fully reported, including considerations used in the selection process."

Agency Coverage

Comment: Comments took various positions on what agency programs should be subject to the P&G. The positions were: In favor of continued coverage of eight agency programs; in favor of expansion of coverage to include additional agencies; and support for the proposal to reduce coverage to the four primary water resource development agencies.

Response: The P&G are for use in planning water projects. Reducing coverage to the four primary water resource development agencies (Corps of Engineers, Bureau of Reclamation, Soil Conservation Service, and Tennessee Valley Authority) is consistent with the content and degree of specificity in the P&G, and especially with the stated Federal objective. Expansion of agency coverage could be accomplished only with fundamental changes in the P&G planning framework. This would introduce undesirable complexity into the P&G.

Applicability

Comment: The definition of and extent of "water resource project plans" subject to the P&G should be clarified.

Response: Water resources project plans of the four agencies covered by the P&G include all pre- and postauthorization project formulation and evaluation studies that are not approved by the agencies' field officers within 120 days of this action. Guidance provided in Section 1.1.1(d) intends broad applicability to both pre- and postauthorization planning of the agencies covered. Limitation of applicability to certain types of water project studies was not intended.

Comment: While some comments supported the absence of a "grandfather" provision that would exempt certain studies, others stated that studies of projects previously authorized for construction should be excluded from coverage.

Response: No change has been made from the March proposal in the applicability of the P&G. All studies completed more than 120 days after the P&G take effect will be covered, so that future studies will contain consistent and comparable evaluations, regardless of the status of the project for which the study is done.

Relationship to Administration's Fiscal Policies

Comment: Some commenters stated that the proposed action was inconsistent with the Administration's policies for fiscal restraint. Others stated that the proposed action supported efforts to reduce costs associated with Federal programs.

Response: The emphasis in the P&G on national economic development is intended to improve water project investment decisions and is, therefore, consistent with the President's fiscal policies.

Cost Sharing

Comment: Cost sharing policies should apply only to projects not yet authorized, and should reflect the degree to which the selected plan addressed desires of Federal, State, and local governments.

Response: Neither the PS&P nor the P&G establish cost sharing and, therefore, that subject is beyond the scope of this action. As stated in Principle #11, cost sharing policies for water projects will be addressed separately.

Compliance With the National Environmental Policy Act

Comment: Several commenters pointed to changes proposed in the P&G that had not been addressed in the preliminary environmental assessment (EA). Others stated that the EA was generally inadequate.

Response: Response to these comments is reflected in the amended environmental assessment.

Compliance With WRC Regulations and Pub. L. 89–80

Comment: WRC administrative regulations require that decisions affecting the authorities and programs of agencies that are not voting members of WRC are to be made in formal meetings. The proposed repeal decision, which was made in a written WRC Action Memorandum, should have been made at a formal recorded meeting of the WRC.

Response: WRC's administrative regulations call for decisions affecting nonmember agencies to be made in formal meetings of the Council. After review of comments received during the initial 30-day comment period and the 60-day extension, the final decision whether to repeal the PS&P was made by the WRC members in a formal meeting, in accordance with WRC regulations.

Clarification of WRC Status

Comment: It is unclear what the future role of the WRC will be, because the proposed Guidelines would be issued under the Water Resources Planning Act authority, and they include references to the WRC.

Response: The Administration has proposed no future funding for a separate WRC staff or for its programs. As long as the Water Resources Planning Act (Pub. L. 89–80) is in effect, the policymaking Council, made up of eight agency heads, has the statutory responsibility for establishing principles, standards, and procedures for planning water resources projects, subject to the approval of the President. The P&G, including the procedures in chapters II and III, constitute, "principles, standards, and procedures," as required by law. Administrative activities formerly carried out by the WRC staff have been or will be assigned to other agencies or to ad hoc interagency groups.

General Comments on Chapter I—Standards

Comment: Clarification is needed that, although "implementation studies" includes both plan formulation and plan evaluation, only the Guideline sections addressing evaluation apply when restudies do not include plan reformulation.

Response: Chapter I has been changed to clarify this point. An example of when this would occur is the updating of financial and economic material to re-examine plan feasibility.

Discount Rate

Comment: Given that the discount rate may change annually, what is the appropriate rate to be used in studies formulated or evaluated over a period of more than one year?

Response: The appropriate discount rate is the rate currently in effect. It changes over time. Such changes must be accommodated in the planning process.

Prices

Comment: The prices used for evaluation should reflect real exchange values. The sections on relative and general prices should be changed to emphasize this.

Response: Section 1.4.10 of the P&G has been changed for clarity and to reflect this comment.

Appraisal of Plan Effects

Comment: The judgment involved in the appraisal process should apply to evaluation of NED effects as well as to evaluation of environmental and social effects.

Response: It is recognized that judgments are necessary to identify the best overall plan. However, the term "appraisal," as used in the P&G, is defined as the process of assigning social values other than dollars to effects of alternative plans.

Mitigation

Comment: Section 6.1(g) overemphasizes the mitigation concept, and fails to provide for recognition of potential benefits for enhancement of the environment.

Response: Environmental enhancement measures may be included in alternative plans if they address State or local concerns or produce net NED benefits.

Comment: Some commenters stated that Section 6.1(g), which deals with mitigation, should be deleted because mitigation requirements allow project opponents to impose unreasonable conditions as a price of withdrawing opposition. Other commenters wanted to strengthen this section by deleting "where practical," in order to ensure that wildlife conservation and enhancement receive equal consideration. Some commenters also pointed out that the Fish and Wildlife Coordination Act does not apply to the Watershed Protection and Flood Prevention Act. One commenter pointed out the fact that all alternatives do not require mitigation.

Response: Fish and wildlife and other mitigation is appropriate and consistent with the Federal objective of contributing to national economic development consistent with protecting the Nation's environment. This section has been retained with editorial changes.

Comment: Section 6.2(b) suggests that incremental mitigation measures not providing net beneficial NED effects cannot be included in the NED plan.

Response: Mitigation measures are not required to produce net NED benefits. Each increment of the NED plan, with its appropriate mitigation measures, must produce net NED benefits. The language has been modified to clarify this point.

Nonstructural Measures

Comment: Many commenters urged retention of the requirement for a primarily nonstructural plan in all cases. Similarly, one commenter stated that consideration of nonstructural measures should be required because nonstructural alternative analysis is critical if an acceptable range of choices

is to be considered. Another commenter stated the opposing view that nonstructural measures should be deleted since they do not provide the same results as structural measures. Other commenters supported deletion of the nonstructural plan requirement as a simplification of the planning process.

Response: While there is no requirement to formulate a separate, primarily nonstructural alternative, nonstructural measures are to be considered in alternative plans (see Section 6.1(f)). The consideration of nonstructural measures in alternatives—alone or in combination with structural measures—is retained, since they sometimes offer more efficient and effective solutions to problems.

Formulation of Alternative Plans

Comment: Section 6.1(e) is overly specific with regard to its stated concern for water demand and supply, since the intended concept applies to other concerns as well, such as flood protection. A range of practical possibilities must be evaluated if alternative plans are to be developed.

Response: Section 6.1(e) has been changed for a more general application.

Comment: Language should be returned to Section 6.1(e) to state that water conservation is to be fully integrated into plan formulation. The provision that drew a clear contrast between water conservation elements and storage facilities is conspicuously absent.

Response: The whole planning process is appropriately concerned with the conservation of water and other resources. Section 6.1(e)(4) was added in the proposal to make it clear that the development and management of water supplies are elements of conservation.

Comment: Section 6.2(b) allows formulation of plans that do not provide net NED benefits, but only if they are cost effective measures. This should be broadened to allow consideration of nonmonetary costs.

Response: Measures which are included to address concerns other than the Federal objective should be those measures that are most cost effective and meet the four criteria of completeness, effectiveness, efficiency, and acceptability. It is proper (when we are trying to hold down Federal expenditures to improve the Nation's economy) to invest in the least costly solutions to problems.

Comment: Section 6.4(c) requires the development of plans in direct conflict with existing laws. This should be optional.

Response: This section has been rewritten to provide flexibility. It now states that alternative plans that include removal of institutional barriers should be presented where such plans are implementable.

Accounts, General

Comment: In the display of effects discussed in section 7.1(e), add "wetlands protection, related terrestrial habitats," between "ground water" and "instream flow."

Response: This is not necessary. The proposed categories are covered by section 6.1(g), *Mitigation.*

Comment: Are significant EQ effects (Section 7.3(c)) part of the EIS?

Response: Yes. Preparation of the EIS is an integral part of the planning process.

Comment: The EQ procedures referenced in Section 7.3(a)(4) should be the required procedure and not simply a "suggested" one, in order to assure unformity of comparison between alternative plans.

Response: The EQ procedures provide only a conceptual framework for evaluation of EQ effects. Other procedures that include measurement techniques may be superior to these procedures in certain instances; therefore, the use of other evaluation procedures remains an option.

Comment: There is no requirement for a State economic development account. A separate accounting would be helpful to State and local government entities.

Response: Such an accounting is not precluded. A State may be treated as a region if such an accounting is needed for decisionmaking purposes.

Comment: Flexibility should be provided to allow the use of State projections in evaluating regional economic development effects.

Response: The regional analysis addresses impacts in more than one region. A meaningful presentation requires the use of consistent projections for all regions.

Comment: The proposals in Section 7.5 (other social effects account) dilute this section to the point of ineffectiveness.

Response: Flexibility has been added in order to focus the evaluation on the effects that have a material bearing on the decisionmaking process.

Comment: The discussion of other social effects (section 7.5(e)) states that agricultural land is a renewable resource. For all practical purposes this is not true. Agricultural land is a nonrenewable resource.

Response: The text has been changed to remove this distinction.

The NED Account

Comment: The NED account is the only required account. Some commenters favored two accounts—NED and EQ. Others favored all four accounts—NED, EQ, OSE and RED—for consistency purposes. They stated that too much emphasis is placed on NED and not enough is placed on other effects of alternative plans. One commenter stated that NEPA is the basis for the EQ account. Other commenters stated that it is sufficient to establish the NED account and questioned the need for the details of the other accounts.

Response: The flexibility of using either the remaining accounts (EQ, RED and OSE) or some other appropriate format for presentation of effects is retained. This satisfies NEPA and the requirement of displaying significant effects for decisionmaking purposes. The proper emphasis is placed on the NED account since it displays information relevant to the Federal objective. The evaluation and display of effects is limited to those which would have a material bearing on the decisionmaking process. This helps to eliminate wasteful inventory and evaluation work and improves the planning process by placing the focus on significant issues.

Comment: The full employment assumption in sections 7.2(c)(3) and 4.9(c) is not consistent with benefit values associated with the use of otherwise unemployed or underemployed labor.

Response: Even in a full employment economy there are areas with persistent unemployment problems due to labor immobility in the short run. It is appropriate to claim employment benefits in such areas if unemployment is substantial and persistent at the time of authorization or new start appropriation decisions.

Comment: Why is the net income approach not utilized to estimate unemployed or underemployed labor benefits?

Response: It is used. Section 7.2(e)(1) has been changed to clarify this.

Comment: Limiting unemployed or underemployed labor benefits to labor employed on site during construction underestimates beneficial effects.

Response: The benefit procedure is consistent with the current state of the art, and it provides a reasonable estimate of the benefits.

Comment: Benefits of employment should not be restricted to construction employment. The greatest long-term benefit will be permanent new jobs.

Response: There are no valid techniques for estimating long-run employment benefits. Also, a basic assumption in benefit-cost analysis is that in the long run there are no unemployed labor resources.

Comment: Section 7.2(e)(1), which discusses the opportunity costs of otherwise unemployed and underemployed labor, is confusing, controversial, and partly unnecessary.

Response: The section has been changed to increase clarity and brevity.

Comment: How do the procedures account for the difference in willingness to pay among various planning regions?

Response: The value of goods and services to the Nation is defined as the willingness of users to pay for each increment of output. Thus, the value of project outputs is the willingness of users in the benefiting region to pay for that increment of project output they will receive.

Comment: Clarification is needed that estimates of benefits should be based on costs of the most likely alternative only when there is evidence that the alternative would be implemented.

Response: Clarification has been provided in the procedures which utilize the cost of the most likely alternative as a means to estimate the willingness of users to pay. There must be evidence that the alternative would be implemented in the absence of any of the alternative plans under consideration (the without-project condition).

Comment: The statement is made that "the external economies in the NED account do not include decreases in the price of products or service, * * *" yet in section 7.2(f)(2) and g(4) these external economies are specifically allowed to be included in the accounts.

Response: The referenced sections covered external *diseconomies;* therefore, they were conceptually sound. However, the problem has been resolved by removing these vague categories of benefits and costs and replacing them with a category called "other direct effects."

Comment: In section 7.2(g)(1), the statement that "these costs do not include transfer payments such as replacement housing, assistance payment, * * *" is not consistent with section 9.1(b).

Response: The difference in the two sections occurs because Section 7 deals with NED costs (net economic costs), while Section 9 deals with financial costs (implementation outlays).

Comment: Water quality should be included in the category of goods and services in the NED account.

Response: The beneficial and adverse effects of water quality changes are contained in the categories of benefits and costs associated with water use, for example, recreation and water supply.

Comment: Low flow augmentation can produce benefits and should be included in the list of goods and services.

Response: The economic benefits of low flow augmentation are contained in the categories of benefits associated with water use, e.g., recreation and water supply.

Comment: NED benefits should include fish and wildlife management benefits.

Response: Where fish and wildlife benefits can be quantified in monetary terms, they are included in the recreation and commercial fishing categories.

Comment: Administratively established values, such as for recreation, have been historically grossly understated. Such value should be the minimum Federal wage times eight hours per day.

Response: The commenter offers a measure of the value of leisure. However, the willingness to pay for use of the particular site under consideration in an evaluation cannot be directly related to labor income foregone. In addition to the unit-day values schedule, alternative techniques are provided to estimate the value of a visitor-day of recreation use. They are considered to provide more accurate estimates, but at the expense of added complexity.

Displays

Comment: The concept of a "candidate plan" should be retained. Use of this concept ensured the availability of alternative plans with very different priorities.

Response: The term "candidate plans" has been eliminated as a simplifying change. However, the concept is retained in the requirement that alternative plans be formulated to address not only the Federal objective, but also other State and local concerns.

Comment: Effects should be displayed in the four account system. Section 8.2(b)(3) should eliminate the "some other appropriate format" language.

Response: The language has been retained in the interest of flexibility. Other display methods are equally valid for making consistent comparisons of alternative plans.

Comment: The table formerly required under 711.71(c)(2) of the PS&P should be retained. The proposed section does not substitute for the determination of a plan's compliance with environmental statutes.

Response: Such a table is not needed. The P&G require that each alternative plan comply with all environmental statutes.

Cost Allocation

Comment: Is the proposed cost allocation method the same as the separable costs/remaining benefits (SC/RB) method?

Response: Yes, except as otherwise provided in Section 1.9.3(b) of Chapter I, by which joint costs may be allocated in proportion to the use of facilities.

Comment: Some commenters proposed broadening the use of alternative costs in the cost allocation procedure.

Response: The section addressing use of alternative costs was expanded to indicate that an alternative cost approach is to be used whenever costs would be incurred for a purpose not addressing the NED objective, e.g., a State or local concern.

