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Federal Register

Thursday
December 12, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Philadelphia, PA and Washington, DC, see announcement on the inside cover of this issue.

Selected Subjects

CONTINUED INSIDE

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 Administration, Washington, DC 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, DC 20402.

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THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

PHILADELPHIA, PA

WHEN: Dec. 17; at 1 pm.
Dec. 18; at 9 am. (identical session)

WHERE: Room 3306/10,
William J. Green, Jr., Federal Building,
600 Arch Street, Philadelphia, PA.

RESERVATIONS: Laura Lewis,
Philadelphia Federal Information Center.
215-597-1709

WASHINGTON, DC

WHEN: January 17; at 9 am.

WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.

RESERVATIONS: Howard Landon 202-523-5227
Melanie Williams 202-523-5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the Washington, DC briefing.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 5419 of December 7, 1985

National Drunk and Drugged Driving Awareness Week, 1985

By the President of the United States of America

A Proclamation

Motorists who drive while impaired by alcohol or other drugs are one of our Nation's most serious public health and safety problems. Each year, drunk drivers account for tens of thousands of highway fatalities and hundreds of thousands of injuries.

This needless carnage on our streets and highways can be reduced through increased public awareness and a willingness to take the necessary steps to prevent it. We must not wait until personal tragedy strikes to become involved.

Strict law enforcement and just penalties are essential. Contrary to popular opinion, driving is not a right, but a privilege that can and should be withdrawn when a drunken or drugged driver endangers others. We also need to develop better means of detecting these drivers and getting them off the road before they cause an accident.

Statistics show that a disproportionate number of our young people are involved in accidents in which alcohol and drugs are a contributing factor. In recognition of the considerable evidence that such accidents can be drastically reduced by raising the legal drinking age, the Federal government is encouraging each State to establish 21 as the minimum age at which individuals may purchase, possess, or consume alcoholic beverages. Many States have already raised the legal drinking age, as a result of efforts of dedicated citizen volunteers and the growing awareness that motor vehicle accidents are the leading cause of death among young people. States that have not raised their legal drinking age should review these developments carefully.

We need informed, concerned citizens who are willing to help generate awareness; we need education and action to eliminate drunk and drugged drivers from our highways. With the continued involvement of private citizens and action at all levels of government, we can control the problem of drunken and drugged driving.

In line with the recommendations of the Presidential Commission on Drunk Driving, we have embarked on a long-term sustained effort to focus the resources of our local, State, and Federal governments on this problem.

In order to encourage citizen involvement in prevention efforts and to increase awareness of the seriousness of the threat, the Congress, by Senate Joint Resolution 137, has designated the week of December 15 through December 21, 1985, as "National Drunk and Drugged Driving Awareness Week."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of December 15 through December 21, 1985, as National Drunk and Drugged Driving Awareness Week. I call upon each American to help make the difference between the needless tragedy of alcohol- and drug-related accidents and the blessings of health and life. I ask all Americans to take this message to heart and to urge others not to drive if they are under the influence of drugs or alcohol.

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

Ronald Reagan

[FR Doc. 85-29539
Filed 12-10-85; 11:09 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5420 of December 10, 1985

Bill of Rights Day
Human Rights Day and Week, 1985

By the President of the United States of America

A Proclamation

On December 15, 1791, the adoption of the first ten amendments to the Constitution of the United States—the Bill of Rights—gave legal form to the noble principles which our Founding Fathers had set forth in the Declaration of Independence as the very basis for the birth of our Nation.

Benjamin Franklin, then 81 years old, in a moving address, reminded the members of the Constitutional Convention that it was God who had seen them safely through the War of Independence and that it was only through His "kind Providence" that they were able to meet in peace to shape "the means of establishing . . . future national felicity. . . . And if a sparrow cannot fall to the ground without His notice," Franklin asked, "is it probable that an empire can rise without His aid?"

Mindful of this, and deeply convinced that fundamental human rights are not a concession from the state but a gift of God, the Founding Fathers knew that government has a solemn obligation to safeguard those rights. That is why they were at pains to devise and ordain a constitutional system that would ensure respect for the dignity and uniqueness of every human being. Thus, they brought into existence a form of limited government—representative democracy—whose powers are circumscribed by law and whose legitimacy derives from the consent of the governed. For the first time in the history of nations, a written Constitution based on the inalienable God-given rights of the individual was promulgated.

It is with sincere thanksgiving that we reflect on the successful efforts of those wise patriots of two hundred years ago who laid the political foundations of our beloved Nation, and also to those millions of citizens ever since who have cherished and defended the Constitution and the principles it embodies. Many have given their lives on the field of battle so that freedom and human dignity might live both at home and abroad; let us never forget our debt to them or fail to honor their sacrifice and courage.

One hundred and fifty-seven years after the adoption of our Bill of Rights, the fundamental concepts enshrined in our Constitution were internationally acknowledged as applying to all peoples when the United Nations adopted the Universal Declaration of Human Rights on December 10, 1948.

Although we can take heart at the number of nations in which human rights are respected and real progress towards democratic self-government is being made, a disturbingly large number of governments continue to commit serious abuses of human rights. In the tradition of our forefathers, we protest against these abuses wherever they occur. We condemn the practice of torture, racial and religious persecution, and the denial of the right of free expression and freedom of movement.

The United States will never cease to be in the forefront of the noble battle for human rights. We have committed our resources and our influence to efforts aimed at extending throughout the world the rights we enjoy, rights which are rightly the prerogative of all people. This Nation must remain and will remain

a beacon of hope for all who strive for human dignity. There is no better way of showing our gratitude for our inheritance of liberty.

We believe it is a right, not a privilege, to be allowed to speak freely; to assemble peacefully; to acquire and dispose of private property; to leave the country of one's residence; to form trade unions; to join or not to join groups and associations; and to worship according to one's conscience. Experience teaches us that the best check against tyranny is a government of the people in which leaders are elected in fair and open balloting and where the government's powers are subject to constitutional limitations. We pray that one day all nations of the earth may share with us the joys and rewards of living in free societies, and we resolve not to rest from our labors until the most noble longings of the human spirit, those for freedom of belief and expression, are fully realized.

During this commemorative week, let us rededicate ourselves to the advancement of human rights throughout the world, recalling the words of Alexander Hamilton that "natural liberty is a gift of the beneficent creator to the whole human race . . . and cannot be wrested from any people without the most manifest violation of justice."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim December 10, 1985, as Human Rights Day, and December 15, 1985, as Bill of Rights Day, and I call upon all Americans to observe the week beginning December 10, 1985, as Human Rights Week.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of December, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 85-29628
Filed 12-11-85; 10:11 am]
Billing code 3195-01-M

Editorial note: For the President's remarks of December 10 on signing Proclamation 5420, see the *Weekly Compilation of Presidential Documents* (Vol. 21, No. 50).

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

Navel Orange Regulation 617; Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 617 establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period December 13–19, 1985. Such action is needed to provide for the orderly marketing of fresh navel oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 617 (§ 907.917) is effective for the period December 13–19, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202–447–5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This regulation is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This 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 1985–86 adopted by the Navel Orange Administrative Committee. The committee met publicly on December 10, 1985, 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 week. The committee reports that the market for fresh navel oranges has become very good. The prorate regulation is needed to continue providing stability in the market and promote orderly marketing.

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 is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Agricultural Marketing Service, Marketing agreements and orders, California, Arizona, Oranges (Navel).

PART 907—[AMENDED]

1. The authority citation for 7 CFR 907 continues to read:

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

2. Section 907.617 is added to read as follows:

§ 907.917 Navel Orange Regulation 617.

The quantities of navel oranges grown in California and Arizona which may be handled during the period December 13, 1985, through December 19, 1985, are established as follows:

(a) District 1: 1,400,000 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons;

Dated: December 10, 1985.

Thomas R. Clark,

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

[FR Doc. 85–29625 Filed 12–11–85; 8:45 am]
BILLING CODE 3410–02–M

7 CFR Parts 907 and 908

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Selection Criteria for Committee Members

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: This final rule sets the criteria the Secretary of Agriculture will apply in selecting grower and handler members to serve on the Navel Orange Administrative Committee (NOAC) and the Valencia Orange Administrative Committee (VOAC). The rule also clarifies the term "cooperative marketing organization" which is used in determining the nomination and eligibility of individuals to serve on the committees.

EFFECTIVE DATE: The final rule is effective on January 13, 1986.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202–447–5975.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. The Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

Notice of a proposed rule to specify selection criteria was published in the August 6, 1985, issue of the **Federal Register** (50 FR 31723) which provided the opportunity for public comment through August 21, 1985. Comments were received from Fred LoBue, California-Arizona Citrus League; Joel Nelsen, California Citrus Mutual; G.A. Wollenman, LoBue Bros.; Perry Walker, Riverbend Farms; James A. Moody, attorney for Sequoia Orange Co. Inc.; Marylin Hudson, Chairperson, Valencia Orange Administrative Committee

(VOAC); and James J. Neu, Chairperson, Executive Committee, Navel Orange Administrative Committee (NOAC). These comments were considered in the final rule established herein.

This final rule is issued under Marketing Orders 907 and 908, as amended (7 CFR Parts 907 and 908 (50 FR 1429)), regulating the handling of navel and Valencia oranges, respectively, grown in Arizona and designated parts of California. The marketing orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended. It is hereby found that this action will tend to effectuate the declared policy of the act.

Pursuant to §§ 907.23 and 908.23, the Secretary selects persons to serve as members, alternates and additional alternates on the NOAC and VOAC. Such persons may be nominated in accordance with §§ 907.22 and 908.22.

Three grower members and two handler members are selected to represent any cooperative marketing organization which handled more than 50 percent of all oranges handled during the year in which nominations are submitted; one grower member and one handler member are selected to represent all other cooperative marketing organizations; two grower members and one handler member are selected to represent independent growers and handlers; and one member is selected who is neither a grower or handler.

Last year a new cooperative of orange growers was formed which claims to qualify under the Capper-Volstead Act (7 U.S.C. 291 and 292), and which appears to market, but not sell, oranges. This rulemaking defines the term "cooperative marketing organization" to clarify the status of this type of organization for purposes of representation on the committees. Also, the rule specifies the criteria the Secretary will use in selecting grower and handler members to the committees.

The proposed rule would have defined a cooperative marketing organization to mean an association of producers that: (1) Is qualified as a Capper-Volstead cooperative; (2) has its entire organization and all of its activities under the control of its members; and (3) has authority and is engaged in making collective sales of citrus or citrus products, including oranges, or otherwise performs handling functions as defined in the respective marketing orders. The proposed rule also provided that only growers and handlers who were not affiliated with any cooperative marketing organization, or any Capper-Volstead cooperative organization which is in any way involved in the handling or marketing of citrus or citrus products, could serve on the committees representing independents.

None of the comments received supported the proposed rule in its entirety. It was apparent that there was a wide difference of opinion in the industry relative to appropriate selection criteria and the proposed rule did not appear to narrow such difference. On the basis of the comments received, this final rule is intended to provide a readily understood and sound basis for selecting committee members in the future; and will facilitate the completion of the nomination process for the remainder of the 1984–86 term of office for certain positions on in the NOAC. As established herein, the final should provide selection criteria for which the effects are readily discernable and uniformly understood by those in the industry. Moreover, as discussed in greater detail, herein, all of the comments received support all or part of its provisions.

For the purpose of these orders, the final rule defines "cooperative marketing organization" as an association of producers who qualify as a Capper-Volstead cooperative which markets, or handles, oranges regulated under the respective marketing orders. This rule incorporates the Capper-Volstead qualification because it is a recognized standard under law, and thus, cooperative status can be readily determined with its use. Further, there are legal precedents for the use of a Capper-Volstead criteria such as the definitions of cooperatives found in numerous milk marketing orders.

The term "market" as used in this definition is to be given its normally understood definition which involves any of a number of functions involved in transferring title and moving goods from producer to consumer, including among others buying, selling, storing, transporting, standardizing, financing, risk bearing, and supplying marketing information. Thus, any single one of these functions alone would qualify as marketing under this rule. This definition of "market" is also consistent with the meaning of the term as it has been used in recent court decisions. For example, in *Northern California Supermarkets, Inc* vs. *Central California Lettuce Producers Cooperative* (413 F. Supp. 984 (N.D. Cal. 1976), *affirmed* 580 F. 2d 369 (9th Cir. 1978), *cert. denied* 439 U.S. 1090 (1979)) the district court considered the term "marketing" as it applied under the Capper-Volstead Act.

The final rule also provides that all producers who are not affiliated with a cooperative marketing organization and who deliver any oranges to handlers which are not cooperative marketing organizations, may serve on the committees in positions representing independent producers. All such producers may vote for the independent grower and handler nominees. Also, the rule provides that handlers who market oranges for cooperative marketing organizations, but who are not members or principals of cooperative marketing organizations, would be considered to be independents. They would be eligible to be nominated and serve as representatives of independent handlers. However, handlers who are nominated for independent NOAC positions must demonstrate that they are not members or principals of a cooperative marketing organization. Handlers (and their representatives) who are principals of such organizations would be eligible to serve on the NOAC or VOAC representing cooperative handlers.

These provisions are established in lieu of those contained in the proposed rule because none of the comments favored the establishment of a rule in which some producers could vote for independent candidates but could not serve on the committees representing such independent producers. The effect of such an exclusion would have been that some growers could not serve on the committees.

Although the reference in the proposed rule to citrus products, and to citrus generally, was intended to ensure that the independent grower and handler membership category on the NOAC and VOAC represent the independent point of view, not the cooperative point of view, the proposed definition was overly broad and might have unfairly impacted on growers who are in fact independents but for reasons beyond their control market through processing cooperatives. Many growers who have traditionally been classified as independents send their oranges to citrus products cooperatives for processing into orange juice. Some of these growers are obligated to become members of such cooperatives because the handlers to whom the growers deliver their oranges utilize cooperative processors. In addition, some growers of oranges that use independent handlers to market their oranges, also grow other citrus crops, e.g. lemons and grapefruit, which are marketed through cooperatives. Thus, the definitions of a cooperative marketing organization adopted herein refer only to the respective oranges, not citrus other than oranges, or citrus products.

Also, the definition of a cooperative marketing organization in the final rule excludes the requirement that a cooperative marketing organization should have its entire organization and all of its activities under the control of its grower members. Comments characterized this requirement as ambiguous, difficult to enforce, and not descriptive of cooperatives currently operating in the orange industry.

Comments submitted by two parties, Sequoia Orange Company and Riverbend Farms, supported the final rule in its entirety. For the reasons previously discussed the final rule differs substantially from the comments of the NOAC, the VOAC, LoBue Bros. and the California-Arizona Citrus League which supported the definition of a "marketing organization" as recommended on March 19, 1985, by the NOAC and VOAC in lieu of the definition contained in the proposed rule. The NOAC and VOAC proposed to define the term to mean an organization which arranges for the sale or consignment of oranges on behalf of its growers and which also is responsible for collecting the receipts of such sales or consignments and remitting such receipts to its growers. The committees, proposed definition would exclude any organization which "merely handles" oranges, or which only exercises authority to disapprove, or to veto, sales without actually performing the sales and collection function described above. Similarly, the final rule differs from the rule advocated by California Citrus Mutual which contained a definition of cooperative marketing organization which required it to have primary responsibility for sales and collections.

All of the Capper-Volstead cooperatives currently classified as cooperative marketing organizations as well as at least one cooperative which markets, but does not handle oranges, would fall within the new definition.

List of Subjects in 7 CFR Parts 907 and 908

Californina, Arizona, oranges (navel), oranges (Valencia).

1. The authority citation for 7 CFR Parts 907 and 908 continues to read as follows:

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

2. Sections 907.104 and 908.104 and 908.104 are added to read as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

§ 907.104 Selection criteria.

(a) For purposes of this part, the term "cooperative marketing organization" shall mean an association of producers (i.e. growers) that:

(1) Is qualified as a Capper-Volstead cooperative under the provisions of the Act of the Congress of February 18, 1922, known as the "Capper-Volstead Act," (7 U.S.C. 291, 292); and

(2) Markets oranges regulated under this part, or performs handling functions as defined in § 907.10 for the producers thereof.

(b) Pursuant to § 907.23 the Secretary shall select committee members, and their respective alternates and additional alternatives, as follows:

(1) Three growers members who shall be affiliated with the cooperative marketing organization which handled more than 50 percent of the total volume of oranges during the fiscal year in which nominations are made, and two handler members to represent such an organization;"

(2) One grower member who shall be affiliated with any of the other cooperative marketing organizations, and one handler member to represent such organizations; and

(3) Two grower members not affiliated with any cooperative marketing organization, and one handler member who is not a member or principal of any cooperative marketing organization to represent all handlers which are not cooperative marketing organizations.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

§ 908.104 Selection criteria.

(a) For purposes of this part, the term "cooperative marketing organization" shall mean an association of producers that:

(1) Is qualified as a Capper-Volstead cooperative under the provisions of the Act of the Congress of February 18, 1922, known as the "Capper-Volstead Act," (7 U.S.C. 291, 292); and

(2) Markets oranges regulated under this part, or performs handling functions as defined in § 908.11 for the producers thereof.

(b) Pursuant to § 908.23 the Secretary shall select committee members, and their respective alternates and additional alternates, as follows:

(1) Three grower members who shall be affiliated with the cooperative marketing organization which handled more than 50 percent of the total volume of oranges during the marketing year in which nominations are made, and two handler members to represent such an organization;

(2) One grower member who shall be affiliated with any of the other cooperative marketing organizations, and one handler member to represent such organizations; and

(3) Two grower members not affiliated with any cooperative marketing organization, and one handler member who is not a member or principal of any cooperative marketing organization to represent all handlers which are not cooperative marketing organizations.

Dated: December 9, 1985.

Thomas R. Clark,

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

[FR Doc. 85–29488 Filed 12–10–85; 9:32 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Parts 102, 108, and 114

[Docket No. 85–096]

Viruses, Serums, Toxins, and Analogous Products; Unlicensed Products in Licensed Establishments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: With limited exceptions, the present regulations prohibit the preparation of unlicensed veterinary biological products in establishments licensed under the Virus-Serum-Toxin Act. Under this revision, an establishment preparing veterinary biological products not licensed by USDA for local distribution which wishes to obtain a USDA establishment and product license may be allowed to do so for an interim period without being required to immediately cease production of the unlicensed products. Under the provisions of such interim licensure, an establishment meeting the requirements of the regulations may be issued an establishment license and one or more U.S. Veterinary Biological Product Licenses for a period of up to 4 years. Such interim establishment and product licenses will automatically expire at the end of the period for which they were granted.

The establishment can become eligible for indefinite licensure if proper application is made and if the applicant is found to be in full compliance with the Act and regulations. This licensing procedure will allow establishments

which meet USDA requirements and in which at least one product is prepared which qualifies for a product license to become licensed under the Virus-Serum-Toxin Act. Only USDA licensed products may be shipped or delivered for shipment interstate.

EFFECTIVE DATE: December 12, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. David F. Long, Chief Staff Veterinarian, Veterinary Biologics Staff, VS, APHIS, USDA, Room 834, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8674.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This final rule contains no new or amended recordkeeping, reporting, or application requirements or any type of information collection requirement subject to the Paperwork Reduction Act of 1980.

Executive Order 12291

This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512–1 to implement Executive Order 12291 and has been classified as a "Nonmajor Rule."

The revised rules will not have a significant effect on the economy and will not result in 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 on the ability of the United States-based enterprises to compete with foreign-based enterprises, in domestic or export markets.

Certification Under the Regulatory Flexibility Act

The Administrator of the Animal and Plant Health Inspection Service has determined that this action will not result in an adverse economic impact on a substantial number of small entities. Small entities are defined as independently owned businesses not dominant in the field of veterinary biologics manufacturing.

Background

With the exception of experimental products covered under 9 CFR Part 103 and products for disease eradication and control programs exempted by 9 CFR Part 106, present regulations prohibit a licensed establishment from producing or otherwise handling an unlicensed veterinary biological product. Parts 102 and 114 contain provisions which require a product license for each veterinary biological product prepared in a licensed establishment and prohibit introduction of a product which is not licensed onto the premises of a licensed establishment. Such requirements and prohibitions were imposed to assure adequate control over the activities of establishments licensed under the Virus-Serum-Toxin Act. Presently, there are a number of unlicensed establishments which could meet licensing requirements and which prepare at least one product which could qualify for licensure. However, they also prepare other products for intrastate distribution which have not been fully evaluated for USDA licensure. Many of these establishments would find it difficult, if not impossible, to become licensed by USDA to prepare only one product and to immediately discontinue all others.

For some time now, the Department has been receiving requests to consider an amendment to its regulations which would allow some flexibility in this matter, provided that proper safeguards were established. Therefore, 9 CFR 102.4(h) is added to provide for the issuance of a U.S. Veterinary Biologics Establishment License for an interim period not to exceed 4 years to those establishments which meet USDA standards and which desire to continue producing other products for intrastate distribution while producing at least one USDA-licensed product. Appropriate safeguards will be provided to assure the safety and purity of licensed products. Such licenses for an interim period will be issued with a specified expiration date which shall not be more than 4 years from the date of issuance. During the interim period, establishments will be required to: obtain U.S. Veterinary Biological Product Licenses as provided in 9 CFR 102.3(b) for all veterinary biological products produced in the establishment; comply with the specific provisions of their U.S. Veterinary Biologics Establishment License as provided in proposed amendment to 9 CFR 114.2(b); and comply with the Act and regulations in 9 CFR Parts 101–117. Provided that an establishment has complied with the above provisions, including the licensure of all veterinary biological products being produced (or the discontinuation of any unlicensed veterinary biological products) it may then qualify for a U.S. Veterinary Biologics Establishment License for an indefinite period upon proper application. Establishments achieving such compliance before expiration of the interim period may apply for an indefinite license at this time. The amendment to 9 CFR 114.2 which allows preparation of unlicensed products in establishments licensed for an interim period will limit such unlicensed products to those being prepared in the establishment within the 12 months prior to issuance of the establishment license for the interim period. Establishments will also be subject to the limitations specified in § 151 of the Act with respect to preparation of products in the District of Columbia, or in the Territories, or in any place under the jurisdiction of the United States, and to other applicable laws.

The regulations in 9 CFR 102.1 state that the Deputy Administrator shall issue a U.S. Veterinary Biologics Establishment License for each qualified establishment maintained to produce biological products and a U.S. Veterinary Biological Product License for each biological product authorized to be produced in a licensed establishment. For the purpose of this amendment 9 CFR 102.1 is revised and clarified and would make reference to 9 CFR 103.6, 102.4(h), and 106 concerning experimental products, products for disease control programs, and licenses for an interim period. Section 102.3 is amended to require that an application for an indefinite license be made prior to the expiration of the interim licensing period. In case of unusual circumstances or in an emergency, the Deputy Administrator has the authority to issue an Establishment License for an additional limited interim period.

In order to ensure that unlicensed products continued in production after issuance of an establishment license for an interim period are compatible with preparation of licensed products, it is considered essential to list all products prepared in the establishment whether licensed or unlicensed. Therefore, 9 CFR 102.5(d)(3) is revised by deleting the word "licensed" from the statement concerning the list of products to be submitted when requested by the Deputy Administrator.

Current regulations do not address the problem of cross contamination from agents used to prepare unlicensed products in licensed establishments. Therefore, the revision of 9 CFR 108.5(b)(1) requires that both licensed and unlicensed products be listed on blueprint legends which are evaluated to determine risks of cross contamination. A requirement that decontamination procedures and other precautions against cross contamination be submitted is also added with regard to room or work areas where products are most likely to be at risk.

All establishments wishing to be licensed under these proposed revisions

are expected to be in full compliance with the Act, the regulations, and any other applicable law and will be subject to inspection in accordance with sections 156 and 157 of the Act and with 9 CFR 115.1. These provisions are only applicable to establishments wishing to become newly licensed. At the end of the 4-year interim period of licensure, all veterinary biological products prepared or brought into the establishment will be required to be licensed unless they are subject to the experimental use provisions of 9 CFR Part 103 or exempted in accordance with 9 CFR Part 106.

Comments Received

On Wednesday, February 27, 1985, a notice of proposed rulemaking was published in the **Federal Register** at 50 FR 7927 discussing this revision and soliciting comments.

Comments were received from nine licensed manufacturers, five unlicensed manufacturers, one State animal health official, and two other persons with animal health interests.

Eight of the commenters recommended adoption of the proposal, although some reservations were expressed. Three commenters were opposed to adoption.

Three licensed manufacturers and one State authority expressed concern that issuance of establishment license would give implied approval to all products manufactured by the firm. The Department considers the prohibition in 9 CFR 114.2(b)(2), along with vigorous action in the event of violative acts, adequate to ensure that this will not happen.

One licensed manufacturer recommended that the regulation be revised to permit preparation of unlicensed product in currently licensed establishments. The Department proposed this amendment to make the licensing process more feasible and, incidentally, to reduce the number of products marketed without adequate evaluation. The suggested action would increase such inadequately evaluated products without benefit to the general public. Therefore, this suggestion was not accepted.

One licensed manufacturer expressed the opinion that this action would condone illicit manufacture and is unfair. It is anticipated that this action would have the opposite effect. If licensure is more economically feasible, many more firms may become licensed, and products which cannot meet USDA's rigorous standards will eventually be phased out.

One manufacturer recommended that records be required as specified throughout 9 CFR Part 116 for all products, whether licensed or unlicensed. This requirement, if applied to unlicensed products, would be unduly restrictive. Records required as specified in 9 CFR 116.3 for labels, in 9 CFR 116.4 for sterilization and pasteurization, in 9 CFR 116.6 for animals, and in 9 CFR 116.7 for test results would be inappropriate except for licensed products. Therefore, this proposal was not adopted.

Six licensed manufacturers recommended a shorter time for complete compliance and two unlicensed manufacturers suggested a longer period. The Department has established the 4 year period because of the likelihood that the basic purpose of the revision would be most effectively accomplished in that time. It sometimes takes certain firms 3 or 4 years to satisfy all requirements for product licensure, therefore, the 4 year period was retained. One unlicensed manufacturer objected to the requirements in 9 CFR 114.2(b) (4), (5), (6), and (7) descriptions of unlicensed products, records, reports, and additional new products. The descriptions, records, reports, and restriction on new products are considered to be essential to ensure that licensed products are not jeopardized by the presence of unlicensed products and that the purposes of the amendment are being accomplished. Therefore, the proposed change was not adopted.

Three commenters suggested that extensions of the 4 year period specified in 9 CFR 102.4(1) be deleted or limited. One commenter suggested that all conditions be specified for justifying an extension. The Department foresees a number of potential situations where an extension for a comparatively short period would be in the interest of the users and the general public. Specifying time periods or conditions under which extensions might be considered could result in unduly permissive or unacceptably restrictive actions. Therefore, these suggestions were not adopted.

Three commenters incorrectly interpreted the changes as a requirement for all currently unlicensed manufacturers to be licensed under the Virus-Serum-Toxin Act. One commenter was concerned that State licensure could no longer be permitted. Two commenters incorrectly assumed that this revision would result in elimination of Autogenous Biologics from unlicensed firms. This revision will have no effect on any of the elements stated.

List of Subjects in 9 CFR Parts 102, 108, and 114

Animal biologics.

PART 102—LICENSES FOR BIOLOGICAL PRODUCTS

Accordingly, 9 CFR Part 102 is amended as follows:

1. The authority citation for Part 102 continues to read as follows:

Authority: 21 U.S.C. 151–158; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 102.1 is revised to read:

§ 102.1 Licenses issued by the Deputy Administrator.

Each establishment qualified to produce biological products under the Virus-Serum-Toxin Act shall hold an unexpired and unrevoked U.S. Veterinary Biologics Establishment License issued by the Deputy Administrator and a U.S. Veterinary Biological Product License for each product prepared in such establishment unless the establishment is licensed for an interim period as provided in § 102.4(h) of this Subchapter or unless the product is subject to the provisions of Parts 103 or 106 of this Subchapter.

3. Section 102.3 is amended by revising (a)(6) to read:

§ 102.3 License applications.

(a) * * *

(6) A new application shall be made when a change of ownership, operation, or location of an establishment occurs; or prior to the expiration of a U.S. Veterinary Biologics Establishment License issued for an interim period of time.

* * * * *

4. Section 102.4 is amended by adding paragraph (h) as follows:

§ 102.4 U.S. Veterinary Biologic Establishment License.

* * * * *

(h) An establishment preparing unlicensed veterinary biological products for intrastate distribution which qualifies for the issuance of a U.S. Veterinary Biologics Establishment License and one or more U.S. Veterinary Biological Product Licenses and which desires to continue producing the unlicensed products, may be issued a U.S. Veterinary Biologics Establishment License by the Deputy Administrator for an interim period, subject to the provisions of § 114.2(b).

(1) The U.S. Veterinary Biologics Establishment License for such purpose shall be restricted to a period not to exceed 4 years; *Provided:* That for good cause and when deemed necessary the Deputy Administrator may authorize the issuance of an Establishment License for an additional limited interim period. The termination date for such

license shall be established at the time of issuance.

(2) Prior to the termination date, the licensee may request issuance of an establishment license for an indefinite period by application as provided in § 102.3(a).

(3) Before a U.S. Veterinary Biologics Establishment License will be issued for an indefinite period to an establishment previously issued a U.S. Veterinary Biologics Establishment License for an interim period, the licensee shall demonstrate compliance with provisions of the Act and regulations.

5. Section 102.5 is amended by revising (d)(3) to read:

§ 102.5 U.S. Veterinary Biologist Product License.

* * * * *

(d) * * *

(3) When requested by the Deputy Administrator, a licensee shall submit a list of all biological products prepared in the licensed establishment.

* * * * *

PART 108—FACILITY REQUIREMENTS FOR LICENSED ESTABLISHMENTS

Accordingly, 9 CFR Part 108 is amended as follows:

1. The authority citation for Part 108 continues to read as follows:

Authority: 21 U.S.C. 151–158; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 108.5 is amended by revising (b)(1) to read:

§ 108.5 Preparation of legends.

* * * * *

(b) * * *

(1) A listing of all rooms by identifying letters or numbers and the fractions prepared in each. Exceptions may be listed for general purpose areas or rooms. Functions performed in each area and room shall be described, whether the licensed or unlicensed products. In rooms where products are exposed to the surroundings, a description of decontamination procedures and other precautions against cross contamination shall be included.

* * * * *

PART 114—PRODUCTION REQUIREMENTS FOR BIOLOGICAL PRODUCTS

Accordingly, 9 CFR Part 114 is amended as follows:

1. The authority citation for Part 114 continues to read as follows:

Authority: 21 U.S.C. 151–158; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 114.2 is amended by revising (b) to read:

§ 114.2 Products not prepared under license.

* * * * *

(b) When an establishment license is issued for an interim period not to exceed 4 years, the establishment may continue preparing certain specified unlicensed biological products with the permission of the Deputy Administrator; *Provided,* That:

(1) Such unlicensed products have been prepared in the establishment within the 12 months prior to issuance of the establishment license.

(2) Such unlicensed products are not distributed interstate, do not bear a U.S. Veterinary license number, and are not otherwise represented in any manner as having met the requirements for licensure.

(3) All products, whether licensed or unlicensed, are prepared in locations indicated in legends filed in accordance with Part 108 of this Subchapter.

(4) A description of methods of preparation and testing of each unlicensed product are filed with Veterinary Services.

(5) Records are maintained in accordance with §§ 116.1 and 116.2 and include all products, whether licensed or unlicensed.

(6) Reports prescribed in § 116.5 are submitted for all products, whether licensed or unlicensed.

(7) No new unlicensed biological products are prepared in the licensed establishment after issuance of the establishment license except as provided in § 103.1

(8) The licensee either achieves licensure of all unlicensed products by the close of the interim period or discontinues producing and removes from the licensed establishment any product which is not licensed.

* * * * *

Done at Washington, DC, this 6th day of December 1985.

Gerald J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

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BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Specific Exemptions; Clarification of Standards

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to clarify the standards that will be applied when it considers whether to grant exemptions from the requirements codified in 10 CFR Part 50.

EFFECTIVE DATE: January 13, 1986.

FOR FURTHER INFORMATION CONTACT: F.X. Cameron, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–8689.

SUPPLEMENTARY INFORMATION:

I. Background

On April 26, 1985, the Commission issued a proposed rule modifying the criteria for granting exemptions from the requirements of 10 CFR Part 50 for the licensing of production and utilization facilities. 50 FR 16506. Section 50.12(a) of Chapter I, Title 10, the Code of Federal Regulations provides that the Commission may grant exemptions from the regulations in Part 50 that it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest. Traditionally, this authority has been delegated by the Commission to its staff which determines whether exemptions are needed and justified. The Commission believes that it is not possible for its regulations to predict and accommodate every conceivable circumstance. Consequently, it has historically provided mechanisms to grant exemptions where application of the regulation would not serve the public interest and no undue risk to the public health and safety would occur as a result of not requiring literal adherence to a particular requirement.

In reviewing § 50.12(a) requests for exemptions, the NRC staff ("staff") has considered whether any undue risk would result from the granting of a particular exemption. This determination was, in general, based on a qualitative engineering analysis of the purpose of the regulatory requirement and consideration of the methods specified in the specific regulation for achieving the regulatory purpose. The staff compared the proposed method of compliance to ensure that the regulatory purpose was satisfied and that the method to be used in a particular case was, under the particular circumstances before the staff, appropriate and technically sound for accomplishing the regulatory purpose. In recent years when probabilistic quantitative assessment techniques have been available, these techniques, along with

engineering judgment, have been used to ensure that the exemption involved was acceptable from a safety standpoint. In summary, the staff would evaluate an exemption request to determine if there was a justifiable reason for the proposed exemption and, in addition, whether adequate protection of the public health and safety would be maintained if the exemption were granted.

As noted in the Supplementary Information to the proposed rule, several recent adjudicatory proceedings reviewed by the Commission, had made it evident that it would be desirable to attempt to state clearly the circumstances for which the Commission believes that exemptions are warranted for the guidance of applicants, licensees, the staff, and the public. For example, the Commission's recent decision on an exemption request for the Shoreham nuclear power plant,[1] represented a departure from past staff practice in the exemption area. In *Shoreham*, the Commission requested the applicant, in addressing the determinations to be made under the 10 CFR § 50.12(a) exemption criteria, to include a discussion of:

1. The 'exigent circumstances' that favor the granting of an exemption under 10 CFR 50.12(a) should it be able to demonstrate that, in spite of its noncompliance with GDC 17, the health and safety of the public would be protected.

2. Its basis for concluding that, at the power levels for which it seeks authorization to operate, operation would be as safe under the conditions proposed by it, as operation would have been with a fully qualified onsite A/C power source.