Comment: One commenter stated that there was ambiguity in the definition of financial costs to be allocated.

Response: The section on cost allocation has been clarified to include the value of contributed lands used for a plan.

Plan Selection

Comment: In order to eliminate confusion it should be made clear that the plan with the greatest net economic benefit is the NED plan. Suggest "The plan with the greatest net economic benefit (the NED plan) is to be selected * * *"

Response: This change has been made.

Comment: There is a conflict between Section 10.2(a), which states that the plan with the greatest net economic benefit is to be selected "unless the Secretary of a department or head of an independent agency grants an exception * * *," and Section 10.2(c), which states that selection of the recommended plan should be made by the agency decisionmaker.

Response: The Secretary of a department or head of an independent agency is the agency decisionmaker for these purposes.

Comment: The selected plan must be consistent with State water management plans and policies. The Governor of the affected States must concur in the final plan selection.

Response: Consistency with State water management plans and policies is an indicator of a plan's acceptability. Concurrence by the Governors of affected States is also a measure of a plan's acceptability. The NED plan is to

be formulated in consideration of the acceptability criterion, i.e., acceptance by State and local entities and compatibility with existing laws, regulations and policies. This is adequately covered in Section 6.2(c). Another indicator of the plan's acceptability is the willingness of nonfederal sponsors to sign agreements to provide financing, lands, easements, and rights-of-way.

Comment: Section 10.2(c) indicates that selection of the recommended plan should be made by State or local sponsors for federally-assisted projects. Section 10.2(a) requires selection of the NED plan unless the Secretary of a department grants an exception. This is an inconsistency. There is also an inconsistency in requiring formulation of alternative plans to respond to State and local concerns, but requiring selection of the NED plan.

Response: Section 10.2(c) has been modified to recognize that State and local sponsors may recommend the selection of a plan other than the NED plan. However, plan selection is to be made by the agency decisionmaker for both Federal and federally-assisted programs.

General Comments on Procedures

Comment: The degree of flexibility in the procedures should be increased in order to be consistent with the change from rules to guidelines.

Response: The Guidelines state in Section 1.7.2(a)(4) that the NED procedures can be abbreviated when appropriate, but that planners are expected to use the approved procedures unless or until more accurate alternative methods have been approved by the Water Resources Council or, if policy changes are involved, the Cabinet Council on Natural Resources and Environment. Additional analyses can also be presented for comparison. This policy is reflected in the NED procedures. The EQ procedures are included as one alternative evaluation system that may be used by affected Federal agencies.

NED Procedures, General (Subparts A and B)

Comment: Subparts A and B should be deleted because they do not include benefit evaluation procedures, and the material is adequately addressed in Chapter I of the Guidelines.

Response: It is agreed that this material does not include procedures for measuring NED benefit categories. Material that was adequately covered in Chapter I has been removed. The material on risk and uncertainty has been edited to be general guidance on how to treat risk and uncertainty and has been moved to a supplemental Chapter I. This change also recognizes the fact that considerations of risk and uncertainty apply not only to NED analysis, but also to environmental quality, regional, and social effects analyses.

Comment: The calculation of net NED benefits in this section should be presented in average annual equivalent (annualized) terms, rather than in present value terms.

Response: Agree. In the interest of consistency, the presentation of net NED benefits in this section has been changed from "present value" to "average annual equivalent" terms. This is the normal presentation of benefits in agency reports.

Comment: The definition of the period of analysis needs to be clarified.

Response: Agree. The language in old section 2.1.2(c) has been revised to provide clarification and consistency.

M&I Water Supply (Subpart C)

Comment: The Federal discount rate should not be used in valuing the most likely nonfederal alternative M&I project, because it undervalues the costs that would be incurred in nonfederal development.

Response: In order to assess comparable value of all alternatives on a common basis, the Federal discount rate is used in evaluations. This ensures that the unrelated element of variable financing will not bias the evaluation toward Federal, rather than local or private, investment.

Agriculture (Subparts D, E and F)

Comment: Some commenters objected to the sole use of ten basic crops (rice, cotton, corn, soybeans, wheat, milo, barley, oats, hay, and pasture) in the analysis of intensification benefits for agricultural floodwater, erosion, sedimentation, drainage, and irrigation. They stated that this is unnecessarily arbitrary and restrictive and may result in an understatement of the actual NED benefit. On the other hand, another commenter stated that if crop restrictions are eliminated, NED benefits will be overstated because benefit claims will be made for transfers in production from one area to another.

Response: The theory underlying the distinction between basic crops and other crops has been clarified. In a national context, the production of crops other than basic crops is seldom limited by the availability of suitable land. The limitations on production are generally market demand, risk aversion, and other supply factors. When suitable lands are already available, making additional land available will not lead to a national increase in production. Rather, it will lead to transfers of production from one area to another. The area losing production of these other crops would switch to production of basic crops. As a result, national benefits from a project would accrue from any decreases in the cost of production of these other crops and from the increased production of basic crops.

However, it is agreed that the designation of certain crops as basic for the analysis of all projects is an overly simple solution to what is in reality a complex empirical problem. Therefore, a test has been added to the procedure to determine whether the absence of suitable land is constraining production in a proposed project area. When it can be demonstrated that crops not considered basic crops are land constrained, they may be evaluated as basic crops in the determination of agricultural intensification benefits.

Comment: Why not circumvent the problem of crop selection by going directly to the change in land value associated with irrigation, rather than focusing on which crops should be included or excluded from the agricultural benefit calculations?

Response: An alternative procedure has been added in which intensification benefits from a plan are based on differences in the market value of land. This procedure is to be implemented by qualified land appraisers. The land value procedure can be substituted for an income calculation of intensification benefits associated with a plan. It is recognized that in some cases obstacles to proper land evaluation analysis may prohibit use of this procedure.

Comment: Increased returns to family labor and to farm management should be counted as benefits rather than as costs. This is because the opportunity cost of additional effort for most farm areas is almost zero due to the immobility of these factors. Furthermore, the level of management charge is arbitrary and inflexible.

Response: The procedures are designed to evaluate the benefits of the project measure that remain after accounting for all costs of implementation. These costs include project costs and associated on-farm costs such as family labor and management. Although these costs are not financial outlays, they are opportunity costs and must be counted to properly evaluate a plan. It is unrealistic to infer that farm labor and management will be immobile over the long life of a water project and, thus, to assign them zero opportunity cost. The

existing treatment of farm labor is proper. However, in the case of management the procedure has been modified to allow the use of a range of charges appropriate to the type of farming operation.

Comment: One commenter has indicated that the procedures are inconsistent in the treatment of benefits from increases in yields due to future improvements in technology. They are permitted for damage reduction benefits, but not in the analysis of intensification benefits.

Response: Agree. Increases in yields due to changes in technology, as well as the costs associated with those changes, should be included in intensification benefits, since realization of the benefits from improved technology is dependent on the installation of the water resources project. This change results in consistent treatment of benefits from changes in technology.

Comment: Benefit should be allowed in computing net farm income for marketing field crops through livestock.

Response: The current procedures recognize that irrigated crops are appropriately valued at their market price regardless of the form in which they are ultimately marketed. That is, the crop and livestock activities are considered to be independent. However, in geographically isolated locations, increased livestock production may depend on the development of the project. Where this can be demonstrated, net income from additional livestock production may be included as a benefit. All costs associated with the increased livestock production, including the value of the feed and forage from the project used in feeding the livestock, must be included as costs in the evaluation.

Hydropower (Subpart H)

Comment: Simplified procedures for small-scale hydropower projects should apply to projects of 100 MW capacity or less.

Response: The procedures have been revised to permit the use of simplified evaluations for single-purpose projects of 80 MW capacity or less at existing Federal facilities. This capacity was selected because it is defined as small-scale under the Public Utility Regulatory Practices Act of 1978.

For projects at undeveloped sites, which involve more uncertainties and generally have higher unit costs, the simplified evaluation will continue to apply to projects of 25 MW or less capacity.

Comment: The procedures should allow use of market data in evaluating hydropower projects.

Response: In recognition of the fact that a market exists to guide nonfederal energy development decisions, an alternative procedure has been provided for use under certain conditions. This alternative procedure permits the evaluation of single-purpose hydropower alternatives on the basis of market data when those plans would be 100 percent nonfederally financed and would have no significant adverse incidental effects.

Comment: One commenter suggested that the most likely nonfederal interest rate should be used in determining hydropower benefits. Another commenter urged that the Federal discount rate continue to be used.

Response: Distortions would be introduced into comparison of alternatives if an interest rate other than the Federal discount rate were used to evaluate the most likely nonfederal alternative.

Recreation (Subpart K)

Comment: Recreation benefit procedures are overly complex and, given the imprecision of recreation economics, cannot yield cost effective results. The threshold for use of the contingent valuation method (CVM) or the travel cost method (TCM) should be increased to one million visits annually.

Response: The procedures for the evaluation of recreational benefits of a project as proposed in these guidelines reflect the current state of the art and if used with skill and judgment by the analyst should provide the best estimates that can be obtained. Three alternative methods and their appropriate uses are presented in the guidelines with detailed explanation in the attached appendices. In the interest of increasing flexibility and reducing planning costs, the threshold for use of the CVM and TCM methods has been increased from 500,000 to 750,00 visits annually.

Comment: The existing unit-day value schedule is too restrictive, and there is a wide disparity between these values and those developed using the travel cost method, particularly for specialized hunting and fishing activities. Additional work is needed to ensure that values are reasonable, acceptable, and representative of expected user benefits.

Response: Reevaluation of the schedule of unit-day values is beyond the scope of this action. Unit-day values are cooperatively established by Federal water resource agencies, as provided for in Section 2.10.10(c)(2). The values have been updated by use of the Consumer Price Index to reflect current dollar (FY 1983) values.

External Economies (Subpart M)

Comment: The procedure concerning external economies should be deleted, because all known benefits should be internalized in the planning process.

Response: Agree. National economic planning should internalize all known direct beneficial and adverse effects. Consequently, this procedure has been rewritten as new *Section XII, Other Direct Benefits.*

Comment: This procedure contains potentially serious ambiguities and should be revised to ensure that only technological economies are included.

Response: It is correct that only direct effects of a plan arising from technological relationships are to be included in the analysis. The section has been rewritten to clarify this point.

Unemployed or Underemployed Labor Resources (Subpart N)

Comment: The procedure should extend the value for employment benefits to projects within reasonable commuting distance of areas of high and persistent unemployment.

Response: The procedure is limited to projects physically located in areas of high or persistent unemployment because the values (see Step 5 of evaluation procedure) are based on a study of projects physically located in areas of high and persistent unemployment. It would be inappropriate to apply these same values to projects outside these areas. Expenditures on projects outside of these areas would have a somewhat smaller but unspecifiable impact; however, the state of the art does not include procedures for measuring these unspecifiable benefits.

Procedure for Evaluating Structural Failure (OSE Account)

Comment: Some commenters urged retention of the OSE procedure for structural failure. Others supported the proposal to eliminate it from the P&G.

Response: The P&G do not include the former structural failure procedure. That procedure assumed arbitrary conditions for structural failure and resulting analyses could not be translated into expected losses. Without such capability, the procedure would not have provided useful information to assist in decisionmaking.

Final Action

PART 711—[REMOVED]

PART 713—[REMOVED]

PART 714—[REMOVED]

PART 716—[REMOVED]

Title 18 of the Code of Federal Regulations is amended by removing Parts 711, 713, 714 and 716.

(Secs. 103 and 402 of the Water Resources Planning Act (Pub. L. 89-80, 42 U.S.C. 1962, 19629-2 and 1962d); E.O. 11747, November 7, 1973, 38 FR 30993).

Dated: February 22, 1983.

James G. Watt,

Chairman, Water Resources Council.

[FR Doc. 83-6067 Filed 3-9-83; 8:45 am]

BILLING CODE 4310-10-M

WATER RESOURCES COUNCIL

Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies

AGENCY: Water Resources Council.

ACTION: Notice of adoption and availability.

SUMMARY: This notice announces the adoption and availability of administrative Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies (P&G) as approved by the President on February 3, 1983, and the Chairman of the Water Resources Council on February 22, 1983. The P&G replace 18 CFR Parts 711, 713, 714 and 716 and apply to implementation studies for water and related land resources projects of the Bureau of Reclamation, the Corps of Engineers, the Soil Conservation Service and the Tennessee Valley Authority.

DATE: The new P&G become effective July 8, 1983.

ADDRESS: Written comments for future improvements in the P&G should be addressed to: Chairman of the Water Resources Council, Department of the Interior, Washington, D.C. 20240. Copies of the P&G may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 (Stock Number 052–045–00085–1).

FOR FURTHER INFORMATION CONTACT: Jonathan P. Deason, Department of the Interior (202) 343–3150.

SUPPLEMENTARY INFORMATION:

I. Background

A notice of proposed repeal of the Principles, Standards and Procedures (PS&P) in 18 CFR 711, 713, 714, and 716 was published on September 11, 1981, at 46 FR 45368. Many commenters requested the opportunity to review the proposed P&G to assist them in commenting on repeal of the existing rules. In response, the comment period was re-opened on March 22, at which time proposed P&G were published at 47 FR 12297. Comments were requested on repeal of the PS&P and on adoption of the proposed P&G, including the procedures for evaluating national economic development (NED) and environmental quality (EQ).

II. Issuance of the P&G

The proposed P&G were reappraised by the Water Resources Council (WRC) in light of comments received during the initial and re-opened public review periods. A discussion of the comments received and WRC responses is presented in the document repealing 18 CFR Parts 711, 713, 714, and 716 which is published in today's **Federal Register.**

The P&G, as revised in response to public comments, have been established and adopted by the WRC. This action implements the requirement of the Water Resources Planning Act (Pub. L. 89–80) that the WRC establish principles, standards and procedures for planning water and land resources projects.

To assist in consideration of possible future improvements, continuing public review and comment are welcomed. Changes should be suggested to the Chairman of the WRC. All suggested changes will be considered at the time of the next revisions to the P&G. Copies of the P&G may be obtained from the Superintendent of Documents at the above address.

Dated: March 4, 1983.

Garrey E. Carruthers,

Alternate to the Chairman, Water Resources Council.

[FR Doc. 83-6068 Filed 3-9-83; 8:45 am]

BILLING CODE 4310-10-M

federal register

Thursday
March 10, 1983

Part IV

Department of the Interior

Minerals Management Service

Outer Continental Shelf; St. George Basin

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Oil and Gas Lease Sale No. 70
St. George Basin

1. Authority. This notice is published pursuant to the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1331-1343), as amended (92 Stat. 629), and the regulations issued thereunder (30 CFR 256 (formerly 43 CFR 3300; see the Federal Register at 47 FR 47006, October 22, 1982)). A revision of those regulations appeared in the Federal Register of June 16, 1982 at 47 FR 25967 and 26031. The revisions became effective on July 16, 1982, and will therefore apply to this sale.