In the context of exemptions related to plant operations, these determinations regarding "exigent circumstances" and "as safe as" are not explicitly stated in 10 CFR 50.12(a). Although the Commission specified that *Shoreham* was only to apply to the particular circumstances of that case, it also directed the development of this rulemaking to codify appropriate exemption standards. The proposed rule was an attempt to fashion a comprehensive, consistent, practicable, and appropriate framework for reviewing exemption requests, based on past staff practice and on the Commission's concerns, as evidenced in the *Shoreham* decision and related discussions.

[1] *In the Matter of Long Island Lighting Company* (Shoreham Nuclear Power Station, Unit 1), CLI-84-8, 19 NRC 1154, (May 16, 1984) (hereinafter "Shoreham").

The Commission expects the intent of its regulations to be met and normally this requires conforming to the regulations as stated. There are circumstances, however, where on balance it would not be equitable or in the public interest to require literal adherence to regulations particularly where a particular requirement applied to a specific plant would not result in an improvement in overall safety or a reduction in risk to the public.

The objective of this rulemaking is to identify the criteria to apply in such circumstances and to provide a means for considering these circumstances so that consistent regulatory decisions can be made concerning exemptions to Commission regulations.

The Commission's exemption authority is exercised consistent with the Administrative Procedure Act's requirements for informal rulemaking, i.e. the regulatory policy for a particular rule is developed through the rulemaking process without expecting a need for large numbers of exemptions. Therefore, the Commission will exercise its discretion to limit exemptions in any particular area if the "exceptions" to the rule threaten to erode the rule itself. The Commission is also aware that exemptions can serve as warning signals that a particular rule may need to be revised and can serve as a supplement to traditional evaluation mechanisms in identifying areas in need of revision.

II. The Proposed Rule

The proposed rule retained the existing criteria of § 50.12(a) in a slightly modified form, as general standards for the granting of exemptions. Under proposed § 50.12(a)(1), the Commission could grant exemptions which:

> are authorized by law, will not present an undue risk to the public health and safety, are consistent with the common defense and security, and are in the public interest.

In a departure from the text of the existing rule, the proposed rule would have required a finding that the exemption will not "present an undue risk to the public health and safety" and would be "consistent with the common defense and security." These standards provide an explicit recognition of traditional staff practice in evaluating the safety implications of a particular exemption.

As is currently required by § 50.12(a), the proposed rule would have also required that the exemption be in the "public interest." However, the Commission explicitly stated that the public interest determination would consist of a consideration of the special circumstances that justify the exemption. This determination would be confined to the consideration of the equities of the situation, similar to those cited in the *Shoreham* decision, including the stage of the facility's life, any financial or economic hardships, any unusual difficulties in complying with the regulation, any internal inconsistencies in the regulation, the applicant's good faith effort to comply with the regulation from which the exemption is sought, the public interest in adherence to the Commission's regulations, and the safety issues involved.

In addition to the general standards of proposed § 50.12(a)(1) the Commission proposed to add a new § 50.12(a)(2), which would require that a particular condition exists before an exemption could be granted. The Commission stated that these conditions represent situations in which it would be reasonable to grant an exemption, provided that the general standards of § 50.12(a)(1) are also met. The conditions were selected on the basis of exemption criteria that have been noted by the courts with approval (special circumstances, hardship, equity, more effective implementation of overall policy, circumstances substantially different from those considered in the rulemaking proceeding) and on the basis of examples from past Commission exemption practice for which the circumstances underlying the exemption appeared to be relevant and appropriate for exemption relief. The Commission emphasized that the conditions in proposed § 50.12(a)(2) constitute a specific application of either the safety criterion or the public interest criterion stated in the general standards of proposed § 50.12(a)(1). Although an exemption request could satisfy one of the conditions in proposed § 50.12(a)(2), the general criteria in proposed § 50.12(a)(1) would also need to be satisfied.

Proposed § 50.12(a)(2) would have required that one of the following be satisfied before an exemption could be granted:

(i) Application of the regulation in the particular circumstances would be in conflict with other rules of the Commission; or

(ii) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule; or

(iii) Alternative or compensatory means exist to achieve the underlying purpose of the regulation; or

(iv) The exemption would result in an overall benefit to the public health and safety that compensates for any decrease in safety that may result from the grant of the exemption; or

(v) Application of the regulation would result in treatment of the particular applicant or licensee in a manner substantially different than other similarly situated applicants or licensees; or

(vi) The exemption would provide only temporary relief from the applicable regulation; or

(vii) There is present any other material circumstance not considered when the regulation was adopted.

The Commission directed the staff to use existing staff practice, pre-*Shoreham*, in evaluating exemptions, pending the effective date of this rulemaking. Commissioner Asselstine requested comments on the following proposed rule as an alternative to that proposed by the Commission:

Section 50.12 Specific Exemptions

(a)(1) The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations in this part.

(2) The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever:

(i) Compliance with the regulations would be inconsistent with some other Commission requirement;

(ii) compliance with the regulation would decrease overall facility safety, or would not achieve or not be necessary to achieve the purpose of the regulation;

(iii) compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated;

(iv) a compliance issue is raised late in the licensing review that cannot be fully resolved in a timely fashion despite good faith efforts;

(v) compliance would result in applicant or licensee being treated in a manner significantly different from others similarly situated; or

(vi) there is present any other material circumstance not considered when the regulation was adopted.

(3) No exemption will be granted unless the Commission finds that it would be authorized by law and would be in accord with the common defense and security, and that there would be no undue risk to the health and safety of the public.

III. Public Comments

The Commission received seventeen comments on the proposed rule. Sixteen of these were from the nuclear industry, comprised of electric utilities, law firms representing electric utilities, architect engineers, and a trade association. One comment was submitted by the law firm of Harmon & Weiss, representing the Union of Concerned Scientists (UCS). The industry comments were generally supportive of the Commission's objective in attempting to clarify its exemption policy. However, industry commenters did recommend revision of selected details of this proposed clarification. They also expressed both favorable and unfavorable comments on the specific provisions of Commissioner Asselstine's proposal, noting that in many respects there did not seem to be any substantial differences between the two versions. The comments submitted on behalf of the UCS focused exclusively on the Commission's basic authority to grant exemptions, and requested that the Commission withdraw the proposed rule as being outside of the Commission's authority. The discussion of the comments has been organized into the following segments—

A. The extent of the Commission's authority in the exemptions area.

B. The "no undue risk" and "common defense and security" standards of proposed § 50.129(a)(1).

C. The "public interest" standard of proposed § 50.12(a)(1).

D. The "special circumstances" criteria of proposed § 50.12(a)(2).

E. Temporary noncompliances.

F. Relationship to other Commission regulatory actions.

G. Policy statement versus rule.

A. The Extent of the Commission's Authority in the Exemptions Area

The UCS requested that the Commission withdraw the proposed rule because, among other reasons, the Commission does not have the statutory authority to grant any exemptions from its regulations. The UCS cites the Supreme Court in *E.I. duPont de Nemours & Co.* v. *Train*, 430 U.S. 112, 97 S.Ct. 965 (1977), for the proposition that the authority of an administrative agency to issue exemptions must be granted by Congress, either through the specific language of the enabling statute or its legislative history. Acccording to UCS, because the Atomic Energy Act and its legislative history contain no specific provisions allowing the Commission to grant exemptions from its regulations, the "Commission lacks the grounds to establish rules for exemptions from its regulations." As evidence for this proposition UCS cites section 103b(2) of the Atomic Energy Act which states that the Commission shall issue production or utilization licenses to persons who—

> . . . are equipped to observe and who agree to observe such safety standards to protect health and to minimize danger to life or property as the Commission may by rule establish. 42 U.S.C 2133(b)(2).

In addition, no variance from the above requirement can be found in Section 161h of the Atomic Energy Act, 42 U.S.C. 2201(h), characterized by UCS as the provision that "governs consideration of license applications."

As the Commission stated in the Supplementary Information to the proposed rule, the authority of an administrative agency to povide for exemptions from its regulations is well-established. In *United States* v. *Allegheny-Ludlum Steel*, 406 U.S. 742 (1972), the Supreme Court recognized the authority of an agency to establish exemption to address peculiar factual situations. As stated by the Court—

> It is well-established that an agency's authority to proceed in a complex area * * * by means of rules of general application entails a concomitant authority to provide exemptions procedures in order to allow for special circumstances. *Id* at 755.

In a case involving regulations of the Federal Communications Commission, the United States Court of Appeals for the District of Columbia Circuit emphasized that "a system where regulations are maintained inflexibly without any procedure for waiver poses legal difficulties" because the power of an agency to promulgate general regulations in the public interest "does not relieve it of an obligation to seek out the 'public interest' in particular individualized situations." *WAIT Radio* v. *FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969). The court noted further that—

> [t]he agency's discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exception based on special circumstances. *Id.*

Furthermore, as noted by the the Court of Appeals for the District of Columbia Circuit, and contrary to the thrust of the USC comment,—

> Certain limited grounds for the creation of exemptions are inherent in the administrative process, and their unavailability under a statutory scheme should not be presumed, save in the face of the most unambiguous demonstration of congressional intent to foreclose them. *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 357 (D.C. Cir. 1979).

The Supreme Court decision cited by UCS, *E.I. duPont de Nemours & Co.* v. *Train, supra*, was based on the Court's interpretation of the specific statutory scheme embodied in the Federal Water Pollution Control Act Amendments of 1972 (FWPCA). Unlike the instant rulemaking, *duPont* involved the issue of granting exemptions from a specific statutory obligation, rather than exemptions from regulations designed to implement a general statutory obligation, for example, the Commission's responsibility to ensure adequate protection of the public health and safety. The Court noted that Section 306 of the FWPCA, which directs the EPA to establish national standards of performance for new sources, contains no provision for exceptions from the standards for individual plants. On the contrary, Section 306(e) expressly makes it unlawful to operate a new source in violation of the applicable standard of performance after its effective date. Consequently, the Court concluded that EPA did not have the authority to issue variances for individual plants unable to comply with the national standards of performance promulgated by EPA for the discharge of pollutants from "new sources" (as opposed to "existing sources"). The Court's conclusion was based on the clear congressional intent that the new source standards should be absolute prohibitions. As the Court noted—

> . . . A variance provision would be inappropriate in a standard that was intended to ensure national uniformity and "maximum feasible control of new sources." *Supra* at 138.

Notably, from the standpoint of the UCS assertion that a statute must explicity provide for the authority to issue exemptions, the Court did find that EPA had the authority to issue individual variances from the effluent limitations required to be applied by July 1, 1977, for existing sources, despite the failure of the FWPCA to explicitly provide for such variances.

In regard to the provisions of the Atomic Energy Act cited by UCS, the Comission cannot find any evidence in the general licensing standards of section 103b(2) that Congress intended to prohibit the Commission from issuing exemptions in limited circumstances. Furthermore, it is unclear what relevance the UCS citation of Section 161h has to the matter of exemptions. Section 161h authorizes the Commission to—

> Consider in a single application one or more of the activities for which a license is required by this Act, combine in a single license one or more of such activities, and permit the applicant or licensee to incorporate by reference pertinent information already filed with the Commission. 42 U.S.C. 2201(h).

The Commission believes that its exemption policy, part of the Commission's regulations since 1956, is within its statutory authority. As noted above, the unavailability of exemptions should not be presumed except in the face of "the most unambiguous demonstration of Congressional intent to foreclose them." *Alabama Power, supra.* Nothing in the Atomic Energy Act prohibits the Commission from providing for exemptions, and Section 161p. of the Atomic Energy Act authorizes the Commission to—

> Make, promulgate, issue, recind, and amend such rules and regulations as may be necessary to carry out the purposes of this Act. 42 U.S.C. 2201(p).

On a related issue, UCS asserts that, even if the Commission does have the statutory authority to grant exemptions from its regulations, the Commission may not consider economic factors in granting an exemption. Therefore, any of the proposed criteria that address economic considerations must be deleted. According to UCS this would include the public interest criterion in proposed § 50.12(a)(1), the specific condition in § 50.12(a)(2)(v) where application of the regulation would result in treatment of the particular applicant or licensee in a manner substantially different than other similiarly situated applicants or licensees, and the specific condition in § 50.12(a)(2)(vi) where the exemption would provide only temporary relief from the applicable regulation. Citing *Power Reactor Development Corporation* v. *International Union of Electrical, Radio, and Machine Workers*, 367 U.S. 413 (1961), and *Porter County Chapter of Izaak Walton League* v. *NRC*, 606 F.2d 1363 (D.C. Cir. 1979), UCS asserts that "[t]he courts have made it clear that the Commission may not consider the cost of meeting its safety requirements in making decisions whether to allow the operation of nuclear power plants." Applying this proposition to the area of exemptions, UCS concluded that "[t]he Commission may not rely on economic issues in order to change an operating license to permit operation at less than the same assurance of safety as provided by compliance with the regulations."

The Commission believes that judicial precedent and long-standing Commission practice confirm that, within the confines of carrying out its paramount responsibility to protect public health and safety, it may consider economic factors in its decision making. The Commission's regulatory mandate is couched in terms of "adequate protection of the public health and safety," 42 U.S.C. 2232. The courts have held that absolute safety or zero risk is not required, and have interpreted the Atomic Energy Act to confer considerable discretion on the Commission to determine what level of protection is adequate.[2] Consequently, the basic standard is inherently broad and general, rather than precise. As long as a Commission decision adheres to the primary "adequate protection" standard, the decision can legitimately take into account cost considerations.

In regard to the judicial decisions cited by the commenter, the *Power Reactor Development Corporation, supra*, concerned the validity of the two-step licensing process. A majority of the U.S. Supreme Court held in that context that the Commission is absolutely denied any authority to consider the enormous investment (sunk costs) made during construction in making the definitive safety findings for purposes of operation. The case did not concern the general question of whether costs could otherwise be considered in licensing and regulatory decisions. This conclusion is also applicable to *Porter County, supra.*

Finally, the Commission would emphasize that § 50.12(a)(1) of the proposed rule requires a safety finding that the exemption will not present an undue risk to the public health and safety and is in accord with the common defense and security. It is only after these statutorily based findings have been made that the Commission may then consider whether the *additional* requirements for the grant of an exemption have been met, some of which include economic considerations.

B. The No Undue Risk and Common Defense and Security Standards of Proposed § 50.12(a)(1)

UCS also challenges the "no undue risk" standard of the proposed rule on the basis that it lowers the existing safety standard for granting exemptions. However, the existing safety standard that the commenter refers to is the "as safe as" standard that was controlling in the Commission's *Shoreham* decision, rather than the existing requirement of § 50.12 that the exemption will not "endanger life or property." UCS argues that "there is no acceptable lower safety standard" than the "as safe as" standard employed by the Commission

[2] *See, for example Siegel* v. *AEC*, 400 F2d. 778 (D.C. Cir. 1968); *Nader* v. *Ray*, 363 F. Supp. 946 (D.C.D.C. 1973).

in *Shoreham*. This argument is based on the proposition that "the regulations establish the minimal requirements for safe operation of a nuclear power plant * * * they do not eliminate all risks from nuclear power plant operation, but are intended to provide a reasonable assurance of safety." According to the UCS, the Commission may not "retreat" from the levels of protection established in its regulations. Granting an exemption based on anything other than a standard that demonstrates an equivalent assurance of safe operation would degrade the safety of a nuclear power plant because the license would have been issued based on compliance with the regulations, and the exemption would allow the reactor to operate in noncompliance based on some lower standard.

As emphasized in the Supplementary Information to the proposed rule, the Commission's *Shoreham* decision is intended to only apply to the particular circumstances of that case. 50 FR 16506, 16508. Consequently, it is not appropriate to characterize the "as safe as" standard applied in *Shoreham* as the "existing safety standard." As also noted in the Supplementary Information to the proposed rule, the "no undue risk" standard of proposed § 50.12(a)(1) is an explicit recognition of, not only traditional staff practice in evaluating the safety implications of a particular exemption, but of the statutory findings required by section 182 of the Atomic Energy Act. 50 FR 16506, 16508. The 10 CFR 50.12(a) exemption provision was originally added to the Commission's regulations in 1956 and has a long history of implementation. 21 FR 355, January 19, 1956. The staff evaluates an exemption request to determine if there is a justifiable reason for the proposed exemption and, in addition, whether adequate protection of the public health and safety would be maintained if the exemption were granted. Contrary to what UCS suggests, the grant of an exemption does not lower the existing safety standard for granting exemptions, but rather explicity reaffirms the existing safety standard. This safety standard represents the statutory requirements of section 182 of the Atomic Energy Act for "adequate protection to the health and safety of the public." 42 U.S.C. 2232.

In regard to the UCS assertion that the Commission's regulations establish the minimum requirements for providing adequate protection of the public health and safety, the Commission believes that, while it is true that compliance with all NRC regulations provides reasonable assurance of adequate protection of the public health and safety, the converse is not correct, that failure to comply with one regulation or another is an indication of the absence of adequate protection, at least in a situation where the Commission has reviewed the noncompliance and found that it does not pose an "undue risk" to the public health and safety.

Two industry commenters, Northeast Utilities, and Bishop, Liberman, Cook, Purcell & Reynolds, representing several utilities, requested that the Supplementary Information to the final rule reiterate that the "no undue risk" standard includes the consideration of compensatory measures, length of time of the exemption, and the power level involved. As the Commission noted in the Supplementary Information to the proposed rule, it is anticipated that the staff review of the safety significance of the requested exemption will take into account the type of plant operation contemplated (fuel loading, low power testing, power ascension, or full power operation), the length of time that the exemption would be in effect, the existence of compensatory measures, and other safety factors.

One industry commenter, Baltimore Gas & Electric, requested that the Commission include some discussion of the criterion in proposed § 50.12(a)(1) that the exemption would be "consistent with the common defense and security." The commenter also noted that the wording of the current § 50.12(a)(1), that the exemption would "not endanger * * * the common defense and security * * *," may be easier to apply.

In response, the Commission does not intend for the change in wording in the proposed rule on the security finding to change the nature of that standard. The proposed rule would include the statutory safety and security findings, based on section 182 of the Atomic Energy Act for "adequate protection to the health and safety of the public" and "accord with the common defense and security." 42 U.S.C. 2232. This is in contrast to the language in the existing rule to the effect that the exemption must "not endanger life or property or the common defense and security." The "not endanger" language in the current rule was never intended to embody any special standards for exemptions that differed from the statutory standards that licensing must provide adequate protection to the health and safety of the public and be in accord with the common defense and security. For an example of how the "common defense and security" standard has been applied in the context of an exemption request, see *In the Matter of Long Island Lighting Company* (Shoreham Nuclear Power Station, Unit 1), LBP-84-45, 20 NRC 1343, 1400 (October 29, 1984).

C. The "Public Interest" Standard of Proposed § 50.12(a)(1)

A number of comments from the industry addressed the "public interest" standard of proposed § 50.12(a)(1). Two of these commenters, Duke Power Company, and Bishop, Liberman, Cook, Purcell & Reynolds, recommended that the "public interest" standard of § 50.12(a)(1) would be more appropriately termed a "balancing of the equities" or "special circumstances" standard. These two commenters noted that in the Supplementary Information to the proposed rule, the Commission stated that "the public interest determination will consist of a consideration of the special circumstances that justify the exemption," and that the "determination will be confined to the equities of the situation." 50 FR 16508. Both commenters believed that the "special circumstances/balancing of equities" standard is consistent with the NRC staff practice in granting of exemptions and gives the staff the necessary flexibility to evaluate the full range of potential requests. Therefore, they recommended deletion of the "public interest" standard in proposed § 50.12(a)(1). A third industry commenter, Northeast Utilities, also endorsed the idea that a "special circumstances" standard is more appropriate than a "public interest" standard because it is more in keeping with traditional staff practice. Baltimore Gas & Electric stated that, on this issue, it preferred Commissioner Asselstine's version because that version deleted the "public interest" standard. This commenter believes that the "public interest" standard is too subjective, and no supporting guidance was given for its interpretation.

Both Duke Power and Bishop, Liberman, Cook, Purcell & Reynolds suggested that the use of the broad "public interest" language in proposed § 50.12(a)(1) could also "cloud" the application of the "special circumstances" standard, citing the Commission's *Shoreham* decision where the traditional public interest test was expanded to include a requirement of "exigent circumstances." These commenters recommended that the Commission refine the language of the proposed regulation to explicitly define the type of assessment involved in evaluating exemption requests, i.e. "public interest" or "special circumstances" stated as an equitable

balancing test, and include a list of factors to be considered in applying this test. Somewhat in contrast, the Atomic Industrial Forum (AIF) believed that the Commission had selected the correct general standards. Furthermore, the AIF noted that the "special circumstances" standard in § 50.12(a)(2) of Commissioner Asselstine's proposal, 50 FR 16509, appears to be unnecessary because the Commission intends to grant exemptions only in special circumstances. Another industry commenter, GPU Nuclear, criticized Commissioner Asselstine's proposal for deleting the "public interest" standard, although no further expanation was offered as a basis for this criticism.

On a related issue, Duke Power Company and Bishop, Liberman, Cook, Purcell & Reynolds, asserted that the situations in proposed § 50.12(a)(2), in which it would be reasonable to grant an exemption, "gives the regulation a slightly illogical structure." This results from the specific situations of proposed § 50.12(a)(2) being used to define and limit the general standards. According to these commenters, it would be advisable to state the special circumstances standard in terms of a definition, rather than by the limiting examples of proposed § 50.12(a)(2). In addition, they suggested that the list of factors to be considered under the "public interest" standard of proposed § 50.12(a)(1) would in many respects parallel the specific situations of proposed § 50.12(a)(2). Therefore, § 50.12(a)(2) is unnecessary, and also deprives the Commission of needed flexibility in considering exemption requests. However, these commenters requested that, if the Commission does adopt the approach set forth in proposed § 50.12(a)(2), § 50.12(a)(2)(vii) be retained to provide for unanticipated circumstances. Another industry commenter, GPU Nuclear stated that the addition of the specific situations in proposed § 50.2(a)(12) does not provide any clarity to the exemption criteria, and merely adds more requirements. This commenter also criticized the Commission's proposal generally for not stating any more clearly than the existing rule the circumstances for which an exemption would be warranted.

Boston Edison stated that the prescriptive content of the proposed rule was too narrow and imposed more stringent standards than the NRC staff had used in the past. Northeast Utilities believed that the seven criteria in proposed § 50.12(a)(2) appear to encompass most of the relevant bases which might be advanced in support of an exemption request, and endorsed the general approach of Commissioner Asselstine, which they characterized as "adopting two general standards for exemptions rather than prescribing specific criteria to be met." The commenter further noted that the specific list of special circumstances in Commissioner Asselstine's proposed § 50.12(a)(2) was too narrow and didn't reflect all the possible factors which should be considered. Another industry commenter, Yankee Atomic, found Commissioner Asselstine's "special circumstances" attractive in that it identifies "safe harbor" special circumstances without excluding any other circumstances.

Yankee Atomic further suggested that the specific conditions of proposed § 50.12(a)(2) and the equitable factors cited in the Commission's *Shoreham* decision, be consolidated under the "public interest" standard in proposed § 50.12(a)(1). Explicitly listing these factors in the text of the regulation would, according to this commenter, provide more guiance on interpreting the "public interest" standard. The commenter also noted that this would be a way of more clearly indicating that the proposed rule was not intended to substantially alter existing staff practice in the exemptions area.

After careful consideration of the public comments, and further evaluation of the proposed rule, the Commission has decided to delete the public interest standard of proposed § 50.12(a)(1). As the commenters noted, the public interest determination consists of the consideration of the special circumstances that justify the exemption. Therefore, "special circumstances" is a more appropriate terminology for this standard. In addition, the Commission is concerned that the framework of the proposed rule could be somewhat awkward to implement and could result in inefficiency and confusion. In addition to meeting the general "no undue risk" and "public interest" standards of proposed § 50.12(a)(1), proposed § 50.12(a)(2) requires that one of several specific conditions exist before an exemption may be granted. These conditions represent specific applications of the general "public interest" or "no undue risk" standards in proposed § 50.12(a)(1). This presents the potential problem of determining the extent to which the analysis and conclusions on the specific conditions of proposed § 50.12(a)(2) will be applicable in determining whether the proposed § 50.12(a)(1) standards have been met, particularly whether any further analysis is necessary at all on the general standard to which the specific situation applies. Although the Commission believes that the framework of the proposed rule could be implemented, the Commission desires to fashion the clearest and most efficient implementation process possible. Because the factors that would be considered in determining whether the "public interest" standard has been met, would in large part, also be considered under the "special circumstances" standard in § 50.12(a)(2) of the final rule, the deletion of the public interest standard will provide a clear framework for implementation of the exemption rule without sacrificing any substantive policy considerations. The deletion of the "public interest" standard in proposed § 50.12(a)(1) reflects a conclusion that an exemption would always be in the public interest, if special circumstances are present, and the safety and security findings of §50.12(a)(1) are made. However, the Commission believes that the "public interest" concept is still an appropriate consideration for determining whether the general special circumstances criterion in § 50.12(a)(2)(vi) has been met, and has added it to the final rule. The Commission emphasizes that a finding of "special circumstances" only defines the situations where exemptions will be considered. Even if special circumstances are present, no exemption will be granted unless the findings of § 50.12(a)(1) can be made.

As noted above, several of the commenters recommended a general "special circumstances" standard, rather than a standard that is defined by specific criteria. Although the Commission has the flexibility to consider unanticipated circumstances in the exemptions area, it desires to establish a predictable and consistent exemption policy. The most effective way to accomplish these objectives is to establish standards. Consequently, the Commission is employing the specific conditions of proposed § 50.12(a)(2) as the criteria for the "special circumstances" standard in § 50.12(a)(2) of the final rule. As discussed more fully below, the Commission has modified some of the provisions of proposed § 50.12(a)(2) in response to the public comments. However, the final rule does retain the criterion in proposed § 50.12(A)(2)(vii) to retain the flexibility for the Commisson itself to deal with unanticipated circumstances. The Commission believes that the "special circumstances" criteria in the final rule do not simply add more requirements, but do in fact, add clarity to the

exemptions process and provide additional guidance to licensees and the public on when exemptions may be appropriate. In response to the suggestion by Yankee Atomic that the proposed rule is not intended to substantially alter the Commission's exemption policy, the Commission would agree that the final rule does rely substantially on existing staff practice in the exemptions area. However, the final rule is also an attempt to strengthen the Commission's exemption policy by establishing more definitive standards, and by providing for a more systematic and formal analysis of exemption requests. Finally, the Commission would most emphatically disagree with the assertion made by the UCS that the special circumstances in proposed § 50.12(a)(2) are "conditions so vaguely described or so unremarkable as to invite widespread abuse of the provision." As stated in the Supplementary Information to the proposed rule, the courts have cited several broad rationales that are permissible for an agency to employ in granting exemptions. 50 FR 16507. For example, the D.C. Circuit in *Wait Radio* v. *FCC* noted that—

> The agency may not act out of unbridled discretion or whim in granting waivers any more than in any other aspect of its regulatory function. 418 F.2d 1153, 1157 (D.C. Cir. 1969).

However, the D.C. Circuit found that an exemption or waiver provision could legitimately take into account considerations of "hardship, equity, or more effective implementation of overall policy." *Supra* at 1159. Certainly, the Commission's attempt, in this rulemaking, to clarify its exemption standards and to establish more definitive criteria, is not an exercise of "unbridled discretion" as asserted by UCS. The criteria of the final rule are the types of considerations that would be consistent with those cited above in *Wait Radio* and other judicial decisions.

D. The "Special Circumstances" Criteria in Proposed § 50.12(a)(2)

A number of commenters addressed the specific conditions in proposed § 50.12(a)(2). As noted above, these specific conditions now form the basis for the "special circumstances" standard in § 50.12(a)(2) of the final rule. On a general matter, Stone & Webster Engineering and GPU Nuclear recommended that, to the extent they are not already incorporated, the equities cited in the Commission's *Shoreham* decision should be incorporated into proposed § 50.12(a)(2). The equities cited in *Shoreham* were the stage of the facility's life, any financial or economic hardships, any internal inconsistencies in the regulation, the applicants good faith effort to comply with the regulation from which an exemption is sought, the public interest in adherence to the Commission's regulations, and the safety significance of the issues involved. *Id.* at 1156.

The Commission believes that most of these equities were already reflected in the specific conditions set forth in proposed § 50.12(a)(2) (i) through (vi), or could be considered under the broader category established in proposed § 50.12(a)(2)(vii), and consequently would be considered under the "special circumstances" standard in § 50.12(a)(2) of the final rule.

The law firm of LeBoeuf, Lamb, Leiby & MacRae, representing several utilities, requested that the Commission adopt Commissioner Asselstine's version of proposed § 50.12(a)(2)(i). This version would recognize inconsistencies between the regulation from which an exemption was sought and "other Commission *requirements*," emphasis added, as a special circumstance, rather than the Commission's version which only recognizes inconsistencies "with other *rules*." Emphasis added. The commenter suggested that the Commission expand proposed § 50.12(a)(2)(i) to include inconsistencies with "other rules and requirements." Yankee Atomic recommended that proposed § 50.12(a)(2)(i) be revised to include inconsistencies with "other rules of the Commission, with the staff's interpretation of other rules or requirements, or with other law." The rationale for this revision is that "* * * in many cases the Commission's rules are not detailed enough to cover all situations, and the staff is subsequently called upon to use a reasonable amount of guarded discretion in interpreting rules."

The Commission agrees that proposed § 50.12(a)(2)(i) should be revised to recognize that exemptions from a regulation may be necessary because of conflicts with Commission requirements generally, and not only because of conflicts with Commission regulations. Therefore, the Commission has revised § 50.12(a)(2)(i) in the final rule as follows—

> § 50.12(a)(2)(i)—application of the regulation in the particular circumstances would be in conflict with other rules or requirements of the Commission.

However, as explained more fully below, this modification only addresses situations where an exemption from the regulations is being made considered and does not include situations where relief is sought from license conditions or amendments. The Commission believes that the above revision also accommodates the primary substance of the suggestion made by Yankee Atomic. However, the focus of § 50.12(a)(2)(i) is on inconsistencies between the regulation from which an exemption is sought and other Commission rules and requirements, and not "other law" in general. Although the commenter did not provide any examples of potential inconsistencies with "other law", if such a special circumstance does occur, the Commission could address it under § 50.12(a)(2)(vi) of the final rule which provides for "any other material circumstance not considered when the regulation was adopted." In addition, the Commission does not believe it necessary to include, as suggested by Yankee Atomic, inconsistencies with "staff interpretations of * * * rules or requirements" because these would seem to be an integral part of, and reflection of, the Commission's regulations and other requirements.

Proposed § 50.12(a)(2)(ii) established a special circumstance where—

> Application of the regulation . . . would not serve the underlying purpose of the rule, or is not necessary to achieve the underlying purpose of the rule.

Yankee Atomic suggested that the Commission revise this provision to include situations where application of the regulation would result in "a less effective implementation of overall policy." According to the commenter, this revision would capture "some of the language from *Wait Radio* and would lessen the harshness of the criteria." The commenter further noted that this revision would involve a balancing based on whether overall policy is more or less effectively implemented. According to the commenter, without this change, proposed § 50.12(a)(2)(ii) might result in denying an exemption if only some insignificant portion of the underlying purpose would be served.

The relationship between the suggested "implementation of overall policy" and the substance of proposed § 50.12(a)(2)(ii) which addresses the underlying purpose of a particular regulation is less than clear. From one perspective, the purpose of a rule does serve to implement overall policy, and consequently, the existing text of this provision would already address the commenter's concern. For another perspective, if the commenter is referring to some broader policy, then the use of proposed § 50.12(a)(2)(iv), which addresses situations where the exemption would result in benefit to the

public health and safety, would seem more appropriate. The Commission would also note that one of the objectives of the total exemption policy set forth in this final rule is to establish criteria that would allow more effective implementation of the overall policy of efficient and effective nuclear safety regulation.

Proposed Section 50.12(a)(2)(iii) establishes a special circumstance when—

> Alternative or compensatory means exist to achieve the underlying purpose of the regulation.

USC asserted that this provision[3] would "violate" the Commission's policy in 10 CFR 2.758(a) of the Commission's regulations which prohibit challenges to Commission rules. Consequently, the commenter asserts, "[e]ach exemption proceeding could be a forum for relitigation of the purpose of the rule and the acceptable means of achieving that purpose." This would waste agency resources and eliminate all consistency and reliability from the Commission's regulatory process. However, an industry commenter, Northeast Utilities, was supportive of this provision because it provides explicit recognition that generic regulations cannot consider all the relevant factors for a particular plant and that, in some cases, detailed plant requirements are inappropriate either because they would not, on a given plant, achieve the intended end result of the regulation, or because there are alternative and possible more effective means for achieving the underlying purpose of the regulation.

In considering these comments, it was apparent that the existence of alternative or compensatory measures is also an appropriate consideration in making the "no undue risk" determination of § 50.12(a)(1). Originally, the specific situations of § 50.12(a)(2) were examples of either the no undue risk standard or the public interest standard in proposed § 50.12(a)(1), and therefore it was appropriate to include "alternative or compensatory measures" as a special condition under proposed § 50.12(a)(2). With the change in focus in the final rule to "special circumstances", alternative or compensatory measures are no longer necessary for consideration as a separate special circumstance, and the Commission has deleted this provision from § 50.12(a)(2) of the final rule. However, alternative means of compliance may be considered in evaluating the special circumstances factors in § 50.12(a)(2)(ii) of the final rule. The detailed requirements of each safety regulation in 10 CFR Part 50 reflect a rulemaking judgment that satisfaction of those detailed requirements is the only way to achieve the specific purpose of the regulation without imposing unnecessary hardship or creating unforeseen conflicts. However, in any particular case this could prove to be incorrect, and the exemption process would permit licensees or applicants to offer alternative ways of achieving the purpose of the regulation without other undesirable effects. The Commission does not believe that this limited application will eliminate consistency and reliability from the regulatory process. In regard to the UCS statement that consideration of alternative mechanisms would violate the Commission's policy in 10 CFR 2.758, the change in focus in the final rule to "special circumstances" makes it consistent with the considerations the Commission expects parties to address in adjudications involving 10 CFR 2.758.

Proposed § 50.12(a)(2)(iv) establishes a special circumstances when—

> The exemption would result in an overall benefit to the public health and safety that compensates for any decrease in safety that may result from the grant of the exemption.

UCS stated that this provision, as well as proposed § 50.12(a)(2)(ii) of Commissioner Asselstine's version, would allow an applicant or licensee to compensate for the decrease in safety caused by an exemption by increasing safety in some other part of a plant's design or operation. According to UCS, this would ignore the principle of "defense in depth." UCS characterized this principle by stating that "[e]ach of the Commission's safety regulations ha[s] a purpose in providing a reasonable assurance of safe operation of a nuclear power plant." According to the commenter, the Commission cannot license a plant based on some "overall" finding of reasonable assurance, but must resolve the safety issues raised by noncompliance with each individual standard. UCS cited *In the Matter of Vermont Yankee Power Corporation* (Vermont Yankee Nuclear Power Station), ALAB-138, 3 AEC 520, 529 (1973) in support of the above arguments.

While compliance with all NRC regulations provides reasonable assurance of adequate protection of the public health and safety, the converse is not correct, that failure to comply with one regulation or another is an indication of the absence of adequate protection, at least in a situation where the Commission has reviewed the noncompliance and found that it does not pose an "undue risk" to the public health and safety. Furthermore, the Commission has never defined the concept of "defense-in-depth" to preclude the granting of an exemption from a regulation as long as the applicable exemption criteria are met. In fact, the Commission has recognized that its regulations may provide for the possibility of exemptions when an appropriately high level of safety is in fact achieved and the public interest is served. *See, In the Matter of Consumers Power Company* (Big Rock Point Nuclear Power Station), CLI-76-8, 3 NRC 598, 600 (1976). The Appeal Board decision cited by the commenter, *Vermont Yankee, supra,* concerned the correctness of a Licensing Board decision allowing continued plant operation pending the outcome of an operating license proceeding that had been reopened to consider one safety issue. In affirming the Licensing Board decision, the Appeal Board did state that "reactors may not be licensed unless they comply with all applicable standards," *id.* at 529, and that—

> It cannot be argued that, even though the reactor does not comply with the criteria, it should receive an unrestricted full-power, full-term license on the ground that there is reasonable assurance that it can operate without adversely affecting the public health and safety. *Id.*

However, no exemption request was involved in this case, and the above statements of the Appeal Board were not made in the context of applying the exemption criteria embodied in the Commission's regulations. Rather, the issue in *Vermont Yankee* was whether the licensee had complied with a particular regulation. Furthermore, the Appeal Board, with a slight modification, upheld the Licensing Board's decision to allow continued operation. In summary, the Commission believes that the effect of an exemption on total facility safety is appropriate for consideration as a special circumstance.

Three comments addressed proposed § 50.12(a)(2)(vii) which establishes a general category of special circumstances for—

> Any other material circumstance not considered when the regulation was adopted. If such condition is relied on exclusively for

[3] UCS consistently referred to the provisions of proposed § 50.12(a)(2) as "Section 40.12*(b)*." (Emphasis added.) The Commission assumed that the commenter was referring to proposed § 50.12(a)(2). 10 CFR 50.12(b) establishes a separate exemption procedure to permit the carrying out of construction activities prior to the issuance of a construction permit. As noted in the proposed rule, the § 50.12(b) procedures are not of concern here and are left undisturbed by this rulemaking. 50 FR 16507.

satisfying paragraph (a)(2) of this section, the exemption shall not be granted until the Executive Director for Operations has consulted with the Commission.

Duke Power requested that some guidance be contained in the Supplementary Information to the final rule on the extent of the consultation process between the Executive Director for Operations (EDO) and the Commission. The consultation anticipated by this provision would consist of submitting the proposed staff action on an exemption request, which is based solely on this provision, to the Commission for determination of whether the particular fact situation constitutes a special circumstance within the meaning of this provision. If the Commission makes an affirmative finding on this issue, the staff will then determine if the other standards of § 50.12(a) are met, and act accordingly on the exemption request.

Two other commenters, Baltimore Gas & Electric, Yankee Atomic Electric Company, addressed the substance of this provision. Baltimore Gas & Electric requested that the provision be expanded to allow the introduction of any other material information which could support the exemption request and to include the evaluation of factors which had been considered when the regulation was adopted but may not have received the *level* of consideration necessary. To implement this suggestion, Baltimore Gas & Electric recommended the following wording—

There is present any other material circumstance which clearly supports the request for exemption or which may not have been fully considered in the context of the requested exemption when the regulation was adopted.

In a similar vein, Yankee Atomic recommended that this provision be revised to allow the consideration of material circumstances not *carefully* considered when the regulation was adopted or any other material circumstances which are substantially different from those which had been carefully considered in the rulemaking proceeding. According to this commenter, this revision would allow the Commission to consider the "novel proposal" rationale of *Industrial Broadcasting Co.* v. *FCC*, 437 F.2d 680 (D.C. Cir. 1970). Without such a revision, "a utility which presents a novel proposal might be denied an exemption on the grounds that the circumstance was somewhat although not fully considered." The commenter further stated that such a revision is particularly important to operators of nuclear power plants like Yankee Atomic, whose plants "have an overall good safety record, are of small size, and are remote from population centers." According to the commenter, it is these operators who are most likely to seek exemptions based on "novel proposals."

In response, the Commission does not deem it advisable to include the consideration of whether a material circumstance was "fully" or "carefully" considered in the text of the final rule. Enough judgment and difficulty is already involved in determining whether the particular fact situation constitutes a "material circumstance not considered when the regulation was adopted," without trying to determine whether it was "fully" or "carefully" considered. However, in making a determination under § 50.12(a)(2)(vi) of the final rule (redesignated from § 50.12(a)(2)(vii) of the proposed rule), the Commission anticipates that it will of necessity have to consider the extent to, and manner in which, the circumstances were considered in the rulemaking proceeding in order to determine whether this special circumstance is present. In addition, the Commission does not believe it necessary to include in this provision such consideration as "any other material circumstance" or "any other material circumstances which are substantially different from those which had been carefully considered in the rulemaking proceeding." Such considerations would seem to already be covered under either the other special circumstances in § 50.12(a)(2) or under the criterion in § 50.12(a)(2)(vi) of the final rule for "any other material circumstance not considered when the regulation was adopted." Finally, in response to the Yankee Atomic comment on "novel proposals," the Commission does not believe that the "special circumstances" criteria of § 50.12(a)(2) would preclude consideration of such a proposal.

A number of industry commenters, LeBoeuf, Lamb, Leiby & MacRae, Baltimore Gas & Electric, Isham, Lincoln & Beale (representing Commonwealth Edison), and Yankee Atomic recommended that the special circumstances criteria include the consideration of undue hardship or excessive costs. Such a provision would be similar to § 50.12(a)(2)(iii) in Commissioner Asselstine's version which established a special circumstance whenever—

Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by other similarly situated.

These commenters recommended that, althrough financial hardships would be considered under the "public interest" standard of proposed § 50.12(a)(1), it should also constitute a "special circumstance" under proposed § 50.12(a)(2). This recommendation is based on the fact that undue hardship or excessive costs have traditionally formed the basis for exemptions granted by the Commission, by administrative agencies in general, and are clearly contemplated by the judicial decisions on the permissible scope of agency exemption criteria.

The Commission agrees that undue hardship or excessive costs would constitute an appropriate "special circumstance," particularly in light of the deletion of the "public interest" standard in proposed § 50.12(a)(1). The final rule has been revised accordingly. Because the "undue hardship or excessive costs" criterion would now cover the situations contemplated in proposed § 50.12(a)(2)(v) on the treatment of the licensee or applicant in a manner substantially different than similarly situated applicants or licensees, the Commission has deleted this provision from the final rule.

One commenter, Stone & Webster Engineering Corporation, recommended that the Commission adopt § 50.12(a)(2)(iv) of Commissioner Asselstine's proposal, which established a special circumstance whenever—

A compliance issue is raised late in the licensing review that cannot be fully resolved in a timely fashion despite good faith efforts.

According to the commenter, "[t]his is a significant and not infrequent circumstance, e.g., a new rule, and should be incorporated in the proposed rule." Another commenter, LeBoeuf, Lamb, Leiby & MacRae, was critical of this provision in Commissioner Asselstine's version, because it provided only a very limited recognition of the need for schedular exemptions. According to this commenter, Commissioner Asselstine's § 50.12(a)(2)(iv) is limited to "compliance issues" "raised late in the licensing review," which the commenter characterized as "undefined and ambiguous terms." Finally, the commenter noted that Commissioner Asselstine's finding would be conditioned upon "good faith efforts." The commenter did not feel that any of these limitations had any apparent relationship to the public health and safety, but "appear simply to be roadblocks to the timely issuance of operating licenses." A third commenter, Isham, Lincoln & Beale, stated that

§ 50.12(a)(2)(iv) of Commissioner Asselstine's version recognizes a real and substantial problem often faced by licensees. However, this commenter believed that the solution to the problem is to recognize that a compliance issue raised relatively late in the NRC license review process may result in undue hardship and excessive cost. The implications of this comment would seem to be that compliance issues raised late in the licensing review could be addressed under the special circumstance of "undue hardship or excessive cost."

The Commission does not see the need to include § 50.12(a)(2)(iv) of Commissioner Asselstine's proposal in the special circumstances criteria of the final rule. Proposed § 50.12(a)(2)(vi) (redesignated as § 50.12(a)(2)(v) in the final rule), which establishes a special circumstance for cases where the exemption would provide only temporary relief from the applicable regulation, adequately covers these situations. Alternatively, the Commission agrees with the commenter who suggested that such situations might also be covered by the special circumstance for undue hardship or excessive cost.

Two commenters, Bishop, Liberman, Cook, Purcell & Reynolds, and Northeast Utilities, addressed the possibility of including such factors as compliance with plant performance design objectives established in safety goals or in the integrated plant safety review concept as special circumstances. Specifically, Northeast Utilities recommended that the following text be included as § 50.12(a)(2)(viii)—

> It is demonstrated to the satisfaction of the Commission through an integrated plant safety review that compliance with the regulation should not be required for the particular facility.

The commenter suggested that the Commission's Integrated Safety Assessment Program (ISAP) would support such a special circumstance. The commenter cited the Commission Paper on ISAP indicating that following the review of existing regulatory requirements at a particular plant, "the subsequent integrated assessment process would likely cause some of the deferred NRC requirements to be modified or deleted on a plant-specific basis." U.S. Nuclear Regulatory Commission, "Integrated Safety Assessment Program," SECY-84-133 (March 23, 1984) [4]. The commenter implied that these modifications or deletions would be accomplished through the Commission's exemption process.

The commenter also noted that a similar special circumstance could be established for the safety goal concept. Bishop, Liberman, Cook, Purcell & Reynolds elaborated on this idea by suggesting that a plant-specific exemption could be justified based on a quantitative assessment of overall power plant design and the potential risks to public health and safety. As an example, the commenter offered the situation where an assessment of plant design may demonstrate that regulatory compliance is unnecessary to satisfactorily protect public health and safety from undue risk. This conclusion could be based upon a showing that there would be no undue risk, because the risk of reactor core damage as a result of a particular noncompliance will not exceed the plant performance design objectives established in safety goals.

The Commission recognizes that implementation of a safety goal program, and the ISAP program, may demonstrate compliance with the "no undue risk" portion of the exemption equation. The Commission would also note that ISAP is still at the pilot-program stage, and that the Commission has not yet established the final safety goal implementation program. In regard to ISAP, the Commission believes that, at this stage of the process, it is more appropriate to implement the results of the ISAP program within the specific framework of ISAP, rather than through the Commission's general exemptions policy. Any adjustments necessary to ISAP to reflect the revision of the Commission's exemption policy will have to be considered in the context of that program. In regard to the safety goal, the Commission has noted that the safety goals are a supplement to, but do not supplant, the regulations. Therefore, although the safety goals can assist in the review of exemption requests, they should not, in and of themselves constitute a special circumstance.

Two industry commenters, Northeast Utilities and Bishop, Liberman, Cook, Purcell & Reynolds, urged the Commission to include a provision in the specific situations of proposed § 50.12(a)(2) for an exemption where generic regulations impose a backfit that is not justified on a plant-specific basis. The rationale for this proposal is that although a new regulation may be justified under the Commission's backfit procedures on a generic basis, there may be individual plants where the backfit standard is not met. These plants should be entitled to an exemption from the applicable regulation.

The Commission does not believe that it is appropriate or advisable to establish a special circumstance specifically directed at the backfit standard. The Commission has addressed this issue in the final rule on backfitting, 50 FR 38097, 38101, September 20, 1985, and further discussion here is unnecessary.

E. Temporary Noncompliances

Virtually all of the industry commenters objected to the Commission's intention to end the practice of granting temporary noncompliances for near-term operating plants. As noted in the Supplementary Information to the proposed rule, for a typical power reactor under operating license review, the NRC staff normally would recognize that while the plant was ready for low power operation, power ascension or even initial full power operation, the plant might not fully comply with each and every NRC regulation. In these circumstances, "noncompliances" were typically dealt with by license conditions requiring compliance before proceeding to a particular power level or by a particular time. The effect on safety of such "temporary noncompliances" was evaluated by the staff and discussed in the staff safety evaluation report. In situations where the noncompliance would be corrected in a relatively short time and did not prevent a finding of adequate safety, the staff would condition the operating license so that the requirements must be met at a later time or before a particular power plant level was reached. However, the staff did not expressly consider or grant an exemption under § 50.12(a) for these temporary noncompliances. In the Supplementary Information to the proposed rule, the Commission noted its intent to eliminate the practice of allowing a licensee to defer compliance without expressly granting an exemption under § 50.12(a).

The industry comments on this proposal can best be summarized in the following excerpt from the Bishop, Liberman, Cook, Purcell & Reynolds comment letter—

> There is no particular language in the proposed rule, however, which would specifically mandate this change in practice. Moreover, as a practical matter, we do not believe the change is necessary or desirable. Where compliance with a regulation for low power operation makes no technical sense, or presents no undue risk, an exemption request should not be necessary. A certain amount of flexibility should be assumed in the regulations, i.e., compliance should not be

[4] Documents referenced in this notice are available for inspection or copying for a fee at the NRC's Public Document Room at 1717 H Street, NW., Washington, DC.

required for a level of operation for which the regulation has no effect or serves no purpose. The traditional license condition approach avoids unnecessary exemption paper work and prevents potential licensing delays which could result from non-compliances which are a relatively normal part of the evolution of the plant. Moreover, because the Staff has used the "no undue risk" in establishing acceptable license conditions, the license conditions provide the same level of public protection as would exemptions.

Duke Power offered its experience in the licensing of its Catawba 1 Unit to illustrate the potential problems of requiring all temporary noncompliances to be evaluated under the exemption criteria rather than being dealt with as license conditions. Duke Power asserted that the approach used in Catawba, of requiring a specific exemption from each regulatory provision for which compliance was lacking, did not make technical sense and delayed fuel load for approximately two weeks.

The industry commenters questioned why the Commission did not even mention that the practice of granting "temporary noncompliances" has explicit regulatory support in 10 CFR 50.57(b). This regulation provides that—

[e]ach operating license will include appropriate provisions with respect to any uncompleted items of construction and such limitations and conditions as are required to assure that operation during the period of completion of such items will not endanger public health and safety.

The Atomic Industrial Forum asserted that nothing in the proposed rule modifies § 50.57(b), and the AIF interprets the proposed rule as permitting the staff to proceed under § 50.57(b) without the need to obtain a § 50.12(a) exemption.

The Commission's rationale for ending the past practice of granting temporary noncompliances through license conditions is twofold—to ensure that all exemptions from the regulations are formally and systematically evaluated and documented, and to ensure that relief from the regulations is based on clear regulatory authority. Contrary to what has been suggested by the commenters, the Commission has not relied on 10 CFR 50.57(b) in issuing "noncompliances," and in fact, the regulatory authority for this practice had been unspecified. In contrast, the use of § 50.12(a), in all cases where compliance with the regulations cannot be had, will provide clear regulatory authority for exemption relief. Although the literal wording of § 50.57(b), read apart from the other provisions of 10 CFR 50.57, would seem to support the commenters' interpretation, the Commission has not used § 50.57(b) in this manner, and the history of the provision and its relationship to the other parts of 10 CFR 50.57, would indicate that it cannot be used in the manner suggested by the commenters. The predecessor to the current § 50.57(b) was the provisional operating license provisions originally promulgated as 10 CFR 50.57 (a) through (e), establishing the criteria and procedures for the issuance of a provisional operating license. 25 FR 8712, Sept. 9, 1960. The provisional operating license was established to allow an orderly and expeditious transition from a construction permit to an operating license in cases where—

- The evidence would not support a finding of completion of construction, or
- Where it was desirable to obtain further experience before issuing the full operating license.

Specifically, the provisional operating license was used to allow fuel loading and low power testing to take place before the issuance of the full operating license. In order to ensure that the public health and safety were protected during the term of the provisional operating license, § 50.57(c), the corresponding provision to § 50.57(b) in the existing rule, authorized the Commission to include in the provisional operating license—

. . . Appropriate provisions with respect to any uncompleted items of construction or other matters covered by provisional findings.

These provisional findings, set forth in § 50.57(a) addressed the following issues—

- Construction of the facility has proceeded and there is reasonable assurance that the facility will be completed in conformity with the construction permit and the Commission's regulations.
- Reasonable assurance exists that activities authorized by the provisional operating license can be conducted without endangering public health and safety and that such activities can be conducted in compliance with the regulations.
- The applicant is technically and financially qualified.
- Proof of financial protection was furnished.
- There is reasonable assurance that the facility will be ready for initial loading with nuclear fuel within 90 days from the date of issuance of the provisional operating license.

In 1970, § 50.57 was amended to eliminate the provisional operating license, to establish the standards for the issuance of a full-term operating license currently in § 50.57(a), and to provide for the imposition of license conditions currently in § 50.57(b). 35 FR 5317, March 31, 1970. In promulgating this rule, the Commission stated that the requirements for the issuance of a full operating license were "largely the same" as those which had been required for a provisional operating license. Because the findings were largely the same, the Commission did not believe that there was a need for a provisional operating license. Significantly, although utility commenters on the proposed rule had requested the Commission to state that the provisional operating license and full operating license requirements were the same, the Commission did not agree with the industry interpretation. One respect in which the standards are different is that for the issuance of a full operating license, § 50.57(a) now requires that "construction of the facility has been substantially completed", rather than the provisional operating license finding that "construction of the facility has proceeded, and there is reasonable assurance that the facility will be completed." In promulgating the new rule, the Commission also retained the provision which authorized the Commission to include appropriate provisions in the operating license with respect to any uncompleted items of construction to assure that operation during the period of the completion of such items will not endanger public health and safety. The Commission was merely retaining a provision, similar to that in the provisional operating license procedures, which would allow the imposition of conditions on the *full* operating license for any uncompleted items of construction. However, all of the findings of § 50.57(a) must have been made, including substantial completion of construction, before § 50.57(b) would be applicable. The provisions of § 50.57(b) must be read in conjunction with the provisons of § 50.57(a). Finally, shortly after the promulgation of the current §§ 50.57(a) and 50.57(b), the Commission promulgated the present version of § 50.57(c) to allow for low power operation. 36 FR 886, May 14, 1971. The interpretation urged by the commenters, would also not be consistent with the promulgation of § 50.57(c)

In order to use an approach consistent with existing regulatory authority, and to ensure a documented and systematic consideration of exemption requests, the Commission will permit temporary noncompliance if appropriate under §§ 50.12(a) or 50.57(b). Any schedular exemptions for near-term operating licenses must be accompanied by the formal findings required by 10 CFR 50.12(a). However, for these near-term

operating licenses, the Commission will continue to provide schedular relief under 10 CFR 50.57(b) through temporary noncompliances for any uncompleted construction activities remaining, provided that the Commission can find, pursuant to 10 CFR 50.57(a), that construction is substantially complete.[5] This is within the scope and intent of 10 CFR 50.57(b). Both the schedular exemptions and the schedular relief for near-term operating licenses will be documented by license conditions and addressed in the Safety Evaluation Report. No revision of the regulatory text has been made to implement these changes because the Commission is merely affirming what is required by the existing regulations. Finally, the Commission would note that it is not unsympathetic to the need of flexibility in applying its regulations at lower power levels. The Commission staff is currently evauating a rulemaking that would provide for such flexibility.

F. Relationship to Other Commission Regulatory Actions

Stone & Webster Engineering Corporation noted that a large number of Commission regulations are "criteria oriented without specifying a means to accomplish the underlying intent of the regulation." The commenter requested that the Commission not interpret the exemption rule to require exemptions when a ". . . non-standard method is used as an alternative means of compliance other than that specified in guidance documents." On a related issue, Duke Power and Isham, Lincoln & Beale, specifically addressed the issue of regulatory guidance. Both commenters criticized the staff practice of requiring a license applicant to request exemptions from NRC "requirements" contained in the Standard Review Plan, regulatory guides, or other guidance documents. Isham, Lincoln & Beale believed this to be an inappropriate and unnecessary use of the exemption requirements because the failure to meet these "requirements" often is a result of a change in NRC staff interpretation and not a change in the underlying regulation.

The Commission recognizes that some Commission regulations are broadly framed and susceptible of various methods of compliance. Compliance with the regulations is guided by the use of regulatory guides, branch technical positions, and the standard review plan. Such guidance, however, does not have the force and effect of a regulation. The Commission also recognizes that acceptable methods of compliance may change over time based on staff and licensee experience. If what Stone & Webster referred to as a "non-standard" alternative method of compliance is outside the scope of previous interpretations on acceptable methods of compliance, or the method currently acceptable to the staff, an exemption from the regulation may or may not be required. Under the existing regulatory framework, an applicant or license may demonstrate that an alternative method of satisfying the regulation is acceptable. Failing such a demonstration, an exemption would be necessary. The revisions to the exemption provisions which are the subject to this rulemaking would not change this regulatory framework.

Stone & Webster Engineering stated that the proposed rule only applies to 10 CFR Part 50 and also noted that an Appeal Board decision in the Shoreham proceeding held that an exemption request to 10 CFR Part 50 did not constitute an exemption request to 10 CFR Part 73. *In the Matter of Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-800, 21 NRC 386 (February 21, 1985). This commenter recommended that the Commission consider the need for "similar and consistent language throughout its regulations." In response, the Commission agrees that exemptions from the provisions of each part of the regulations must be evaluated and granted under the exemption provisions contained in that part. Therefore, a request for a Part 73 or a Part 20 exemption would have to be evaluated under § 73.5 or § 20.501, respectively. The Commission has considered the need to revise other parts of its regulations to correspond to the criteria in § 50.12(a). Because the majority of exemption situations arise in the context of the 10 CFR Part 50 requirements, the Commission has determined that revisions to other parts of the regulations are not necessary at this time.

On a related point, the relationship between the general exemption criteria in § 50.12(a) and other provisions in Part 50 that contain specific exemption criteria or alternative methods of compliance, the Commission would emphasize that § 50.12(a) is the exemption provision that applies *generally* to the provisions of 10 CFR Part 50. If another regulation in Part 50 provides for specific exemption relief, or for alternative methods of compliance, the criteria of the specific regulation are the appropriate considerations. If the exemption criteria in the specific regulation are met, the rule has been complied with, and no exemption under § 50.12(a) is necessary. It is only in those cases where the specific exemption or alternative compliance criteria cannot be satisfied, that the application of the general criteria in § 50.12(a) will be appropriate. If the specific exemption criteria, or the alternative methods of compliance, can be satisfied, there is no need to also satisfy the criteria of § 50.12(a).

The AIF requested clarification on the relationship of the proposed rule to the Sholly amendment process, and to the "living schedule" concept. Public Service Gas & Electric also requested information relevant to the Sholly process. Georgia Power requested clarification on the relationship of the exemptions rule to requirements, which the commenter characterized as licensee "commitments", often made by a licensee to perform a particular activity, such as modification of facilities during a particular period or prior to a particular date.

The final rule applies solely to exemptions from the Commission's regulations. It does not apply to relief from license conditions or amendments, technical specifications, or other licensee "commitments." The "living schedule" involves the application of a plant-specific license requirement, and therefore, is not covered by the exemptions rule.

G. Policy Statement Versus Rule

GPU Nuclear suggested that the Commission, as an alternative to the proposed rule, may want to issue a policy statement that provides guidance on interpretation of the "public interest" standard. In issuing the proposed rule, the Commission did consider the use of a Policy Statement to clarify the exemption process. The Commission rejected this approach, believing that rulemaking would be the more appropriate approach for formalizing the exemption process.

IV. The Final Rule

Section 50.12(a)(1). Section 50.12(a)(1) of the final rule authorizes the Commission to grant exemptions which—

are authorized by law, will not present an undue risk to the public health and safety,

[5] A *schedular* exemption is granted under § 50.12(a) for those items of temporary noncompliance which would prevent the NRC from finding that construction is substantially complete under § 50.57(a). Schedular *relief* is granted under § 50.57(b) for those minor items of temporary noncompliance remaining after the NRC has made a finding that construction is substantially complete under § 50.57(a).

and are consistent with the common defense and security.

As in the existing rule, an exemption must be "authorized by law." Apart from the very fact of granting the exemption relief itself, the granting of the exemption cannot be in violation of other applicable laws, such as the Atomic Energy Act or the National Environmental Policy Act.

In a departure from the text of the existing rule, the final rule requires a finding that the exemption will not "present an undue risk to the public health and safety" and would be "consistent with the common defense and security." These standards provide an explicit recognition of traditional staff practice in evaluating the safety implications of a particular exemption. As noted above, it is anticipated that the evaluation of "no undue risk" will consider such factors as the type of plant operation contemplated (fuel loading, low power testing, power ascension, or full power operation), the length of time that the exemption would be in effect, the existence of alternative means of compliance or compensatory measures, and other safety factors. The Commission believes that the "not endanger" language in the current rule was never intended to embody any special standards for exemptions that differed from the statutory standards that licensing must provide adequate protection to the health and safety of the public and be in accord with the common defense and security. The "no undue risk" standard of the final rule is a refinement of the statutory standard that reflects current staff practice in the exemptions area.

As discussed earlier, the "public interest" standard of the proposed rule has been deleted.

Section 50.12(a)(2). Section 50.12(a)(2) of the final rule provides that the Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever—

(i) Application of the regulation in the particular circumstances would be in conflict with other rules or requirements of the Commission; or

(ii) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule; or

(iii) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated;

(iv) The exemption would result in benefit to the public health and safety that compensates for any decrease in safety that may result from the grant of the exemption; or

(v) The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation; or

(vi) There is present any other material circumstance not considered when the regulation was adopted for which it would be in the public interest to grant an exemption.

These circumstances represent situations in which the Commission believes it would be reasonable to grant an exemption, provided that the general standards of § 50.12(a)(1) are also met. The circumstances were selected on the basis of exemption criteria that have been noted by the courts with approval (hardship, equity, more effective implementation of overall policy, circumstances substantially different from those considered in the rulemaking proceeding) and on the basis of examples from past Commission exemption practice where the circumstances underlying the exemption appeared to be relevant and appropriate for exemption relief. The Commission's objective in adding 50.12(a)(2) is to impose limits on the type of exemption requests that can be granted, and thereby reaffirm and strengthen the existing NRC policy and practice of evaluating and granting exemptions in a judicious and discriminating manner.

Section 50.12(a)(2)(i) would address those situations where application of a regulation in a particular circumstance would be in conflict with other rules or requirements of the Commission. This provision is designed for those situations where an applicant or licensee would be in the anomalous position of satisfying two or more conflicting requirements.

Section 50.12(a)(2)(ii) would address those situations where application of the regulations in the particular circumstance is not necessary to achieve, or would not serve, the underlying purpose of the rule. This would include those situations considered in requests for exemptions under 10 CFR 2.758(b), where circumstances peculiar to that case, as opposed to any alleged generic inadequacy of the regulation, may result in the frustration of the underlying purpose of the rule. For example, *see, In the Matter of Pacific Gas and Electric Company* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-653, 16 NRC 55 (1981); *In the Matter of Metropolitan Edison Company* (Three Mile Island Nuclear Station, Unit No. 1), CLI-80-16, 11 NRC 674 (1980); *In the Matter of Duke Power Company* (Catawba Nuclear Station, Units 1 and 2), CLI-75-9, 2 NRC 180 (1975). It must be understood here that the underlying purpose of the rule should be something more specific than achieving adequate safety protection. Otherwise all of the safety requirements in 10 CFR Part 50 become subject to open litigation, and the exemption process becomes open ended. Rather, the specific objective of the regulation must be ascertained from the rule itself or the underlying rulemaking proceeding (for example, the specific purpose of 10 CFR § 50.46 would be assuring a coolable core during and after postulated loss-of-coolant accidents).

Section 50.12(a)(2)(iii) addresses those situations where compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated. This is intended to provide equitable treatment to applicants or licensees who, because of some unusual circumstance, are affected in a manner different than that of other similarly situated licensees or applicants. For example, *see In the Matter of Duke Power Company* (Catawba Nuclear Station, Units 1 and 2), CLI-75-9, 2 NRC 180 (1975).

Section 50.12(a)(2)(iv) would address situations where the exemption would result in benefit to health and safety that compensates for any decrease in safety that may result from the grant of the exemption.

Section 50.12(a)(2)(v) establishes a condition where the exemption would provide only temporary relief from the applicable regulation. This would cover the so-called "schedular" exemptions where the relief sought is limited to a specific amount of time or until a specific event occurs.

The applicant's good faith efforts to comply with the required schedule would be one of the factors considered in determining whether this special circumstance exists.

Section 50.12(a)(2)(vi) establishes a category of any other material circumstances not considered when the regulation was adopted. Although the Commission believes that the conditions in §§ 50.12(a)(2)(i) through 50.12(a)(2)(v) will cover most requests in which an exemption could reasonably be granted, § 50.12(a)(2)(vi) recognizes that there may be circumstances, which could not have been foreseen in developing the conditions in § 50.12(a)(2)(i) through

50.12(a)(2)(v), in which it would be equitable to provide relief from the regulations. In these cases, after documentation of the material circumstances not considered when the regulation was adopted, a determination that the exemption would be in the public interest, and meeting the general criteria, including "no undue risk, in § 50.12(a)(1), an exemption could issue. However, this provision would also require the Executive Director for Operations to consult with the Commission before the exemption could be granted.

The Commission notes that because the criteria in § 50.12(a)(2) will now include consideration of hardships or unusual difficulties, as well as the level of safety, it is deleting the provision from existing § 50.12(a) on additional requirements for exemptions from the fracture toughness requirements of 10 CFR Part 50, Appendices G and H. A corresponding deletion has been made to 10 CFR 50.60(b).

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment. Therefore the Commission has determined that it will not prepare an environmental impact statement for this action. The final rule modifies that criteria and procedures for the consideration of exemption requests under 10 CFR Part 50. The adoption of such criteria and procedures does not have an environmental impact in and of itself. The potential environmental impact of a specific exemption will be evaluated, as appropriate, in the context of the specific request for an exemption. The environmental assessment and finding of no significant impact on which this determination is based have been incorporated into the regulatory analysis for this rulemaking. The availability of the regulatory analysis/environmental assessment is noted under *Regulatory Analysis, infra.* No other related environmental documents are relevant to this determination.

Paperwork Reduction Act

This final rule does not contain a new or amended information collection requirement subject to Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0011.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final rule. The analysis examines the costs and benefits of the alternatives, as well as the environmental assessment, considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW, Washington, DC. Single copies of the analysis may be obtained from: F.X. Cameron, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-8689.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not have a significant economic impact upon a substantial number of small entities. The final rule primarily affects commercial power reactor licensees and license applicants, none of whom constitute a "small entity."

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246 as amended (42 U.S.C. 5841, 5842, 5846, unless otherwise noted.

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.57(d), 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2071, 2073 (42 U.S.C. 2133, 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100-50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.12, paragraph (a) is revised to read as follows:

§ 50.12 Specific exemptions.

(a) The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are—

(1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security.

(2) The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever—

(i) Application of the regulation in the particular circumstances conflicts with other rules or requirements of the Commission; or

(ii) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule; or

(iii) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated; or

(iv) The exemption would result in benefit to the public health and safety that compensates for any decrease in safety that may result from the grant of the exemption; or

(v) The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation; or

(vi) There is present any other material circumstance not considered when the regulation was adopted for which it would be in the public interest to grant an exemption. If such condition is relied on exclusively for satisfying paragraph (a)(2) of this section, the exemption may not be granted until the Executive Director for Operations has consulted with the Commission.

* * * * *

3. In § 50.60, paragraph (b) is revised to read as follows:

§ 50.60 Acceptance criteria for fracture prevention measures for lightwater nuclear power reactors for normal operation

* * * * *

(b) Proposed alternatives to the described requirements in Appendices G

and H of this part or portions thereof may be used when an exemption is granted by the Commission under § 50.12

Dated at Washington, D. C. this 6th day of December, 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85-29512 Filed 12-11-85; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL ELECTION COMMISSION

11 CFR Ch. I

[Notice 1985-13]

Technical Amendments

AGENCY: Federal Election Commission.

ACTION: Final rule; technical amendments.

SUMMARY: The Federal Election Commission is publishing today technical amendments to its regulations in Title 11 of the Code of Federal Regulations. These changes are necessry because the Commission moved to a new location on November 25, 1985.

EFFECTIVE DATE: December 12, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 523-4143 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: On November 25, 1985 the Commission began its move to a new location. The technical amendments published in this notice revise Parts 1 through 9039 in Chapter 1 of Title 11 of the Code of Federal Regulations to change the Commission's address to that of its new location at 999 E Street, NW., Washington, DC 20463.

Because these amendments are technical, they are not substantive rules requiring notice and comment under the Administrative Procedure Act, 5 U.S.C. 553, or submission to Congress pursuant to 2 U.S.C. 438(d) or 26 U.S.C. 9009(c) and 9039(c). These amendments are, therefore, made effective December 12, 1985.

List of Subjects in 11 CFR Chapter 1

Elections, Candidates, Political committees, Organization and functions (government agencies).

For the reasons set out above, Parts 1 through 9039 in Chapter I of Title 11 of the Code of Federal Regulations are amended by removing the words "1325 K Street, NW., Washington, D.C. 20463" and inserting in their place, the words "999 E Street, NW., Washington, DC 20463" in the following places:

(a) 11 CFR 1.3(b)
(b) 11 CFR 1.4(a)
(c) 11 CFR 2.2
(d) 11 CFR 4.5(a)(4)(i)
(e) 11 CFR 4.5(a)(4)(iv)
(f) 11 CFR 4.7(a)
(g) 11 CFR 4.7(b)
(h) 11 CFR 4.8(c)
(i) 11 CFR 5.5(a)
(j) 11 CFR 5.5(c)
(k) 11 CFR 6.103(b)
(l) 11 CFR 6.170(d)(3)
(m) 11 CFR 6.170(i)
(n) 11 CFR 100.9
(o) 11 CFR 100.19(a)
(p) 11 CFR 102.2(a)
(q) 11 CFR 104.2(b)
(r) 11 CFR 104.3(d)(5)
(s) 11 CFR 111.4(a)
(t) 11 CFR 111.15(a)
(u) 11 CFR 111.16(c)
(v) 11 CFR 112.1(e)
(w) 11 CFR 112.3(d)
(x) 11 CFR 9002.3
(y) 11 CFR 9008.2(a)
(z) 11 CFR 9032.3

Authority: 2 U.S.C. §§ 438(8) and 437d(8); 26 U.S.C. 9009(b) and 9039(b).