2. Filing of Bids. Sealed bids will be received by the Regional Manager, Alaska Outer Continental Shelf (OCS) Region, 620 East 10th Avenue, P.O. Box 1159, Anchorage, Alaska 99510. Bids may be delivered, either by mail or in person, to the above address until 4:30 p.m., April 11, 1983, or by personal delivery to the Howard Rock Ballroom, Sheraton Anchorage Hotel, 401 East 6th Ave., Anchorage, Alaska, between the hours of 8:30 a.m., a.h.s.t., and 9:30 a.m., a.h.s.t., April 12, 1983. Bids received by the Regional Manager later than the times and dates specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless written modification or withdrawal is received by the Regional Manager prior to 9:30 a.m., a.h.s.t., April 12, 1983. All bids must be submitted and will be considered in accordance with applicable regulations, including 30 CFR 256. The list of restricted joint bidders which applies to this sale was published in the Federal Register at 47 FR 44166, October 6, 1982.

3. Method of Bidding. A separate bid in a sealed envelope, labeled, "Sealed Bid for Oil and Gas Lease (insert number of tract), not to be opened until 10 a.m., a.h.s.t., April 12, 1983," must be submitted for each tract. A suggested bid form appears in 30 CFR 256, Appendix A. Bidders are advised that tract numbers are assigned solely for administrative purposes and are not the same as block numbers found on official protraction diagrams. All bids received shall be deemed submitted for a numbered tract. Bidders must submit with each bid one-fifth of the cash bonus in cash or by cashier's check, bank draft, or certified check, payable to the order of the Minerals Management Service. No bid for less than a full tract as described in paragraph 12 will be considered. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to no more than five decimal places after the decimal point, e.g., 50.12345 percent. Other documents may be required of bidders under 30 CFR 256. Partnerships also need to submit a list of signatures authorized to bind the partnership. All documents must be executed in conformance with signatory authorizations on file. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. All leases awarded for this sale will provide for a yearly rental payment of $8 per hectare or fraction thereof and a minimum royalty of $8 per hectare or fraction thereof. The following systems will be utilized:

(a) Bonus Bidding with a Fixed Sliding Scale Royalty. Bids on tracts 70-10, 70-11, 70-12, 70-13, 70-14, 70-15, 70-16, 70-23, 70-24, 70-25, 70-26, 70-27, 70-28, 70-29, 70-36, 70-37, 70-38, 70-39, 70-40, 70-41, 70-42, 70-49, 70-50, 70-51, 70-52, 70-53, 70-54, 70-55, 70-73, 70-74, 70-75, 70-76, 70-77, 70-78, 70-79, 70-80, 70-81, 70-82, 70-83, 70-84, 70-85, 70-86, 70-87, 70-105, 70-106, 70-107, 70-108, 70-109, 70-110, 70-111, 70-112, 70-113, 70-114, 70-115, 70-116, 70-117, 70-118, 70-119, 70-137, 70-138, 70-139, 70-140, 70-141, 70-142, 70-143, 70-144, 70-145, 70-146, 70-147, 70-148, 70-149, 70-150, 70-151, 70-159, 70-160, 70-161, 70-162, 70-163, 70-164, 70-165, 70-166, 70-167, 70-168, 70-169, 70-170, 70-171, 70-172, 70-173, 70-181, 70-182, 70-183, 70-184, 70-185, 70-186, 70-187, 70-188, 70-189, 70-190, 70-191, 70-192, 70-193, 70-194, 70-195, 70-203, 70-204, 70-205, 70-206, 70-207, 70-208, 70-209, 70-210, 70-211, 70-212, 70-213, 70-214, 70-215, 70-216, 70-217, 70-225, 70-226, 70-227, 70-228, 70-229, 70-230, 70-231, 70-232, 70-233, 70-234, 70-235, 70-236, 70-237, 70-238, 70-239, 70-247, 70-248, 70-249, 70-250, 70-251, 70-252, 70-253, 70-254, 70-255, 70-256, 70-257, 70-258, 70-259, 70-260, and 70-261 must be submitted on a cash bonus basis with the percent royalty due in amount or value of production fixed according to the sliding scale formula described below. This formula fixes the percent royalty at a level determined by the value of lease production during each calendar quarter. For purposes of determining the royalty percent due on production during a quarter, the value of production during the quarter will be adjusted for inflation as described below. The determination of the value of the production on which royalty is due will be made pursuant to 30 CFR 250.64.

The fixed sliding scale formula operates in the following way: when the quarterly value of production, adjusted for inflation, is less than or equal to $16.697566 million, a royalty of 12.50000 percent in amount or value of production will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than $16.697567 million, but less than or equal to $11822.537759 million, the royalty percent due on the unadjusted value or amount of production is given by

$Rj = b[Ln (Vj/S)]$ where

Rj = the percent royalty that is due and payable on the unadjusted amount or value of all production in quarter j

b = 8.0

Ln = natural logarithm

Vj = the value of production in quarter j, adjusted for inflation, in millions of dollars

S = 3.50

TABLE 1. HYPOTHETICAL QUARTERLY ROYALTY CALCULATIONS

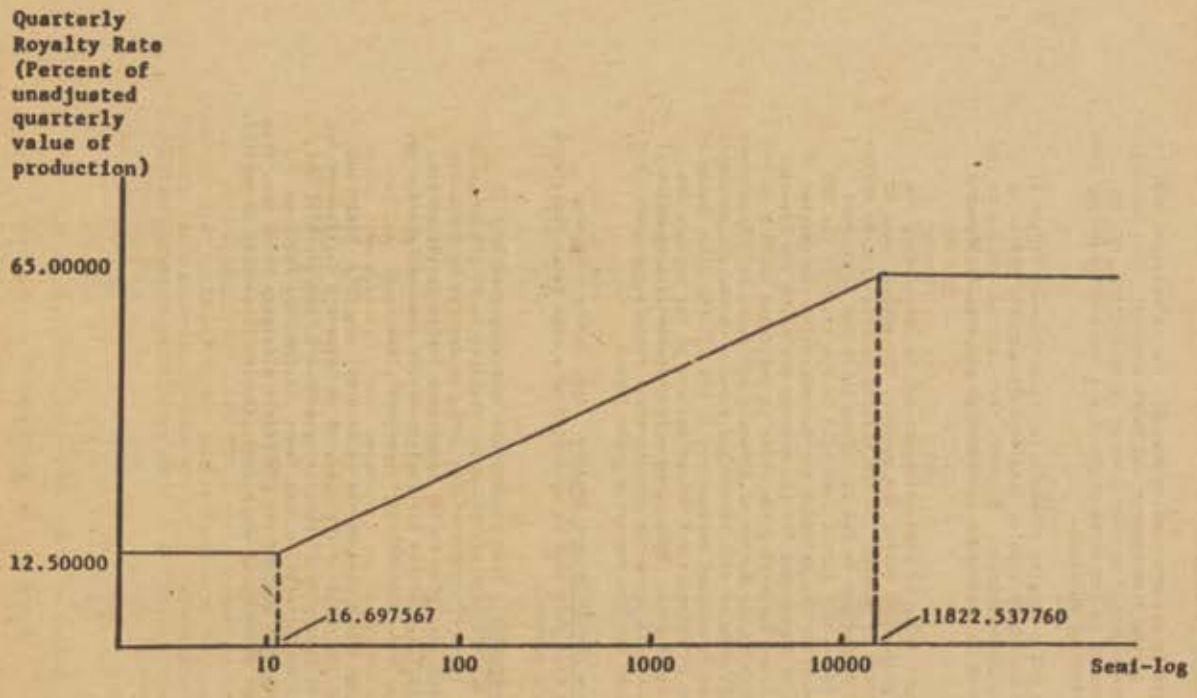
(A) Actual Value of Quarterly Production (Millions of Dollars)	(B) GNP Fixed Weighted Price Index	(C) Inflation Factor[1]	(D) Adjusted Value of Quarterly Production[2] (Vj, Millions of $)	(E) Percent Royalty Rate (Rj)	(F) Royalty Payment[3] (Millions of Dollars)
10.000000	200.0	4/3	7.500000	12.50000	1.25000
30.000000	200.0	4/3	22.500000	14.88602	4.46581
90.000000	200.0	4/3	67.500000	23.67492	21.30743
270.000000	200.0	4/3	202.500000	32.46382	87.65231
810.000000	200.0	4/3	607.500000	41.25271	334.14695
10.000000	250.0	5/3	6.000000	12.50000	1.25000
30.000000	250.0	5/3	18.000000	13.10087	3.93026
90.000000	250.0	5/3	54.000000	21.88977	19.70079
270.000000	250.0	5/3	162.000000	30.67867	82.83241
810.000000	250.0	5/3	486.000000	39.46757	319.68732

1 Column (B) divided by 150.0 (assumed value of GNP fixed weighted price index at time leases are issued).

2 Column (A) divided by Inflation Factor.

3 Column (A) times Column (E) divided by 100. All values are rounded for display purposes only.

Figure 1
Form of the Sliding Royalty Schedule



When the adjusted quarterly value of production is equal to or greater than $11822.537760 million, a royalty of 65.00000 percent in amount or value of production will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production.

In determining the quarterly percent royalty due, Rj, the calculation will be carried to five decimal places (for example, 18.56224 percent). This calculation will incorporate the adjusted quarterly value of production, Vj, in millions of dollars, rounded to the sixth digit, i.e., the nearest dollar (for example, 35.624831 millions of dollars).

The form of the sliding scale royalty schedule is illustrated in Figure 1. Note that the effective quarterly royalty rate depends upon the inflation adjusted quarterly value of production. However, this rate is applied to the unadjusted quarterly value of production to determine the royalty payments due.

In adjusting the quarterly value of production for use in calculating the percent royalty due on production during the quarter, the actual value of production will be adjusted to account for the effects of inflation by dividing the actual value of production by the following inflation adjustment factor. The inflation adjustment factor used will be the ratio of the GNP fixed weighted price index for the calendar quarter preceding the quarter of production to the value of that index for the quarter preceding the issuance of the lease. The GNP fixed weighted price index is published monthly in the Survey of Current Business by the Bureau of Economic Analysis, U.S. Department of Commerce. The percent royalty will be due and payable on the actual amount or value of production as determined pursuant to 30 CFR 250.64. The timing of procedures for inflation adjustments and determinations of the royalty due will be specified at a later date. Table 1 provides hypothetical examples of quarterly royalty calculations using the sliding scale formula just described under two different values for the quarterly price index.

(b) Bonus Bidding with a 12-1/2 Percent Royalty. Bids on the remaining tracts to be offered at this sale must be submitted on a cash bonus basis with a fixed royalty of 12-1/2 percent.

5. Equal Opportunity. Each bidder must have submitted by 9:30 a.m., a.h.s.t., April 12, 1983, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140-8 (June 1982), and the Affirmative Action Representation Form, Form 1140-7 (June 1982). See "Information to Lessees" item 14(h).

6. Bid Opening. Bids will be opened on April 12, 1983, beginning at 10 a.m., a.h.s.t., at the second address stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight, April 12, 1983, that bid will be returned unopened to the bidder, as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks or bank drafts submitted with a bid may be deposited in a suspense account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Tracts. The United States reserves the right to withdraw any tract from this sale prior to issuance of a written acceptance of a bid for that tract.

9. Acceptance, Rejection, or Return of Bids. The United States reserves the right to reject any and all bids for any tract. In any case, no bid for any tract will be accepted and no lease for any tract will be awarded to any bidder unless:

a. The bidder has complied with all requirements of this notice and applicable regulations;

b. The bid is the highest valid cash bonus bid; and

c. The amount of the bid has been determined to be adequate by the Secretary of the Interior.

No bid will be considered for acceptance unless it offers a cash bonus in the amount of $371 or more per hectare or fraction thereof. Any bid submitted which does not conform to the requirements of this notice of sale, the OCS Lands Act, as amended, or applicable regulations may be returned to the person submitting that bid by the Regional Manager and not considered for acceptance.

10. Successful Bidders. Each person who has submitted a bid accepted by the Secretary of the Interior will be required to execute copies of the lease specified below, pay the balance of the cash bonus bid together with the first year's rental and satisfy the bonding requirements of 30 CFR 256 Subpart I within the time provided in 30 CFR 256.47. A modification of payments procedures for successful bidders appeared in the latest revision of 30 CFR 256 (see paragraph 1, above). These changes do not apply to the submission of the one-fifth bonus with bids, described in paragraph 3, above.

11. Official Protraction Diagrams. Tracts offered for lease may be located on the following official protraction diagrams which are available from the Regional Manager, Alaska Outer Continental Shelf Region, at the first address stated in paragraph 2, at a cost of $2 each:

a. Outer Continental Shelf Official Protraction Diagram NN 3-1, Davidson Bank (approved November 29, 1974).

b. Outer Continental Shelf Official Protraction Diagram NO 2-8, St. George Island (approved November 29, 1974).

c. Outer Continental Shelf Official Protraction Diagram NO 3-7 (approved November 29, 1974).

12. Tract Descriptions. Note: There may be gaps in the numbers of the tracts listed. Some of the blocks identified in the final environmental impact statement may not be included in this notice. The tracts offered for bid are as follows:

OCS OFFICIAL PROTRACTION DIAGRAM, DAVIDSON BANK NN 3-1
(Approved 11/29/74)

Tract	Block	Designation	Hectares
70-1	19	All	2304.00
70-2	20	All	2304.00
70-3	63	All	2304.00
70-4	64	All	2304.00
70-5	65	All	2304.00
70-6	107	All	2304.00
70-7	108	All	2304.00
70-8	109	All	2304.00
70-9	110	All	2304.00
70-10	212	All	2304.00
70-11	213	All	2304.00
70-12	214	All	2304.00
70-13	215	All	2304.00
70-14	216	All	2304.00
70-15	217	All	2304.00
70-16	218	All	2304.00
70-17	233	All	2304.00
70-18	234	All	2304.00
70-19	235	All	2304.00
70-20	236	All	2304.00
70-21	237	All	2304.00
70-22	238	All	2304.00
70-23	256	All	2304.00
70-24	257	All	2304.00
70-25	258	All	2304.00
70-26	259	All	2304.00
70-27	260	All	2304.00
70-28	261	All	2304.00
70-29	262	All	2304.00
70-30	277	All	2304.00
70-31	278	All	2304.00
70-32	279	All	2304.00
70-33	280	All	2304.00
70-34	281	All	2304.00
70-35	282	All	2304.00
70-36	300	All	2304.00
70-37	301	All	2304.00
70-38	302	All	2304.00
70-39	303	All	2304.00
70-40	304	All	2304.00
70-41	305	All	2304.00
70-42	306	All	2304.00
70-43	321	All	2304.00
70-44	322	All	2304.00
70-45	323	All	2304.00
70-46	324	All	2304.00

OFFICIAL PROTRACTION DIAGRAM, DAVIDSON BANK NN 3-1
(Approved 11/29/74)