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act).

I certify that the attached final rule will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that no new requirements would be imposed on any small entities as a result of these rules.

Dated: December 5, 1985.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 85-29362 Filed 12-11-85; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-AWP-28]

Alteration of the Santa Rosa, CA, Transition Area

AGENCY: Federal Aviation Administration, Transportation.

ACTION: Correction to final rule.

SUMMARY: On October 31, 1985 (50 FR 45402), the Federal Aviation Administration (FAA) amended the transition area at Santa Rosa, California. This amendment was necessary to provide controlled airspace for aircraft executing Standard Instrument Approach Procedures (SIAP) at Sonoma County Airport. In the description of the airspace amendment, the term "counter clockwise" was inadvertently replaced with the term "clockwise." This action will correctly describe the transition area.

EFFECTIVE DATE: 0901 GMT, March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Bill Reidy, Airspace Branch, Air Traffic Division, Federal Aviation Administration (FAA), 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297-1186.

SUPPLEMENTARY INFORMATION:

History

On August 12, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to expand the Santa Rosa, California, Transition Area (50 FR 32441). This change to the transition area is necessary to contain the proposed amendment to the ILS Runway 32 Standard Instrument Approach Procedure (SIAP) developed for Sonoma County Airport in controlled airspace. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will expand the 700 foot transition area to contain the proposed amendment to the ILS Runway 32 SIAP at Sonoma County Airport.

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

List of Subjects in 14 CFR Part 71

Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Santa Rosa, CA—[Revised]

"That airspace extending upward from 700 feet above the surface beginning at lat. 38°27'40" N., long. 122°44'20" W.; thence counter clockwise via the 5-mile radius arc of the Sonoma County Airport (lat. 38°30'30" N., long. 122°48'45" W.); to lat. 38°26'30" N., long. 122°48'40" W.; to lat. 38°24'30" N., long. 122°47'30" W.; to lat. 38°26'20" N., long. 122°43'20" W.; thence to the point of beginning."

Issued in Los Angeles, California, on November 27, 1985.

DeWitte T. Lawson, Jr.,

Acting Director, Western-Pacific Region.

[FR Doc. 85-29430 Filed 12-11-85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 4

Commercial Practices; Organization, Procedures, and Rules of Practice

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Commission has revised § 4.9 of its Rules of Practice and Procedure to clarify and reorganize the rule to reflect current procedures and to enable the public to identify more easily publicly accessible documents. In addition, the Commission is amending § 4.1(c) of its Rules to conform with changes being made to § 4.9.

EFFECTIVE DATE: December 12, 1985.

FOR FURTHER INFORMATION CONTACT: Nancy Kantrowitz, (202) 523-3906, Office of General Counsel, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Several substantive changes have been made from the former Rule 4.9. First, § 4.9(a) now specifies that no one may obtain documents which are not on the public record except in accordance with the Commission's Rules of Practice. Second, § 4.9(b)(1)(ii) provides that the votes of every Commissioner shall be placed on the public record "in all matters of public record, including matters of public record decided by notational voting." Formerly, § 4.9(b)(2) provided that the Commissioner's votes would be made public "in every agency proceeding." The change to this section was made to clarify Commission procedure. The Commission will place on the public record a statement identifying those matters of public record when the Commissioners' votes are placed on the public record.

In addition to the above changes, a few deletions have been made from the old rule. For example, the revised rule omits language in the old Rule 4.9(b)(21) which states that information exempt from disclosure under §§ 4.10(a)(2), 4.10(a)(4), or 4.10(a)(7) will not be placed on the public record with clearance requests filed by former employees for authorization to participate in Commission proceedings. By specifying only three exemptions, the old § 4.9(b)(21) suggested that information falling under other exemptions in Rule 4.10 would necessarily be placed on the public record.

Although the names of parties under investigation are exempt from mandatory disclosure under Rule 4.10(a)(5)(i), the Commission decided in 1977 not to delete the names of the investigated parties when their identities are revealed in clearance requests and petitions to limit or quash compulsory process. See 42 FR 64,135 (1977). Revised Rule 4.9(b)(10)(ii) makes it clear that other information which is exempt from mandatory disclosure under Rule 4.10 will not be placed on the public record routinely.[1] We have also deleted a portion of § 4.9(b)(5) of the old rule to clarify that petitions requesting the Commission to take law enforcement action are not placed on the public record. It is Commission policy to protect the identities of both the petitioners and the targets of a potential investigation.

Two provisions, § 4.9(b)(9)(i) and § 4.9(c), have been added to Rule 4.9, and these provisions merely explain current Commission procedure.

The remaining changes are technical and are not intended to change current practice. For example, some of the language in § 4.9(b)(7)(i) differs from the language in the former § 4.9(b)(13). These changes are intended to clarify that when compliance reports concerning divestitures required by Commission order are submitted to the Commission, the submitting party may request confidentiality for each report at the time it is submitted. Absent such a request, all such compliance reports are placed on the public record after the Commission has approved the last divestiture required by a particular order. In addition, paragraph 4.9(b)(2)(i) specifies that advisory opinions by both the staff and the Commission are placed on the public record. Under the present Commission policy, both types of advisory opinions are placed on the public record. The new language states this policy more directly than the former language in Rule 4.9(b)(11), which simply stated that "any" such advice would be put on the public record. Similarly, paragraph 4.9(b)(4) (i) and (ii) specify that both initial rulings and full Commission rulings on petitions to limit or quash compulsory process are placed on the public record as are closing letters in initial phase and full phase investigations.

Rule 4.9 is a rule of agency organization, procedure or practice and it is being amended without notice and comment. 5 U.S.C. 553(b)(A).

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of information, Privacy, Sunshine Act.

PART 4—[AMENDED]

For the reasons given in the preamble above, Part 4 of Title 16 of the Code of Federal Regulations is amended as follows:

1. The authority citation for 16 CFR Part 4 continues to read as follows:

Authority: 5 U.S.C. 552; 15 U.S.C. 46(g).

2. The Commission revises 16 CFR 4.9 to read as follows:

§ 4.9 Public Records.

(a) *General.* (1) All records of the Commission are available for public inspection and copying either routinely or upon request except to the extent that they are exempt by law from mandatory public disclosure and are described in § 4.10 of this part.

(2) Records that are exempt from disclosure or are otherwise not available from the Commission's public record may be made available for inspection and copying only upon request under the procedures set forth in

[1] A conforming amendment has been made to Rule 4.1(c).

§ 4.11 of this part, or as provided in §§ 4.10(d)–(g), 4.13, and 4.15(b)(3) of this part, by the Chairman under § 5.12(c) of this chapter, or by the Commission.

(b) *Categories of Public Records.* The public records of the Commission that are routinely available for inspection and copying include (except as provided in paragraph (c) of this section):

(1) *Commission Organization and Procedures (16 CFR Part 0 and §§ 4.14–4.15, 4.17).* (i) A current index of opinions, orders, statements of policy and interpretations, administrative staff manuals, general instructions and other public records of the Commission;

(ii) A current record of the final votes of each member of the Commission in all matters of public record, including matters of public record decided by notational voting;

(iii) Descriptions of the Commission's organization, including descriptions of where, from whom, and how the public may secure information, submit documents or requests, and obtain copies of orders, decisions and other materials;

(iv) Statements of the Commission's general procedures and policies and interpretations, its nonadjudicative procedures, its rules of practice for adjudicative proceedings, and its miscellaneous rules, including descriptions of the nature and requirements of all formal and informal procedures available, and

(v) Reprints of the principal laws under which the Commission exercises enforcement or administrative responsibilities.

(2) *Industry Guidance (16 CFR 1.1–1.6).* (i) Any advice, advisory opinion or response given and required to be made public under §§ 1.4 and 2.41 (d) or (f) of this chapter (whether by the Commission or the staff), together with a statement of supporting reasons;

(ii) Industry guides, digests of advisory opinions and compliance advice believed to be of interest to the public generally and other administrative interpretations;

(iii) Transcripts of hearings in all industry guide proceedings, as well as written statements filed with or forwarded to the Commission in connection with these proceedings; and

(iv) Petitions filed with the Secretary of the Commission for the promulgation or issuance, amendment, or repeal of industry guides.

(3) *Rulemaking (16 CFR 1.7–1.97).* (i) Petitions filed with the Secretary of the Commission for the promulgation or issuance, amendment, or repeal of rules or regulations within the scope of §§ 1.7 and 1.21 of this chapter, and petitions for exemptions;

(ii) Notices and advance notices of proposed rulemaking and rules and orders issued in rulemaking proceedings; and

(iii) Transcripts of hearings of all rulemaking proceedings, as well as written statements filed with or forwarded to the Commission in connection with these proceedings.

(4) *Investigations (16 CFR 2.7).* (i) Petitions to limit or quash compulsory process and the rulings thereon, requests for review by the full Commission of those rulings, and Commission rulings on such requests; and

(ii) Closing letters in initial phase and full phase investigations.

(5) *Adjudicative Proceedings and Litigated Orders (16 CFR 3.1–3.24, 3.31–3.55, 4.7).* (i) The pleadings and prehearing conferences (to the extent made available under § 3.21(d)), motions, certifications, orders, and the transcripts of hearings (including public conferences), testimony, oral arguments, and other material made a part thereof, and exhibits and all documents received in evidence or made a part of the record in adjudicative proceedings (except matters heard or filed *in camera*);

(ii) Initial decisions of administrative law judges;

(iii) Orders and opinions in interlocutory matters;

(iv) Final orders and opinions in adjudications, including separate statements of Commissioners;

(v) Petitions, applications, pleadings, briefs, and other records filed by the Commission with the courts in connection with adjudicative, injunctive, enforcement, compliance, and condemnation proceedings, and in connection with judicial review of Commission actions, and opinions and orders of the courts in disposition thereof;

(vi) Records of *ex parte* communications in adjudicative proceedings; and

(vii) Petitions to reopen proceedings and orders to determine whether orders should be altered, modified, or set aside in accordance with § 2.51.

(6) *Consent Agreements (16 CFR 2.31–2.34, 3.25, 3.71–3.72).* (i) Agreements containing orders, after acceptance by the Commission pursuant to §§ 2.34 and 3.25(f) of this chapter;

(ii) Comments filed under §§ 2.34 and 3.25(f) of this chapter concerning proposed consent agreements;

(iii) Final decisions and orders issued after the comment period prescribed in §§ 2.34 and 3.25(f), including separate statements of Commissioners; and

(iv) Petitions to reopen consent agreements to determine whether they should be altered, modified, or set aside in accordance with § 2.51.

(7) *Compliance/Enforcement (16 CFR 2.33, 2.41).* (i) Reports of compliance filed pursuant to the rules in this chapter or pursuant to a provision in a Commission order and supplemental materials filed in connection with these reports, except for reports of compliance, and supplemental materials filed in connection with Commission orders requiring divestitures or establishment of business enterprises or facilities, which are confidential until the last divestiture or establishment of a business enterprise or facility, as required by a particular order, has been finally approved by the Commission. At the time each such report is submitted the filing party may request confidential treatment in whole or in part and submit satisfactory reasons therefor, and the Commission with due regard for statutory restrictions, its rules and the public interest will pass upon such request;

(ii) Requests for advice concerning proposed mergers and material required to be made public under § 2.41(f) of the Commission Rules; and

(iii) Applications for approval of proposed divestitures, acquisitions or similar transactions subject to Commission review under outstanding orders together with supporting materials, objections and comments concerning these transactions submitted by the public and Commission responses.

(8) *Access to Documents and Meeting (16 CFR 4.8, 4.11, 4.13).* (i) Letters requesting access to Commission records pursuant to § 4.11(a) of this chapter and the Freedom of Information Act, 5 U.S.C. 552, and letters granting or denying such requests (not including access requests and answers thereto from the Congress or other government agencies);

(ii) Announcements of Commission meetings as required under the Sunshine Act, 5 U.S.C. 552b, including records of the votes to close such meetings;

(iii) Summaries or other explanatory materials relating to matters to be considered at open meetings made available pursuant to § 4.15(b)(3) of this chapter; and

(iv) Commission minutes of open meetings, and, to the extent they are not exempt from mandatory public disclosure under the Sunshine Act or the Freedom of Information Act, portions of minutes or transcripts of closed meetings.

(9) *Standards of Conduct (16 CFR 5.5–5.6, 5.10–5.26, 5.31, 5.57–5.68).*

(i) Memoranda to staff elaborating or clarifying standards described in administative staff manuals and Part 5 of this subchapter.

(10) *Miscellaneous (Press Releases, Clearance Requests, Reports Filed by or with the Commission, Continuing Guaranties, Registered Identification Numbers).* (i) Releases by the Commission's Office of Public Affairs supplying information concerning the activities of the Commission;

(ii) Applications under § 4.1(b)(2) of this chapter for clearance or authorization to appear or participate in a proceeding or investigation and of the Commission's responses thereto;

(iii) Continuing guaranties filed under the Wool, Fur, and Textile Acts;

(iv) Published reports by the staff or by the Commission on economic surveys and investigations of general interest;

(v) Filings by the Commission or by the staff in connection with proceedings before other federal agencies or state or local government bodies;

(vi) Registration statements and annual reports filed with the Commission by export trade associations, and bulletins, pamphlets, and reports with respect to such associations released by the Commission;

(vii) The identities of holders of registered identification numbers issued by the Commission pursuant to § 1.32 of this chapter;

(viii) The Commission's annual report submitted after the end of each fiscal year, summarizing its work during the year [available for inspection at each of the offices of the Commission with copies obtainable from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402) and any other annual reports made to Congress on activities of the Commission as required by law; and

(ix) Every amendment, revision, substitute, or repeal of any of the foregoing items listed in §§ 4.9(b)(1) through 4.9(b)(10) of this section.

(c) *Confidentiality.* (1) Persons submitting documentary material to the Commission described in this section may designate that material or portions of it confidential and request that it be withheld from the public record. No such material or portions of material (including documents generated by the Commission or its staff containing or reflecting such material or portions of material) will be placed on the public record pursuant to this section until the Commission has ruled on the request for confidential treatment and provided any prior notice to the submitter required by law. All requests for confidential treatment shall be supported by a showing of justification in light of applicable statutes, rules, orders of the Commission or its administrative law judges, orders of the courts, or other relevant authority.

(2) The Commission may withhold from the public record any documents or portions of documents otherwise falling within § 4.9(b) of this section to the extent they contain information that would be exempt from mandatory public disclosure under § 4.10 of this part.

3. Section 4.1(c) is revised to read a follows:

§ 4.1 Appearances

* * * * *

(c) *Public disclosure.* All applications requesting authorization to appear or participate in a proceeding or investigation, and the Commission's responses thereto, are part of the public records of the Commission, except for information exempt from disclosure under § 4.10(a) of this chapter.

* * * * *

Dated: December 2, 1985.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85-29236 Filed 12-11-85; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket No. C-602]

Chesebrough-Pond's Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: The Federal Trade Commission has modified a 1963 consent order issued against the New York City-based manufacturer and marketer of Vaseline petroleum jelly (63 F.T.C. 927). The modified order deletes provisions prohibiting the company from claiming that Vaseline provides a protective barrier to the skin and is effective for the relief of itching, and allows respondent to make limited claims about the product's beneficial effects, provided respondent has competent and reliable scientific evidence to support its claims. These modifications were granted based on reports from the Food and Drug Administration's over-the-counter drug review program. The modified order also allows respondent to compare Vaseline's effectiveness to that of other products, provided competent and reliable scientific evidence is available.

DATES: Consent Order issued Sept. 25, 1963. Modifying Order issued Nov. 25, 1985.

FOR FURTHER INFORMATION CONTACT: FTC/B-425, Thomas D. Massie, Washington, DC 20580. (202) 376-2891.

SUPPLEMENTARY INFORMATION: In the Matter of Chesebrough-Pond's Inc.

List of Subjects in 16 CFR Part 13

Over-the-counter drugs, Petroleum jelly, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Before Federal Trade Commission

[Docket No. C-602]

Commissioners: Terry Calvani, Acting Chairman, Patricia P. Bailey, Mary L. Azcuenaga.

In the Matter of Chesebrough-Pond's Inc.

Order Reopening the Proceeding and Modifying Cease and Desist Order

On April 11, 1985, Chesebrough-Pond's Inc. ("Petitioner") filed a request to reopen and to set aside or modify the Consent Order entered against it by the Commission on September 25, 1963, in Docket No. C-602 (63 F.T.C. 927). The Order prohibits Petitioner from making certain usage and effectiveness claims with respect to the advertising of its over-the-counter drug product, "Vaseline" petroleum jelly.[1] The request to reopen and to set aside or modify the Consent Order was placed on the public record on April 23, 1985, and a press release regarding the request was issued on the same date. The public comment period ended May 23, 1985. Comments were filed by four individual consumers during that period.[2] The deadline to rule on Petitioner's request was subsequently extended to November 25, 1985.

The Order requires Petitioner to cease making a variety of advertising claims with respect to the therapeutic and protective qualities of "Vaseline." The Order contains twelve specific prohibitions relating to the following

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[1] "Vaseline" petroleum jelly is the product trade name. It is composed mostly or petrolatum, a purified mixture of semi-solid hydrocarbons derived from petroleum. "Vaseline" contains both white petrolatum and yellow petrolatum, which are essentially identical except for color. The terms "Vaseline", "petrolatum", and "product" are used interchangeably throughout this Decision and Order.

[2] All four commenters expressed that they have used the product for a number of years and have used it to treat minor burns, cuts, and scratches. Two of the commenters stated that they have used the product as a skin softener. One commenter stated that she has used the product on heat rash, as a preventative for diaper rash, and as a deodorant.

types of claims: infections; skin injuries; a protective barrier; diaper rash; cradle cap; advertising slogans; and escape of tissue fluids.

Petitioner sets forth several arguments as justification for its request. First, it asserts that the Food and Drug Administration's (F.D.A.) over-the-counter drug review program has resulted in changed conditions of law and fact that require the Order to be set aside or modified to allow those claims which the F.D.A. review program has substantiated. Second, Petitioner asserts that the Order is no longer necessary or appropriate to protect consumers and thus should be set aside in its entirety. Finally, Petitioner asserts that the Order should be modified to allow it to make any claim for which there is a reasonable basis.

Since the Order's entry some twenty-two years ago, the F.D.A. has undertaken a comprehensive review evaluating the safety and effectiveness of the ingredients in over-the-counter drug products such as "Vaseline". Petitioner submits that several F.D.A. Advisory Review Panels have concluded that petrolatum, the principal ingredient in "Vaseline", is effective for claims prohibited by the Order. It is Petitioner's position that the findings and conclusions of these panels now provide adequate substantiation for these prohibited claims which justifies setting aside these prohibitions.

As Petitioner points out, the Commission has allowed the conclusions and recommendations of F.D.A. Advisory Review Panels to demonstrate adequate substantiation for performance claims. In prior decisions, the Commission has held that F.D.A. final monographs [3] may be relied upon to substantiate performance claims for over-the-counter drug products, *AHC Pharmacal, Inc.*, 101 F.T.C. 40 (1983); *Thompson Medical Co.*, Docket No. D.9149, Slip op. at 80 (November 23, 1984). In addition, the Commission has held that F.D.A. preliminary documents subject to revision, such as tentative final monographs, are also presumptively reliable for substantiation. *American Home Products Corp.*, 98 F.T.C. 136 (1981) at 368. We have reviewed the monographs relied on by Petitioners and compared the findings and conclusions of the various panels reviewing petrolatum with the claims prohibited by the Order. Based on this review we conclude that the findings and conclusions do substantiate two of the claims now prohibited by the Order.

Paragraph 1.(b) of the Order prohibits Petitioner from making any claim that "Vaseline" provides a protective barrier to the skin unless such claim is limited to the water repellant effect of a continuous film of the product. The Skin Protectant Panel conclusively states that petrolatum is a skin protectant. It defines a skin protectant as "any agent that isolates the exposed skin or mucous membrane surface from any harmful or annoying stimuli." 43 FR 34630 (August 4, 1978). The panel further concludes that "protectants act as mechanical barriers that physically alter the superficial wound environment by excluding air, removing wetness, prevent drying and protecting from intertriginous contact." *Id.* In addition, the F.D.A. has published a tentative final monograph for skin protectants which determined that petrolatum "protects injured or exposed skin or mucous membrane surfaces from harmful or annoying stimuli." 48 Fed. Reg. 6823 (February 15, 1983). We conclude that these findings and conclusions establish that petrolatum provides a protective barrier to skin without limitation to its water repellant effect, and accordingly decide that this paragraph of the Order shall be set aside.

Paragraph 1.(c)(5) of the Order specifically prohibits Petitioner from claiming that "Vaseline" will have any effect upon itching unless limited to itching from sunburned, dry, chapped, chafed or scraped skin or other minor skin injuries. The skin Protectant Panel did find that petrolatum is effective for the treatment of itching associated with dry skin conditions. This panel found the product useful as a soothing topical lubricant. The Hemorrhoidal Panel went even further. It concluded that petrolatum is effective for (1) relief of itching or other anorectal discomfort; (2) for the temporary relief of anorectal itching; (3) for the temporary relief of itching associated with hemorrhoids and other anorectal disorders; and (4) in forming a protective coating over inflamed tissue that can relieve itching. 45 Fed. Reg. 35628 (May 27, 1980). We conclude that these findings and conclusions substantiate that petrolatum relieves itching other than itching associated with sunburned, dry, chapped, chafed of scraped skin, and accordingly decide that the limitation on itching claims is inappropriate and shall set aside this paragraph of the Order.

The findings and conclusions of the F.D.A. Advisory Review Panels fall short of providing adequate substantiation justifying the setting aside of the proscribed claims relating to burns (1.(c)(1)), scrapes (1.(c)(1)), scratches (1.(c)(1)), abrasions (1.(c)(1)), scabbed skin (1.(c)(2)), diaper rash (1.(c)(3)), cradle cap (1.(c)(4)), and escape of tissue fluids (1.(g)). These same findings and conclusions do not address other claims that are proscribed by the Order, namely claims relating to the prevention of infection (1.(a)), treatment of cuts or open wounds, (1.(d)), or advertising slogans (1.(e)). Since the findings and conclusions of the F.D.A. panels are the only evidence Petitioner has submitted to support its request, there is nothing before us to support any action with respect to provisions 1.(a), 1.(d) and 1.(e). Consequently, these provisions of the Order will remain unchanged.

Petitioner next argues that the Order is no longer necessary or appropriate to protect consumers. In essence, Petitioner argues that most of the proscribed claims have been addressed by the F.D.A. Advisory Review Panels and their findings and conclusions are in conflict with a number of the provisions of the Order. In addition, Petitioner contends that combined with the ongoing F.D.A. review of over-the-counter drugs, the age of the Order renders it obsolete.

The Federal Trade Commission Act, 15 U.S.C. 45(b) requires that an order be modified or set aside upon a satisfactory showing that changed conditions of law or fact requires such modification or setting aside. The Commission's rules implementing this statutory mandate amplify on this by stating that an order should be set aside or modified if "the public interest so requires." Rule 2.51(b) Commission's Rules of Practice, 16 CFR 2.51. When an order no longer serves any useful purpose and impedes truthful advertising, it is clear under the statute and the rules that it should be set aside. However, where the provisions of an order are not inconsistent with the F.D.A. and its advisory review panels, such an order retains its usefulness irrespective of its age. Other than the provisions of the Order we have decided should be aside, several provisions, namely those relating to burns (1.(c)(1)), scrapes (1.(c)(1)), scratches (1.(c)(1)), abrasions (1.(c)(1)), scabbed skin (1.(c)(2)), diaper rash (1.(c)(3)), cradle cap (1.(c)(4)), and escape of tissue fluids (1.(g)), are not wholly consistent with the findings and conclusions of the advisory review panels. While these findings and conclusions do not justify

[3] A monograph sets out the findings and conclusions of the F.D.A. Advisory Review Panels. A monograph can be published as a proposed monograph, a tentative final monograph, and a final monograph depending on the stage of the review process.

setting aside the proscribed claims, they do justify some claims of a similar nature which the current Order prohibits because of the absolute nature of these prohibitions. For example, the panels found that petrolatum is safe and effective in the temporary relief of minor skin irritations; soothes minor skin irritations; gives comfort to minor skin irritations; affords temporary protection of minor skin injuries; aids in the prevention of diaper rash; affords protection against wetness that causes diaper rash; softens skin; and prevents water loss from stratum corneum. Accordingly, we have concluded that these claims will be subjected to a reasonable basis standard, as requested by Petitioner as alternative relief, as being in the public interest.

This is appropriate relief under Commission policy. The Commission has long held that an advertiser is not required to demonstrate the absolute truth of a particular claim, only a reasonable basis for making it. Bureau of Consumer Protection, F.T.C. *Advertising Substantiation Program, Analysis of Public Comments and Recommended Changes* (July 23, 1984). This is consistent with our previous decisions in *AHC Pharmacal, Inc., supra*, where we modified an order to permit AHC to rely on F.D.A. panel recommendations as a reasonable basis for substantiating superiority claims. *See, also, Thompson Medical Co., supra*, and *Ogilvy & Mather International Corp.*, 101 F.T.C. 1 (1983).

As noted above, the findings and conclusions of the F.D.A. Advisory Review Panels do justify the use of some claims of a similar nature to those prohibited under the Order, namely qualified claims with respect to burns, scrapes, scratches, abrasions, scabbed skin, diaper rash, cradle cap and escape of tissue fluids. Petitioner does possess a reasonable basis for making these similar, albeit qualified claims but can not do so under the current Order. Because of this dichotomy, we will modify the order to allow any such claims that can be supported by a reasonable basis consisting of competent and reliable scientific evidence. *See e.g., Sterling Drug, Inc.*, 101 F.T.C. 375 (1983). Although Petitioner has only presented the findings and conclusions of the various F.D.A. panels in support of its request, we do recognize that competent and reliable evidence consisting of tests, analyses, research, studies or other materials based on the expertise of professionals in the relevant area may also provide a reasonable basis to substantiate some of the claims in issue here. Consequently, either the findings and conclusions of the F.D.A. panels or competent and reliable scientific evidence may be used by Petitioner as a reasonable basis to substantiate such advertising claims, if such evidence does in fact support such claims. In addition, although it is not clear that the advisory review panels addressed this issue, we will also accord the comparative soothing and softening claims similar treatment in accord with our policy to encourage comparative claims where justified.

Because of the nature of the modifications granted hereby, it has been necessary to restructure the Order. All reference to the two previously prohibited claims which we have decided to set aside will be deleted from the modified Order. Part I of the modified Order prohibits those claims for which no evidence justifying their vacation has been presented and will remain unchanged from the original Order. Part II of the modified Order prohibits the use of certain other claims unless substantiated by competent and reliable scientific evidence establishing a reasonable basis or which are supported by the findings and conclusions of the various F.D.A. Advisory Review Panels. The final sentence in Part II of the modified Order is intended to clarify the fact that current versions of the F.D.A. Advisory Review Panels' findings and conclusions may be used as a reasonable basis for substantiating claims, unless and until such findings and conclusions are modified. Part III of the modified Order prohibits the dissemination of advertising of any representations or claims not allowed under the modified Order.

It is therefore ordered, that the proceeding is hereby reopened and the Decision and Order issued September 25, 1963 in Docket No. C-602 is hereby modified to read as follows:

Order

I

It is ordered, that respondent Chesebrough-Pond's Inc., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of "Vaseline" petroleum jelly (White Petrolatum, U.S.P. or Yellow Petrolatum, N.F.), or any other preparation of similar composition or possessing substantially similar properties, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing in any manner, directly or indirectly:

(a) That respondent's product is of value in preventing infection;

(b) That respondent's product is of any benefit in the treatment of cuts or open wounds; or

(c) That respondent's product is a substitute for a "First Aid Kit in a Jar" unless such slogan is used in direct connection with or in close proximity to illustrations or descriptions of the unprohibited first aid uses of the product.

II

It is further ordered that respondent, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, or distribution of "Vaseline" petroleum jelly (White Petrolatum, U.S.P. or Yellow Petrolatum, N.F.), or any other preparation of similar composition or possessing substantially similar properties, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing in any manner, directly or indirectly:

(a) That respondent's product is of any benefit in curing, or in promoting or accelerating the healing of, burns, scrapes, scratches, abrasions, scabbed skin, diaper rash or cradle cap;

(b) That respondents's product will soothe and soften the skin better than competitors' products having substantially similar properties; or

(c) That respondent's product prevents the escape of tissue fluids from the skin;

Unless at the time that such representation is made respondent possesses and relies upon a reasonable basis consisting of reliable and competent evidence that substantiates the representation. Reliable and competent evidence establishing a reasonable basis for such representation shall consist of:

(a) Tests, analyses, research, studies or any other materials based on the expertise of professionals in the relevant area, provided such tests, analyses, research, studies or other materials are conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results; or

(b) The findings and conclusions of the Food and Drug Administration (F.D.A.) or an F.D.A. Advisory Review Panel as published in the **Federal Register** to describe such findings and

conclusions, unless and until any such findings of conclusions are modified.

Nothing herein shall be deemed to create or support an inference that evidence in existence at the time this Modified Order is issued does not constitute a reasonable basis for any representation subject to this paragraph.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-29481 Filed 12-11-85 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 625 and 655

[FHWA Docket Nos. 79-37, 83-26, 85-1, 85-3, 85-18, and 85-28]

National Standards for Traffic Control Devices; Manual on Uniform Traffic Control Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final amendments to the Manual on Uniform Traffic Control Devices; comments requested on editorial amendments.

SUMMARY: This document contains notice of amendments to the Manual on Uniform Traffic Control Devices (MUTCD) which are being adopted by the Federal Highway Administrator for inclusion therein. The MUTCD is incorporated by reference in the design standards for Federal-aid highways in 23 CFR Part 625. It is also recognized in Part 655 as the national standard for traffic control devices on all public roads. The amendments affect various parts of the MUTCD and are intended to expedite traffic, improve safety and provide a more uniform application of highway signs, signals, and markings.

DATES: Effective February 22, 1986. Comments on the editorial amendments must be received on or before March 24, 1986.

ADDRESS: Submit written comments, preferably in triplicate, on editorial changes to FHWA Docket No. 85-28, and on Standards for performance of retroreflective traffic control devices to Docket No. 85-18, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. e.t., Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Philip O. Russell, Office of Traffic Operations, (202) 426-0411, or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 426-0762, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D. It may be purchased for $30.00 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 050-001-81001-8. The purchase of a MUTCD includes a subscription service for adopted revisions.

This document contains the dispositions of proposals for changes in the MUTCD which were received or originated by the FHWA. Previous **Federal Register** actions regarding these requests are listed in the following table:

Item	Request No.	Title	Published in Federal Register FHWA Docket No.
		Final Rulings.	
1	II-56 (Chng.)	Symbolic CROSS ON WALK SIGNAL ONLY Sign	Docket No. 79-37 (47 FR 5238, February 4, 1982) (48 FR 962, January 10, 1983).
2	II-60 (Chng.)	Preferential Lane Signing and Marking	Docket Nos. 81-5 (46 FR 32880, July 25, 1981); 83-26 (49 FR 1213, January 10, 1984).
3	II-67 (Chng.)	Delete/Modify LIMITED SIGHT DISTANCE Sign	Docket No. 83-26 (49 FR 1213, January 10, 1984).
4	II-83 (Chng.)	Memorial Signing for Highways	Docket No. 83-26 (49 FR 1213, January 10, 1984).
5	II-85 (Chng.)	Delete Word Message Alternates to Symbols	Docket No. 83-26 (49 FR 1213, January 10, 1984).
6	II-94 (Chng.)	DEAD END and NO OUTLET Plaques	Docket No. 85-3 (50 FR 10072, March 13, 1985).
7	III-2 (Chng.)	Delineators on Tangent Freeway Sections	Docket No. 83-26 (49 1213, January 10, 1984).
8	IV-25 (Chng.)	Speed Limit Sign Beacon	Docket No. 85-3 (50 FR 10072, March 13, 1985).
9	IV-40 (Chng.)	Pedestrian Clearance Interval During Emergency Preemption	Docket No. 85-3 (50 FR 10072, March 13, 1985).
10	IV-59 (Chng.)	Elimination of the Flashing Walk	Docket No. 85-3 (50 FR 10072, March 13, 1985).
11	IV-62 (Chng.)	Interconnection of Reversible Lane-Use Control Signals	Docket No. 85-3 (50 FR 10072, March 13, 1985).
12	VI-27 (Chng.)	Minimum Area of Reflective Barricade Rails	Docket No. 85-3 (50 FR 10072, March 13, 1985).
13	VIII-11 (Chng.)	Location of DO NOT STOP ON TRACKS Sign (RB-6)	Docket No. 85-3 (50 FR 10072, March 13, 1985).
14	VIII-12 (Chng.)	Placement of RXR Pavement Marking in Relation to Advanced Warning Sign (W10-1)	Docket No. 85-3 (50 FR 10072, March 13, 1985).
15	VIII-14 (Chng.)	Preemption of Highway Traffic Signals	Docket No. 85-3 (50 FR 10072, March 13, 1985).
		Editorial Changes.	
16	IV-55 (Chng.)	Traffic Signal Displays for Left Turn Phasing	Not Previously Published in Federal Register.
17	IV-56 (Chng.)	Modification of Pedestrian Signal Face	Not Previously Published in Federal Register.
18	IV-61 (Chng.)	Number of Lens Per Signal Face	Not Previously Published in Federal Register.
		Items Deferred or Comment Period Extended.	
19	II-5 (Chng.)	Recreational and Cultural Interest Signs	Docket No. 85-1 (50 FR 10506, March 15, 1985).
20	II-61 (Chng.)	Traffic Control for Reversible Two-Way Left-Turn Lanes	Docket Nos. 81-5 (46 FR 32880, July 25, 1981); 85-3 (50 FR 10072, March 13, 1985).
21	II-101 (Chng.)	Standards for Performance of Retroreflective Traffic Control Devices	Docket No. 85-18 (50 FR 18515, April 26, 1985).

Advance copies of the text changes to the MUTCD for all of the adopted requests will be distributed to everyone currently appearing on the FHWA Federal Register mailing list for MUTCD matters. Those wishing to receive an advance copy of the text changes or to be added to this mailing list should write to the Federal Highway Administration, Office of Traffic Operations, HTO-21, 400 Seventh Street SW., Washington, DC 20590.

Discussion of Requests

These amendments are being processed in accordance with the rulemaking procedure of the Administrative Procedure Act (5 U.S.C. 553) and the Department of Transportation's reguatory policies and procedures.

Each request is assigned an identification number which indicates by Roman numeral, the primary organizational part of the MUTCD affected and, by Arabic numeral, the order in which the request was received.

The FHWA has reviewed the comments received in response to the notices and other information relating to the MUTCD and these proposals. The FHWA is acting on the following requests for change to the MUTCD. Each action and its basis is summarized below:

(1) Request II-56 (Chng.)—Symbolic CROSS ON WALK SIGNAL ONLY Sign

This amendment to section 2B-37 adopts a symbol sign alternate (R10-2a) to the standard MUTCD word message sign CROSS ON WALK SIGNAL ONLY (R10-2).

Of the 20 commenters, 15 were in favor of the addition of this symbol sign. The adoption of this request is in keeping with the use of symbols in lieu of word messages.

This change imposes no additional cost or mandate on highway agencies.

(2) Request II-60 (Chng.)—Preferential Lane Signing and Marking

Sections 2B-20 and 3B-19 are revised to provide more specific guidance on the type and frequency of signing and pavement markings for various preferential lane treatments.

There were 18 commenters in favor of this request and one opposed.

The amendment imposes no additional costs and provides highway agencies additional guidance for identifying preferential lanes.

(3) Request II-67 (Chng.)—Delete/Modify LIMITED SIGHT DISTANCE Sign

This amendment deletes section 2C-39 and Sign W14-4 (Limited Sight Distance) from the MUTCD.

After incorporation into the MUTCD a number of jurisdictions felt the lack of criteria and restrictions on its use resulted in a proliferation of the sign. In the NPA it was proposed to adopt criteria for use of the sign. Ten commenters favor adoption of additional criteria, seven favored removing the sign from the MUTCD and three requested additional research before any action was taken.

The FHWA conducted research[1] on this and similar message/symbol signs to determine if motorist understanding to the sign could be improved. None of the evaluated signs produced a meaningful motorist response.

This amendment imposes no additional costs. Highway agencies can develop and install signs for this or similar application under the provisions of section 2C-41. A compliance date of December 31, 1988 is established.

[1] "Limited Sight Distance Warning For Verticle Curves", Mark Freedman et al., February 1984, FHWA.

[2] Available for inspection and copying at the Federal Highway Administration, Office of Traffic Operations, Room 3419, 400 Seventh Street SW., Washington, DC 20590.

(4) Request II-83 (Chng.)—Memorial Signing for Highways

This amendment to sections 2D-50 and 2F-2 eliminates the prohibition on memorial signing and adds standards for the design and placement of memorial signs.

A total of 21 comments were received to the NPA. Of these 5 were in favor, 16 opposed, and 1 (the NCUTCD) request for deferral. Upon further evaluation the NCUTCD now supports this change. This change is being made in response to support from AASHTO and the NCUTCD, and the widespread use of memorial signing on highways.

Since the use of memorial signing is voluntary, this amendment imposes no additional costs on highway agencies but will give these agencies the option of when and where to erect memorial signs.

(5) Request II-85 (Chng.)—Delete Word Message Alternates to Symbols

This amendment eliminates the word message alternate for signs having a standard symbol. Twenty seven of the 28 commenters favor deleting the following word message signs:

Section 2B-15—NO RIGHT TURN and NO LEFT TURN Signs (R3-1 and 2)
Section 2B-16—NO U TURN Sign
Section 2C-17—SIGNAL AHEAD Sign
Section 2C-25—TWO WAY TRAFFIC Sign

Symbols are preferred because they provide instant communication and can be understood without being read. Action on the other signs remains deferred pending additional information.

A compliance date of December 31, 1988 has been established to offset the impact of the minor additional cost of this amendment on highway agencies.

(6) Request II-94 (Chng.)—DEAD END and NO OUTLET Plaques (W14-1P) and W14-2P)

This amendment to section 2C-37 allows the use of black on yellow rectangular plaques (W14-1P) and W14-2P) as alternates or supplements to standard signs W14-1 and W14-2. These devices will permit motorists to conveniently and safely avoid a dead end street.

There were 18 commenters in favor of this request and 1 opposed.

This amendment imposes no additional costs and allows flexibility in the format and shape of signs.

(7) Request III-2 (Chng.)—Delineators on Tangent Freeway Sections Not Required

This amendment to section 3D-4 allows, under certain conditions, raised pavement markers to be substituted for delineators on tangent sections of freeways. State highway agencies indicate this amendment is an effective treatment and will reduce the cost of freeway delineation in many instances.

Of the 21 commenters to the NPA, 15 were in favor, 2 opposed, 1 neutral and 3 (including the NCUTCD) requested deferral. After review and evaluation the three requesting deferral expressed support for the change.

This change imposes no additional cost to State and local highway agencies.

(8) Request IV-25 (Chng.)—Speed Limit Sign Beacon

Sections 4E-2 and 7D-24 of the MUTCD are amended to permit the use of horizontally aligned Speed Limit Sign Beacons when the sign is longer horizontally than vertically.

There were 15 commenters, 11 of which were in favor of the request and 4 opposed.

This amendment provides greater latitude in the placement of Speed Limit Sign Beacons. This change imposes no additional cost on State and local highway agencies.

(9) Request IV-40 (Chng.)—Pedestrian Clearance Interval During Emergency Preemption

Sections 4B-22 and 4D-7 of the MUTCD are being amended to add explicit language clarifying that an abbreviated pedestrian clearance interval may be used during emergency vehicle priority control.

These sections are being amended to provide latitude to shorten the pedestrian clearance interval during emergency preemption. Section 8C-6 already contains similar provisions relative to preemption at railroad highway grade crossings.

There were 19 commenters of which 15 were in favor of the request.

The commenters not favoring the proposals were concerned with the possibility of stranding pedestrians. The FHWA has carefully considered these concerns and does not find that pedestrians will be endangered. Most pedestrians upon seeing or hearing the approach of an emergency vehicle will either rapidly complete their crossing, return to the curb or move to a safe position. At the same time, emergency vehicle drivers are obligated to drive with due regard for the safety of all persons and to exercise due care to avoid colliding with any pedestrian. Thus, this provision recognizes the realities of emergency situations and that there are adequate safeguards to

protect the safety of the handicapped and infirm.

This change is voluntary and imposes no additional costs.

(10) Request IV-59 (Chng.)—Elimination of the Flashing WALK Pedestrian Signal

Sections 4D-2, 4D-7 and 7D-9 of the MUTCD are amended by deleting all provisions for the use of the flashing WALK. The wording recommended by the NCUTCD will be substituted for the wording in the NPA. FHWA research[2] found that the flashing WALK is understood by less than 4% of the pedestrians and that only about 7% of the pedestrian signals in the nation use flashing WALK. One survey[3] indicated that only 19% of the jurisdictions used the flashing WALK.

There were 19 commenters, 18 of which were in favor of the request.

This amendment will impose minimal cost on a limited number of State and local highway agencies. To minimize the impact of these costs a compliance date of December 31, 1990 is established.

(11) Request IV-62 (Chgn.)—Interconnection of Reversible Lane-Use Control Signals

Section 4E-12 of the MUTCD will be amended to allow for the elimination of the need for cable interconnect of lane-use control signals. The final rule will adopt the changes as recommended by the NCUTCD with only minor modifications. This change provides greater flexibility in the design and operation of reversible lane use control signals.

There were 17 comments, 13 of which were in favor of the request.

This change imposes no additional costs.

(12) Request VI-27 (Chng.)—Minimum Area of Reflective Barricade Rails

This amendment to section 6C-9 adopts a minimum (nominal) 270 square inches of reflective area for Type 1 and Type 2 barricades when used on expressways, freeways, and other high speed roads.

The amendment as proposed would have revised section 6C-9, Table VI-1, and Figure 6-14 to:

(a) Combine the existing Type I and Type II barricades into one class to be called Type I,

(b) Require the width of stripes on the new Type I barricades regardless of length to be a minimum of 6 inches,

(c) Require that the height of the new Type I barricade be 12 inches (nominal), and

(d) Require a minimum of 270 square inches of reflective area on the new Type I barricade when used on expressways, freeways and other high speed roadways.

Virtually all of the 28 commenters agreed that Type I barricades used on expressways, freeways and other high speed facilities should have a minimum reflective area of 270 square inches. However, a number of commenters pointed out that the 12 inch minimum width of rail posed some problems. Others expressed the opinion that 8 inch wide rails are sufficient for lower speed, urban and local streets. Some of the commenters pointed out that a 6 inch wide stripe on a 2 foot long rail would result in very few complete stripes and therefore, would provide little if any directional guidance to motorists.

The FHWA will not implement parts a, b and c of the proposed amendment.

This amendment will impose no additional costs on highway agencies.

(13) Request VIII-11 (Chng.)—Location of DO NOT STOP ON TRACKS Sign (R8-8)

Section 8B-8 is modified to allow placement of the DO NOT STOP ON TRACKS signs (R8-8) at the location which will provide the most visibility for the motorists. This change allows more engineering judgment in the placement.

None of the nineteen commenters opposed this amendment.

This amendment imposes no additional costs on highway agencies.

(14) Request VIII-12 (Chng.)—Placement of RXR Pavement Marking in Relation to Advance Warning Sign

This amendment to sections 8B-3 and 8B-4 refines the guidance for placement of the RXR pavement marking symbol. Also it recommends placement of the RXR pavement marking symbol adjacent to the Advance Warning Sign (W10-1).

Twenty-one of the 22 commenters agreed totally with the need for further refinements to Sections 8B-3 and 8B-4 as proposed by the FHWA. Of the 22 commenters, 10 offered suggestions or comments on the specific wording of the change. These suggestions and comments have been considered and to the extent appropriate incorporated into the change.

This amendment, therefore, varies somewhat from the position proposed in the NPA and consists of the following: (a) In section 8B-3 the first sentence of the second paragraph will be revised to read:

"Placement of the sign shall be in accordance with Table II-1, section 2C-3 and sections 2A-21 to 2A-27, except that in residential or business districts where low speeds are prevalent. . . ." and (b) The following two sentences will be added to the first paragraph of section 8B-4:

"When used, a portion of the pavement marking symbol should be directly opposite the Advance Warning Sign. If needed, supplemental pavement marking symbol(s) may be placed between the Advance Warning Sign and the crossing."

All new or reconstructed pavement marking symbols should comply with the new provisions. The compliance date for existing pavement marking symbols is December 31, 1989. The schedule will mitigate the impact of the minimal additional costs to highway agencies.

(15) Request VIII-14 (Chng.)—Preemption of Highway Traffic Signals

This amendment revises section 8C-6 to clarify the language to require the closed circuit principle (normally energized) to be used in the preemption circuit of traffic signals at or near railroad grade crossings.

The NPA recommended this amendment not be incorporated into the MUTCD. Sixteen of the 19 commenters agreed with the position of the NPA of not normally including technical information on the MUTCD. Three commenters, including the NCUTCD, agreed that while the information on the "closed circuit principle" is technical in nature, it is an important safety application standard. Based on the safety implications of not including this information, the MUTCD is being revised to include discussion on the "closed circuit principle." The reference to this same requirement will remain in the Traffic Control Devices Handbook.[4]

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[2] C.V. Zegeer, K.S. Opiela and M.J. Cynecki, "Pedestrian Signalization Alternatives", July 1985. Report No FHWA-RD-83/102 is available for purchase from the National Technical Information Service, Springfield, VA 22161.

Available for inspection and copying at the Federal Highway Administration Office of Traffic Operations, Room 3419, 400 Seventh Street, SW., Washington, DC 20590.

[3] "Pedestrian Control at Signalized Intersections," ITE Committee 4A-15, June 1965. Available from Institute of Transportation Engineers, 525 School St, SW., Suite 410, Washington, DC 20024.

Available for inspection and copying at the Federal Highway Administration, Office of Traffic Operations, Room 3419, 400 Seventh Street, SW., Washington, DC 20590.

[4] Available for $20.00 from the Government Printing Office, Washington, DC 20402, Stock No. 050-001-02700-1. Copies are also available for inspection at the Federal Highway Administration, Office of Traffic Operations, HTO-21, Room 3419, 400 Seventh St. SW., Washington, DC 20590.

This amendment imposes no additional costs on highway agencies.

Discussion of Editorial Changes

In accordance with the FHWA procedures published in FHWA Docket 83-18 (48 FR 30145, June 30, 1983) the FHWA invites comments on the following editorial changes.

The FHWA is making the following editorial changes to the MUTCD. Each change and its basis is summarized below.

(16) Request IV-55 (Chng.)—Traffic Signal Display for Left Turn Phasing

The NCUTCD requested specific wording changes to section 4B-6 of the MUTCD to clarify existing language relative to signals controlling left turn movements.

In particular, the MUTCD in sections 4B-6, 4[d), and 4B-6, 5[e) states that "exclusive turn lanes" "shall" or in some cases "may" be signalized. This has caused considerable confusion as to the use of left turn displays. The term "exclusive turn lane" has a highway geometric definition that covers any lane dedicated exclusively to turning traffic, whether signalized on not. The MUTCD intends the term "exclusive turn lane" to mean "separately controlled turn lane." The FHWA is adopting this wording change to amend the MUTCD accordingly.

The wording change should eliminate the confusion that was created as to the proper use of left turn displays, but impose no additional costs.

(17) Request IV-56 (Chng.)—Modification to Pedestrian Signal Face Indications

Section 4D-1 and Figure 4-3 are being amended in order to clarify the meaning of "Palm" and to allow the use of a single section symbol display.

Section 4D-1 describes the symbolic "DON'T WALK" as an upraised palm. The palm is commonly defined as the inner surface of the hand extending from the wrist to the base of the fingers. Therefore the word "palm" will be changed to "hand."

Also the following editorial changes will be made in Figure 4-3.

1. Eliminate the words "with cut out letters";

2. Show also a single section symbol display;

3. Change subtitle to read "one section" rather than "single section." Change subtitle to read "two section" rather than "two section type;" and

4. Retitle Figure 4-3 to "Typical pedestrian signal indications."

This amendment to the MUTCD provides clarity and imposes no additional cost.

(18) Request IV-61 (Chng.)—Number of Lenses per Signal Face

The Signals Technical Committee of the NCUTCD recommended that an editorial change be made to section 4B-7 of the MUTCD.

The third sentence of the first paragraph currently reads: "Allowable exceptions to the above are:" The word "above" when applied to the second sentence could be interpreted to mean that (a) colors other than red, yellow, and green can be used and (b) indication other than circular or arrow can be used. This was not the intent of "allowable exception." the NCUTCD suggested that the following editorial changes be made:

1. In the third sentence of the first paragraph of Section 4B-7, insert the words "number of lenses stated" between "the" and "above". The revised third sentence would thus read: *"Allowable exceptions to the number of lenses stated above are:"*

2. Add a new paragraph 5 to read as follows: "5. A signal face used for a ramp metering signal."

The effect of the above change is to delineate a fifth exception already allowed in section 4E-22-2.

The FHWA is therefore amending the MUTCD to reflect the editorial change which will clarify the intent of the words "allowable exceptions". This revision imposes no additional cost.

Discussion of Actions To Be Deferred or Extended

Actions on the following requests are being deferred pending additional information and review.

(19) Request II-5 (Chng.)—Recreational and Cultural Interest Signs

(20) Request II-61 (Chng.)—Traffic Control for Reversible Two-Way Left-Turn Lanes

The FHWA extends the deadline for comments by 120 days for the following request.

(21) Request II-101 (Chng.)—Standards for Performance of Retroreflective Traffic Control Devices

The NCUTCD has expressed a great deal of interest in this request. On September 3, 1985, they asked for the deadline for comments for FHWA Docket No. 85-18 to be extended so that they might have more time to form a task force to evaluate the need for standards and to develop a response. This action will be addressed in a separate document.

In consideration of the foregoing and under the authority of 23 U.S.C. 109(d), 315, and 402(a), and the delegation of authority in 49 CFR 1.48(b), the Federal Highway Administration hereby adopts the Manual on Uniform Traffic Control Devices as amended herein and amends Part 625 of Title 23 CFR by revising § 625.3(c)(1) to read as set forth below.

Regulatory Impact

The Federal Highway Administration has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. As stated herein the economic impact of these amendments is so minimal as not to require preparation of a full regulatory evaluation. For the same reasons and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Since the editorial amendments contained in this document are technical in nature and have been previously circulated to those most likely to have an interest, the FHWA finds good cause to make the editorial amendments final without the opportunity for comment under the Administrative Procedure Act. However, interested parties may comment on the editorial amendments by March 29, 1986 and such comments will be placed in a Public Docket and considered. For the same reasons, opportunity for prior comment is not required under the regulatory policies and procedures of the Department of Transportation.

Incorporation by Reference

The MUTCD has been incorporated by reference in 23 CFR Part 625 under the provisions of 5 U.S.C. 552(a) and 1 CFR Part 51 and approved by the Director of the Federal Register as of April 1, 1985. The MUTCD was last revised on March 13, 1985 (50 FR 10001). The MUTCD citation included in 23 CFR 625 will be revised to reflect the amendments contained in this document.

List of Subjects in 23 CFR Parts 625 and 655

Design standards, Grant programs—transportation, Highway and roads, Signs, Traffic regulations, Incorporations by reference.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372

regarding intergovernmental consultation on Federal programs and activities apply to this program]

Issued on: December 2, 1985.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

PART 625—DESIGN STANDARDS FOR HIGHWAYS

The FHWA hereby amends Chapter I of Title 23, Code of Federal Regulations, by amending Part 625 as set forth below.

1. The authority citation for 23 CFR Part 625 is revised to read as follows:

Authority: 23 U.S.C. Sections 109(d), 315, and 402(a); 49 CFR 1.48(b).

2. In Section 625.3, paragraph (c)(1) is revised to read as follows:

§ 625.3 Standards, specifications, policies, guides, and references.

* * * * *

(c) *Traffic control.* (1) Manual on Uniform Traffic Control Devices for Streets and Highways, FHWA, 1978, as amended February 1986.[5]

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[FR Doc. 85-29359 Filed 12-11-85; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Permanent State Regulatory Program of Colorado

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

ACTION: Final rule.

SUMMARY: The Director, OSM, is announcing his decision to further extend the deadline for Colorado (1) to promulgate rules governing the tranining, examination and certification of blasters and (2) to develop and adopt a program to examine and certify all persons who are directly responsible for use of explosives in a surface coal mining operation.

States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause. In accordance with the State's request the Director is granting the State an additional extension until January 31, 1986.

EFFECTIVE DATE: December 12, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hagen, Director, Albuquerque Field Office, Office of Surface Mining, 219 Central Avenue, N.W., Albuquerque, New Mexico 87102, Telephone (505) 766-1486.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Part 850 (46 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each state with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after the publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of Colorado's program, the applicable date is 12 months after publication of OSM's rule, or March 4, 1984.

On February 6, 1984, Colorado advised OSM that it would be unable to meet the March 4, 1984 deadline and requested an additional six months to develop and adopt a blaster certification program.

The Director of the Colorado Department of Natural Resources, Mined Land Reclamation Division, the regulatory authority for Colorado's program, advised OSM that the State would require the additional time in order to work out an agreement with another State agency that would administer the blaster certification program. He also stated that Colorado would like to promulgate regulations governing a blaster training program concurrently with the promulgation of other modifications to the program which the State intended to make as a result of modifications in the Federal regulations under SMCRA. In accordance with the State's request, on April 30, 1984, the Director extended the deadline for Colorado to submit a proposed blaster training program until September 4, 1985 (49 FR 18296).

On August 10, 1984, the State requested another extension for an additional six months. This request was granted by OSM on September 24, 1984 (49 FR 37426). OSM received a third request from Colorado for an extension of time to submit a blaster training and certification program. In its letter to OSM requesting the extension, Colorado indicated that additional time was needed to work with a contractor on development of a program. The State advised OSM that it intended to initiate rulemaking in July. The rulemaking process will take approximately six to seven months to complete. Therefore, the State requested an extension of the current deadline until January 31, 1986. On October 31, 1985, OSM published notice in the Federal Register of the State's request for an additional extension to submit a blaster training program (49 FR 37430). Public comment on this proposal was sought for 30 days ending December 2, 1985. No comments were submitted to OSM during the comment period.

Director's Decision

In accordance with the State's request, the Director is extending the deadline for Colorado to submit a proposed blaster training program until January 31, 1986. This extension will allow the Colorado Department of Natural Resources, Mined Land Reclamation Division, to work with its contractor to complete the writing of the regulations and to initiate and complete State rulemaking.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Director has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12292 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

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

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 906

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

Dated: December 6, 1985.

Gary Bennethum,

Acting Deputy Director, Operations and Technical Services, Office of Surface Mining.

PART 906—COLORADO

30 CFR Part 906 is amended as follows:

1. The authority citation for Part 906 continues to read as follows:

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

§ 906.16 [Amended]

2. 30 CFR 906.16(a) is revised by substituting "January 31, 1986" for "March 4, 1985."

[FR Doc. 85–29465 Filed 12–11–85; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH-FRL-2921-8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusions and Final Vertical and Horizontal Spread Model (VHS)

Correction

In FR Doc. 85–27069, beginning on page 48886 in the issue of Wednesday, November 27, 1985, make the following correction: On page 48899, first column, sixth line, the "λ" symbol should appear as a subscript, as corrected the sixth line should read: "$D = \alpha \lambda v + D^*$, where".

BILLING CODE 1505–01

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–6691]

Changes in Flood Elevation Determinations; Indiana et al.

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the flood plain management measures required by 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Flood plains.

The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Indiana: Allen	City of Fort Wayne	November 1, 1985 and November 8, 1985, *The News-Sentinel.*	Honorable Winfield Moses, Mayor, City of Fort Wayne, City/County Building, 1 Main Street, Fort Wayne, Indiana 46802.	Oct. 21, 1985	180003

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Louisiana: East Baton Rouge Parish.	Unincorporated areas	November 12, 1985 and November 19, 1985, *Advocate.*	Honorable Pat Screen, Mayor of the City of Baton Rouge, P.O. Box 1471, Baton Rouge, Louisiana 70821.	October 28, 1985, letter of map revision.	2200588
Michigan: Kent	City of Grandville	November 12, 1985 and November 19, 1985, *Advance.*	Honorable James Buck, Mayor, City of Grandville, City Hall, 3195 Wilson Avenue, Grandville, Michigan 49418.	Nov. 4, 1985	260171
Ohio: Franklin and Fairfield	City of Columbus	November 27, 1985 and December 4, 1985, *Columbus Dispatch.*	Honorable Dana G. Rinehart, Mayor, City of Columbus, City Hall, 90 West Broad Street, Columbus, Ohio 43215-4184.	Nov. 18, 1985	390170
Texas:					
Dallas	City of Irving	October 16, 1985 and October 23, 1985, *Irving Daily News.*	Honorable Bobby Joe Raper, Mayor of the City of Irving, P.O. Box 3008, Irving, Texas 75061.	Oct. 7, 1985	480180A
Collin and Denton	City of Plano	December 11, 1985 and December 18, 1985, *Plano Daily Star-Courier.*	The Honorable Jack Harvard, Mayor of the City of Plano, P.O. Box 358, Plano, Texas 75074.	Nov. 26, 1985, letter of map revision.	480140B

Issued: December 3, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-29440 Filed 12-11-85; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

Changes in Flood Elevation Determinations; New York et al.

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator, has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the flood plain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Flood plains.

The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
New York: Westchester (FEMA Docket No. 6657).	City of Yonkers	April 2, 1985 and April 9, 1985, *Herald Statesman.*	Honorable Angelo R. Martinelli, Mayor of the City of Yonkers, City Hall, Yonkers, New York 10701	Feb. 14, 1985	3609368
Texas: Dallas (FEMA Docket No. 6657)	City of Irving	April 16, 1985 and April 23, 1985, *The Irving Daily News.*	Honorable Bobby Joe Raper, Mayor of the City of Irving, P.O. Box 3008, Irving, Texas 75061	Mar. 4, 1985	480180

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Wisconsin: Green (Docket No. FEMA 6684).	City of Monroe	August 12, 1985 and August 19, 1985, *Monroe Evening Times.*	Honorable Patrick F. Thorpe, Mayor, City of Monroe, P.O. Box 200, 1110 18th Avenue, Monroe Wisconsin 53566.	July 30, 1985	550162

Issued: December 3, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-29441 Filed 12-11-85; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations; Arkansas et al.

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Federal Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Federal Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
ARKANSAS	
Dumas (City), Desha County (FEMA Docket No. 6643)	
Canal No. 19: At State Route 54	*157
Maps available for inspection at the Dumas Municipal Building, 155 East Waterman, Dumas, Arkansas.	
NEVADA	
Caliente (City), Lincoln County (FEMA Docket No. 6673)	
Clover Creek: Intersection of Spring and Main Streets	Zone B
Maps available for inspection at City Clerk's Office, City Hall, Caliente, Nevada.	
Lincoln County (Unincorporated Areas) (FEMA Docket No. 6673)	
Clover Creek: At the City of Caliente corporate limits	*4415
Maps available for inspection at County Surveyor's Office, Lincoln County Courthouse, Pioche, Nevada.	
TEXAS	
San Antonio (City), Bexar County (FEMA Docket No. 6673)	
Salado Creek:	
Approximately 3,525 feet upstream of Interstate Highway 410	*544
Upstream side of Loop 13 Southeast Military Drive	*560
Upstream side of Southcross Boulevard	*573
At confluence of Tributary A to Salado Creek	*577
At confluence of Tributary B to Salado Creek	*601
Upstream side of Rice Road	*607
At confluence of Tributary C to Salado Creek	*622
Upstream side of Southern Pacific Railroad	*636
At confluence of Fort Sam Houston Tributary to Salado Creek	*646
Upstream side of W. W. White Road	*648
Upstream side of Winans Road	*663
At confluence of Walzem Creek	*673
At confluence of Beitel Creek	*691
At confluence of Tributary D to Salado Creek	*700
At confluence of Tributary F to Salado Creek	*718
Approximately 300 feet downstream of Missouri Pacific Railroad	*724
Upstream side of Wetmore Road	*736
At confluence of Mud Creek	*738
Upstream side of Bitters Road (second upstream crossing)	*752
Upstream side of Jones Maltzburger Road	*768
At confluence of U.S. 281 Tributary to Salado Creek	*780
Upstream side of North Loop Road	*789
Upstream side of West Avenue	*804
Upstream side of Blanco Road	*843
Approximately 1,800 feet upstream of Blanco Road	*850
Maps available for inspection at the City Clerk's Office, City Hall, Plaza de Armas, San Antonio, Texas.	
San Antonio (City), Bexar County (FEMA Docket No. 6656)	
Leon Creek:	
Approximately 200 feet upstream of Culebra Road	*756
At (Abandoned) Potranco Road	*762
Huebner Creek Tributary A:	
Approximately 500 feet upstream of confluence with Huebner Creek	*841
At Eckert Boulevard	*850
At weir	*858
Maps available for inspection at the City Clerk's Office, City Hall, Plaza de Armas, San Antonio, Texas.	
WISCONSIN	
Milwaukee (City), Milwaukee and Washington Counties (FEMA Docket No. 6673)	
Lincoln Creek:	
At mouth	*622
Just downstream of West Green Tree Road	*693

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
About 0.5 mile upstream of Chicago and North Western Railroad	*708
Maps available for inspection at the Building Inspectors Office, Municipal Building, 841 N. Broadway, Room 1007, Milwaukee, Wisconsin.	

Issued: December 3, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-29442 Filed 12-11-85; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Regulations Governing the Gray Wolf in Minnesota

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service issues a final rule governing the gray wolf in Minnesota that is identical to the final rule issued on August 10, 1983 (48 FR 36256), with certain exceptions that are required by orders of the United States District Court for the Minnesota District on January 5, 1984, and May 2, 1985. These orders require the Service to amend the August 10, 1983, regulations to:

1. Delete all references to public taking of wolves;
2. Require that the taking and killing of wolves under the depredation control program be performed in a humane manner;
3. Require the release of any young of the year that are taken on or before August 1 of that year; and
4. Prohibit sale or export in interstate or foreign commerce of gray wolves.

DATE: This rule is effective December 12, 1985.

FOR FURTHER INFORMATION CONTACT: John Spinks, Office of Endangered Species, Room 500 Broyhill Building, U.S. Fish and Wildlife Service, Washington DC 20240 (703) 235-2771.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1982, the Service proposed to amend the special regulations governing the gray wolf in Minnesota (47 FR 30528). The gray wolf is listed under the Endangered Species Act, 16 U.S.C. 1533, as threatened in Minnesota and endangered elsewhere in the 48 contiguous States (50 CFR 17.11). The Service proposed to allow a carefully controlled taking of wolves by the public and by designated State and Federal employees in certain areas of the State. The proposed amendment further would have authorized the sale in interstate and foreign commerce of wolf parts taken by the public. In addition, the amendment would modify the Service's existing wolf depredation control program by authorizing the taking of wolves within one-half mile of farms where depredation has occurred and by authorizing the killing of any wolf, including pups of the year.

Subsequent to a 60-day public comment period and public hearings in Minneapolis and International Falls, Minnesota, the Service modified the proposed amendment to clarify that wolves would not be taken in Wisconsin (except in response to depredation) and that no trade in live wolves would be authorized. The final rule was published in the **Federal Register** (48 FR 36256) on August 10, 1983. This rule contained extensive background discussion regarding wolf management in Minnesota, including a summary of comments submitted in response to the proposed gray wolf regulations and the Service's response thereto.

Several groups challenged the August 10, 1983, rule, alleging, among other things, that the Service could not authorize public taking of the threatened gray wolf without demonstrating that the taking was required to relieve population pressures among the wolves and that the Service had not explained its reasons for altering the existing program for controlling wolves that prey on domestic animals. The Service agreed with the plaintiffs to stay the effectiveness of the rule pending the outcome of the lawsuit. On January 5, 1984, the District granted the plaintiffs' motion for summary judgment, *Sierra Club and Defenders of Wildlife* v. *Clark*, 577 F. Supp. 783 (D. Minn. 1984), a ruling that was appealed by the Service. On February 19, 1985, the United States Court of Appeals for the Eighth Circuit affirmed the District Court's decision on public taking of the wolf but remanded for further consideration by the District Court the issue of whether the changes in depredation control had been adequately explained. *Sierra Club and Defenders of Wildlife* v. *Clark*, 755 F. 2d 608 (8th Cir. 1985).

After a hearing on May 2, 1985, upon the consent of the parties, the District Court ordered the Service to amend the August 10, 1983, regulations to:

1. Require, with regard to the depredation control program, that any taking or killing of wolves be done in a humane manner and that any young of the year taken on or before August 1 of that year be released.

2. Prohibit sale or export in interstate or international commerce of Minnesota gray wolves.

The Service is, therefore, promulgating a revised final rule that incorporates the August 10, 1983, final rule with the exception of the changes that are required by the January 5, 1984, and May 2, 1985, court orders.

This revision does not change or redefine the five management zones and designated critical habitat as set forth in 50 CFR 17.40(d)(1).

National Environmental Policy Act

An environmental assessment was prepared in conjunction with the August 10, 1983, final rule, and the Fish and Wildlife Service determined that adoption of that rule was not a major Federal action that would significantly affect the quality of the human environment. The Service concludes that adoption of the revised final rule is likewise not a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Determinations Under Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior determined that the August 10, 1983, final rule was not a major rule and did not require preparation of a regulatory analysis under Executive Order 12291. The Department also determined that this rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These determinations are discussed in detail in the Determination of Effects that was prepared by the Fish and Wildlife Service for the August 10, 1983, final rule. As the District Court ordered revision of this final rule requires deletion of a portion of that rule without significant change to the remainder, the Service concludes that the determinations under Executive Order 12291 and the Regulatory Flexibility Act for this revised rule are unchanged from those concluded for the August 10, 1983, final rule. This rule is published in final form without opportunity for further public comment and is made effective upon publication

because all changes in the August 10, 1983, final rule are mandated by a court order. Therefore, the Service finds that good cause exists under 5 U.S.C. 553(d)(3) to make this rule effective immediately.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Accordingly, 50 CFR Part 17 is revised as follows:

1. The authority for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359; 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531, et seq.), unless otherwise noted.

§ 17.40 [Amended]

2. Section 17.40(d) paragraphs (2) and (3) are revised to read as shown below:

(d) * * *

(2) *Prohibitions.* The following prohibitions apply to the gray wolf in Minnesota.

(i) *Taking.* Except as provided in this paragraph (d)(2)(i) of this section, no person may take a gray wolf in Minnesota.

(A) Any person may take a gray wolf in Minnesota in defense of his own life or the lives of others.

(B) Any employee or agent of the Service, any other Federal land management agency, or the Minnesota Department of Natural Resources, who is designated by his/her agency for such purposes, may, when acting in the course of his/her official duties, take a gray wolf in Minnesota without a permit if such action is necessary to:

(*1*) Aid a sick, injured or orphaned specimen; or

(*2*) Dispose of a dead specimen; or

(*3*) Salvage a dead specimen which may be useful for scientific study.

(*4*) Designated employees or agents of the Service or the Minnesota Department of Natural Resources may take a gray wolf without a permit in Minnesota, in zones 2, 3, 4, and 5, as delineated in paragraph (d)(1) of this section, in response to depredations by a gray wolf on lawfully present domestic animals: *Provided*, that such taking must occur within one-half mile of the place where such depredation occurred and must be performed in a humane manner: *And provided further*, that any young of the year taken on or before August 1 of that year must be released.

(C) Any employee or agent of the Service or the Minnesota Department of Natural Resources, when operating under a Cooperative Agreement with the Service signed in accordance with section 6(c) of the Endangered Species Act of 1973, who is designated by the Service or the Minnesota Department of Natural Resources for such purposes, may, when acting in the course of his or her official duties, take a gray wolf in Minnesota to carry out scientific research or conservation programs.

(ii) *Export and Commercial Transactions.* Except as may be authorized by a permit issued under § 17.32, no person may sell or offer for sale in interstate commerce, import or export, or in the course of a commercial activity transport, ship, carry, deliver, or receive any Minnesota gray wolf.

(iii) *Unlawfully Taken Wolves.* No person may possess, sell, deliver, carry, transport, or ship, by any means whatsoever, a gray wolf taken unlawfully in Minnesota, except that an employee or agent of the Service, or any other Federal land management agency, or the Minnesota Department of Natural Resources, who is designated by his/her agency for such purposes, may, when acting in the course of his official duties, possess, deliver, carry, transport, or ship a gray wolf taken unlawfully in Minnesota.