Tract	Block	Designation	Hectares
70-47	325	All	2304.00
70-48	326	All	2304.00
70-49	344	All	2304.00
70-50	345	All	2304.00
70-51	346	All	2304.00
70-52	347	All	2304.00
70-53	348	All	2304.00
70-54	349	All	2304.00
70-55	350	All	2304.00
70-56	365	All	2304.00
70-57	366	All	2304.00
70-58	367	All	2304.00
70-59	368	All	2304.00
70-60	369	All	2304.00
70-61	370	All	2304.00
70-62	371	All	2304.00
70-63	372	All	2304.00
70-64	373	All	2304.00
70-65	374	All	2304.00
70-66	375	All	2304.00
70-67	376	All	2304.00
70-68	377	All	2304.00
70-69	378	All	2304.00
70-70	379	All	2304.00
70-71	380	All	2304.00
70-72	381	All	2304.00
70-73	382	All	2304.00
70-74	383	All	2304.00
70-75	384	All	2304.00
70-76	385	All	2304.00
70-77	386	All	2304.00
70-78	387	All	2304.00
70-79	388	All	2304.00
70-80	389	All	2304.00
70-81	390	All	2304.00
70-82	391	All	2304.00
70-83	392	All	2304.00
70-84	393	All	2304.00
70-85	394	All	2304.00
70-86	395	All	2304.00
70-87	396	All	2304.00
70-88	409	All	2304.00
70-89	410	All	2304.00
70-90	411	All	2304.00
70-91	412	All	2304.00
70-92	413	All	2304.00

OFFICIAL PROTRACTION DIAGRAM, DAVIDSON BANK NN 3-1
(Approved 11/29/74)

Tract	Block	Designation	Hectares
70-93	414	All	2304.00
70-94	415	All	2304.00
70-95	416	All	2304.00
70-96	417	All	2304.00
70-97	418	All	2304.00
70-98	419	All	2304.00
70-99	420	All	2304.00
70-100	421	All	2304.00
70-101	422	All	2304.00
70-102	423	All	2304.00
70-103	424	All	2304.00
70-104	425	All	2304.00
70-105	426	All	2304.00
70-106	427	All	2304.00
70-107	428	All	2304.00
70-108	429	All	2304.00
70-109	430	All	2304.00
70-110	431	All	2304.00
70-111	432	All	2304.00
70-112	433	All	2304.00
70-113	434	All	2304.00
70-114	435	All	2304.00
70-115	436	All	2304.00
70-116	437	All	2304.00
70-117	438	All	2304.00
70-118	439	All	2304.00
70-119	440	All	2304.00
70-120	453	All	2304.00
70-121	454	All	2304.00
70-122	455	All	2304.00
70-123	456	All	2304.00
70-124	457	All	2304.00
70-125	458	All	2304.00
70-126	459	All	2304.00
70-127	460	All	2304.00
70-128	461	All	2304.00
70-129	462	All	2304.00
70-130	463	All	2304.00
70-131	464	All	2304.00
70-132	465	All	2304.00
70-133	466	All	2304.00
70-134	467	All	2304.00
70-135	468	All	2304.00
70-136	469	All	2304.00
70-137	470	All	2304.00
70-138	471	All	2304.00

OFFICIAL PROTRACTION DIAGRAM, DAVILSON BANK NN 3-1
(Approved 11/29/74)

Tract	Block	Designation	Hectares
70-139	472	All	2304.00
70-140	473	All	2304.00
70-141	474	All	2304.00
70-142	475	All	2304.00
70-143	476	All	2304.00
70-144	477	All	2304.00
70-145	478	All	2304.00
70-146	479	All	2304.00
70-147	480	All	2304.00
70-148	481	All	2304.00
70-149	482	All	2304.00
70-150	483	All	2304.00
70-151	484	All	2304.00
70-152	507	All	2304.00
70-153	508	All	2304.00
70-154	509	All	2304.00
70-155	510	All	2304.00
70-156	511	All	2304.00
70-157	512	All	2304.00
70-158	513	All	2304.00
70-159	514	All	2304.00
70-160	515	All	2304.00
70-161	516	All	2304.00
70-162	517	All	2304.00
70-163	518	All	2304.00
70-164	519	All	2304.00
70-165	520	All	2304.00
70-166	521	All	2304.00
70-167	522	All	2304.00
70-168	523	All	2304.00
70-169	524	All	2304.00
70-170	525	All	2304.00
70-171	526	All	2304.00
70-172	527	All	2304.00
70-173	528	All	2304.00
70-174	551	All	2304.00
70-175	552	All	2304.00
70-176	553	All	2304.00
70-177	554	All	2304.00
70-178	555	All	2304.00
70-179	556	All	2304.00
70-180	557	All	2304.00
70-181	558	All	2304.00
70-182	559	All	2304.00
70-183	560	All	2304.00
70-184	561	All	2304.00

OFFICIAL PROTRACTION DIAGRAM, DAVIDSON BANK NN 3-1
(Approved 11/29/74)

Tract	Block	Designation	Hectares
70-185	562	All	2304.00
70-186	563	All	2304.00
70-187	564	All	2304.00
70-188	565	All	2304.00
70-189	566	All	2304.00
70-190	567	All	2304.00
70-191	568	All	2304.00
70-192	569	All	2304.00
70-193	570	All	2304.00
70-194	571	All	2304.00
70-195	572	All	2304.00
70-196	595	All	2304.00
70-197	596	All	2304.00
70-198	597	All	2304.00
70-199	598	All	2304.00
70-200	599	All	2304.00
70-201	600	All	2304.00
70-202	601	All	2304.00
70-203	602	All	2304.00
70-204	603	All	2304.00
70-205	604	All	2304.00
70-206	605	All	2304.00
70-207	606	All	2304.00
70-208	607	All	2304.00
70-209	608	All	2304.00
70-210	609	All	2304.00
70-211	610	All	2304.00
70-212	611	All	2304.00
70-213	612	All	2304.00
70-214	613	All	2304.00
70-215	614	All	2304.00
70-216	615	All	2304.00
70-217	616	All	2304.00
70-218	639	All	2304.00
70-219	640	All	2304.00
70-220	641	All	2304.00
70-221	642	All	2304.00
70-222	643	All	2304.00
70-223	644	All	2304.00
70-224	645	All	2304.00
70-225	646	All	2304.00
70-226	647	All	2304.00
70-227	648	All	2304.00
70-228	649	All	2304.00
70-229	650	All	2304.00
70-230	651	All	2304.00
70-231	652	All	2304.00

OFFICIAL PROTRACTION DIAGRAM, DAVIDSON BANK NN 3-1
(Approved 11/29/74)

Tract	Block	Designation	Hectares
70-232	653	All	2304.00
70-233	654	All	2304.00
70-234	655	All	2304.00
70-235	656	All	2304.00
70-236	657	All	2304.00
70-237	658	All	2304.00
70-238	659	All	2304.00
70-239	660	All	2304.00
70-240	683	All	2304.00
70-241	684	All	2304.00
70-242	685	All	2304.00
70-243	686	All	2304.00
70-244	687	All	2304.00
70-245	688	All	2304.00
70-246	689	All	2304.00
70-247	690	All	2304.00
70-248	691	All	2304.00
70-249	692	All	2304.00
70-250	693	All	2304.00
70-251	694	All	2304.00
70-252	695	All	2304.00
70-253	696	All	2304.00
70-254	697	All	2304.00
70-255	698	All	2304.00
70-256	699	All	2304.00
70-257	700	All	2304.00
70-258	701	All	2304.00
70-259	702	All	2304.00
70-260	703	All	2304.00
70-261	704	All	2304.00
70-262	720	All	2304.00
70-263	721	All	2304.00
70-264	722	All	2304.00
70-265	723	All	2304.00
70-266	724	All	2304.00
70-267	725	All	2304.00
70-268	726	All	2304.00
70-269	727	All	2304.00
70-270	728	All	2304.00
70-271	764	All	2304.00
70-272	765	All	2304.00
70-273	766	All	2304.00
70-274	767	All	2304.00
70-275	768	All	2304.00
70-276	769	All	2304.00
70-277	770	All	2304.00
70-278	771	All	2304.00

OFFICIAL PROTRACTION DIAGRAM, DAVIDSON BANK NN 3-1
(Approved 11/29/74)

Tract	Block	Designation	Hectares
70-279	772	All	2304.00
70-280	808	All	2304.00
70-281	809	All	2304.00
70-282	810	All	2304.00
70-283	811	All	2304.00
70-284	812	All	2304.00
70-285	813	All	2304.00
70-286	814	All	2304.00
70-287	815	All	2304.00
70-288	816	All	2304.00
70-289	852	All	2303.00
70-290	853	All	2304.00
70-291	854	All	2304.00
70-292	855	All	2304.00
70-293	856	All	2304.00
70-294	857	All	2304.00
70-295	858	All	2304.00
70-296	874	All	2304.00
70-297	875	All	2304.00
70-298	876	All	2304.00
70-299	877	All	2304.00
70-300	897	All	2304.00
70-301	898	All	2304.00
70-302	899	All	2304.00
70-303	900	All	2304.00
70-304	901	All	2304.00
70-305	902	All	2304.00
70-306	915	All	2304.00
70-307	916	All	2304.00
70-308	917	All	2304.00
70-309	918	All	2304.00
70-310	919	All	2304.00
70-311	920	All	2304.00
70-312	921	All	2304.00
70-313	941	All	2304.00
70-314	942	All	2304.00
70-315	943	All	2304.00
70-316	944	All	2304.00
70-317	945	All	2304.00
70-318	946	All	2304.00
70-319	959	All	2304.00
70-320	960	All	2304.00
70-321	961	All	2304.00
70-322	962	All	2304.00
70-323	963	All	2304.00
70-324	964	All	2304.00
70-325	965	All	2304.00

OFFICIAL PROTRACTION DIAGRAM, DAVIDSON BANK NN 3-1
(Approved 11/29/74)

Tract	Block	Designation	Hectares
70-326	1003	All	2304.00
70-327	1004	All	2304.00
70-328	1005	All	2304.00
70-329	1006	All	2304.00
70-330	1007	All	2304.00
70-331	1008	All	2304.00
70-332	1009	All	2304.00

OFFICIAL PROTRACTION DIAGRAM, ST. GEORGE ISLAND NO 2-8
(Approved 11/29/74)

Tract	Block	Designation	Hectares
70-333	341	All	2304.00
70-334	342	All	2304.00
70-335	385	All	2304.00
70-336	386	All	2304.00
70-337	387	All	2304.00
70-338	388	All	2304.00
70-339	389	All	2304.00
70-340	390	All	2304.00
70-341	391	All	862.83
70-342	431	All	2304.00
70-343	432	All	2304.00
70-344	433	All	2304.00
70-345	434	All	2304.00
70-346	435	All	963.60
70-347	476	All	2304.00
70-348	477	All	2304.00
70-349	478	All	2304.00
70-350	479	All	1064.32
70-351	521	All	2304.00
70-352	522	All	2304.00
70-353	523	All	1165.00

OFFICIAL PROTRACTION DIAGRAM, NO 3-7
(Approved 11/29/74)

Tract	Block	Designation	Hectares
70-354	358	All	862.83
70-355	359	All	2304.00
70-356	360	All	2304.00
70-357	361	All	2304.00
70-358	362	All	2304.00
70-359	363	All	2304.00
70-360	402	All	963.60
70-361	403	All	2304.00
70-362	404	All	2304.00
70-363	405	All	2304.00
70-364	406	All	2304.00
70-365	407	All	2304.00
70-366	408	All	2304.00
70-367	446	All	1064.32
70-368	447	All	2304.00
70-369	448	All	2304.00
70-370	449	All	2304.00
70-371	450	All	2304.00
70-372	451	All	2304.00
70-373	452	All	2304.00
70-374	453	All	2304.00
70-375	490	All	1165.00
70-376	491	All	2304.00
70-377	492	All	2304.00
70-378	493	All	2304.00
70-379	494	All	2304.00
70-380	495	All	2304.00
70-381	496	All	2304.00
70-382	497	All	2304.00
70-383	498	All	2304.00
70-384	534	All	1265.62
70-385	535	All	2304.00
70-386	536	All	2304.00
70-387	537	All	2304.00
70-388	538	All	2304.00
70-389	539	All	2304.00
70-390	540	All	2304.00
70-391	541	All	2304.00
70-392	542	All	2304.00
70-393	578	All	1366.20
70-394	579	All	2304.00
70-395	580	All	2304.00
70-396	581	All	2304.00
70-397	582	All	2304.00
70-398	583	All	2304.00
70-399	584	All	2304.00
70-400	585	All	2304.00

OFFICIAL PROTRACTION DIAGRAM, NO 3-7
(Approved 11/29/74)

Tract	Block	Designation	Hectares
70-401	586	All	2304.00
70-402	622	All	1466.72
70-403	623	All	2304.00
70-404	624	All	2304.00
70-405	625	All	2304.00
70-406	626	All	2304.00
70-407	627	All	2304.00
70-408	628	All	2304.00
70-409	629	All	2304.00
70-410	630	All	2304.00
70-411	631	All	2304.00
70-412	666	All	1567.19
70-413	667	All	2304.00
70-414	668	All	2304.00
70-415	669	All	2304.00
70-416	670	All	2304.00
70-417	671	All	2304.00
70-418	672	All	2304.00
70-419	673	All	2304.00
70-420	674	All	2304.00
70-421	675	All	2304.00
70-422	676	All	2304.00
70-423	677	All	2304.00
70-424	710	All	1667.61
70-425	711	All	2304.00
70-426	712	All	2304.00
70-427	713	All	2304.00
70-428	714	All	2304.00
70-429	715	All	2304.00
70-430	716	All	2304.00
70-431	717	All	2304.00
70-432	718	All	2304.00
70-433	719	All	2304.00
70-434	720	All	2304.00
70-435	721	All	2304.00
70-436	754	All	1767.99
70-437	755	All	2304.00
70-438	756	All	2304.00
70-439	757	All	2304.00
70-440	758	All	2304.00
70-441	759	All	2304.00
70-442	760	All	2304.00
70-443	761	All	2304.00
70-444	762	All	2304.00
70-445	763	All	2304.00
70-446	764	All	2304.00
70-447	765	All	2304.00

OFFICIAL PROTRACTION DIAGRAM, NO 3-7
(Approved 11/29/74)

Tract	Block	Designation	Hectares
70-448	798	All	1868.31
70-449	799	All	2304.00
70-450	800	All	2304.00
70-451	801	All	2304.00
70-452	802	All	2304.00
70-453	803	All	2304.00
70-454	804	All	2304.00
70-455	805	All	2304.00
70-456	806	All	2304.00
70-457	807	All	2304.00
70-458	808	All	2304.00
70-459	809	All	2304.00
70-460	843	All	2304.00
70-461	844	All	2304.00
70-462	845	All	2304.00
70-463	846	All	2304.00
70-464	847	All	2304.00
70-465	848	All	2304.00
70-466	849	All	2304.00
70-467	850	All	2304.00
70-468	851	All	2304.00
70-469	852	All	2304.00
70-470	853	All	2304.00
70-471	888	All	2304.00
70-472	889	All	2304.00
70-473	890	All	2304.00
70-474	891	All	2304.00
70-475	892	All	2304.00
70-476	893	All	2304.00
70-477	894	All	2304.00
70-478	938	All	2304.00
70-479	982	All	2304.00

13. Lease Terms and Stipulations.

a. All leases issued as a result of this sale will be for an initial term of 10 years. Leases issued as a result of this sale will be on Form MMS-2005 (August 1982), available from the Regional Manager, Alaska Outer Continental Shelf Region, at the first address stated in paragraph 2.

b. For leases resulting from this sale for tracts offered on a cash bonus basis with a fixed sliding scale royalty, listed in paragraph 4(a), Form MMS-2005 will be amended as follows:

Sec. 6. Royalty on Production. The lessee agrees to pay the lessor a royalty of that percent in amount or value of production from the leased area as determined by the sliding scale royalty formula as follows: when the quarterly value of production, adjusted for inflation, is less than or equal to $16.697566 million, a royalty of 12.50000 percent in amount or value of production will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than $16.697567 million, but less than or equal to $11822.537759 million, the royalty percent due on the unadjusted value or amount of production is given by

Rj = b[Ln (Vj/S)] where

Rj = the percent royalty that is due and payable on the unadjusted amount or value of all production in quarter j

b = 8.0

Ln = natural logarithm

Vj = the value of production in quarter j, adjusted for inflation, in millions of dollars

S = 3.50

When the adjusted quarterly value of production is equal to or greater than $11822.537760 million, a royalty of 65.00000 percent in amount or value of production will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production.