(3) *Permits.* All permits available under § 17.32 (General Permits—Threatened Wildlife) are available with regard to the gray wolf in Minnesota. All the terms and provisions of § 17.32 apply to such permits issued under the authority of this paragraph (d)(3).

* * * * *

Dated: October 25, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–29417 Filed 12–11–85; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 50950–5182]

Tanner Crab Off Alaska

Correction

In a correction appearing in the issue of Thursday, December 5, 1985, on page 49853, third column, last line of paragraph 2, "(e)(1)(iv)" should have read "(e)(1)(vi)".

BILLING CODE 1505–01–M

Proposed Rules

Federal Register
Vol. 50, No. 239
Thursday, December 12, 1985

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 430

[Docket No. 0043A]

Sugar Beet Crop Insurance Regulations; Withdrawal of Proposed Rulemaking

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Withdrawal of Notice of Proposed Rulemaking.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby publishes this notice for the purpose of withdrawing a Notice of Proposed Rulemaking (NPRM) revising and reissuing the Sugar Beet Crop Insurance Regulations (7 CFR Part 430), effective for the 1986 and succeeding crop years. The intent of this notice is to withdraw the NPRM because sufficient time was not available to issue a final rule that would apply to all states and for filing under the provisions of 7 CFR Part 430. The authority for this action is contained in the Federal Crop Insurance Act, as amended.

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: On Thursday, April 25, 1985, FCIC published a Notice of Proposed Rulemaking in the **Federal Register** at 50 FR 16265, proposing to revise and reissue the Sugar Beet Crop Insurance Regulations (7 CFR Part 430), effective for the 1986 and succeeding crop years.

The provisions of 7 CFR Part 430 provided that any changes in the terms and conditions of the contract will be available at the service office by May 31.

On Thursday, May 30, 1985, FCIC published an Interim Rule in the **Federal Register** at 50 FR 22969, amending the Sugar Beet Crop Insurance Regulations (7 CFR 430) effective for the 1985 crop year only, by extending the date for filing contract changes from May 31, 1985, to June 30, 1985.

FCIC could not meet the extended date of June 30 for filing contract changes.

Due to an error in scheduling, these regulations will not meet the time restraints required for notice in Arizona and California; therefore, the Notice of Proposed Rulemaking, published on April 25, 1985, at 50 FR 16265 is hereby withdrawn.

Done in Washington, D.C., on October 4, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-29415 Filed 12-11-85; 8:45 am]

BILLING CODE 3410-06-M

Agricultural Marketing Service

7 CFR Part 1136

Milk in the Great Basin Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

Correction

On December 9, 1985, on page 50159, the Agricultural Marketing Service published a document seeking comments on a proposed suspension of certain provisions of the Great Basin milk order (FR Doc. 85-29082). The document was printed in the rules section; however, it should have appeared in the proposed rules section.

BILLING CODE 1505-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; TIL-1]

Truth in Lending; Proposed Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: The Board is publishing for comment proposed changes to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z and is a substitute for individual staff interpretations of the regulation. The proposed revisions address a variety of questions that have arisen about the regulation, and include new material and changes in existing material.

DATE: Comments must be received on or before February 7, 1986.

ADDRESS: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to Room B-2223, 20th and C Streets, NW., Washington, DC between 8:45 a.m. and 5:15 p.m. weekdays. Comments should include a reference to TIL-1. Comments may be inspected in Room B-1122 between 8:45 and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION: Contact the following attorneys in the Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-3667 or (202) 452-3867:

Subpart A—Adrienne Hurt

Subpart B—Gerald Hurst, Susan Kraeger

Subpart C—Michael Bylsma, Leonard Chanin, Adrienne Hurt

or Joy W. O'Connell, Telecommunication Device for the Deaf (TDD) at (202) 452-3244.

SUPPLEMENTARY INFORMATION: (1) *General.* The Truth in Lending Act (15 U.S.C. 1601 *et seq.*) governs consumer credit transactions and is implemented by the Board's Regulation Z (12 CFR Part 226). Effective October 13, 1981, an official staff commentary (TIL-1, Supp. I to 12 CFR Part 226) was published to interpret the regulation. The commentary is designed to provide guidance to creditors in applying the regulation to specific transactions. The commentary is updated periodically to address significant questions that arise. There have been four general updates so far—the first in September 1982 (47 FR 41338), the second in April 1983 (48 FR 14882), the third in April 1984 (49 FR 13482), and the fourth in April 1985 (50 FR 13181). There was also a limited update concerning fees for the use of automated teller machines, which was adopted in October 1984 (49 FR 40560). This notice contains the proposed fifth general update. It is expected that it will be adopted in final form in March 1986

with optional compliance until the uniform effective date of October 1 for mandatory compliance.

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows, while language that would be deleted is set off with brackets.

(2) *Proposed revisions.* Following is a brief description of the proposed revisions to the commentary:

Subpart A—General

Section 226.4—Finance charge

4(b) Examples of Finance Charges

Paragraph 4(b)(5). Comment 4(b)(5)–2 would be added to explain the situations in which premiums or other charges for residual value insurance obtained by a creditor or consumer are includable in the finance charge. In certain credit transactions, most notably automobile balloon payment financing, such insurance guarantees the estimated residual value of the property purchased based on the term of the agreement; that estimated value usually is equivalent to the final balloon payment due.

Subpart B—Open-End Credit

Section 226.7—Periodic statement

7(c) Credits

Comment 7(c)–4 would be added to make clear that, where the creditor provides the dates and amounts of any credits made to the account during the billing cycle, the regulation does not require that the creditor also disclose a total for each particular type of credit made to the account (for example, payments); nor does the regulation require that the creditor provide a total figure for all credits made to the account during the billing cycle.

Section 226.8—Identification of transactions

In comment 8–5 certain material would be deleted; the deleted material would be incorporated in new comment 8–8. Comment 8–8 would be added to clarify the identification of transaction requirements for transaction in which a creditor and a seller have a corporate connection. Comment 8–8 would make clear that in certain instances creditors may describe transactions involving sellers with whom they have a corporate connection using the identification requirements for unrelated creditors and sellers (§ 226.8(a)(3)), instead of the identification requirements for related creditors and sellers (§ 226.8(a)(2)). Creditors may use the rules in § 226.8(a)(3) when (1) the transactions occur under a credit plan that was established primarily for use with sellers that do not have a corporate connection with the creditor, or (2) the transactions involve a seller whose connection with the creditor would not be known to the consumer (for example, where the creditor's and seller's names are not similar, and the periodic statements are issued only in the creditor's name). The second situation is currently addressed by comment 8–5; as indicated above, that material has been deleted from comment 8–5 and incorporated in new comment 8–8. Staff believes that, in the circumstances described in comment 8–8, the information provided to consumers under § 226.8(a)(3) would be at least as useful as that provided under § 226.8(a)(2).

Section 226.12—Special credit card provisions

12(d) Offsets by Card Issuer Prohibited

Paragraph 12(d)(2). Comment 12(d)(2)–1 would be revised to clarify the security interest exception to the prohibition on a credit card issuer's offsetting a cardholder's indebtedness against funds of the cardholder that are on deposit with the card issuer. The comment would make clear that the exception does not include any security interest that may result from a card issuer's routinely including language in its credit card agreements with consumers providing for such security interests. Comment 12(d)(2)–2 would be deleted since it would be inconsistent with the requirements of comment 12(d)(2)–1 as revised. Comment 12(d)(2)–3 would be redesignated comment 12(d)(2)–2.

Section 226.16—Advertising

16(b) Advertisement of Terms That Require Additional Disclosures

A new comment 16(b)–1 would be added to indicate that, in an advertisement, the disclosures required by § 226.16(b)(1)–(3) need be made only when the advertisement reflects one or more of the disclosure terms contained in § 226.6(a) or 226.6(b). In light of this new comment, comment 16(b)–2 would be redesignated comment 16(b)–3 and would be revised to delete the example indicating that the implicit disclosure of a security interest requires that the additional advertising disclosures of § 226.16(b)(1)–(3) be made. Present comment 16(b)–1 would be redesignated comment 16(b)–2, and comments 16(b)–3 through 16(b)–7 would be redesignated comments 16(b)–4 through 16(b)–8.

Subpart C—Closed-End Credit

Section 226.17—General disclosure requirements

17(a) Form of Disclosures

Paragraph 17(a)(1). Comment 17(a)(1)–4 would be revised to clarify the disclosure of certain security interest charges under sections §§ 226.4(e) and 226.18(o). Footnote 38 gives creditors the option of making this disclosure either with the segregated disclosures or elsewhere. The revised comment would make clear that if a creditor chooses to list security interest charges in the itemization of the amount financed, no further disclosure of those charges would be necessary.

Comment 17(a)(1)–7 would be added to clarify the disclosure of balloon payment financing, having some characteristics of both a lease transaction subject to Regulation M and a credit transaction subject to Regulation Z. Such hybrid types of financing are increasingly being offered, particularly in the area of automobile financing. In these transactions where ownership rights to the property subject to the transaction vest in the consumer upon consummation, creditors must comply with the disclosure requirements of this regulation. Therefore, additional information, such as options that a borrower may choose in lieu of making a large final payment, should not be included in the segregated Truth in Lending disclosures.

Paragraph 17(c)(2). Comment 17(c)(2)–3 would be added to clarify the use of estimated disclosures in simple-interest transactions. Creditors should not label disclosures as estimates if the only reason for the designation is the fact that consumers may make payments on other than scheduled due dates. Creditors should assume that all payments will be timely in making their disclosure calculations.

Section 226.18—Content of disclosures

18(f) Variable Rate

Comment 18(f)–2 would be revised to address the basis for final disclosures in transactions for which creditors must give early disclosures three days after application under § 226.19. If creditors choose to redisclose at settlement, rather than at consummation, disclosures may be based on the terms in effect at settlement, rather than at consummation.

Comment 18(f)–6 would be expanded to cover mortgages containing an option permitting consumers to convert an adjustable-rate mortgage to a fixed-rate mortgage. This type of option is a

variable-rate feature that must be disclosed. Creditors must disclose the limits on an increase upon conversion and the effects of an increase. However, no example of payment terms that could result once a consumer exercises the option would be required.

18(k) Prepayment

Paragraph 18(k)(1). Comment 18(k)(1)–1 would be revised to clarify that prepayment penalties include interest charges assessed for any period of time after the date prepayment in full is made. Such charges are assessed strictly because prepayment in full has been made at a date earlier than maturity. For example, under regulations of the Department of Housing and Urban Development (24 CFR Parts 203, 213, 222 and 234), a lender who accepts prepayment in full on a date other than the installment due date may assess a charge for interest to the end of the month. The revision would make clear that the interest charge assessed from the date of prepayment in full until the end of the month is a prepayment penalty.

18(m) Security Interest

Comments 18(m)–1 and 18(m)–3 would be amended to clarify acceptable descriptions of security interests for transactions in which the proceeds, or a portion of the proceeds, are used to purchase the collateral. The revision would make clear that creditors may identify the collateral generally as "the property purchased" or, instead, may identify the collateral by item or type, in accordance with § 226.18(m)(2).

Section 226.23—Right of rescission

23(f) Exempt Transactions

Comment 23(f)–8 would be revised to clarify the application of the right of rescission to an account that converts from an open-end to a closed-end transaction. In some cases, creditors delay closed-end disclosures until conversion of an account even if consummation of the closed-end transaction occurs when the account is opened, as permitted by comment 17(b)–2. Comment 23(f)–8 would be amended to provide that no new right of rescission arises at conversion, regardless of a creditor's compliance with rescission provisions at the opening of an account.

Section 226.24—Advertising

Comments 24(b)–1 and 24(c)(2)–3 would be amended to permit the abbreviation "APR" to be used instead of the term "annual percentage rate" in advertisements. This change would make more consistent the advertising of annual percentage rates for open-end and closed-end credit.

List of Subjects in 12 CFR Part 226

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Truth in lending.

PART 226—[AMENDED]

(3) *Text of Revisions.* The proposed revisions to the commentary (TIL–1, Supplement 1 to 12 CFR Part 226) read as follows. Arrows indicate new language; brackets indicate language to be removed.

SUPPLEMENT I—OFFICIAL STAFF COMMENTARY—TIL–1

Subpart A—General

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Section 226.4—Finance charge

* * * * *

4(b) Examples of Finance Charges.

* * * * *

Paragraph 4(b)(5).

* * * * *

►2. *Residual value insurance.* Where a creditor requires a consumer to maintain residual value insurance or where a creditor is a beneficiary of such insurance, the premiums must be included in the finance charge for the period that the insurance is to be maintained.◄

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Subpart B—Open-End Credit

* * * * *

Section 226.7—Periodic statement

* * * * *

7(c) Credits.

* * * * *

►4. *Totals.* Where the creditor provides the dates and amounts of credits made to the account during the billing cycle, the creditor need not disclose total figures for the amounts credited.◄

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Section 226.8—Identification of transactions

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5. *Same or related persons.* ►*For purposes of identifying transactions, the*◄ [The] term "same or related persons" refers to, for example:

• Franchised or licensed sellers of a creditor's product or service

• Sellers who assign or sell open-end sales accounts to a creditor or arrange for such credit under a plan that allows the consumer to use the credit only in transactions with the seller

[A person is not related to the creditor merely because, for example:

• The person and the creditor have an agreement by which the person is authorized to honor the creditor's credit card under the terms specified in the agreement

• The person and the creditor have a corporate connection, such as subsidiary-parent, if that connection is not obvious from the names they use. For example, if XYZ card issuer owns the ABC hotel, the card issuer and the hotel are not "related."]

►A seller is not related to the creditor when the only connection between the seller and the creditor is an agreement by which the seller is authorized to honor the creditor's credit card under the terms specified in the agreement.◄

* * * * *

►8. *Transactions involving creditors and sellers with corporate connections.* In a credit card plan established for use primarily with sellers that have no corporation connection with the creditor, the creditor may describe all transactions under the plan using the rules in § 226.8(a)(3)—creditor and seller not same or related persons—including transactions involving a seller that has a corporate connection with the creditor. In other credit card plans, the creditor may describe transactions involving a seller that has a corporate connection with the creditor, such as subsidiary-parent, using the rules in § 226.8(a)(3) if the circumstances are such that it is unlikely that the consumer would know of the corporate connection between the creditor and the seller—for example, where the names of the creditor and the seller are not similar, and the periodic statement is issued in the name of the creditor only.◄

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Section 226.12—Special credit card provisions.

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12(d) Offsets by Card Issuer Prohibited.

* * * * *

Paragraph 12(d)(2).

1. *Security interest—limitations.* In order to qualify for the exception stated in § 226.12(d)(2), a security interest must be affirmatively agreed to by the consumer ►(for example, by signing a separate security agreement)◄, must be disclosed in the issuer's initial disclosures under section 226.6, ►must be specific in amount,◄ and must be obtained and enforced only through procedures equally available to other creditors. ►An example of a permissible security interest in deposit account funds would be one in which◄ [For example,] the consumer [may offer] ►offers◄ a savings account (as an alternative to other personal property, such as an automobile) as security [for credit card indebtedness.] ►in order to qualify for a credit card line.◄ Another example of a permissible security interest in deposit account funds would be one granted by the consumer in return for an incentive offered by the issuer (for example, lower rates on the credit card account). ►Routinely including in agreements contract language that indicates that consumers are giving a security interest in any deposit accounts held by the issuer does not come within the security interest exception of § 226.12(d)(2).◄

[2. *Security interest—after-acquired property.* As used in § 226.12(d), the term "security interest" does not exclude (as it

does for other Regulation Z purposes) interests in after-acquired property. Thus, a consensual security interest in deposit-account funds, including funds deposited after the granting of the security interest, would constitute a permissible exception to the prohibition on offsets.]

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Comment 12(d)(2)–3 is redesignated 12(d)(2)–2.

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Section 226.16—Advertising

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16(b) Advertisement of Terms That Require Additional Disclosures.

►1. *Terms requiring additional disclosures.* In § 226.16(b) the phrase "the terms required to be disclosed under § 226.6" refers to the terms in § 226.6(a) and (b).◄

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Comments 16(b)–1 redesignated comment 16(b)–2.

* * * * *

[2.] ►3.◄ *Implicit terms.* Section 226.16(b) applies even if the triggering term is not stated explicitly, but may be readily determined from the advertisement. [For example, a statement that "the equity in your home becomes spendable with an XYZ line of credit" implicitly states that the creditor will take a security interest in the consumer's home.]

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Comments 16(b)–3 through 16(b)–7 are redesignated comments 16(b)–4 through 16(b)–8.

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Subpart C—Closed-End Credit

Section 226.17—General disclosure requirements.

17(a) Form of Disclosures.
Paragraph 17(a)(1).

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4. *Content of segregated disclosures.* Footnotes 37 and 38 contain exceptions to the requirement that the disclosures under § 226.18 be segregated from material that is not directly related to those disclosures. Footnote 37 lists the items that may be added to the segregated disclosures, even though not directly related to those disclosures. Footnote 38 lists the items required under § 226.18 that may be deleted from the segregated disclosures and appear elsewhere. Any one or more of these additions or deletions may be combined and appear either together with or separate from the segregated disclosures. The itemization of the amount financed under § 226.18(c), however, must be separate from the other segregated disclosures under § 226.18. ►If a creditor chooses to include in the amount financed itemization the security interest charges required to be itemized under §§ 226.4(e) and 226.18(o), the creditor need not list these charges elsewhere.◄

* * * * *

►7. *Balloon payment financing with leasing characteristics.* In certain credit sale or loan transactions, a consumer may reduce the dollar amount of the payments to be made during the course of the transaction by agreeing to make a large final payment based upon the residual value of the property purchased at end of the loan term. The consumer may have a number of options with respect to the final payment, including, among other things, retaining the property and making the final payment, refinancing that payment, or transferring the property to the creditor in lieu of the final payment. Such transactions may have some of the characteristics of lease transactions subject to Regulation M, but are considered credit transactions where title to the property vests in the consumer upon consummation. These transactions are governed by the disclosure requirements of this regulation instead of Regulation M. Therefore, creditors should not include in the segregated Truth in Lending disclosures additional information. Disclosures should show the large final payment in the payment schedule without mentioning, for example, other options available to a borrower at maturity.◄

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17(c) Basis of Disclosures and Use of Estimates.

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Paragraph 17(c)(2).

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►3. *Simple-interest transactions.* If consumers do not make timely payments in a simple-interst transaction, some of the amounts calculated for the disclosures will differ from amounts that consumers will actually pay over the term of the transaction. Creditors should not label disclosures as estimates in these transactions if the only reason for uncertainty about the amounts disclosed is the fact that payments may be late. For example, although the finance charge and total of payments may be larger than disclosed if consumers habiturally make late payments, creditors should not label these amounts as estimates. All disclosures should be based on the assumption that payments will be made on time.◄

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Section 226.18—Content of disclosures

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19(f) Variable Rate.

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2. *Basis for disclosures.* For transactions subject to the requirements of § 226.18(f), the disclosures must be given for the full term of the transaction and must be based on the terms in effect at the time of consummation. However, [in]

►• In◄ a variable-rate transactions with either a seller buydown that is reflected in the credit contract or a consumer buydown, disclosures should not be based solely on the initial terms. In those transactions, the disclosed annual percentage rate should be composite rate based on the lower rate for the buydown period and the rate that is the basis of the variable rate feature for the remainder of the term. (See the commentary to § 226.17(c) for a discussion of buydown transactions.)

►• In a variable-rate transaction in which a creditor rediscloses after giving disclosures three days after application, as required by section 226.19, the final disclosures need not be based on the terms if effect at the time of consummation. If, as permitted by § 226.19(b), creditors delay rediscloure until settlement, creditors may base their disclosures on the terms in effect at settlement, rather than those in effect at consummation.◄

* * * * *

6. *Examples of variable-rote transactions.* The following transactions constitute variable rate transactions: * * *

►• Variable-rate transactions with an option permitting consumers to convert at a later time to a fixed-rade loan. The conversion option is a variable-rate feature that should be disclosed. Creditors should disclose any limitations on a rate increase resulting from conversion, along with the effects of an increase. An example of an increase resulting from a consumer's exercising the conversion feature need not be included.◄

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18(k) Prepayment.

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Paragraph 18(k)(1).

1. *Penalty.* this applies only to those transactions in which the interest calculation takes account of all scheduled reductions in principal, as well as transactions in which interest calculations are made daily. The term "penalty" as used here encompasses only those charges that are assessed strictly because of the prepayment in full of a simple-interest obligation, as an addition to all other amounts. [Items which are not penalties include for example:

• Loan guarantee fees.

• Interim interest on a student loan. However, minimum finance charge is a penalty in a simple-interest transaction. (See the commentary to § 226.17(a)(1) regarding the disclosure of minimum finance charge as directly related information.)]

►§ Items which are penalties include, for example:

• Interest charges for any period after prepayment in full is made.

• A minimum finance charge in a simple-interest transaction (See the commentary to § 226.17(a)(1) regarding the disclosure of a minimum finance charge as directly related information.)

Items which are not penalties include, for example:

• Loan guarantee fees.

• Interim interest on a student loan.◄

* * * * *

18(m) Security Interest.

1. *Purchase money transactions.* When the collateral is the item purchased as part of, or with the proceeds of, the credit transaction, § 226.18(m) requires only a general identification such as "the property purchased in this transaction." [The] ►However, the◄ creditor may [give a more specific indentification of the collateral, although only the abbreviated disclosure is necessary.] ►identify the property by item or type consistent with § 226.18(m)(2), instead of identifying it as "the property purchased in this transaction."◄ Any transaction in which the credit is being used to purchase the collateral is considered a purchase money transaction and the abbreviated property

identification may be used, whether the obligation is treated as a loan or credit sale.

3. *Mixed collateral.* In some transactions in which the credit is used to purchase the collateral, the creditor may also take other property of the consumer as security. In those cases, a combined disclosure must be provided, consisting of the abbreviated property identification ►or an identification consistent with § 226.18(m)(2)◄ for the purchase money collateral [(although more detail may be given, at the creditor's option)] and a [more] specific identification of the other collateral.

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Section 226.23—Right of rescission

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23(f) Exempt Transactions.

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8. *Converting open-end to closed-end credit.* Under certain state laws, consummation of a closed-end credit transaction may occur at the time a consumer enters into the initial open-end credit agreement. As provided in the commentary to § 226.17(b), closed-end credit disclosures may be delayed under these circumstances until the conversion of the open-end account to a closed-end transaction. In accounts secured by the consumer's principal dwelling, no new right of rescission arises at the time of conversion►.◄ [, assuming that the right of rescission was previously provided on the open-end account pursuant to § 226.15.]

* * * * *

Section 226.24—Advertising

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24(b) Advertisement of Rate of Finance Charge.

1. *Annual percentage rate.* Advertised rates must be stated in terms of an "annual percentage rate," as defined in § 226.22. Even though state or local law permits the use of add-on, discount, time-price differential, or other methods of stating rates, advertisements must state them as annual percentage rates. Unlike the transactional disclosure of an annual percentage rate under § 226.18(e), the advertised annual percentage rate need not include a descriptive explaination of the term[.] ►and may be expressed using the abbreviation "APR."◄ The advertisement must state that the rate is subject to increase after consummation if that is the case, but the advertisement need not describe the rate increase, its limits, or how it would affect the payment schedule. As under § 226.18(f), relating to disclosure of a variable rate, the rate increase disclosure requirement in this provision does not apply to any rate increase due to delinquency (including late payment), default, acceleration, assumption, or transfer of collateral.

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24(c) Advertisement of Terms That Require Additional Disclosures.

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Paragraph 24(c)(2).

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3. *Annual percentage rate.* ►The advertised annual percent rate may be expressed using the abbreviation "APR."◄ The advertisement must also state, if applicable, that the annual percentage rate is subject to increase after consummation.

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Board of Governors of the Federal Reserve System, December 5, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-29301 Filed 12-11-85; 8:45 am]

BILLING CODE 6210-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 615

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by its Federal Farm Credit Board (Federal Board), published for comment proposed amendments and new regulations pertaining to Farm Credit System (System) banks' investment activities. The Farm Credit Act Amendments of 1980 (1980 Amendments) gave System banks expanded authorities to make investments as authorized by their boards of directors and approved by FCA. Recent FCA and System emphasis on the need to maintain adequate liguidity reserves both at the bank level and System level requires that the banks be given mone flexibility in their investment programs both in terms of the volume and types of investments held. The proposed amendments broaden investment standards for bank investment policies and eliminate FCA prior approval of such policies. The new regulation also proposes additional types of investments that System banks may make under authority of the 1980 Amendments.

DATE: Written comments must be received on or before February 10, 1986.

ADDRESSES: Submit any comments in writing to Donald E. Wilkinson, Governor, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of Examination and Supervision, Finance and Operations Division, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Michael J. LaVerghetta, Assistant Director, Office of Examination and Supervision, (703) 883-4400

or

Kenneth L. Peoples, Office of the General Counsel, (703) 883-4020, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090

SUPPLEMENTARY INFORMATION: The Federal Board at its September meeting proposed regulations expending the authority of System institutions to make investments as authorized by their respective boards of directors. Currently, System banks are restricted essentially to investments for liquidity purposes. In addition, bank investment policies are subject to the prior approval of the FCA. The 1980 Amendments gave System institutions expanded investment authority when authorized by their boards of directors and approved by the FCA. The incorporation of service organizations, the implementation of System financial assistance packages, and the increased importance of cash management of liquidity funds have generated a need for expansion of the current FCA investment regulations. The Federal Board also believes that prior approval of bank policies is unnecessarily restrictive since FCA supervisory goals can be accomplished by establishing detailed investment criteria for bank policies and by taking appropriate action where the policies do not meet the regulatory requirements.

The proposed amendments to the regulations would eliminate FCA approval of bank investment policies and other investment restrictions. Proposed amendments to 12 CFR 615.5135 require System banks to adopt policies according to specific criteria. Proposed new regulation § 615.5136 sets forth the types of investments that banks are authorized to hold, including liquidity, and in such entities, securities, or other instruments closely related to the business of the bank.

A number of amendments have been proposed to 12 CFR 615.5140 to clarify and expand the categories of investments that a bank may hold for liquidity purposes. The amendments establish bank liquidity requirements according to a System or FCA formula based on the schedule of a bank's maturing debt. Investments for liquidity purposes are limited generally to the enumerated list. However, the list has been substantially broadened. This formula may be changed by the FCA at any time. The FCA would also continue to consider additional eligible investments as requested by the banks and found appropriate for liquidity purposes.

Proposed amendments to 12 CFR 615.5141 and 615.5142 permit System associations to make investments for liquidity purposes as authorized by the

supervising bank. Proposed new 12 CFR 615.5144 would authorize System service organizations to make investments for liquidity and such other purposes as approved by the FCA.

List of Subjects in 12 CFR Part 615

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

For the reasons set out in the preamble, it is proposed that Part 615 of Chaper VI, Title 12 of the Code of Federal Regulations, be amended as shown.

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

1. The authority citation of Part 615 continues to read as follows:

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

2. Move § 615.5135 from Subpart D to Subpart E and revise § 615.5135 to read as follows:

Subpart E—Investments

§ 615.5135 Investment policy.

(a) Each bank's board of directors shall adopt a policy regarding the management of its investments. Within this policy, the following items shall be addressed:

(1) The purpose of the bank's investments and the relation of such investments to the business of the bank.

(2) The portfolio objectives.

(3) The bank's liquidity needs.

(4) The portfolio size and quality.

(5) Maturity guidelines.

(6) Authorization to manage investment activities.

(7) Reporting and monitoring requirements.

Additional areas may be addressed in the policy as deemed appropriate by each bank.

(b) Each bank shall follow the criteria set forth below in adopting a policy for each bank investment authorized by this section and § 615.5140:

(1) Liquidity investments shall be maintained to satisfy a bank's demonstrable liquidity requirements. Each bank shall comply with the liquidity formula as referenced in § 615.5140.

(2) A bank may invest in the obligations of any issuer only after the appropriate analysis has been made of the financial condition of the issuer. The bank shall maintain records of such analysis.

(3) Each bank shall establish an adequate internal control and reporting of bank investment activities by and to the bank's chief executive officer.

3. Section 615.5136 is added to read as follows:

§ 615.5136 Types of investments.

(a) Banks are authorized to hold investment portfolios for the purpose of maintaining sufficient liquidity, investing short-term surplus funds, and managing short-term debt in eligible instruments as set forth in § 615.5140.

(b) In addition to the investments authorized in paragraph (a) of this section, a bank is authorized to invest in such entities, securities, or other instruments closely related to the business of the bank as set forth below:

(1) Farm Credit System service organizations chartered by the Farm Credit Administration under Title IV, Part D, of the Act.

(2) Partnerships, joint ventures, and unincorporated associations organized to conduct activities the banks are authorized to perform.

(3) Foreign branches or representatives offices of banks for cooperatives to engage in activities of the banks for cooperatives authorized under section 3.7(b) of the Act and under § 614.4120 of this chapter.

(4) Foreign entities principally engaged in providing credit information to and performing such servicing functions for their members in connection with the members' international activities as set forth in § 615.5143. Such credit information and service functions must be the major sector of the entity's business.

(5) Bankers acceptances, letters of credit, and other extensions of credit to foreign or domestic parties that a bank for cooperatives could have made under § 614.4120 of this chapter to serve as a liquidity facility for obligations arising out of transactions authorized by section 3.7(b) of the Act with voting stockholders of the banks for cooperatives. Such investments may be made only by banks for cooperatives and shall not exceed 15 percent of the bank's outstanding loans and other credits extended pursuant to section 3.7(b) of the Act.

(6) Any corporation or organization not chartered by the Farm Credit Administration where such investment is closely related to the business of the bank and approved by the Farm Credit Administration.

(7) Any System financial assistance plan to any System bank or association approved by the Farm Credit Administration, including without limitation, participation or purchase of loans, acquired property, stock, or other assets of the bank or association.

(8) Such other investments as may be approved by the Farm Credit Administration.

4. Section 615.5140 is revised to read as follows:

§ 615.5140 Eligible liquidity investments.

(a) The approved list of eligible investments for the Farm Credit banks for liquidity purposes and other purposes as set forth in § 615.5136 shall include the following securities. The banks may also invest in such other securities and financial instruments and for such other purposes as permitted under § 615.5136. All such investments must be denominated in dollars ($ US) unless otherwise authorized by the Farm Credit Administration. Each bank must maintain liquidity investments equaling the minimum standard set by the liquidity formula established by the Farm Credit System. The Farm Credit Administration may direct changes to such formula at any time or adopt such other formula deemed necessary for liquidity purposes. In no event shall a bank maintain liquidity exceeding the maturing debt needs of such bank pursuant to the liquidity formula in effect.

(1) Notes, bonds, debentures, or other similar obligations of the Farm Credit banks issued individually or jointly and severally as Systemwide obligations.

(2) Notes, bonds, bills, debentures, or other similar obligations issued or guaranteed by the United States Government.

(3) Notes, bonds, debentures, or similar obligations of, or guaranteed by:

(i) Any Federal Home Loan Bank chartered pursuant to 12 U.S.C. 1421–1459.

(ii) The Federal Home Loan Mortgage Corporation.

(iii) The Federal National Mortgage Association.

(iv) The Student Loan Marketing Association.

(v) The Tennessee Valley Authority.

(vi) The International Bank for Reconstruction and Development, the International Finance Corporation, or such other public international financial institution approved by the Farm Credit Administration.

(vii) The National Credit Union Administration.

(viii) The Federal Financing Bank.

(4) Bankers acceptances.

(5) Negotiable certificates of deposit.

(6) Prime corporate notes, drafts, and bills of exchange, provided such corporate debt obligations continue to be rated in the highest category by the

most recently published rating of such obligations by a nationally recognized investment rating service. All such investments under this paragraph are not be exceed 15 percent of the bank's total investment portfolio.

(7) Repurchase agreements of eligible investments.

(8) Notes, bonds, debentures, bills, or similar obligations of any State, territory, or possession of the United States, or political subdivision thereof, including any agency, corporation, or instrumentality of any State, territory, possession, or political subdivision thereof, provided:

(i) The obligations are rated A or better (or the equivalent) by a nationally recognized rating service.

(ii) The obligations mature within approximately 10 years.

(iii) The obligations are readily marketable.

(9) Loans of unsecured day(s) funds to an insured bank or other federally insured financial institution (i.e., Federal funds or similar unsecured loans), provided that such loans will mature in 90 days or less.

(10) Shares or certificates in any open-end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940, while the portfolio of such company is restricted by its investment policy, changeable only by vote of the shareholders, to investments authorized by this section.

(11) Any Systemwide funding reserve maintained by the fiscal agency or other institution of the Farm Credit System for the retirement of Systemwide debt as necessary. Investments of such reserve must be eligible under this section.

(12) Other types of investments authorized by the Farm Credit Administration.

(b) The collateral value of eligible investments supporting System obligations shall be the lower of cost or market value.

5. Section 615.5141 is revised to read as follows:

§ 615.5141 Production credit associations.

Production credit associations shall invest in obligations eligible as investments for liquidity purposes under § 615.5140, as authorized by the supervising bank.

6. Section 615.5142 is revised to read as follows:

§ 615.5142 Federal land bank associations.

A Federal land bank association shall invest its excess cash in unsecured obligations of its supervising bank or in obligations eligible as investments for liquidity purposes under § 615.5140, as authorized by the supervising bank.

7. Section 615.5144 is added to read as follows:

§ 615.5144 System service organizations.

A service organization incorporated by the Farm Credit System banks under Title IV, Part D, of the Act and § 611.1150 of this changer may invest in obligations eligible as investments for liquidity and other purposes approved by the Farm Credit Administration under § 615.5140.

Donald E. Wilkinson,

Governor.

[FR Doc. 85-29456 Filed 12-11-85; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 802 3128]

Saab-Scania of America, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comments

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require an Orange, Conn. wholly-owned subsidiary of a Swedish automobile company, among other things, to make repairs or reimburse consumers for costs they incurred because of paint problems with Saab cars assembled at the company's factory in Malines, Belgium, from 1976 to 1978. The offer to repair or reimburse would be made to consumers who bought a new Belgian-made Saab after December 31, 1977 and to subsequent owners who bought their vehicle within the first 36 months after the original purchase. The repair or reimbursement cost would be up to $ 2,000 per car, except for cars purchased in Massachusetts. The Attorneys General in Massachusetts, Maine and Vermont have reached separate aggreements with Saab in those states over the paint problem, but Saab consumers in Maine and Vermont would be eligible for the repair or reimbursement program.

DATE: Comments must be received on or before February 10, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phoebe Morse, Director, Boston Regional Office, Federal Trade Commission, 150 Causeway St., Room 1301, Boston, MA 02114 (312) 353-4423.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with an accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comments is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Automobiles, Trade practices.

Before Federal Trade Commission

[File No. 802 3128]

In the matter of Saab-Scania of America, Inc., a corporation. Agreement containing consent order to cease and desist.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Saab-Scania of America, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Saab-Scania of America, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Saab-Scania of America, Inc. (Saab), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at Saab Drive in the Town of Orange, State of Connecticut.

2. Saab admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Saab waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the

validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Saab, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by Saab that the law has been violated as alleged in the draft complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to Saab, (1) issue its complaint corresponding in form and substance with the draft complaint here attached and its decision containing the following order in disposition of the proceeding and (2) make information public in respect thereto. When so entered, this order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to Saab's address as stated in this agreement shall constitute service. Saab waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Saab has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Saab further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purposes of this order, the following definitions shall apply:

1. "Saab" means Saab-Scania of America, Inc., its successors and assigns.

2. "Saab-Scania AB" means Saab-Scania AB, of Sweden, the parent corporation of Saab-Scania of America, Inc.

3. "Motor vehicle" means a passenger car.

4. "Belgian Saab" means a Saab motor vehicle that was assembled at the factory of Saab-Scania AB in Malines, Belgium and that was delivered to the first retail purchaser on or after January 1, 1978, as indicated by the date the warranty period began according to Saab's records.

5. "Paint condition" means the incomplete adhesion of the exterior paint to the underlying metal of a Belgian Saab causing the paint later to lift, peel, or blister. This term does not include paint problems or rust caused by accident, normal road hazard, or other external conditions.

6. "Repair" means the performance of all tasks necessary to restore completely the area where the paint condition exists, whether visibly or latently. The repair includes, but is not necessarily limited to, stripping the paint on the exterior surface of the motor vehicle to the sheet metal surface; correcting all rusting; and preparing, priming and repainting the surface in a color matching the exterior body color.

7. "Complete repair" is a repair which was preformed by Saab at no charge to the owner and which was valued at $800 or more according to Saab's records.

8. "Person" means any individual, partnership, corporation, firm, trust, estate, cooperative, association, or other entity.

9. "Dealer" means any person who, pursuant to a sales and service agreement with Saab, purchases or receives on consignment motor vehicles from Saab for resale or lease to the public, including any dealer owned or operated by Saab.

10. "Months-in-service" is calculated as beginning on the date on which Saab or a dealer delivered the motor vehicles to the first retail purchaser.

11. "Warranty period" means the first twelve months-in-service.

12. "Owner" means any person who lawfully acquired custody and/or possession of a Belgian Saab within the vehicles' first 36 months-in-service. This term include, but is not limited to, any past or current register owner or person acting on such owner's behalf. This term does not include a dealer or person in temporary possession of the vehicle by right of a lien.

13. "Original owner" means that owner who was the first retail purchaser.

14. "Subsequent owner" means any owner who owned a Belgian Saab after the original owner.

15. "Attorney General settlement" means any formal or informal agreement with the Attorneys General of the states of Maine, Massachusetts, or Vermont.

I

It is ordered that respondent, Saab-Scania of America, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution in the United States of any motor vehicle, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to:

Notification

A. Identify owners to be notified of their potential eligibility for repair of the paint condition and/or reimbursement for past repairs to correct the paint condition, as specified below:

1. Each original owner shall be notified except: a) any owner who has received a complete repair of the paint condition or b) any owner who purchased his/her Belgian Saab in a state in which there was an Attorney General settlement; and

2. Saab will use own records to obtain the names and addresses of original owners to be notified;

B. Within sixty (60) days after the date of the service of this order, send, by first-class mail in an envelope on which is disclosed the vehicle identification number (VIN), to each original owner, as identified in Paragraph I.A., a self-addressed, postage pre-paid enveiope and a copy of the Notice Package (using the exact language and format used in Attachment A) which shall include: (a) One (1) copy of the "Notice of Program to Determine Eligibility for Free Repair or Reimbursement," (b) one (1) copy of the "Request Form" and (c) one (1) self-addressed, postage pre-paid postcard;

C. Within thirty (30) days of an inquiry or sixty (60) days after the date of service of this order, whichever is later, send the Notice Package to each owner of a Belgian Saab who inquiries of Saab or one of its dealers about Saab's program for repair and reimbursement due to the paint condition; however, it shall not be

necessary to mail the Notice Package if the owner states that the paint condition did not appear within the first 36 months-in-service or that he/she did not own the Belgian Saab within the first 36 months-in-service or that he/she previously received a complete repair;

D. Within thirty (30) days of identification, send a copy of the Notice Package and return envelope, as described in Paragraph I.B., by first class mail to each subsequent owner of a Belgian Saab that has been identified by an original owner as having been sold within the first 36 months-in-service or within an unspecified time; provided that, if the original owner fails to specificially or completely identify the subsequent owner by name and/or address, Saab shall expeditiously attempt to identify the name and address of the current owner of that Belgian Saab, based on the Vehicle Identification Number, using either Saab's corporate or dealer records or state motor vehicle records and send the Notice Package to that address within thirty (30) days of identifying the current owner;

E. For any Notice Package (other than those sent pursuant to Paragraph I.F.) that is returned to Saab as being undeliverable, make a reasonable attempt to obtain the original owner's present address and send the Notice Package and return envelope by first class mail to that address; however, if unable to locate the original owner, send the Notice Package and return envelope by first class mail to the person identified as the current owner of that Belgian Saab based on the Vehicle Identification Number in Saab's corporate or dealer records, and, if unable to so identify and locate the current owner, take additional steps to make a reasonable attempt to obtain the current owner's present address and send the Notice Package and return envelope by first class mail to that address; however, such additional attempts need not include use of a commercial locator service except as provided in Paragraph I.F.;

F. Use a commercial locator service to endeavor to obtain correct addresses and locate owners if, at any time within ninety (90) days of the date the Notice Packages were sent, as provided in Paragraphs I.B. and I.D., Saab learns from dealers, the United States Postal Service, or otherwise that the Notice Packages have not been or will not be delivered to twenty percent (20%) or more of the number of owners eligible pursuant to Paragraph I.A.;

Inspection

G. Within sixty (60) days after the owner submits the Request Form to Saab requesting an inspection, schedule and perform inspections of each Belgian Saab for which:

1. The owner has completed and mailed to Saab the Request Form requesting inspection/repair within sixty (60) days after Saab sent the Notice Package to this owner;

2. The owner can provide reasonable proof that he/she owned and/or legally possessed the Belgian Saab within its first 36 months-in-service; and

3. The owner has stated in a signed statement that the paint condition occurred within the first 36 months-in-service;

H. Have a representative of Saab conveniently available to the owner to arrange for inspections and repairs, to review documentation, and to determine eligibility for repair;

Repair

I. Determine which owners are eligible for repair based upon the following criteria:

1. The owner owned the Belgian Saab within the first 36 months-in-service;

2. The paint condition occurred within the first 36 months-in-service;

3. The owner owned the Belgian Saab at a time when the paint condition occurred;

4. The owner has not previously received a complete repair; and

5. The original owner did not purchase the Belgain Saab in Massachusetts;

J. Except as provided in Paragraphs I.K. and I.M., send by first class mail within thirty (30) days after the inspection, described in Paragraphs I.G. through I.H., to each owner whose Belgian Saab was inspected, a letter informing the owner whether he/she is eligible for repair, and if not eligible, the reasons therefor, which letter shall contain the following:

1. If the owner's Belgian Saab is eligible for repair: (a) What Saab will do to repair the paint condition; (b) when Saab will provide repair, which shall not be at a time greater than sixty (60) days after receipt of the owner's request for repair following Saab's notification to the owner of his/her eligibility; (c) where the repair will be provided, whether at a dealership or other location convenient to the owner; (d) how the owner can arrange the date and time for the repair, or set the date and time for the repair with allowance for change by the owner if necessary; (e) how long the owner has to respond and request repair, but this period shall not be less than thirty (30) days from the date the owner receives this letter nor more than forty-five (45) days after Saab sends it; and (f) whom the owner should contact with questions about the repair procedure, with appropriate telephone number(s) and address(es); and

2. If Saab rejects the request for repair: (a) The reason(s) why the request was rejected and (b) instructions on how the owner can seek reconsideration of the rejection by Saab within forty-five (45) days of the date Saab mails this letter rejecting the repair request;

K. At its option, authorize dealers to arrange for performing repairs simultaneously with or immediately following the inspection; provided that such arrangements shall be at a time and place mutually convenient to the owner and the dealer, and if such arrangements are not made at the time of inspection, comply with the notification requirements as set forth in Paragraph I.J.;

L. Repair the paint condition on each eligible Belgian Saab at no cost to the owner within sixty (60) days after the owner requests an appointment for repair following Saab's notification to the owner of his/her eligibility; provided that:

1. The owner has not accepted any offer of cash settlement made by Saab, as set forth in Paragraph I.M., if Saab makes such an offer; and

2. Saab shall not be responsible or liable under this order for repair costs in excess of $2000.00 per Belgian Saab;

Cash Settlement

M. At Saab's option, offer the owner a cash settlement in lieu of repairs, as follows:

1. Any offer for a cash settlement shall be made to the owner in writing and shall be sent by first class mail to the owner, in duplicate, within thirty (30) days after the inspection and include a self-addressed, postage-paid envelope;

2. The offer shall explain that the owner may accept the cash settlement by signing and returning one (1) copy of the written offer within thirty (30) days in the envelope provided;

3. Saab may determine the amount of the cash settlement, but the letter, as described in Paragraph I.M.2., must include: (a) An explanation that accepting the cash settlement nullifies the owner's right to a free repair; (b) what Saab would do to repair the paint condition if the owner does not accept the cash settlement and the other information as required by Paragraph I.J. 1. and 2.; (c) Saab's estimate of the cost of repairing the vehicle if the owner has the repair made on his/her own; and (d)

instructions on how to obtain the cash settlement;

4. If the owner accepts Saab's offer, Saab shall send the cash settlement within thirty (30) days of receiving the owner's acceptance;

5. If the owner does not accept the offer within the later of thirty (30) days after the owner receives it or forty-five (45) days after Saab sends it, Saab shall perform its obligations to repair, as set forth in Paragraph I.L. as if no cash settlement had been offered;

Reconsideration of Rejection

N. Within thirty (30) days after an owner requests reconsideration pursuant to Paragraph I.J., review the rejected request and either (a) determine that the owner does not qualify for repair and send to the owner by first class mail a second letter describing the reason(s) for the rejection; or (b) determine that the owner does qualify for repair and notify the owner and provide repairs as set forth in Paragraphs I.J. and I.L. or offer cash settlement as set forth in Paragraph I.M.;

Reimbursement

O. Determine which owners are eligible for reimbursement for past repairs based upon the following criteria:

1. The paint condition occurred within the first 36 months-in-service;

2. The owner owned the Belgian Saab within the first 36 months-in-service;

3. Initial repair(s) was (were) attempted within the first 42 months-in-service;

4. The owner has not previously received a complete repair;

5. The original owner did not purchase the Belgian Saab in Massachusetts;

6. The owner provides adequate documentation of the amount of expenses incurred and evidence that the expenses incurred were due to the paint condition; provided that (a) such documentation and evidence shall include but is not limited to itemized receipts for work done by dealers, auto body shops, or other providers of repairs; or cancelled checks paid to dealers, auto body shops, or other providers of repairs if accompanied by related evidence of prior contact with Saab or a dealer regarding the paint condition; or other records reasonably demonstrating that the owner's Belgian Saab had the paint condition and was repaired either partially or completely and (b) Saab shall instruct its dealers to provide, upon request, copies of repair bills or receipts for repairs performed by or through a dealer to assist the owner in obtaining documentation; and

7. The owner's request for reimbursement is mailed within sixty (60) days after the date Saab sent the Notice Package to this owner;

P. Within thirty (30) days after the owner has returned to Saab the Request Form requesting reimbursement and submitted evidence of repair expenses, as described in Paragraph I.O.4., reimburse in person or by first class mail each eligible owner of a Belgian Saab for all reasonable repair expenses (not to exceed $2,000.00) incurred for attempts to eliminate the paint condition, whether or not they eliminated the condition.

Q. In each instance where Saab rejects an owner's request for reimbursement or reimburses an amount less than the amount requested, provide the owner, in writing, within thirty (30) days after Saab receives the owner's request for reimbursement: (1) The specific reasons for the decision; and (2) how the owner may seek reconsideration by Saab;

Limitations

R. In the event that an owner (or owners) qualifies for both repair and reimbursement, provide free repairs and reimbursement as outlined in Paragraphs I.L. and I.P.; however, Saab shall not be responsible or liable under this order for a total of reimbursement and repair costs in excess of $2000.00 per Belgian Saab, and if the total amount for which the owner(s) would be eligible would exceed $2000.00, offer the owner(s) the choice of how to allocate the money as between repair and reimbursement;

S. Saab shall have no obligations under this Order.

(1) To any owner who has received a Notice Package from Saab, unless the owner has notified Saab of a request for inspection, repair, or reimbursement within sixty (60) days of the owner's receipt of the Notice Package; or

(2) To any owner who has not received a Notice Package from Saab, unless the owner has requested information from Saab concerning inspection, repair, or reimbursement related to the paint condition within 240 days from the date of Saab's initial mailing of the Notice Package to original owners pursuant to this order.

II

Notice to Dealers

It is further ordered that, within twenty (20) days after the date of service of this order, Saab shall:

A. Provide to every dealer a copy of the "Notice to Dealers" as provided in Attachment B to this order; and

B. Notify all dealers in writing to forward owner inquiries, as described in Paragraph I.C., to Saab within five (5) business days after the owner inquires.

III

It is further ordered that for three (3) years after the date of service of this order, Saab shall maintain and upon request make avialable to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with this order, including but not limited to:

A. A log stating the name and address of each owner sent the Notice Package, the date on which the Notice Package was sent, the date of any response(s), and the nature and date of Saab's ultimate disposition of the owner's request for repair or reimbursement;

B. Copies of all correspondence and other communicatons to, from, or concerning any such owner;

C. The name and last known address of each original owner known to Saab who was not sent a Notice Package and the reason why the Notice Package was not sent; and

D. All documents relied upon, or concerning, any decision by Saab about inspecting, repairing, or offering a cash settlement for the paint condition.

IV

It is further ordered that Saab shall notify the Commission at least thirty (30) days prior to any change in its corporate structure, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

V

It is further ordered that Saab shall, within 65 days and 510 days after the date of service of this order, file with the Commission reports, in writing, setting forth in detail the manner and form in which it has complied with this order.

Attachment A

Notice of Program To Determine Eligibility for Free Repair or Reimbursement

[Date sent]

Dear Saab Owner: You may be eligible for a free repair or reimbursement for past repairs if your Saab developed a particular paint condition that occurred on a percentage of Saab automoblies built before 1979. It appears that the paint finish on some Saabs that were assembled in Belgium was not up to the usual high quality of Saab automobiles.

On some of these Belgium-assembled Saabs, the paint may lift or blister, sometimes

causing rust to form. The paint condition was caused by incomplete adhesion of the paint to the sheet metal. This condition is different from rusting that may result from road conditions, such as snow and salt. To repair the paint condition properly, affected body panels should be stripped to the sheet metal surface and prepared, primed and repainted. The paint condition does not affect the performance, operation, or safety of the car.

Because Saab-Scania has a continuing interest in the quality of our cars and the satisfaction of our customers, we have agreed with the Federal Trade Commission that under certain circumstances we will offer free repairs or reimbursement for repairs previously performed at your expense. It will be necessary to inspect your car to determine eligibility for free repairs.

You need not be the original owner or own the car now to be eligible. But, you must meet the following conditions and return the attached form within 55 days of the date of this letter.

You May Be Eligible for Inspection and Free Repair if

- Your car was originally purchased on or after January 1, 1978,
- The paint condition appeared within 36 months after the car was delivered to the first owner, and
- The car was never repaired or a partial repair was attempted and the condition reoccurred.

If You Request Inspection and Free Repair

- Please complete the enclosed form and send it to us within *55 days* of the date of this letter.
- We will get back to you within 60 days of receiving your completed form with the results of our review.
- We may then schedule a date for inspection of your car at a Saab dealer in your area.
- Within 30 days after the inspection, we will tell you whether and how your car will be repaired.

You May Be Eligible for Reimbursement if

- Your car was originally purchased on or after January 1, 1978,
- The paint condition appeared within 36 months after the car was delivered to the first owner, and
- You paid for a repair that was performed within the first 42 months.

If You Request Reimbursement

- Please complete the enclosed form and send it to us, with copies of all your supporting documentation, within *55 days* of the date of this letter.
- We will get back to you within 30 days of receiving your completed form with the results ofour review.
- If we approve your request, in whole or in part, we will include a check for your reimbursement.
- If we do not approve your request, in whole or in part, we will tell you the specific reasons for our decision.

If you believe you qualify for repair, reimbursement or both, please complete and sign the enclosed form and return it to us in the return envelope we have provided for your convenience. To be eligible for free repair or reimbursement, *you must return the form with any necessary documents within 55 days of the date of this letter.*

If you have any questions about this letter or Saab's offer, please call us at 203–795–5671 and ask to speak to our National Consumer Relations Coordinator.

Very truly yours,

Saab-Scania of America, Inc.

Alex S. Lieuwma,

National Service Manager.

P.S. In order to be sure we reach all Saab owners who may be eligible for repair or reimbursement, we need your help. *If you sold your Saab within the first 36 months, and you are not seeking reimbursement* for repairs made while you owned the car, *please send us the name and address of the person you sold the car to* and the approximate date on which you sold the car. You may use the enclosed postage-paid postcard, to let us know, that you sold your car. Even if you don't know the buyer's name or address, please return the card indicating that the car was sold within the first 36 months. Thank you for your assistance.

[Request Form]

SAAB–Scania of America, Inc.

Request for Inspection/Repair or Reimbursement for the Cost of Repair of Paint Conditions on Belgian-assembled Saabs

(Please retrun this form within 55 days.)

Name ———
Address ———
———
Vehicle Identification Number (VIN) ———

(The VIN is the number written on the envelope next to your address.)

1. When did you purchase your Saab?

2. From whom did you purchase your Saab?

Name:———
Address: ———
———

3. Since your bought your Saab, either new or used, has the paint peeled or blistered:
Yes—— no ——.

4. If the paint peeled or blistered, please answer the following questions. (If the paint has *not* peeled or blistered, please use the attached postcard instead of this form.)

(a) When did the peeling or blistering first occur? Month ———, year ———.

(b) Please describe the extent and location of the peeling or blistering. ———
———
———

(c) Did you try to have the condition repaired?
Yes ——, no ——.

5. If your tried to have the condition repaired, please answer the following questions.

(a) When were the repairs done?
Month ———, year ———.

(b) Who did them?
Name:———
Address: ———
———

(c) Did you pay any money attempting to have the condition repaired?
Yes ——. If yes, how much did you pay? ——.
No ——.

(d) Have you been reimbursed by Saab or the dealer or any of this cost?
Yes ——. If yes, when? ——. How much?
$——.

6. Has the paint condition reoccurred on any portion of the car?
Yes ——, no ——.

7. If the paint condition reoccurred, please answer the following questions.

(a) When did it reoccur?
Month ———, year———.

(b) Please describe the extent and location of any peeling or blistering. ———
———
———
———
———

(c) Did you try to have the condition repaired?
Yes ——, no ——.

8. If you tried to have the paint condition repaired, please answer the following questions:

(a) When were the repairs done?
Month ———, year ———.

(b) Who did them?
Name:———
Address: ———
———

(c) Did you pay any money attempting to have the condition repaired?
Yes ——. If yes, how much did you pay?
$——.
No ——.

(d) Have you been reimbursed by Saab or the dealer for any of this cost?
Yes ——. If yes, when? ——. How much?
$——.
No ——.

9. If you paid for repairs and were not reimbursed, you may be eligible for reimbursement.

Please supply copies of the following documents if you have any of them:

(a) Repair orders, letters or other written records to or from any Saab dealer, Saab-Scania of American, Inc., and any government or consumer organization, or others discussing the paint condition and the date it occurred.

and

(b) Paint repair bills or invoices showing the date of repair, a description of the repair and the actual cost of the repair.

If you do not have all of the forms mentioned, send copies of whatever relevant records you do have. The repair shop or dealer may have copies of bills, and you may be able to get copies from them.

You may be eligible for reimbursement even if you no longer own your Saab.

10. If you own a Saab in which the paint condition occurred during the first 36 months and the *condition is still unrepaired,* you may be eligible for free repair of the condition. If you are in this category and would like Saab to inspect your car to determine if it is eligible for free repair, please tell us the name and address of the dealer most convenient for you.
Dealer Name: ———
Address: ———
———

11. If your have sold your Saab, please provide the approximate date on which you sold it and the name and address, if you know them, of the person to whom you sold it.

Date Saab Sold: _____
Buyer's Name: _____
Address: _____

_____

The above information is accurate to the best of my knowledge.

_____

Your signature

_____

Date

Thank you for filling out and returning this form. If you have requested free repair, we will let you know within 60 days whether you qualify for inspection and, if so, schedule and inspection date. If you have requested reimbursement, we will respond to you within 30 days.

Very truly yours,
Saab-Scania of America, Inc.
Alex S Liewma,
National Service Manager.

[Separate postcard]

(1) Your name: _____
Address: _____
Vehicle Identification Number (VIN) _____
(The VIN is the number written on the envelope next to your address.

(2) If your have sold your Saab, please provide the approximate date on which you sold it and the name and address, if you know, of the person to whom you sold it.
Date Saab sold: _____
Buyer's Name: _____
Address: _____

_____

(Please return this card even if you don't know the name of the person who brought your Saab. Just write in the approximate date on which you sold it.)

(3) If you still own your Saab and the paint condition has *not* occurred, please check here.——

Thank you.

Put only in letter to Mass. dealers.

• The car was not originally purchased in Massachusetts, and therefore was not included in a prior voluntary agreement entered into in that state.

Generally, the agreement further provides that an owner is eligible for reimbursement for expenses incurred in repairing the condition in the past if:

• The car was originally purchased on or after January 1, 1978,

• The paint condition appeared within 36 months after the car was delivered to the first owner,

• The owner requesting reimbursement owned the car sometime during the first 36 months (regardless of whether the owner still owns the car) and paid for a repair that was performed within the first 42 months,

• The owner requesting reimbursement did not already receive a complete repair (that is, at a cost to Saab-Scania of $800 or more) free of charge,

Put only in letter to Mass. dealers.

• The car was not originally purchased in Massachusetts.

An owner may qualify for both repair and reimbursement.

Saab-Scania is identifying original owners of Belgium-assembled cars purchased on or after January 1, 1978 and will be sending information directly to these owners about Saab-Scania agreement. An owner seeking inspection/repair or reimbursement will be required to complete a Request Form which will be included in the Notice Package sent by Saab-Scania to the owner.

All determinations of eligibility for inspection, repair and/or reimbursement will be made by Saab-Scania.

If an owner contacts you for information about eligibility for inspection, possible free repair or reimbursement, please refer the owner to our National Consumer Relations Coordinator at Saab-Scania in Orange, and tell the owner that you will pass along the owner's name to Saab-Scania. We are requesting that all dealers notify Saab-Scania of the owner's name within 5 days after the owner makes such an inquiry. The National Consumer Relations Coordinator can be reached at 203-795-5671 or by writing to her at Saab-Scania, on Saab Drive, Orange, CT 06477.

Very truly yours,
Alex S. Lieuwma
National Service Manager.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Saab-Scania of America, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint in this matter charges Saab-Scania of America, Inc. (Saab) with selling some automobiles with exterior paint that did not properly adhere to the underlying metal. As a result, the paint later lifted, peeled, or blistered. This paint condition occurred on some but not all Saabs that were assembled in Belgium and sold in the United States from 1974 through 1978. The 1978 Saab discontinued operations at the Belgium plant. However, the Commission alleges that Saab knew or should have known about the paint condition as of December 31, 1977. Therefore, as to Belgian Saabs sold after that date, the Commission charges Saab with a failure to disclose material information in violation of section 5 of the Federal Trade Commission Act.

Saab denies the Commission's allegations. Nonetheless, Saab has agreed to provide free repairs or reimbursement for previous repairs to owners of Belgian Saabs under certain circumstances.

Under Part I of the proposed order, Saab shall notify owners of Belgian Saabs that were initially purchased on or after January 1, 1978, about the order and offer to inspect the cars and review documentation concerning past repairs. Belgian Saabs are eligible for inspection and free repair if:

(1) The car was originally purchased on or after January 1, 1978, (however, it is not necessary for the original owner to still possess the vehicle);

(2) The paint condition appeared within 36 months after the care was delivered to the first owner;

(3) The current owner requesting the repair is either the original owner or has owned the car since sometime during the first 36 months after the car was delivered to the first owner;

(4) The car was not previously completely repaired, or a partial repair was attempted and the condition reoccurred; and

(5) The car was not orignally purchased in Massachusetts (such cars are not included in this order because they were previously covered by a 1979 agreement between Saab and the Massachusetts Attorney General).

Similar conditons apply to eligibility for reimbursement for past repairs. In addition, owners seeking reimbursement must be able to show that the repairs were made within the first 42 months of ownership.

Owners may qualify for both repair and reimbursement, but Saab is not responsible for more than $2000 per vehicle.

Part II of the proposed order requires Saab to notify its dealers concerning the terms of the order. Parts III—V require Saab to notify the Commission of any proposed changes in its corporate structure and to file appropriate compliance reports.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,
Secretary.

[FR Doc. 85-29480 Filed 12-11-85; 8:45 am]
BILLING CODE 6750-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 166

Customer Protection

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing a rule that would prohibit the use by Commission registrants of any agreement which obligates a commodity customer to pay the attorney's fees of such registrant in the event the customer commences litigation, or initiates a proceeding, pursuant to sections 5a(11), 14, 17(b)(10), or 22, of the Commodity Exchange Act arising from a dispute which occurs subsequent to the execution of the agreement.

DATE: Comments must be received by February 10, 1986.

ADDRESS: Comments on the proposal should be sent to: Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–6314.

FOR FURTHER INFORMATION CONTACT: Edward S. Geldermann, Attorney, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone (202) 254–9880.

SUPPLEMENTARY INFORMATION:

I. Background

Three statutorily created forums exists for the adjudication of customer claims for money damages resulting from violations of the Commodity Exchange Act (the "Act"): private rights of action in federal district court granted by section 22 of the Act; the Commission's reparation procedure created by section 14 of the Act; and the contract market- and registered futures association-sponsored arbitration procedures established by section 5a(11) and 17(b)(10) of the Act, respectively. Congress did not provide for the recovery of attorneys fees by the prevailing party from a losing party in an action brought pursuant to these provisions.

The "American rule," governing the recoverability of one's own attorney's fees from an opposing party in civil litigation, provides that in the absence of a statute or an enforceable contract therefore, attorneys' fees are not recoverable to a prevailing litigant unless the losing party acted "in bad faith, vexatiously, wantonly, or for oppressive reasons." [1] The American rule applies in all federal court civil proceedings by virtue of United States Supreme Court decisions,[2] and therefore governs the question of recoverability of attorneys' fees in actions brought pursuant to section 22 of the Act. In addition, by decision,[3] the Commission has announced that the American rule will apply in reparation proceedings conducted before the Commission pursuant to section 14 of the Act, and Part 12 of the Commission's regulations. While it is unclear whether arbitrators in section 5a(11) and 17(b)(10) arbitration proceedings have inherent power to award attorneys' fees if appropriate under the American rule,[4] it is clear that parties to an arbitration proceeding could, just as parties in a federal civil action or a reparation proceeding could, enter into private agreements authorizing the arbitrators to award attorneys' fees.

Apart from the bad faith exception to the American rule, the only other means for a customer or broker to recover his own attorneys fees in a proceeding brought pursuant to the various private remedies provisions of the Act is, as stated above, an enforceable agreement to that affect, since Sections 5a(11), 14 (a) and (b), 17b(10), and 22 of the Act do not expressly provide for such recovery.[5] It has been brought to the Commission's attention recently that at least one futures commission merchant ("FCM") has adopted a clause for use in its standarized customer agreement, executed at or near the time the customer's account is opened, obligating the customer to pay the attorney's fees incurred by the FCM in defending an action brought by the customer, in which action the FCM prevailed. [6]

The Commission believes that agreements executed in advance of a dispute obligating customers to pay the attorney's fees of their commodity brokers in the event the customer ever pursues his remedies under the Act ("pre-disputes attorneys' fees agreements") undermine the customer protection policies and the private enforcement policies underpinning sections 5a(1), 14, 17(b)(10), and 22 of the Act, and are therefore contrary to the Act. Accordingly, to clarify registrants' obligations in this regard, the Commission is proposing a customer protection rule prohibiting the using of pre-dispute attorneys' fees agreements by Commission registrants.[7] The proposed rule applies both to: (1) "bilateral" pre-dispute attorneys' fees agreements, *e.g.*, where both broker and customer before the dispute mutually promise to pay the other's attorneys fees should that other party prevail in litigation involving the two parties; and (2) "unilateral" pre-dispute attorneys' fees agreements where only the customer agrees to pay the broker's attorneys fees regardless of whether the broker prevails in the subsequent litigation. The proposed rule, if adopted as a final rule, would not bar the Commission registrant from executing an attorneys' fees agreement with a customer after the dispute occurs which serves as the basis for subsequent litigation.[8]

When it enacted sections 5a(11), 14, 17b(10), and 22 of the Act, Congress provided both a scheme for customer protection as well as a scheme for private enforcement of the Act to supplement the enforcement powers it granted the Commission and the self-

[1] *E.g. Hall* v. *Cole*, 412 U.S. 1, 5 (1973).

[2] *See e.g., Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U.S. 240 (1975); *Hall* v. *Cole*, 412 U.S. 1 (1973).

[3] *Sherwood* v. *Maddo Trading Company*, [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,728 (January 5, 1979).

[4] One court has assumed that arbitrators have inherent equitable powers to award attorneys' fees to the prevailing party in accordance with the American rule. *See Del. Dept. of Health* v. *U.S. Dept. of Education*, 592 F. Supp. 1038 (D. Del. 1984). Other courts would apply the American rule where a party refuses to comply with an arbitration award without justification. *See NALC* v. *U.S. Postal Service*, 590 F.2d 1171 (D.C. Cir. 1978); *Shearson Hayden Stone* v. *Liang*, 493 F. Supp. 104 (n.D. Ill. 1980), *off'd*, 653 F.2d 310 (7th Cir. 1981).

[5] Sections 14(d) and 14(e) of the Act both expressly authorize an award of attorneys' fees in connection with the judicial enforcement of a reparation award and judicial review of the Commission's reparation order, respectively. Thus, the rule proposed herein would have no application to these judicial proceedings conducted pursuant to section 14(d) or 14(e) of the Act.

[6] The rule proposal herein would apply to this kind of agreement as well as agreements which obligate the customer to pay the attorneys' fees of his broker, regardless of whether the broker ultimately prevailed.

[7] The term "Commission registrant" is defined in § 166.1 of the Commission's Regulations as "any person who is registered or required to be registered with the Commission pursuant to the Act or any rule, regulation, or order thereunder." This effectively includes all persons registered as a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor, leverage transaction merchant, floor broker and associated person.

[8] Once the dispute has occurred for which the customer seeks redress under the Act, both customer and broker are then in a position to evaluate their claims and defenses. At that juncture, the parties may find it desirable to execute a post-dispute attorneys' fee agreement because both adverse litigants feel confident of prevailing on the merits. The use of such agreements virtually eliminate the risk that customer would be discouraged from pursuing the various private remedies under the Act, would not jeopardize the Act's private enforcement scheme, and would not be inconsistent with the American rule. Thus, the Commission's proposed rules does not bar post-dispute attorneys' fees agreements and the Commission believes that such agreements are binding if otherwise in accordance with the state law.

regulatory duties it imposed on exchanges. In recognizing an implied right of action under the Act prior to the enactment of section 22 of the Act, the Supreme Court stated that the legislative history of the Act "clearly indicates that Congress intended to protect all futures traders from price manipulation and other fraudulent conduct violative of the statute." [9] The Court concurred in an assessment that the Commodity Exchange Act was enacted "for the 'especial benefit' of futures traders." [10] In reporting on the section of the bill that eventually became Section 22 of the Act, the House Committee on Agriculture declared that "the right of an aggrieved person to sue a violator of the Act is critical to protecting the public and fundamental to maintaining the credibility of the futures market." [11] And the Supreme Court has recognized that both reparations and the arbitration procedures established by the Act were intended by Congress to be supplementary means for "compensating injured traders," alternative to the private right of action under the Act." [12]

Aside from the customer protection purposes inherent in the remedies afforded by sections 5a(11), 14, 17b(10), and 22 of the Act, these provisions were also intended to serve as a private enforcement mechanism designed to supplement the broad enforcement powers conferred upon the Commission and the self-regulatory responsibilities imposed upon the contract market.[13] The Supreme Court has stressed the importance of the implied private right of action "as a tool for enforcement of the self-regulation concept of the CEA." [14] And Congress in 1982 made it clear that reparations and arbitration stand on equal footing with private rights of action created by section 22 of the Act as significant enforcement tools. In this regard, the House Agriculture Committee stated that "[t]he availability of these remedies—reparations, arbitration and private rights of action—supplements, but does not substitute, for the regulatory and enforcement program of the CFTC and self-regulatory agencies." [9] Indeed, the Committee expressed concern that the Commission and self-regulatory bodies such as exchanges and NFA use their own enforcement tools vigorously to protect the investig public so that it does not become necessary to rely solely upon private litigants as the "policemen of the Commodity Exchange Act." [16]

Given the customer protection features of sections 5a(11), 14, 17(b)(10), and 22 of the Act, the Commission believes that private agreements that discourage customers from exercising the rights afforded by these provisions would undermine the role that these remedies perform in encouraging the public's participation and confidence in the futures markets. It is not difficult to foresee that a substantial number of customers would sign their names to a pre-dispute attorneys' fee agreement out of eagerness or impatience to trade in the markets, or because they may have already reposed confidence and trust in their broker and do not wish to disappoint the broker by declining to excecute the agreement, or because the likelihood of litigation seems so remote when the account is opened or the agreement executed.

That such agreements do discourage the pursuit of redress, once a dispute has occurred, cannot be seriously questioned. Indeed, one of the main reasons for the Supreme Court's adoption of the American rule in this country (whereunder each party generally bears its own legal fees) was its recognition that:

> Since litigation is best uncertain one should not be penalized for defending or prosecuting a lawsuit, and that the poor might be unjustly discouraged from instituting actions to vindicate their rights if the penalty for losing included the fees of their opposing counsel.[17]

While the Commission does not liken commodity customers as a whole to the poor, customers' resources are often no match for what their brokers might be willing to expend on litigation.[18] And customer reluctance to pursue their various private remedies under the Act is likely to result in loss of investor confidence in the commodity markets.