In determining the quarterly percent royalty due, Rj, the calculation will be carried to five decimal places (for example, 18.56224 percent). This calculation will incorporate the adjusted quarterly value of production, Vj, in millions of dollars, rounded to the sixth digit, i.e., the nearest dollar (for example, 35.624831 millions of dollars). Gas of all kinds (except helium) is subject to royalty. The lessor shall determine whether production royalty shall be paid in amount or value.

c. Except as otherwise noted, the following stipulations will be included in each lease resulting from this sale. In the following stipulations the term RS refers to the Regional Supervisor, Offshore Field Operations, Minerals Management Service, formerly Regional Deputy Minerals Manager, Offshore Field Operations, Minerals Management Service.

Stipulation No. 1: If the RS has reason to believe that a site, structure, or object of historical or archaeological significance, hereinafter referred to as a "cultural resource," may exist in the lease area and gives the lessee written notice that the lessor is enforcing the provisions of this stipulation, the lessee shall, upon receipt of such notice, comply with the following requirements.

(1) Prior to any drilling activity or the construction or placement of any structure for exploration or development on the lease, including, but not limited to, well drilling and pipeline and platform placement, hereinafter in this stipulation referred to as "operation," the lessee shall conduct remote sensing surveys and/or prepare a report, as specified by the RS, to determine the potential existence of any cultural resource that may be affected by such operation. All data produced as well as other pertinent natural and cultural environmental data shall be examined by an archaeologist and geophysicist to determine if indicators are present suggesting the existence of a cultural resource that may be adversely affected by any lease operation. A report of such surveys and assessment prepared by an archaeologist and geophysicist shall be submitted by the lessee to the RS.

(2) If such cultural resource indicators are present, the lessee shall: (a) locate the site of the lease operation so as not to adversely affect the identified location; or (b) establish to the satisfaction of the RS, on the basis of further archaeological investigation conducted by an archaeologist and geophysicist using such survey equipment and techniques as deemed necessary by the RS, either that such operation will not adversely affect the location identified or that the potential cultural resource suggested by the occurrence of the indicators does not exist.

(3) A report of the latter investigation prepared by the archaeologist and geophysicist shall be submitted to the RS for review. Should the RS determine that the existence of a cultural resource which may be adversely affected by such operations is sufficiently established to warrant protection, the lessee shall take no action that may result in an adverse effect on such cultural resource until the RS has given directions as to its protection.

In addition, the lessee agrees that if any cultural resource should be discovered during the conduct of any operations on the lease area, he shall report immediately such findings to the RS and make every reasonable effort to protect the cultural resource until the RS gives directions as to its protection.

Stipulation No. 2: The lessee shall include in any exploration and development plans submitted under 30 CFR 250.34 a proposed environmental training program for all personnel involved in exploration or development activities (including personnel of the lessee's contractors and subcontractors) for review and approval by the Regional Supervisor. The program shall be designed to inform each person working on the project of specific types of environmental, social, and cultural concerns which relate to the individual's job. The program shall be formulated by qualified instructors experienced in each pertinent field of study, and shall employ effective methods to insure that personnel are informed of archaeological, geological, and biological resources, including bird colonies and sea mammal haul-out areas, and to insure that personnel understand the importance of avoidance and non-harassment of wildlife resources. The program shall be designed to increase the sensitivity and understanding of personnel to community values, customs, and lifestyles in areas in which such personnel will be operating. The program shall also include information concerning the domestic and foreign fishing industries in order to reduce potential conflicts.

The lessee shall also submit for review and approval a continuing technical environmental briefing program for supervisory and managerial personnel of the lessee and its agents, contractors, and subcontractors.

Stipulation No. 3 : Subsea wellheads and temporary abandonments, or suspended operations that leave protrusions above the seafloor, shall be protected, if feasible and as appropriate, in such a manner as to allow commercial fisheries trawling gear to pass over the structure without snagging or otherwise damaging the structures or the fishing gear. Latitude and longitude coordinates of these structures, along with water depths, shall be submitted to the Regional Supervisor. The coordinates of such structures will be determined by the lessee utilizing state-of-the-art navigation systems with accuracy of at least ±50 feet (15.25 m) at 200 miles (322 km).

All pipelines, unless buried, including gathering lines, shall have a smooth-surface design. If an irregular pipe surface is unavoidable because of the need for valves, anodes, or other structures, it shall, as appropriate, be protected in such a manner as to allow trawling gear to pass over the object without snagging or otherwise damaging the structure or the fishing gear.

Stipulation No. 4: If the Regional Supervisor has reason to believe that biological populations or habitats which may require additional protection are on any leased tract(s), the Regional Supervisor may require the lessee to conduct environmental surveys to determine the extent and composition of biological populations or habitats which might require additional protective measures on that tract. The Regional Supervisor shall provide written notice to the lessee of his decision to require such surveys.

Based on any surveys which the Regional Supervisor may require of the lessee, or other information available to the Regional Supervisor on special biological resources, the Regional Supervisor may require the lessee to: (1) relocate the site of operations; (2) establish to the satisfaction of the Regional Supervisor on the basis of a site-specific survey, either that such operation will not have a significant adverse effect upon the resource identified or that a special biological resource does not exist; (3) operate during those periods of time that operations do not adversely affect the biological resources as established by the Regional Supervisor; and/or (4) modify operations to ensure that significant biological populations or habitats deserving protection are not adversely affected.

The lessee agrees that, if any area of biological significance should be discovered during the conduct of any operations on the leased area, he will immediately report such findings to the Regional Supervisor and make every reasonable effort to preserve and protect the biological resource from damage until the Regional Supervisor has given the lessee direction with respect to its protection.

The lessee shall submit all data obtained in the course of such surveys to the Regional Supervisor with the locational information for drilling or other activity. The lessee may not take any action that might affect the biologic populations or habitats surveyed until the Regional Supervisor provides written directions to the lessee with regard to permissible actions.

Stipulation No. 5. (To be included only in the leases resulting from this sale for the fixed sliding scale royalty tracts identified in paragraph 4(a) of this notice.)

(a) The royalty rate on production from this lease is subject to consideration for reduction under the same authority that applies to all other oil and gas leases on the Outer Continental Shelf (30 CFR 250.21). The Director, Minerals Management Service, may grant a reduction for only one year at a time and reduction of royalty rates will not be approved unless production has been under way for one year or more.

(b) Although the royalty rate specified in section 6(a) of this lease or as subsequently modified in accordance with applicable regulations and stipulations is applicable to all production under this lease, not more than 16-2/3 percent of the production from the lease area may be taken as royalty in amount, except as provided in sec. 15(d); the royalty on any portion of the production from the lease in excess of 16-2/3 percent may only be taken in value of the production from the lease area.

Stipulation No. 6. Pipelines will be required (a) if pipeline rights-of-way can be determined and obtained; (b) if laying such pipelines is technically and economically feasible and environmentally preferable; and (c) if, in the opinion of the lessor, pipelines can be laid without net social loss, taking into account any incremental cost of pipelines over alternative methods of transportation and any incremental benefits in the form of increased environmental protection or reduced multiple use conflicts. The lessor specifically reserves the right to require that any pipeline used for transporting production to be placed in certain designated management areas. In selecting the means of transportation, including any loading facilities, consideration will be given to any recommendation of the Regional Technical Working Group or other similar advisory group with participation of Federal, State, and local government and industry.

All pipelines, including both flow lines and gathering lines for oil and gas, shall be designed and constructed to provide for adequate protection from water currents, storms and ice gouging, subfreezing conditions, and other hazards as determined on a case-by case basis.

Following the development of sufficient pipeline capacity, no crude oil will be transported by surface vessel from offshore production sites, except in the case of emergency. Determinations as to emergency conditions and appropriate responses to these conditions will be made by the RS.

Where the three criteria set forth in the first sentence of this stipulation are not met and surface transportation must be employed, all vessels used for transporting hydrocarbons from the leased area must conform with all standards established for such vessels, pursuant to the Ports and Waterways Safety Act of 1972 (46 U.S.C. 391a), as amended.

Stipulation No. 7. (To be included in leases only for Tracts 70-10 through 70-16, 70-23 through 70-29, 70-36 through 70-42, 70-49 through 70-55, 70-76 through 70-87, 70-109 through 70-119, 70-142 through 70-151, 70-164 through 70-173, 70-187 through 70-195, 70-210 through 70-217, 70-233 through 70-239, 70-255 through 70-261, 70-296 through 70-299, 70-306 through 70-312, 70-319 through 70-339, 70-342 through 70-344, 70-347 through 70-348, and 70-351.)

In order to protect the wildlife and subsistence resources of the Pribilof Islands and the Aleutian Chain, offshore loading on this tract of produced oil, except during testing for well producibility or in the case of an emergency, is prohibited if such a prohibition on offshore loading is technically and economically feasible, safe, and environmentally preferable.

14. Information to Lessees: (a) Bidders are advised that during the conduct of all activities related to leases issued as a result of this lease sale, the lessee and its agents, contractors, and subcontractors will be subject to the provisions of the Marine Mammal Protection Act of 1972, as amended; the Endangered Species Act of 1973, as amended; and International Treaties.

The lessee or its contractors should be aware that disturbance of wildlife could be determined to constitute harassment, and thereby be in violation of existing laws. Violations under these acts and treaties may be reported to the National Marine Fisheries Service or U.S. Fish and Wildlife Service, as appropriate. Behavioral disturbance of most birds and mammals found in or near the Sale No. 70 area would be unlikely if vessels and aircraft maintained at least a 1-mile distance from observed wildlife or known wildlife concentration areas such as bird colonies and marine mammal haul-out and rookery areas. Therefore, in concurrence with the U.S. Fish and Wildlife Service, it is recommended that aircraft or vessels operated by lessees maintain at least a 1-mile distance from observed or known wildlife concentrations. Human safety will take precedence at all times.

Of particular concern are wildlife populations of the Pribilof Islands, Izembek Lagoon, and other coastal wilderness or refuge areas. For guidance regarding prohibited activities, attention of the lessees is directed particularly to existing National Wildlife Refuge System rules, 50 CFR Parts 27 and 215, and Part 36, rules for the Alaska National Wildlife Refuges (46 FR 31818, June 17, 1981), wherein 50 CFR 36.21(c) states: "The operation of aircraft at altitudes and in flight paths resulting in the herding, harassment, hazing, or driving of wildlife is prohibited."

Maps locating major wildlife concentration areas are available for route planning from the Regional Supervisor, Offshore Field Operations, Alaska OCS Region, and appropriate resource agencies.

(b) Lessees are advised that the state coastal management program contains policies which may be relevant to activities associated with this lease. In addition, local coastal management programs now being developed may have more specific policies related to energy facility siting, areas with particular geologic hazards, subsistence uses, habitats, transportation and areas which have historic or prehistoric resources. Early consultation and coordination with local Coastal Resource Service Area (CRSA) Boards, local planning agencies, and state agencies involved in coastal management review could prevent unsuitable facility siting. Local coastal districts engaged in program development include Bristol Bay CRSA, Aleutian Islands East CRSA, Bethel, and Bristol Bay Borough. Other agencies which would be appropriate to contact include, but are not limited to, the Alaska Office of Coastal Management, the Alaska Department of Natural Resources, and the Alaska Department of Community and Regional Affairs.

(c) Current information indicates that portions of the sale area may contain shallow gas deposits.

(d) The areas adjacent to the tracts offered for lease may fall in areas which may be included in fairways, precautionary zones, or traffic separation schemes which may be established, among other reasons, for the purpose of protecting maritime commerce. Bidders are advised that the United States may designate necessary fairways through leased tracts pursuant to the Port and Tanker Safety Act of 1978.

(e) Corps of Engineers permits are required for construction of any artificial islands, installations and other devices permanently or temporarily attached to the seabed located on the Outer Continental Shelf in accordance with Section 4(e) of the Outer Continental Shelf Lands Act of 1953, as amended.

(f) Bidders are advised that the Departments of the Interior and Transportation have entered into a Memorandum of Understanding, dated May 6, 1976, concerning the design, installation, operation and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(g) Bidders are also advised that in accordance with Sec. 16 of each lease offered at this sale, the lessor may require a lessee to operate under a unit, pooling or drilling agreement, and that the lessor will give particular consideration to requiring unitization in instances where one or more reservoirs underlie two or more leases with either a different royalty rate or a royalty rate based on a sliding scale.

(h) Revisions of Department of Labor regulations on Affirmative Action requirements for Government Contractors (including lessees) have been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 F.R. 42865 and 42968). Should those changes become effective at any time before the issuance of leases resulting from this sale, Section 18 of the lease form, Form MMS-2005 (August 1982), would be deleted from leases resulting from this sale. In addition, existing stocks of the Affirmative Action Forms described in Section 5 of this notice contain language that would be superseded by the revised regulations at 41 CFR 60-1.5(a)(1) and 60-1.7(a)(1).

Pending the issuance of revised versions of Forms 1140-7 and 1140-8, submission of Form 1140-7 (June 1982) and Form 1140-8 (June 1982) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing Affirmative Action Forms.

(i) Bidders are advised that the State of Alaska will be consulted by the MMS throughout the stages of OCS development. In addition to State involvement in the Intergovernmental Planning Program (IPP), and the Scientific Committee of the OCS Advisory Board, the Regional Supervisor will involve the State in the review of exploration and development plans.

(j) Lessees are notified that adequate oilspill contingency plans are required under Alaska OCS Operating Order No. 7, and under 30 CFR 250.34, prior to approval of exploration or development and production plans. OCS Operating Order No. 2 provides that exploration and development and production plans include provisions to meet emergency situations including a means of drilling a relief well should a blowout occur; loss or disablement of a drilling unit or a drilling rig; loss or damage to support craft; hazards unique to the site of drilling operations. In addition, environmental reports, exploration and development and production plans should address, among other things, environmental issues and subsistence values. In accordance with 30 CFR 250.34-1, MMS is required to review oilspill contingency plans. Approval of oilspill contingency plans will require demonstration of theoretical, experimental, and physical capability to detect, contain, cleanup, and dispose of spilled oil in the sale area in accordance with Best Available and Safest Technologies (BAST) requirements, as determined by the Regional Supervisor. Unimak Pass, Isembek, Moffet and Nelson Lagoons, along with areas of the Pribilof Islands, are identified as areas of special biological sensitivity, and under Alaska OCS Operating Order No. 7 and 30 CFR 250.34-3, will require protection in oilspill contingency plans. Due to the severe weather conditions of the St. George Basin area and the sensitivitiy of these areas to spilled oil, special attention will be given to deployment plans and time requirements in the review of oilspill contingency plans. Such protection should not include dispersant usage unless such usage has been approved in advance.

(k) For protection of endangered whales, operators of fixed wing aircraft or helicopters should maintain a 1500 foot altitude (except during take-off and landing) during times when these whales are likely to be present.

(l) Lessees are advised that the RS has the authority to suspend oil and gas exploratory drilling activities on any lease whenever gray whales are present in the migratory corridor or sale area and are near enough to be subject to probable oilspill risk or probable risk from other disturbances. The Department of the Interior has determined that gray whales migrate through or are in the vicinity of St. George Basin generally from April to June and from October to December. If gray whales are present, the RS may order the cessation of exploratory drilling below a threshold depth predetermined by the RS until it is determined that the whales are outside the zone of likely influence or no longer subject to risk from oilspills or other disturbances.

(m) Lessees are advised that Environmental Protection Agency National Pollutant Discharge Elimination System (NPDES) permits are required for discharge of drilling fluids, produced waters and other drilling wastes generated during exploration and development/production phases.

(n) In addressing biological concerns, the RS will receive recommendations from a Bering Sea Biological Task Force (BTF). The BTF will be composed of designated representatives of MMS, U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the Environmental Protection Agency. Before making recommendations to the RS, the Bering Sea BTF should consult with representatives of the State of Alaska and local communities who can contribute to biological evaluations.

(o) Lessees should design the environmental training program required by Stipulation No. 2 to incorporate the views and concerns of local individuals and communities. Lessees are encouraged to provide opportunities to local individuals, organizations, and governments, including local coastal districts, to participate in the development of the environmental training programs.

(p) Lessees are encouraged to hire Alaska residents to perform work done by and for them within the State of Alaska. Lessees are advised that there is considerable local interest in employment associated with petroleum exploration, development and production activities. Lessees are encouraged, through affirmative action programs or otherwise, to provide opportunities to local individuals and organizations to acquire the skills necessary to participation in exploration, development, and production activities and are encouraged to provide, through affirmative action programs or otherwise, employment opportunities for qualified local individuals and organizations. Lessees are also advised that employment of local individuals and organizations may be one method of mitigating certain local social and economic impacts.

(q) Lessees are advised that exploration, development, and production activities may directly and indirectly have significant social and economic impacts on local individuals and communities. Lessees are encouraged to consult with local individuals, organizations, and governments, including local coastal districts, to identify direct and indirect social and economic impacts of exploration, development and production activities prior to undertaking those activities. Lessees are encouraged to consult with and enter into agreements with local individuals, organizations, and governments to compensate for direct and indirect social and economic impacts of exploration, development, and production activities. Lessees are advised

that this may include, among others, support to or provision of local community recreation facilities, mental health, drug, and alcohol treatment services and facilities, or community safety services and capital improvement projects.

(r) Lessees are reminded that potential onshore or nearshore development, e.g., pipelines or port or terminal development, may be subject to land use controls, including the Bristol Bay Cooperative Management Plan, now under preparation.

15. OCS Orders. Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Alaska OCS Orders, effective November 22, 1982, and any other applicable OCS Order as it becomes effective. Final Alaska OCS Orders were published in the Federal Register at 47 FR 47180, on October 22, 1982.

Director, Minerals Management Service
Harold Doley

Date MAR 7 1983

Approved:

Secretary of the Interior
J.J. Simmons III

Certified to be a true copy of the original.

Certifying Officer

[FR Doc. 83-6222 Filed 3-10-83; 8:45 am]

BILLING CODE 4310-MR-C

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
Minerals Management Service
Outer Continental Shelf
St. George Basin

Notice of Leasing Systems, Sale No. 70

Section 8(a)(8) (43 U.S.C. 1337 (a)(8)) of the Outer Continental Shelf Lands Act (OCSLA), as amended, requires that, at least 30 days before any lease sale, a notice be submitted to the Congress and published in the Federal Register:

(A) identifying the bidding systems to be used and the reasons for such use, and

(B) designating the tracts to be offered under each bidding system and the reasons for such designation.

This notice is published pursuant to these requirements.

A. Bidding systems to be used. In OCS Sale No. 70, tracts will be offered under the following two bidding systems as authorized by section 8(a)(1) (43 U.S.C. 1337 (a)(1)): (1) bonus bidding with a fixed sliding scale royalty on 148 tracts, and (2) bonus bidding with a 12 1/2 percent royalty on 331 tracts.

(1) Bonus Bidding with a Fixed Sliding Scale Royalty. This system is authorized by section (8)(a)(1)(C) of the OCSLA, as amended. The sliding scale is designed to establish higher royalty rates for larger reservoirs with higher production rates. As such, the expected bonus is reduced compared to a fixed one-sixth royalty system. This may improve competition for leases, and also tends to reduce the likelihood of production losses that could result if higher royalty rates are set by other means, such as royalty bidding, prior to reservoir delineation and production. The fixed sliding scale formula provided for Sale No. 70 is based on the current assumed range of costs and wellhead prices for this area.

The fixed sliding scale formula operates in the following way: when the quarterly value of production, adjusted for inflation, is less than or equal to $16.697566 million, a royalty of 12.50000 percent in amount or value of production will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than $16.697567 million, but less than or equal to $11822.537759 million, the royalty percent due on the unadjusted value or amount of production is given by

$$Rj = b\,[\ln (Vj/S)]$$ where

Rj = the percent royalty that is due and payable on the unadjusted amount or value of all production in quarter j

b = 8.0

ln = natural logarithm

Vj = the value of production in quarter j, adjusted for inflation, in millions of dollars

S = 3.50

When the adjusted quarterly value of production is equal to or greater than $11822.537760 million, a royalty of 65.00000 percent in amount or value of production will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production.

In adjusting the quarterly value of production for use in calculating the percent royalty due on production during the quarter, the actual value of production will be adjusted to account for the effects of inflation by dividing the actual value of production by the following inflation adjustment factor. The inflation adjustment factor used will be the ratio of the GNP fixed weighted price index for the calendar quarter preceding the quarter of production to the value of that index for the quarter preceding the issuance of the lease. The GNP fixed weighted price index is published monthly in the Survey of Current Business by the Bureau of Economic Analysis, U.S. Department of Commerce. The percent royalty will be due and payable on the actual amount or value of production as determined pursuant to 30 CFR 250.64.

(2) Bonus Bidding with a 12 1/2 Percent Royalty. This system is authorized by section (8)(a)(1)(A) of the OCSLA, as amended. This system has been chosen for certain deeper water tracts proposed for Sale No. 70 because these tracts are expected to require substantially higher exploration, development, and production costs, as well as longer times before initial production, in comparison to more shallow water tracts. Department of the Interior analyses indicate that the minimum economically developable discovery on a tract in such high cost areas under a 12 1/2 percent royalty system would be less than for the same tracts under a 16 2/3 percent royalty system. As a result, more tracts may be explored and developed. In addition, the lower royalty rate system is expected to yield more rapid production rates and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary restraints to competition.

B. Designation of Tracts. The selection of tracts to be offered under the two systems was based on the following factors:

(1) Every effort was made based on available information so that different bidding systems did not split a single geological structure.

(2) Tracts were selected in those resource and cost areas that were appropriate to the identified sliding scale parameters for this sale.

The specific tracts to be offered under each system are as follows:

(a) Bonus Bidding with a Fixed Sliding Scale Royalty—Tracts 70-10 thru 70-16, 70-23 thru 70-29, 70-36 thru 70-42, 70-49 thru 70-55, 70-73 thru 70-87, 70-105 thru 70-119, 70-137 thru 70-151, 70-159 thru 70-173, 70-181 thru 70-195, 70-203 thru 70-217, 70-225 thru 70-239, and 70-247 thru 70-261.

(b) Bonus Bidding with a 12 1/2 Percent Royalty — All remaining tracts.

Director, Minerals Management Service
Harold Doley

Approved:

Acting Secretary of the Interior
J.J. Simmons III

Certified to be a true copy of the original

Certifying Officer

[FR Doc. 83-6223 Filed 3-9-83; 8:45 am]
BILLING CODE 4310-MR-C

federal register

Thursday
March 10, 1983

Part V

Department of Education

Indian Fellowship Program

DEPARTMENT OF EDUCATION

34 CFR Part 263

Indian Fellowship Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary issues proposed regulations to provide appropriate criteria for awarding Indian Fellowships, and to reduce burdens upon applicants by clarifying the regulations governing the Indian Fellowship Program.

DATE: comments must be received on or before April 25, 1983.

ADDRESSES: Comments should be addressed to Director, Indian Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (FOB–6, Room 2177), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Mrs. Alice T. Ford, Coordinator, Indian Fellowship Program, U.S. Department of Education, 400 Maryland Avenue, SW. (FOB–6, Room 2147) Washington, D.C. 20202. Telephone: (202) 245–8840.

SUPPLEMENTARY INFORMATION: (a) The purpose of the Indian Fellowship Program is to provide Federal financial assistance to Indian students by awarding fellowships in order to enable them to pursue a course of study leading toward a postbaccalaureate degree in medicine, law, education, and related fields; or an undergraduate or graduate degree in engineering, business administration, natural resources, and related fields. This program is authorized by Pub. L. 92–318, the Indian Education Act, Section 423, as amended by the Education Amendments of 1978, Pub. L. 95–561, Section 1152, 20 U.S.C. 3385b.

The major issues are:

• Should the Indian Education Fellowship Program be administered without revised regulations which clarify the meaning of the fellowship statute?

Without revised regulations the Indian Education Fellowship Program will experience a substantial burden of monitoring applicants. Revised regulations will make it possible to administer the Indian Education Fellowship Program in a more cost effective manner.

• Should the criteria for the Indian Education Fellowship Program be revised to eliminate "Financial need" as a criterion?

Currently, the Fellowship regulations award points to applicants on a criterion entitled, "Financial need," but the regulations do not require specific information concerning an applicant's needs and resources. The proposed regulations eliminate this criterion, but include a section entitled "Application contents: evidence of financial aid need" to more clearly specify the information that is required to determine the applicant's financial aid need. This change will allow the Indian Education Programs office to make a better assessment of the amount of funds that are awarded to successful applicants for fellowships. This should result in more efficient use of program funds and allow the award of additional fellowships.

(b) The present regulations for the Indian Fellowship Program do not sufficiently clarify certain aspects of the statute. The main provisions of the proposed regulations substantially reduce administrative burdens on program administrators and on the applicants. The direct effect of the proposed regulations will be to provide clarity on the statutory requirements and to minimize the potential for administrative abuses.

(c) These regulations are also needed to—

(1) Better assure that Indian students are able to attend institutions of higher education to pursue a course of study leading to a graduate or undergraduate degree in certain critical professions;

(2) Maximize fellowship resources thereby allowing more Indian students to be served by the program;

(3) Reduce administrative burdens; and

(4) Reduce the rate of abuse of program funds.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have significant economic impact on a substantial number of small entities. The proposed regulations apply to fellowship applicants and individuals who are not classified as small entities.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before (the 45th day after publication of this document) will be considered before the Secretary issues the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Federal Office Building 6, Room 2177, 400 Maryland Avenue, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is especially invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary also particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 263

Colleges and universities, Education, Engineers, Health professions, Indians—education, Law, Natural resources, Scholarships and fellowships.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance No. 84.087; Indian Fellowship Program)

Dated: March 4, 1983.

T. H. Bell,

Secretary of Education.

The Secretary proposes to amend Part 263 of Title 34 of the Code of Federal Regulations to read as follows:

PART 263—INDIAN FELLOWSHIP PROGRAM

Subpart A—General

Sec.

263.1 What is the purpose of the Indian Fellowship Program?
263.2 Who is an eligible applicant for financial assistance?
263.3 What definitions apply to the Indian Fellowship Program?
263.4 What are the allowable fields of study?
263.5 What does a fellowship award include?
263.6 Application contents: evidence that the applicant is Indian.

Sec.

263.7 Application contents: evidence of admission or attendance.
263.8 Application contents: transcripts.
263.9 Application contents: evidence of financial aid need.
263.10 Application contents: other information.

Subpart B—How Are Fellows Selected?

263.11 What priorities may the Secretary establish?
263.12 What priority is given to certain applicants?
263.13 How does the Secretary evaluate applications?

Subpart C—What Conditions Must Be Met by Fellows?

263.21 Required certification of information.
263.22 Time period for a fellowship.
263.23 Responsibilities of a Fellow.
263.24 Leave of absence requests.
263.25 Discontinuation of fellowship payments.
263.26 Requirements for an alternate Fellow.

Subpart D—Who is Responsible for Administration of Grant Payments?

263.31 Disbursement of funds.

Authority: Indian Education Act, section 423 (20 U.S.C. 3385b) as amended, unless otherwise noted.

Subpart A—General

§ 263.1 What is the purpose of the Indian Fellowship Program?

The Indian Fellowship Program provides Federal financial assistance to Indian students by awarding fellowships in order to enable them to pursue a course of study leading toward—

(a) A postbaccalaureate degree in medicine, law, education, and related fields; or

(b) An undergraduate or graduate degree in engineering, business administration, natural resources, and related fields.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.2 Who is an eligible applicant for financial assistance?

(a) An applicant must be an Indian as defined in § 263.3.

(b) An applicant must be a United States citizen.

(c) An applicant is ineligible for a fellowship award if he or she already has obtained a terminal graduate or postbaccalaureate degree in one of the fields listed in § 263.4.

(d) An applicant must be a full-time undergraduate or graduate student at an accredited institution of higher education in one of the fields or related fields listed in § 263.4 and must be recognized by his or her institution of higher education as a degree candidate, except as provided in § 263.7(b).

(e) An applicant must have demonstrated financial aid need, as defined in § 263.3.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.3 What definitions apply to the Indian Fellowship Program?

The following definitions apply to the Indian Fellowship Program:

"Department" means the U.S. Department of Education.

"Dependent care" means the care of minor children who reside with the Fellow.

"Expenses" means tuition and required fees, required university health insurance, room and board at or near the institution, travel in cases of extreme hardship, instructional supplies, and dependent care associated with attendance at an institution of higher education.

"Fellow" means the recipient of a fellowship under the Indian Fellowship Program.

"Fellowship" means an award under the Indian Fellowship Program.

"Financial aid need" means the difference between a student's expenses for the academic year and his or her resources.

"Full course load" means the number of credit hours which the institution requires of a full-time student.

"Full-time student" means a student who is a degree candidate, carries a full course load, and who is not employed for more than 20 hours a week.

"Good standing" means a cumulative grade point average of 2.0 on a 4.0 grade point scale in which failing grades are computed as a part of the average.

"Indian" means any individual who is—

(a) A member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized by the State in which they reside;

(b) A descendant, in the first or second degree, of any individual described in paragraph (a) of this definition;

(c) Considered by the Secretary of the Interior to be an Indian for any purpose; or

(d) An Eskimo or Aleut or other Alaska Native.

(Indian Education Act, Section 453(a); U.S.C. 1221h(a))

"Indian tribe" means any federally or State recognized Indian tribe, band, nation, rancheria, pueblo, Alaska Native village, or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (85 Stat. 688), that exercises the power of self-government.

"Institution of higher education" means that term as defined in 34 CFR 250.4.

"Resources" means income, savings, spouse's income, family contributions and other sources of financial aid.

"Secretary" means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

"Stipend" means that portion of a fellowship award which is used for personal living expenses.

"Undergraduate degree" means a baccalaureate (bachelor's) degree awarded by an institution of higher education.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.4 What are the allowable fields of study?

(a) The allowable fields and related fields of study under this program are—

(1) Medicine. Fields related to medicine such as—
(i) Veterinary medicine;
(ii) Nursing;
(iii) Dentistry;
(iv) Optometry or Ophthalmology;
(v) Biochemistry;
(vi) Pharmacy;
(vii) Nutrition; and
(viii) Clinical psychology.

(2) Law.

(3) Education. Fields related to education such as—
(i) Computer science; and
(ii) Technology.

(4) Business Administration. Fields related to business administration such as—
(i) Accounting;
(ii) Economics;
(iii) Computer science and technology;
(iv) Public administration; and
(v) Mathematics.

(5) Engineering. Fields related to engineering such as—
(i) Architecture;
(ii) Urban or Rural Planning; and
(iii) Communication technology.

(6) Natural Resources. Fields related to natural resources such as—
(i) Agricultural science;
(ii) Forestry;
(iii) Horticulture;
(iv) Hydrology;
(v) Fisheries;
(vi) Environmental or earth sciences;
(vii) Geology or Geophysics;
(viii) Oceanography;
(ix) Marine biology;
(x) Mining;

(xi) Chemical and petroleum refining; and

(xii) Metallurgy.

(b) The Secretary considers, on a case-by-case basis, the eligibility of applications for fellowships in related fields of study in addition to those listed in paragraph (a) of this section.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.5 What does a fellowship award include?

(a) The Secretary awards a fellowship in an amount up to but not more than, the difference between the student's resources, including other sources of financial aid, and the student's expenses, as defined in § 263.3 The assistance provided by the program either—

(1) Fully finances a student's educational expenses; or

(2) Supplements other resources of the student in meeting these expenses.

(b) The Secretary announces for each field of study the expected maximum amounts for subsistence and other fellowship costs in the annual application notice published in the **Federal Register.**

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.6 Application contents: evidence that the applicant is Indian.

An application must contain evidence that the applicant is Indian as defined in § 263.3 of this part.

(Indian Education Act, Section 453(a); 20 U.S.C. 1221h(a))

§ 263.7 Application contents: evidence of admission or attendance.

(a) An application must contain evidence that the applicant is currently in attendance or has been accepted for admission as a full-time student at an accredited institution of higher education in one of the eligible fields of study listed in § 263.4.

(b) An applicant who has not yet been accepted for admission may submit an application that the Secretary may consider, provided that the applicant is accepted by an accredited institution of higher education by a date to be specified by the Secretary.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.8 Application contents: transcripts.

(a) An applicant for an undergraduate fellowship shall submit high school and, if appropriate, undergraduate transcripts.

(b) An applicant for a graduate fellowship shall submit undergraduate and, if appropriate, graduate transcripts.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.9 Application contents: evidence of financial aid need.

(a) An applicant shall demonstrate a need for financial assistance beyond commitments of personal resources, other educational grants, scholarships, Pell Grants, and work study programs. Financial assistance is provided to enable a Fellow to meet allowable expenses for attending an institution of higher education full-time.

(b) To demonstrate need for financial assistance, the applicant must submit the following:

(1) Information showing the amount of tuition and fees charged by the institution of higher education to be attended.

(2) Letters of commitment from granting sources of other financial aid.

(3) Evidence of other pending applications for financial aid.

(4) A copy of the Graduate and Professional Schools Financial Aid Statement (GAPSFAS), the American College Testing Program's Student Need Analysis Statement (Family Financial statement), or a similar complete statement of financial resources that has been submitted to the institution of higher education.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.10 Application contents: other information.

An application must contain—

(a) Three letters of assessment;

(b) An educational commitment essay;

(c) Evidence of scholastic and service awards, leadership positions held, and other special recognition by school, religious, tribal, and civic organizations; and

(d) Standardized test scores appropriate to the applicant's proposed field and level of study.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

Subpart B—How Are Fellows Selected?

§ 263.11 What priorities may the Secretary establish?

(a) Each year, the Secretary may establish priorities among the allowable fields of study described in § 263.4.

(b) The Secretary announces the priorities selected and the approximate amount of funds reserved for any combination of the various fields or related fields of study in the application notice published in the **Federal Register.**

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.12 What priority is given to certain applicants?

The Secretary shall award 15 additional points beyond those awarded under § 263.13 to applicants who apply for graduate fellowships in the fields of engineering, business administration, natural resources, and their related fields.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.13 How does the Secretary evaluate applications?

(a) The Secretary evaluates an application on the basis of the criteria listed in paragraphs (c) and (d) of this section, in addition to the priority listed in paragraphs (c) and (d) of this section, in addition to the priority points awarded under § 263.12. The maximum possible point range for each criterion is stated in parentheses. The number of points the Secretary awards for each criterion depends on how well the application addresses all of the factors of that criterion. The total number of points available under the criteria in this section is 100.

(b) The Secretary evaluates and ranks an application with other applications for the same field and related fields.

(c) *Academic record and leadership potential. (70 points)*

(1) The Secretary considers the quality of the applicant's academic record and the applicant's potential for success in his or her field of study by reviewing the items in paragraphs (c) (2) and (3) of this section. The Secretary awards up to 35 points for paragraph (c)(2) and up to 35 points for paragraph (c)(3).

(2) The Secretary reviews the applicant's grades and standardized test scores, such as the Scholastic Aptitude Test (SAT), American College Testing Assessment Program (ACT), Graduate Record Examination (GRE), Law School Admission Test (LSAT), Medical College Admissions Test (MCAT), and achievements tests.

(3) The Secretary reviews documentation of any leadership positions held by the applicant while in school and three letters of assessment that address the applicant's potential for success and leadership in his or her field of study. The letters must be from—

(i) A teacher or instructor of the applicant;

(ii) A school principal, counselor, or coordinator of a program funded

under Part A of the Indian Education Act; and

(iii) A parent committee member of an Indian Education Act, Part A, project, tribal council member, an advisor or civic leader who has observed the applicant in educational, social, or civic activities.

(d) *Commitment.* (30 points)

(1) The Secretary considers the applicant's commitment by reviewing an educational commitment essay written by the applicant. The Secretary awards up to 30 points for this criterion.

(2) In reviewing the essay, the Secretary looks for—

(i) The applicant's ability to write clearly;

(ii) How well and the extent to which the applicant expresses a commitment of pursuing his or her chosen field of study; and

(iii) The extent to which the essay explains how participation in the fellowship program will enable the applicant to achieve his or her potential and assist him or her in providing leadership to the Indian Community.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

Subpart C—What Conditions Must Be Met by Fellows?

§ 263.21 Required certification of information.

To verify the accuracy of the information provided in the application, the applicant, if requested, shall provide all information and documents, including a copy of his or her Federal Income Tax return. The applicant's failure to provide the requested information and documents invalidates the application.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.22 Time period for a fellowship.

(a) The Secretary awards a fellowship for a period of time—

(1) Not to exceed four academic years for an undergraduate or doctorate degree; and

(2) Not to exceed two academic years for a master's degree.

(b) The Secretary reviews the status of each Fellow at the end of each year and continues support only if the Fellow—

(1) Has complied with the Indian Education Act and applicable regulations;

(2) Has remained a full-time student in good standing in the field in which the fellowship was awarded; and

(3) Has submitted a noncompeting continuation application to request additional support.

(4) Has demonstrated continued financial aid need.

(c) A fellowship terminates when the Fellow receives the degree being sought. A fellowship holder who is awarded an undergraduate degree may seek support under this program to pursue a graduate level or postbaccalaureate degree by submitting a new application.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.23 Responsibilities of a Fellow.

A Fellow shall—

(a) Start school during the first year of the award at the institution named on the grant award document and complete at least one full academic term;

(b) Submit to the Secretary two copies of his or her official grade report at the close of each academic term;

(c) Request a leave of absence from the Secretary for any interruption in his or her program of academic study;

(d) Submit to the Secretary within 60 days from the start of each academic year, a current financial report which has been reviewed and signed by the financial aid officer at the institution of higher education. The financial report shall state all sources and amounts of financial assistance received by the Fellow for the academic year for which the fellowship applies; and

(e) Report to the Secretary any changes in academic or financial status.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.24 Leave of absence requests.

(a) A Fellow may request a leave of absence from the Secretary for a period not longer than 12 months.

(b) The Secretary permits a leave of absence only if the institution certifies that the Fellow is eligible to resume his or her course of study at the end of the leave of absence.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.25 Discontinuation of fellowship payments.

(a) The Secretary may discontinue the fellowship, if the Fellow—

(1) Fails to comply with the provisions under this part, including failure to obtain an approved leave of absence under § 263.24, or with the terms and conditions of the fellowship award;

(2) Fails to disclose any information which substantially affects his or her financial status; or

(3) Fails to report any change in his or her academic status.

(b) The Secretary will discontinue a fellowship only after providing reasonable notice and an opportunity for the Fellow to rebut, in writing or in an informal meeting with the responsible official in the Department of Education, the basis for the decision.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.26 Requirements for an alternate Fellow.

If a fellowship is vacated or discontinued, the Secretary may award the unexpended funds from that fellowship to an alternate applicant at that institution, for a period of study which does not exceed the term of the original fellowship.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

Subpart D—Who Is Responsible for the Administration of Grant Payments?

§ 263.31 Disbursement of funds.

(a) Funds are disbursed directly to the institution of higher education where a Fellow is enrolled. Stipends shall be distributed to Fellows in installments by the institution. No fewer than two installments per academic year shall be made. If the fellowship is vacated or discontinued, the Secretary selects an alternate Fellow at that institution or the institution must return the unexpended funds.

(b) A Fellow who officially or unofficially withdraws or is expelled from an institution before completion of a term shall refund a prorated portion of the stipends, that has been received, as determined by the Secretary.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

[FR Doc. 83-6215 Filed 3-9-83; 8:45 am]
BILLING CODE 4000-01-M

federal register

Thursday
March 10, 1983

Part VI

Department of Agriculture

Animal and Plant Health Inspection

Citrus Canker; Mexico; Proposed Amendment to Interim Rule and Notice of Public Hearing

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 83-308]

Citrus Canker; Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed amendment to interim rule and notice of public hearing.

SUMMARY: This document proposes to amend the "Citrus Canker—Mexico" interim regulations to allow any importer to import restricted articles for movement to and use in certain northern parts of Louisiana and Texas in accordance with certain conditions, and to allow restricted articles to be culled and repacked under certain conditions in restricted areas in Texas. This proposal is in response to requests from importers and State officials and appears to be warranted in order to relieve unnecessary restrictions with respect to restricted articles.

This document also gives notice of a public hearing concerning this proposed action.

DATES: Written comments concerning the proposal must be received on or before March 30, 1983. A public hearing concerning the proposal will be held at 10 a.m. on March 24, 1983.

ADDRESSES: Written comments concerning this proposal should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

A public hearing concerning the proposal will be held at the Crockett Room, The Hilton Inn, 2721 South Tenth Street, McAllen, Texas 78501.

FOR FURTHER INFORMATION CONTACT: Frank Cooper, Staff Officer, Regulatory Services Staff, Plant Protection and Quarantine, APHIS, USDA, Room 637 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-8248.

Stephen Poe, Plant Pathologist, Emergency Programs, Plant Protection and Quarantine, APHIS, USDA, Room 609 Federal Building, Hyattsville, MD 20782; 301-436-6365.

SUPPLEMENTARY INFORMATION:

Public Hearing

A representative of the Animal and Plant Health Inspection Service will preside at the hearing. Any interested person may appear and be heard in person, by attorney, or by other representative.

The hearing will begin at 10 a.m. and is scheduled to end at 5 p.m. local time. However, the hearing may be terminated at any time after it begins if all of those persons desiring an opportunity to speak have been heard. Persons who wish to speak are requested to register with the presiding officer prior to the hearing. The prehearing registration will be conducted at the location of the hearing from 9 a.m. to 10 a.m. Those registered persons will be heard in the order of their registration. Any other person who wishers to speak at the hearing will be afforded such opportunity after the registered persons have been heard. It is requested that duplicate copies of any written statements that are presented be provided to the presiding officer at the hearing.

If the number of preregistered persons and other participants in attendance at the hearing warrants it, the presiding officer may limit the time for each presentation in order to allow everyone wishing to speak the opportunity to be heard.

Comments

Written comments are solicited for 20 days after publication of this document in the **Federal Register**. It appears that there is no longer a need for imposing certain restrictions on the importation of restricted articles and that prompt action should be taken to relieve the unnecessary restrictions. Therefore, a comment period of 20 days appears to be warranted and adequate under the circumstances.

The current "Citrus Canker-Mexico" regulations are established as interim regulations. The comment period for the current interim regulations expired on January 17, 1983. Any comments received in response to this proposal will also be considered in connection with the establishment of final regulations.

Background

This document proposes to amend the "Citrus Canker-Mexico" interim regulations (contained in 7 CFR 319.27 *et seq.* and referred to below as the regulations). The regulations were initially established on November 17, 1982, by a document published in the **Federal Register** on the same day (47 FR 51723-51729). The regulations were changed effective November 17, 1982, and this was announced in the **Federal Register** on December 2, 1982 (47 FR 54273-54275). The regulations were further changed effective January 20, 1983, by a document published in the **Federal Register** on January 5, 1983 (48 FR 387-393).

The regulations were established to protect against the introduction of citrus canker disease, which is caused by the infectious bacterium *Xanthomonas campestris* pv. *citri* (Hasse 1915) Dye 1978. This was necessary because of the finding of citrus canker disease in the State of Colima and in the municipio of Coahuayana in the State of Michoacan in Mexico (these areas are referred to below as infected areas).

The regulations provide that any fruit or peel of Mexican lime (*Citrus aurantifolia*) from any area of Mexico, and any other fruit or peel of citrus or citrus relatives (fruit or peel of any genera, species, or varieties of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae) from infected areas in Mexico offered for importation into the United States will be refused importation unless imported by the U.S. Department of Agriculture for experimental or scientific purposes under certain conditions.

The regulations also designate as restricted articles fruit or peel of ethrog (*Citrus medica*), grapefruit (*Citrus paradisi*), lemon (*Citrus limon*), orange (*Citrus sinensis*), Persian lime (*Citrus latifolia*), and tangerine (*Citrus reticulata*) from uninfected areas in Mexico. Under the regulations any restricted article is allowed to be imported into the United States by the U.S. Department of Agriculture for experimental or scientific purposes under certain conditions and is allowed to be imported by any importer if imported in accordance with certain conditions.

A restricted article is allowed to be imported by any importer only if imported in accordance with provisions concerning permits, inspection and phytosanitary certificates of inspection, treatment and other requirements, marking and identity, arrival notification, costs and charges, ports of entry, destination requirements, and restricted destination permits. In accordance with these requirements, a restricted article may be imported only for movement to and use in locations other than Arizona, California, Florida, Hawaii, Louisiana, Puerto Rico, Texas, or the Virgin Islands of the United States. The **Federal Register** document of January 5, 1983, set forth the rationale for not allowing restricted articles to be imported for movement to or use in these areas. It was explained that a significant number of host plants are grown either commercially or noncommercially in these areas (48 FR

389–390). It was further explained that as an additional precaution against the establishment of citrus canker disease caused by bacteria trapped in pores or wounds of restricted articles, it was necessary to establish procedures designed to prevent restricted articles from being destined to areas in the United States where host plants are grown either commercially or noncommercially in significant amounts (48 FR 388–390).

Movement to and Use in Louisiana and Texas

Importers of restricted articles have requested that the regulations be amended to allow restricted articles to be imported for movement to and use in northern parts of Louisiana and Texas where citrus or citrus relatives are not grown either commercially or noncommercially in significant amounts. It appears that there is a basis for amending the regulations to allow restricted articles to be moved to and used in areas in northern parts of Louisiana and Texas. In this connection, it is proposed to allow restricted articles to be moved to and used in any part of Louisiana not included in that part of Louisiana more than 15 miles south of Interstate Highway 20 and it is proposed to allow restricted articles to be moved to and used in any part of Texas not included in that part of Texas more than 15 miles south of the direct route from the Louisiana border to the New Mexico border beginning on Interstate Highway 20 and continuing on Interstate Highway 10.

The regulations also currently require that a restricted article bear on the outer container the statement "Not to be distributed within Arizona, California, Florida, Hawaii, Louisiana, Puerto Rico, Texas, or the Virgin Islands of the United States." Therefore, in accordance with the proposal to allow restricted articles to be moved to and used in parts of Louisiana and Texas, it is also proposed to change the required statement to read "Not to be distributed within Arizona, California, Florida, Hawaii, any part of Louisiana more than 15 miles south of Interstate Highway 20, Puerto Rico, any part of Texas more than 15 miles south of the direct route from the Louisiana border to the New Mexico border beginning on Interstate Highway 20 and continuing on Interstate Highway 10, or the Virgin Islands of the United States."

In addition, the regulations currently provide that a restricted article may be moved from the port of entry to locations other than Arizona, California, Florida, Hawaii, Louisiana, Puerto Rico, Texas, or the Virgin Islands of the United States only pursuant to a restricted destination permit issue by an inspector. Therefore, in accordance with the proposed provisions explained above, it is further proposed to provide that a restricted destination permit also may be issued for movement to locations in the northern parts of Louisiana and Texas described above.

It appears that restricted articles could be allowed to be imported for movement to and use in such northern parts of Louisiana and Texas under the conditions explained above without presenting a significant risk of causing the introduction of citrus canker disease into the United States.

The proposed marking requirements and restricted destination permit requirements appear to be adequate to prevent the commercial movement of these articles into restricted areas, including any restricted areas in Louisiana or Texas. In this connection, it should be particularly noted that the regulations already provide that a restricted destination permit will be issued for the movement of a restricted article only upon the presentation of evidence, such as U.S. Customs bond, an invoice, or other shipping document indicating destination, sufficient, to establish that the article would be shipped to a location in the United States where it would be eligible for distribution and use.

Also, the proposed boundary lines in Louisiana and Texas appear to be sufficiently distant from areas where citrus or citrus relatives are grown in significant amounts to provide adequate protection against shoppers purchasing restricted articles in areas where restricted articles are allowed and taking the articles back home to areas where citrus or citrus relatives are grown. The boundary lines are at least one hundred and fifty miles from areas in Louisiana and Texas where citrus or citrus relatives are grown in significant amounts.

As an added precaution, it is also proposed to allow restricted articles to be moved from the port of entry to a wholesale distributor in the specified parts of northern Louisiana and Texas only if the wholesale distributor is operating under a valid compliance agreement whereby the wholesale distributor agrees not to reship the restricted articles to areas where they would not be eligible for distribution and use and agrees not to reship restricted articles to any other wholesale distributor in a restricted area not operating under such a compliance agreement. This is in accord with requests of State officials of Louisiana and Texas who asserted that these precautions were needed if the proposal to allow restricted articles to be distributed and used in northern parts of Louisiana and Texas were adopted.

Since areas in these northern parts of Louisiana and Texas have at times served as disrtribution points for areas where the articles would not be allowed to be distributed and used, the proposed compliance agreement requirements appear to be necessary to assure that wholesale distributors understand and comply with the applicable requirements. Further, it is proposed to establish due process requirements as set forth in the proposed text for the withdrawal of such compliance agreements for noncompliance with the regulations or any conditions imposed pursuant thereto.

Culling and Repacking

As noted above, the regulations are designed to provide that a restricted article may be imported only for distribution and use in locations other than areas where citrus or citrus relatives are grown in significant amounts. Currently, the regulations only allow restricted articles to move from the port of entry to destination and do not allow restricted articles to be culled and repacked in the restricted areas where they would not be eligible for distribution and use. Importers of restricted articles have requested that the regulations be amended to allow restricted articles to be culled and repacked in an restricted areas in Texas. Certain importers own facilities for these activities in the restricted areas in Texas. In this connection, it appears that importers want to be allowed to cull and repack restricted articles in their own facilities in Texas since it is more expensive for these importers to have the restricted articles culled and repacked in other facilities in Mexico or in areas in the United States where restricted articles are allowed to be distributed and used.

In order to allow restricted articles to be culled and repacked in restricted areas in Texas, it is necessary to have adequate safeguards to protect against the introduction of citrus canker disease into the United States. It is necessary to have adequate assurance that the restricted articles would remain identifiable as restricted articles while in the restricted areas and that the restricted articles would be shipped to destination where they are eligible to be distributed and used. It is further necessary to require that any restricted articles unpacked and not repacked be disposed of in a manner adequate to

prevent the introduction of citrus canker disease into the United States. It is also necessary that the outer containers of the repacked restricted articles bear sufficient information (1) to indicate that the restricted articles are to be shipped only to destinations where they are eligible to be distributed and used and (2) to provide a means of tracing the articles back to the repacker if additional information were needed concerning the articles for enforcement purposes.

It appears that there would be adequate safeguards if the culling and repacking in the citrus producing areas in Texas were allowed to be conducted only pursuant to a compliance agreement between Plant Protection and Quarantine (the unit of the Animal and Plant Health Inspection Service responsible for administering the regulations) and the person conducting the culling and repacking whereby it is agreed that these activities would be conducted under the following conditions:

(1) The culling and repacking, and any related activities would be subject to monitoring by inspectors;

(2) The culling and repacking would be conducted only under conditions found by an inspector as adequate to assure that the restricted articles would not be commingled with nonrestricted articles and would remain identifiable as restricted articles during such activities (i.e., restricted articles must be separated from nonrestricted articles by being in separate rooms or by being separated by partition, the equipment used for culling restricted articles may not be used for processing nonrestricted articles until all restricted articles which have been culled by that equipment have been repacked for distribution or put in containers for disposal);

(3) The outer containers of the repacked restricted articles would plainly and correctly bear the general nature and quantity of the contents, the country or locality of origin, the name and address of repacker, the name and address of consignee, and the statement "Not to be distributed within Arizona, California, Florida, Hawaii, any part of Louisiana more than 15 miles south of Interstate Highway 20, Puerto Rico, any part of Texas more than 15 miles south of the direct route from the Louisiana border to the New Mexico border beginning on Interstate Highway 20 and continuing on Interstate Highway 10, or the Virgin Islands of the United States States"; and

(4) Any restricted articles taken out of their containers and not repacked for distribution and use in areas where they are eligible for distribution and use must be disposed of daily by returning them to Mexico, or be disposed of daily by incineration or burial in a landfill (the incinerator or landfill must have equipment and use procedures that are determined by the Deputy Administrator to be adequate to prevent the dissemination of citrus canker disease and be certified by the responsible State or local official as currently complying with the applicable laws for environmental protection); and any restricted articles held or moved for disposal must be held or moved in covered containers adequate to prevent spillage of the articles and marked so as to identify these as culled restricted articles.

Accordingly, it is proposed to allow persons to cull and repack restricted articles in the restricted areas of Texas under the specified conditions.

Also, it is proposed to establish due process requirements as set forth in the proposed text for the withdrawal of such compliance agreements for noncompliance with the regulations or any specified conditions imposed pursuant thereto.

As noted above, it is proposed to allow culling and repacking to occur under the conditions in Texas but not in the other specified citrus producing jurisdictions. If there are requests to allow culling and repacking in other jurisdictions where restricted articles are not allowed to be distributed and used, amendment of the regulations to allow such activities will be considered.

As noted above, it is proposed to require the culling and repacking to be subject to monitoring by inspectors and to be conducted only under conditions found by an inspector to meet certain criteria. In this connection, it should be noted that an inspector is defined in the interim rule as:

Inspector. Any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person authorized by the Deputy Administrator in accordance with law to enforce the provisions of the regulations in this subpart.

Miscellaneous

In order ot make the regulations more easily understood it is proposed to define the areas where restricted articles are not allowed to be distributed and used as "restricted areas" and to make certain other nonsubstantive changes in the regulations.

Executive Order 12291 and Regulatory Flexibility Act

This proposed amendment to the interim rule is issued in conformance with Executive Order 12291 and Secretary's Memorandum No. 1512-1, and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this proposal would not have a significant effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and would not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Also, it is necessary to complete this rulemaking proceeding as quickly as possible in order to take any warranted action to relieve unnecessary restrictions. The emergency nature of this action makes it impracticable for the agency to follow the procedure of Executive Order 12291 with respect to this action.

It appears that the restricted articles that would be allowed to be distributed and used in northern parts of Louisiana and Texas would not constitute a significant portion of these types of articles distributed and used within the United States.

Further, it appears that the culling and repacking of restricted articles in accordance with the proposal in areas in Texas would not constitute a significant portion of the culling and repacking of fruits in the United States and would not constitute a significant portion of these activities involving small entities

James O. Lee, Jr., Acting Administrator of the Animal and Plant Health Inspection Service, has determined that, under the circumstances explained above, it is anticipated that the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 319

Agricultural commodities, Imports, Plant diseases, Plants (agriculture), Transportation, Citrus Canker, Fruit.

PART 319—CITRUS CANKER—MEXICO

Under the circumstances referred to above, "Subpart—Citrus Canker—Mexico" in 7 CFR Part 319 is proposed to be amended as follows:

1. Section 319.27-1 would be amended by adding a definition of "Restricted area" in alphabetical order to read as follows:

§ 319.27-1 Definitions.

* * * * *

Restricted area. Any area listed as a restricted area in § 319.27-9.

§ 319.27-5 [Amended]

2. Paragraph (a)(8) of § 319.27-5 would be revised to read as follows:

* * * * *

(a) * * *

(8) The statement "Not to be distributed within Arizona, California, Florida, Hawaii, any part of Louisiana more than 15 miles south of Interstate Highway 20, Puerto Rico, any part of Texas more than 15 miles south of the direct route from the Louisiana border to the New Mexico border beginning on Interstate Highway 20 and continuing on Interstate Highway 10, or the Virgin Islands of the United States."

* * * * *

3. Provisions in § 319.27-9 and 319.27-10 would be revised and new §§ 319.27-11 and 319.27-12 would be added to read as follows:

§ 319.27-9 Restricted areas.

The following areas are designated as restricted areas: Arizona, California, Florida, Hawaii, any part of Louisiana more than 15 miles south of Interstate Highway 20, Puerto Rico, any part of Texas more than 15 miles south of the direct route from the Louisiana border to the New Mexico border beginning on Interstate Highway 20 and continuing on Interstate Highway 10, or the Virgin Islands of the United States.

§ 319.27-10 Destination requirements.

Any restricted article may be imported only for movement to and use in an area not included as a restricted area except that restricted articles may be culled and repacked in restricted areas in Texas as provided in § 319.27-12.

§ 319.27-11 Restricted destination permits.

A restricted article may be moved from the port of entry to a location not in a restricted area only pursuant to a restricted destination permit issued by an inspector. A restricted destination permit will be issued for the movement of a restricted article only upon the presentation of evidence, such a U.S. Customs bond, an invoice, or other shipping document indicating destination, sufficient to establish that the article would not be shipped in violation of this subpart and would be shipped to a location in the United States not in a restricted area.

§319.27-12 Culling and packing in Texas; movement to areas in northern parts of Louisiana and Texas; compliance agreements.

(a) Restricted articles may be culled and repacked in restricted areas in Texas in accordance with a valid compliance agreement between Plant Protection and Quarantine and the person conducting such activities whereby it is agreed that any culling or repacking would be conducted under the following conditions:

(1) The culling and repacking, and any related activities would be subject to monitoring by inspectors;

(2) The culling and repacking would be conducted only under conditions found by an inspector as adequate to assure that the restricted articles would not be commingled with nonrestricted articles and would remain identifiable as restricted articles during such activities (i.e., restricted articles must be separated from nonrestricted articles by being in separate rooms or by being separated by a partition, the equipment used for culling restricted articles may not be used for processing nonrestricted articles until all restricted articles which have been culled by that equipment have been repacked for distribution or put in containers for disposal);

(3) The outer containers of the repacked restricted articles would plainly and correctly bear the general nature and quantity of the contents, the country or locality of origin, the name and address of repacker, the name and address of consignee, and the statement "Not to be distributed within Arizona, California, Florida, Hawaii, any part of Louisiana more than 15 miles south of Interstate Highway 20, Puerto Rico, any part of Texas more than 15 miles south of the direct route from the Louisiana border to the New Mexico border beginning on Interstate Highway 20 and continuing on Interstate Highway 10, or the Virgin Islands of the United States"; and

(4) Any restricted article taken out of its container and not repacked for distribution and use in areas where it is eligible for distribution and use must be disposed of by daily returning it to Mexico, or be disposed of daily by incineration or burial in a landfill (the incinerator or landfill must have equipment and use procedures that are determined by the Deputy Administrator to be adequate to prevent the dissemination of citrus canker disease and be certified by the responsible State or local official as currently complying with the applicable laws for environmental protection); and any restricted articles held or moved for disposal must be held or moved in covered containers adequate to prevent spillage of the articles and marked so as to identify as culled restricted articles.

(b) A restricted article may not be moved from the port of entry to any wholesale distributor or restricted articles in an area in Louisiana or Texas not designated as a restricted area, unless the wholesale distributor is operating under a valid compliance agreement between Plant Protection and Quarantine and the wholesale distributor whereby the wholesale distributor agrees not to reship restricted articles to any restricted area and agrees not to reship restricted articles to any other wholesale distributor in a restricted area not operating under such a compliance agreement.

(c) Any compliance agreement may be cancelled orally or in writing by the inspector who is supervising its enforcement whenever the inspector finds that such person has failed to comply with the provisions of this subpart or any conditions imposed pursuant thereto. If the cancellation is oral, the decision and the reasons therefor shall be confirmed in writing as promptly as circumstances permit. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, to the Deputy Administrator within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict.

(Secs. 105, 106, and 107; 71 Stat. 32-34; 7 U.S.C. 150dd, 150ee, 150ff; secs. 5, 7, and 9; 37 Stat. 316-18; 7 U.S.C. 159, 160, 162; 7 CFR 2.17, 2.51, and 371.2(c))

Done at Wahington, D.C., this 6th day of March, 1983.

H. L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 83-6429 Filed 3-9-83; 12:30 pm]

BILLING CODE 3410-34-M

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