The Commission also believes that predispute attorneys' fee agreements, by discouraging customers from seeking redress pursuant to sections 5a(11), 14, 17(b)(10), and 22 of the Act, significantly undermine the private enforcement scheme contemplated by Congress in enacting these provisions. As stated above, Congress is relying on the various private remedies as a supplement to the Commission's broad enforcement powers and the self-regulatory enforcement responsibilities imposed upon exchanges and registered futures associations. Agreements which inhibit customers from pursuing these remedies jeopardize this private enforcement scheme and threaten the integrity of the markets.

The Commission is cognizant that the rule, if adopted as proposed, would neither encourage litigation nor subject Commission registrants to bear the cost of litigation in all cases. The proposed rule would not encourage litigation simply by maintaining unfettered access to remedies afforded by sections 5a(11), 14, 17(b)(10) and 22 of the Act to customers who have executed pre-dispute attorneys' fees agreements. Commodity brokers who would be prohibited from executing predispute agreements, or who would have existing agreements nullified, by the proposed rule would still be protected from vexatious or bad faith litigation by the American rule which, as discussed earlier, is available at least in the reparations and federal district court forums. And the proposed rule would not restrict agreements requiring the reimbursement of attorneys fees by customers executed after the dispute arose.[19]

The Commission is also proposing to make the rule, once effective, retroactive as well as prospective. Thus, the rule would apply to *all* predispute attorneys agreements so that existing agreements also would not be enforceable on and after the rule's effective date. The Commission invites comments from the public and any interested persons by February 10, 1986, on whether it should adopt the rule herein proposed.

II. Regulatory Flexibility Act and Other Matters

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601, *et seq.*, requires agencies when adopting final rules to consider the impact of those rules on small businesses. While the rule as proposed could augment a litigation-related cost to one of the parties to an arbitration, reparation, or section 22 judicial proceeding, it would be speculative to quantify the likelihood that a particular small business entity will become a party in any such proceeding, and thus subject to this

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[9] *Merrill Lynch, Pierce, Fenner & Smith V. Curran*, 456 U.S. 353, 390 (1982).

[10] *Id.*

[11] H.R. Rep. No. 565 Pt. 1, 97th Cong. 2d Sess. 57 (1982) (hereinafter referred to as "1982 House Report").

[12] 456 U.S. 353, 384 (1982).

[13] 456 U.S. 353, 384 (1982).

[14] *Merrill Lynch Pierce, Fenner & Smith v. Corrant*, 456 U.S. 353 (1982).

[15] 1982 House Report, *supra* note 7, at 57.

[16] *Id.*

[17] *Fleischmann Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714, 718 (1967).

[18] In fact, one of Congress' purposes in establishing the Commission's reparations procedure was to create a federally-sponsored "small claims" court. *See* S. Rep. No. 850, 95th Cong., 2d Sees. 16 (1978), *reprinted in* 1978 U.S. Code Cong. & Ad. News 2067, 2104.

[19] *See* note 8, *supra*.

increased cost. Moreover, the Commission has no reason to believe that the use of pre-dispute attorneys' fees agreements is prevalent in the commodities industry. Since this rule would not impact on any small business entities unless and until they execute agreements affected by the proposed rule, the proposed rule would not be likely to have a significant economic impact on small business entities. Accordingly, pursuant to section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman certifies that § 12.407(d), as amended herein, would not have a significant economic impact on a substantial number of small business entities.

The Paperwork Reduction Act, 44 U.S.C. 3504(h)(1) requires agencies no later than the publication of a notice of proposed rulemaking in the **Federal Register** to forward to the Director of the Office of Management and Budget a copy of any proposed rule which contains a collection of information requirement. Because the rule proposed herein—one prohibiting pre-dispute attorneys' fees agreements between customers and commodity brokers—does not contain a collection of information requirement, or an "information collection request" within the meaning of 44 U.S.C. 3502(4), the Commission has determined that the provisions of the Paperwork Reduction Act do not apply.

List of Subjects in 17 CFR Part 12

Arbitration, Commodity exchange, Commodity futures, Contract markets, Reparations, Registered futures associations.

PART 166—[AMENDED]

17 CFR Part 166 is amended as follows:

1. The authority citation for Part 166 is proposed to be revised to read as follows:

Authority: 7 U.S.C. 4, 6b, 6c, 6h, 6i, 6o, 71a(11), 12a, 18, 21(b)(10), 25.

2. Part 166 is proposed to be revised by adding a new section 166.5 to read as follows:

* * * * *

§ 166.5 Prohibition Against Pre-Dispute Attorneys' Fees Agreements.

No Commission registrant shall execute, or require or cause a customer to execute, or seek to enforce, an agreement obligating a customer to pay the attorneys' fees incurred by the Commission registrant, in connection with an action or proceeding instituted by the customer pursuant to sections 5a(11), 14, 17(b)(10), or 22 of the Commodity Exchange Act, where the execution of such agreement is made in advance of the dispute which gives rise to such action or proceeding.

* * * * *

Issued in Washington, DC on December 6, 1985, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-29424 Filed 12-11-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-85-41]

Drawbridge Operation Regulations; Orange River, FL

AGENCY: Coast Guard, DOT.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Coast Guard is withdrawing a proposed rule concerning the State Road 80 drawbridge between Fort Myers Shores and Tice. The proposed rule would have provided that the draw need no longer open for passage of vessels. The proposal is being withdrawn because public comments indicated a continuing need for draw opening.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, (305) 536-4103.

SUPPLEMENTARY INFORMATION: On September 9, 1985 the Coast Guard published (50 FR 36630) a proposal to revise these regulations. The proposed regulations were also published in a public notice issued by Commander, Seventh Coast Guard District on September 24, 1985. In each notice interested persons were given until October 24 to submit comments.

Many of the comments received described vessels that operate, or will be operating, on the Orange River and cannot pass beneath the closed draw. After reviewing these comments the Coast Guard has decided to withdraw the proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

Accordingly, the proposed rule published in the **Federal Register** (50 FR 36630) on September 9, 1985 is hereby withdrawn.

Dated: November 25, 1985.

R. P. Cueroni,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 85-29475 Filed 12-11-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 166

[CGD 85-097]

Port Access Routes; Approach to Tampa Bay, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of study.

SUMMARY: The Coast Guard is undertaking a study of the fairway anchorage sites and areas adjacent to the fairway in the approach to Tampa Bay, Florida. New fairway anchorage sites are being considered for this area. This study is being conducted in accordance with the standards contained in the Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1223 and 1224). As a result of this study, new or modified fairway anchorage sites may be proposed in the **Federal Register**. Also, the results of this study could cause restrictions in the manner in which specific offshore areas leased after the date of this notice may be explored or developed.

DATE: Comments are due on or before February 10, 1986.

ADDRESS: Commander (mps), Seventh Coast Guard District, Miami, FL 33130.

FOR FURTHER INFORMATION CONTACT: Lieutenant (j.g.) Harry D. Craig, (305) 350-5651.

SUPPLEMENTARY INFORMATION: The area to be examined during the study is bounded by a line connecting the following geographic positions.

	Latitude	Longitude
(1)	27°45'00" N	83°30' 00" W
(2)	27°45'00" N	82°50' 00" W
(3)	27°27'00" N	82°50' 00" W
(4)	27°27'00" N	83°30' 00" W
(5)	27°45'00" N	83°30' 00" W

This area encompasses the present and proposed areas for fairway anchorage sites in the offshore approach to Tampa Bay, Florida, and a portion of the present Tampa Bay Safety Fairway. Safety fairways are areas in which no fixed structures are permitted and therefore may inhibit exploration and exploitation of mineral resources in the area so designated. A fairway anchorage is an anchorage area contiguous to and associated with a fairway, in which fixed structures may be permitted with a two mile spacing limitation (33 CFR 166.200 (c)(1)). The study area also includes tracts in the Eastern Planning Area for the Department of Interior's (DOI) lease sales 104 and 105.

Port access routing needs in the Tampa Bay approach area were

previously studied in 1980 and the results were published in the Federal Register on October 1, 1981 (46 FR 48376). It was noted that the DOI had only a small number of tracts in the area open for bid in 1981, none of which overlapped the Tampa Bay Fairway. Also, no navigational problems were anticipated at that time, and no additional routing measures were recommended during the study.

The Corps of Engineers (COE) estimates that the harbor deepening project in the Tampa Harbor will be completed by mid-December 1985 and should result in an increase in deep draft vessel traffic. The project has required the use of designated spoil areas witin the Tampa Bay Fairway adjacent to the southern Tampa Fairway Anchorage Area (33 CFR 166.200(d)(49)(ii)). The resulting depth of water (operational draft of 33 feet, 6 inches) has reduced the safety and convenience of access to and from the southern anchorage area to the fairway. In addition, the deeper channel (operational draft of 43 feet) will permit an increased number of deeper draft vessels to use the Tampa Harbor. The Tampa Port Authority, acting as sponsor on behalf of the Tampa Bay maritime community, has expressed concern about the present fairway anchorages in relation to the harbor deepening project. The Tampa Port Authority has requested consideration be given to redescribing and establishing new fairway anchorages. The Coast Guard has determined that a study of the situation is warranted and invites the public to submit information and comments which are relevant to solving this problem.

The use of conflict which is of current concern in the area to be studied involves the adequacy of the depth within and near the present anchorages. Present or potential placement of oil exporation and production facilities in or near traditional western approaches from the Gulf of Mexico to Tampa Bay, Florida is also a possible source of conflict in areas where routing measures exist.

During the study the Coast Guard will evaluate any reasonable alternatives. One specific alternative presented by the Tampa Port Authority is to establish a new fairway anchorage area to the west of the present northern fairway anchorage site (33 CFR 166.200(d)(49)(i)) and to eliminate the southern anchorage site (33 CFR 166.200(d)(49)(ii)). The remaining northern anchorage would then be designated Eastern (Shallow Draft) Tampa Fairway Anchorage and the new anchorage would be designated the Western (Deep Draft) Tampa Fairway Anchorage. The western fairway anchorage would be described as follows:

The area within rhumb lines joining points at:

Latitude	Longitude
27°39'00"N	83°01'00"W
27°36'48"N	83°01'00"W
27°36'48"N	83°05'06"W
27°39'00"N	38°05'06"W
27°39'00"N	83°01'00"W

The National Ocean Service has plans to conduct wire drag surveys of the eastern and western sites.

Although the above specific alternative will be examined during this study, comments and recommendations or other information need not be limited to this alternative.

Vessel operators are invited to comment on any positive or negative impacts which may result from modifying the fairway anchorages within the study area. Likewise, offshore developers are encouraged to identify and support any foreseeable cost or benefits from possible modification of fairway anchorages in the study area and to identify interests in developing the areas of the existing South fairway anchorage (described at 33 CFR 166.200(d)(49)(ii)).

Particular issues to be examined during the study are:

—The impact on present leaseholders in the vicinity, on prospective lease sales, and on tract exploration and development.
—The location of pipelines or other underwater features which might affect anchoring.
—The effect two anchorages on one side of the fairway will have on traffic (e.g. crossing traffic and possible confusion between inbound and outbound traffic).
—The value of having a fairway anchorage recommended for deep draft vessels.
—The number, size, and purpose of vessels expected to use the anchorage, in relation to the depth and size of the area to be designated.
—The weather in the area of the proposed fairway anchorage.
—The type and amount of fishing activities and existing or proposed artificial reefs in the area of the proposed anchorage.

The Seventh Coast Guard District will be conducting the study and developing recommendations. Following is the name, address and telephone number of the project officer who will be responsible for the study of this area: Lieutenant (j.g.) Harry D. Craig, Seventh Coast Guard District (mps), Miami, FL 33130, (305) 350–5651.

The Coast Guard is interested in receiving information and opinions from persons who have an interest in safe routing of ships as affected by other uses of the area. Written comments should be mailed to the above address. In accordance with the PWSA, the Coast Guard will consult with the Departments of State, the Interior, Commerce, Army, and with the Governor of Florida during the study. In order to be most useful, any relevant information should be made available to the Seventh District office by the end of the comment period.

Procedural Requirements

In conducting this study, the Coast Guard will be governed by certain procedural requirements which are emphasized here to assist those who wish to submit comments. These requirements are based on the mandates of the PWSA. The Coast Guard also considers its experience in the areas of vessel traffic management, navigation, shiphandling, the effects of weather, and prior analysis of the traffic density in certain regions.

The PWSA directs that "in order to provide safe access routes for movement of vessel traffic proceeding to and from ports . . . the Secretary shall designate necessary fairways and traffic separation schemes" in which the "paramount right of navigation over all other uses" shall be recognized. Before a designation can be made, the Coast Guard is required to "undertake a study of the potential traffic density and the need for safe access routes."

During the study, the Coast Guard is directed to consult with federal and state agencies and to "consider the views of representatives of the maritime community, port and harbor authorities or associations, environmental groups, and other parties who may be affected by the proposed action."

In accordance with 33 U.S.C. 1223(c), the Coast Guard will "to the extent practicable, reconcile the need for safe access routes with the needs of all other reasonable uses of the area involved." The results of this study will be published in the Federal Register. If the

Coast Guard determines that new fairway anchorage sites are needed, a notice of proposed rulemaking will be published.

It is anticipated that the study will be concluded by June 1986.

Dated: December 5, 1985.

T. J. Wojnar,

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

[FR Doc. 85-29476 Filed 12-11-85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-2921-9]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusions and Proposed Organics Model

Correction

In FR Doc. 85-27068, beginning on page 48943 in the issue of Wednesday, November 27, 1985, make the following corrections:

1. On page 48948, first column, the equation in the footnote should appear as follows:

Example:

$$\frac{7{,}000\ \text{gal/day} \times 500\ \text{ppm}}{(0.05\%)} \times \frac{1}{99.95} \times \frac{\text{day}}{3 \times 10^6\ \text{gal}} = 0.01\ \text{ppm}$$

2. On page 48956, first column, in the equation following the sixth line of text:

a. In the second line of the equation, "2.14E05" should read "2.14E-05".

b. In the third line of the equation, "0.44" should read "0.044".

3. On page 48959, third column, the eigtheenth line should read: "$Cw = 0.044 * (10)^{-.71} * (1.67 * 10^{4})^{-.31}$".

4. On page 48960, first column, in paragraph "A.", the first line of the equation should read: "$Cw = BO * C^{x} * S^{y}$.

5. On page 48962, second column, second full paragraph, the formula in the tenth line should read: "$D_1 = \alpha_1 \dot{v} + D^{*}$".

6. On page 48963, first column, the formula in the fifteenth line should read: "$Z = (\alpha_z Y')^{\alpha_z Y'}$".

7. On page 48963, third column, the equation following the sixth line should read:

$$C = \frac{16(2Q)\theta}{2\pi L_v (2\pi)^{0.5} \sigma_z u} = \frac{2.03Q\theta}{L_v \sigma_z u}$$

BILLING CODE 1505-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6692]

Proposed Flood Elevation Determinations; Colorado et al.

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the Nation. These base (100-year) flood elevations are the basis for the flood plain management measures 1that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the Nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premimum rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determintion under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determiantions, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Colorado	Montrose County	Cedar Creek	50 feet downstream of center of U.S. Highway 50	None	*5,670
		Montrose Arroyo	450 feet upstream of confluence with Cedar Creek	None	*5,741
Maps available for inspection at the Planning Department, 320 S. 1st Street, Montrose, Colorado. Send comments to the Honorable Neal Reams, Box 1269, Montrose, Colorado 81402.					
Florida	Unincorporated Areas of Wakulla County	Gulf of Mexico/Oyster Bay	Inland of Oyster Bay	*23	*21
			Just inland from shoreline around Grass Inlet	*23	*22
		Gulf of Mexico/Apalachee Bay	Just inland from shoreline along the southern end of State Road 367.	*22	*21
			Just inland of the eastern shoreline along Goose Creek Bay.	*23	*21
			At shoreline along the southern end of State Road 367.	*22	*23
Maps available for inspection at the Wakulla County Courthouse, County Clerk Office, Courthouse Square, P.O. Box 337, Crawfordville, Florida. Send comments to Honorable Avery Scott, Chairman, Wakulla County Board of County Commissioners, Wakulla County Courthouse, Courthouse Square, P.O. Box 337, Crawfordville, Florida 33327.					
Illinois	Village of Crestwood Cook County	Tinley Creek	Just upstream of 127th Street	*595	*594
			About 800 feet upstream of Elementary Christian School Road.	*609	*611
		Shallow Flooding (overflow from Tinley Creek).	Just east of Playfield Drive	None	*596
			Just east of West Playfield Drive	None	*600
			Approximately 400 feet west of the 127th Street bridge over Tinley Creek.	None	*600
			Just north of the intersection of Carriage Lane and 126th Plaza.	None	*606
Maps available for inspection at the Village Office, 13840 South Cicero Avenue, Crestwood, Illinois. Send comments to Honorable Chester Stranczek, Mayor, Village of Crestwood, 13840 South Cicero Avenue, Crestwood, Illinois 60445.					
Illinois	Village of Fox Lake Lake and McHenry Counties	Pistake Lake	Shoreline	*742	*741
		Nippersink Creek	At mouth	*742	*741
			About 0.75 mile upstream of mouth at Pistakee Lake	*742	*743
Maps available for inspection at the Village Hall, 301 South Route 59, Fox Lake, Illinois. Send comments to Honorable William C. Dam, Mayor, Village of Fox Lake, Village Hall, 301 South Route 59, Fox Lake, Illinois 60020.					
Louisiana	City of Tallulah Madison Parish	Ditch L-7CC-1	Approximately 1,725' downstream of corporate limits	None	*75
			Upstream side of Louisiana Street	None	*78
			Downstream side of State Route 601	None	*83
Maps available for inspection at 204 North Cedar Street, Tallulah, Louisiana. Send comments to Honorable Leander Anthony, Mayor of the City of Tallulah, Madison Parish, 204 North Cedar Street, Tallulah, Louisiana 71282.					
Michigan	City of Warren Macomb County	Red Run Drain	Just upstream of Fourteen Mile Road		
			Just downstream of Dequindre Road	*621	*619
		Big Beaver Creek	Within community	*611	*610
		Bear Creek	Mouth at Red Run Drain	*611	*610
			About 650 feet upstream of Thirteen Mile Road	*611	*611
		Merkle Drain	Mouth at Red Run Drain	*613	*611
			Just downstream of Service Drive	*615	*614
Maps available for inspection at the Planning Department, 29500 Van Dyke Avenue, Warren, Michigan. Send comments to Honorable James R. Randlett, Mayor, City of Warren, City Hall, 29500 Van Dyke Avenue, Warren, Michigan 48093.					
Minnesota	City of St. Louis Park Hennepin County	Minnehaha Creek	Just upstream of Meadowbrook Road	*895	*895
			About 350 feet downstream of West 37th Street	*907	*905
			Just upstream of Jordan Avenue	*908	*908
Maps available for inspection at the Planning Department, 5005 Minnetonka Boulevard, St. Louis Park, Minnesota. Send comments to Honorable Lyle Hanks, Mayor, City of St. Louis Park, City Hall, 5005 Minnetonka Boulevard, St. Louis Park, Minnesota 55416.					
Mississippi	City of Brandon Rankin County	Terrapin Skin Creek	About 100 feet downstream of the east-bound span of Interstate 20.	*340	*340
			About 150 feet upstream of the west-bound span of Interstate 20.	*343	*344
			About 0.6 mile downstream of State Highway 471	*354	*354
		Terrapin Skin Creek Tributary 2	At confluence with Terrapin Skin Creek	*345	*345
			About 500 feet upstream of Thorngate Drive	*351	*353
			About 1.0 mile upstream of Thorngate Drive	*369	*370
Maps available for inspection at the City Hall, 205 West Government Street, Brandon, Mississippi. Send comments to Honorable Manning Cooper, Mayor, City of Brandon, P.O. Box 67, Brandon, Mississippi 39042.					
Mississippi	City of Jackson, Hinds and Rankin Counties	Old Pearl River	Southeast of the East Jackson Levee	None	*263
Maps available for inspection at the Planning and Development Department, P.O. Box 17, Jackson, Mississippi 39205. Send comments to Honorable Dale Banks, Jr., Mayor, City of Jackson, P.O. Box 17, Jackson, Mississippi 39205.					
Missouri	Unincorporated Areas Jackson County	West Fork Sni-A-Bar Creek	About 0.5 mile downstream of Buckner Tarsney Road	*810	*813

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Just downstream of Buckner Tarsney Road	*813	*815
Maps available for inspection at the Jackson County Courthouse, 415 East Twelfth, Kansas City, Missouri. Send comments to Honorable Wiliam Waris, County Executive, Jackson County, Jackson County Courthouse, 415 East Twelfth, Kansas City, Missouri 64106.					
Nevada	Douglas County	Buckeye Creek	50 feet downstream of center of unnamed road approximately 1,800 feet upstream of confluence with lower Old Virginia Canal.	None	*4,777
Maps available for inspection at the Community Development Department, Valley Professional Building, 1645 Highway 395, Minden, Nevada. Send comments to The Honorable Bob Pruitt, Douglas County Board of Commissioners, Douglas County Courthouse, P.O. Box 218, Minden, Nevada 84423.					
New York	Canastota, Village, Madison County	Canastota Creek	Approximately 950' upstream of the confluence with Cowaselon Creek.	*394	*393
			Approximately 300' upstream of NYS Thruway	*401	*399
			Approximately 150' downstream of the upstream corporate limits.	*461	*460
		Owlville Creek	Approximately 1,525' upstream of the confluence with Cowaselon Creek.	*393	*392
			Approximately 400' upstream of NYS Thruway	*401	*399
			Upstream side of New Boston Street	*402	*401
Maps available for inspection at the Village Hall, 205 South Peterboro Street, Canastota, New York. Send comments to Honorable Donald F. Cerio, Mayor of the Village of Canastota, Madison County, Village Hall, 205 South Peterboro Street, Canastota, New York 13032.					
Pennsylvania	Greensburg, City, Westmoreland County	Jack's Run	At Mt. Pleasant Street	*998	*997
			Upstream of East Pittsburgh Street	*1,009	*1,001
			Third upstream corporate limits	*1,017	*1,012
		Tributary No. 5	Confluence with Jack's Run	*1,018	*1,012
			Upstream of Union Cemetery Road	*1,018	*1,015
			Third upstream corporate limits	*1,027	*1,025
Maps available for inspection at the Office of Ms. Barbara Ciampini, City Planning Department, City Hall, Greensburg, Pennsylvania. Send comments to Honorable Scott L. Brown, Mayor of the City of Greensburg, 416 South Main Street, Greensburg, Pennsylvania 15601.					
Pennsylvania	Hempfield, Township, Westmoreland County	Sewickley Creek	Approximately 1,000 feet downstream of Buffalo Creek confluence.	None	*933
			Downstream corporate limit of the Borough of New Stanton.	*939	*937
			Upstream corporate limit of the Borough of New Stanton.	*952	*949
			Upstream side of Trouttown Road	*958	*954
			Upstream side of State Route 819	*969	*965
			Upstream corporate limits	None	*966
		Jacks Run	Confluence with Sewickley Creek	*953	*951
			Downstream side of Depot Street at corporate limits	*953	*952
			Approximately 530 feet downstream of the Borough of Youngwood corporate limits.	*962	*956
			Upstream side of CONRAIL	*973	*969
			Confluence with Slate Creek	*979	*976
			Upstream corporate limit of City of Greensburg	*1,009	*1,002
			Confluence of Tributary No. 2	*1,023	*1,019
		Slate Creek	Confluence with Jack Run	*979	*976
			Upstream side of Reapier Road	*981	*979
			Upstream side of L.R. 64174	*1,000	*999
			Upstream side of Brookdale Drive	*1,022	*1,021
			Upstream side of State Route 130	*1,029	*1,028
			Roadman Lake	*1,059	*1,056
			Upstream side of Luxor Road	*1,088	*1,088
			Upstream corporate limit	*1,135	*1,142
		Zellers Run	Upstream side of Stanton Street	*1,020	*1,018
			Downstream corporate limit of the City of Greensburg	*1,029	*1,029
		Township Line Run	Confluence with Sewickley Creek	*970	*966
			Upstream side of 2nd Robert Shaw Acres bridge	None	*996
			Approximately .75 mile upstream of L.R. 64174	None	*1,070
		Belson Run	Confluence with Sewickley Creek	None	*933
			Upstream corporate limit of the Borough of Hunker	None	*1,007
			Downstream corporate limit of the Borough of New Stanton.	None	*1,044
			Sandworks Road outside corporate limits approximately 100 feet upstream of Sandworks Road.	None	*1,133
			Upstream corporate limits	None	*1,139
		Tributary No. 1 to Jacks Run	Confluence with Jacks Run	*984	*982
			Upstream side of Hunter Road	*984	*983
		Tributary No. 2 to Jacks Run	Confluence with Jacks Run	*1,023	*1,019
			Upstream side of L.R. 64164	*1,031	*1,025
			Upstream side of L.R. 64164	*1,031	*1,025
			Approximately 184.8 feet of L.R. 64164	*1,031	*1,026
		Tributary No. 5 to Jacks Run	Upstream side of U.S. Route 119	*1,018	*1,013
			Downstream side of Terrace View Road	*1,027	*1,025
			Downstream side of State Route 819	*1,064	*1,063
Maps available for inspection at the Township Building, Greensburg, Pennsylvania. Send comments to Honorable John Skiavo, Hempfield Township Supervisor, P.O. Box 500, Greensburg, Pennsylvania 15601.					
Pennsylvania	Mount Pleasant, Township, Westmoreland County.	Sowickley Creek	Approximstely 1,000 feet downstream of corporate limits.	None	*966

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Confluence of Brinkers Run	None	*972
			Upstream side of Township Route 780	None	*981
			Upstream side of Township Route 565	None	*992
			Upstream side of Township Route 824	None	*1,013
			Upstream corporate limits	None	*1,022
		Township Line Run	Downstream corporate limits	None	*966
			Upstream corporate limits	None	*974
		Brinkers Run	Confluence with Sewickley Creek	None	*972
			Approximately 750 feet downstream of Township Route 780.	None	*983

Maps available for inspection at the Municipal Building, Mammoth, Pennsylvania.

Send comments to Honorable Andrew L. Lipko, Chairman of the Board of the Township of Mount Pleasant, Westmoreland County, P.O. Box 158, Mammoth, Pennsylvania 15664.

Pennsylvania	Tionesta, Township, Forest County	Allegheny River	Downstream corporate limits	None	*1,041
			At confluence of Little Tionesta Creek	None	*1,046
			Upstream side of upstream crossing of U.S. Route 62 bridge (second crossing).	None	*1,050
			At upstream corporate limits	None	*1,061

Maps available for inspection at R.D. 1, Box 20, c/o Eugene Wagoner, Tionesta, Pennsylvania.

Send comments to Honorable Maurice McWilliams, Chairman of the Board of Supervisors, of the Township of Tionesta, Forest County, R.D. 1, Tionesta, Pennsylvania 16353.

Pennsylvania	Trainer, Borough, Delaware County	Delaware River	British Petroleum Dock	*9.6	*10

Maps available for inspection at the Borough Building, Trainer, Pennsylvania.

Send comments to Honorable Paul Bernard, Mayor of the Borough of Trainer, Trainer Borough Building, 9th and Main Street, Trainer, Pennsylvania 19103.

Texas	Benbrook, City, Tarrant County	Mary's Creek	Approximately 1,600' downstream of corporate limits	*615	*614
			At upstream side of Texas & Pacific Railroad bridge	*626	*630
			At most upstream corporate limits	*672	*672
		Clear Fork Trinity River	Approximately 800' upstream of Interstate 820	*601	*600
			At corporate limits of Woodlawn Park	*621	*621

Maps available for inspection at 911 Winscott Road, Benbrook, Texas.

Send comments to Honorable Jerry Dunn, Mayor of the City of Benbrook, Tarrant County, P.O. Box 26569, Benbrook, Texas 76126.

Texas	Grand Prairie, City, Dallas, Tarrant, & Ellis Counties.	Kirby Creek	Downstream side of Waterloo Drive	*543	*539
			Downstream side of Kirbywood Trail	None	*550
			Approximately 0.4 mile upstream of Kirbywood Trail	None	*558

Maps available for inspection at the Grande Prairie City Hall, 317 College Street, Grand Prairie, Texas.

Send comments to the Honorable Jerry Debo, Mayor of the City of Grand Prairie, Dallas, Tarrant, and Ellis Counties, 317 College Street, Grand Prairie, Texas 75050.

Vermont	Town of New Haven Addison County	Otter Creek	Downstream corporate limits	None	*148
			Upstream corporate limits	None	*149

Maps available for inspection at the Town Clerk's Office, Town Hall, New Haven, Vermont.

Send comments to Honorable William Paine, Selectman of the Town of New Haven, R.D. 2, Bristol, Vermont 05443.

Virginia	Poquoson, City	Chesapeake Bay	Shoreline approximately 150' north of Browns Neck Road (extended).	*12	*11
			Approximately 700' south of Rock Creek confluence with Chesapeake Bay.	*12	*10
			Intersection of Carys Chapel Road and Wythe Creek Road.	*10	*9
			Intersection of Little Florida Road and Cedar Road	*10	*9
			Intersection of Messick Road and Poquoson Avenue	*10	*9
			Shoreline at Tin Shell Point	*12	*11
			Intersection of Ridge Road and Messick Road	*11	*10

Maps available for insepction at the City Hall, Municipal Building, Poquoson, Virginia.

Send comments to Honorable Robert Murphy, Poquoson City Manager, 830 Poquoson Avenue, Poquoson, Virginia 23662.

Wisconsin	Village of Belleville Dane and Green Counties	Sugar River	Just upstream of Remy Road	*856	*856
			Just upstream of Illinois Central Gulf Railroad	*858	*859
			Just downstream of Belleville Dam	*859	*859

Maps available for inspection at the Village Hall, P.O. Box 70, Belleville, Wisconsin.

Send comments to Honorable Owen Pilgrim, Village President, Village Hall, P.O. Box 70, Belleville, Wisconsin 53508.

Issued: December 3, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-29439 Filed 12-11-85; 8:45 am]

BILLING CODE 6718-03-M

Notices

Federal Register
Vol. 50, No. 239
Thursday, December 12, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Memorandum of Agreement; Implementation of the Housing Preservation Grant Program by the Farmers Home Administration

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation proposes to execute a Programmatic Memorandum of Agreement (PMOA) with the Farmers Home Administration (FmHA) and the National Conference of State Historic Preservation Officers concerning how effects on historic properties will be taken into account in FmHA's implementation of the Housing Preservation Grant Program. Through this program, FmHA will provide funds to applicant organizations to assist low income and very low income homeowners in the rehabilitation of their homes. Such homes may in some cases be included in or eligible for the National Register of Historic Places, and FmHA actions having effects on them are subject to review by the Council under section 106 of the National Historic Preservation Act and the Council's regulations (36 CFR Part 800). Pursuant to 36 CFR 800.8 of the regulations, the Council and FmHA propose to undertaken this review programmatically, via execution of a PMOA. The PMOA would provide for applicants to include historic preservation standards and provisions in their grant applications, and to establish a mechanism to ensure that individual projects affecting historic properties are reviewed to minimize damage to historic and architectual values. Copies of the draft PMOA are available for public review.

COMMENTS DUE: January 13, 1986.

ADDRESS: Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, Suite 809, Washingotn, DC 20005 Attn: Dr, Thomas F. King.

Dated: December 6, 1985.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 85-29466 Filed 12-11-85; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; Revisions To Existing System of Records

AGENCY: Office of the Secretary of Agriculture, USDA.

ACTION: Notice of revisions of Privacy Act systems of records.

SUMMARY: Notice is hereby given that USDA is revising its systems of records maintained by the Office of Inspector General (OIG). This action is necessary to reflect organizational changes in OIG. The revisions contain no new routine uses.

EFFECTIVE DATE: Upon publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: L.L. Free, Assistant Inspector General for Administration, Office of Inspector General, U.S. Department of Agriculture, Washington, D.C. (202-447-6915).

SUPPLEMENTARY INFORMATION: USDA hereby amends its systems of records, USDA/OIG-1 through USDA/OIG-6, to reflect organizational changes which have occurred in OIG offices.

The full text of the systems of records are revised to read as follows:

USDA/OIG-1

SYSTEM NAME:

Employee Records, USDA/OIG.

SYSTEM LOCATION:

In the Headquarters Office of OIG and the Office of Personnel (OP) in the Agriculture Administration Building, 14th and Independence Avenue, S.W., Washington, D.C. 20250, and in the following U.S. Department of Agriculture, Office of Inspector General, Regional Offices and suboffices:

OIG Regional Offices

26 Federal Plaza, Room 17-130, Audit; Room 1707, Investigations, New York, New York 10278
6505 Belcrest Road, Room 422, Audit; Room 432-A, Investigations, Hyattsville, Maryland 20782
1447 Peachtree Street, N.E., Room 900, Audit; Room 901, Investigations, Atlanta, Georgia 30309
165 North Canal Street, Suite 1400 S-C, Chicago, Illinois 60606
101 South Main, Room 324, Audit; Room 311, Investigations, Temple, Texas 76501
P.O. Box 293, Kansas City, Missouri 64141
555 Battery Street, Room 514, Audit; Room 526, Investigations, San Francisco, California 94111

OIG/Audit Suboffices

Deguetau Federal Building, Room 581, Carlos E. Chardon Avenue, Hato Rey, Puerto Rico 00918
Building 124 Federal Center, 424 Trapelo Road, Mailing address: P.O. Box 429, Waltham, Massachusetts 02154
Room 862 Federal Building, 228 Walnut Street, Mailing address: P.O. Box 907, Harrisburg, Pennsylvania 17108
4908 Northwest 13th Street, Suite B, Northwood Square, Gainesville, Florida 32609
Federal Building, Suite 1410, 100 West Capitol, Jackson, Mississippi 39201
Imperial Towers Office Building, 333 Waller Avenue, Room 203, Lexington, Kentucky 40504
4004 Hillsboro Road, Room 219, Nashville, Tennessee 37215
310 New Bern Avenue, Room 333, Raleigh, North Carolina 27601, Mailing address: P.O. Box 27076, Raleigh, North Carolina 27611
200 North High Street, Room 346, Columbus, Ohio 43215
Manley-Miles Building, Room 107, 1405 South Harrison Road, East Lansing, Michigan 48823
333 Sibley, Suite 560, St. Paul, Minnesota 55101
3746 Government Street, Alexandria, Louisiana 71302, Mailing Address: P.O. Box 5889, Alexandria, Louisiana 71301
1114 Commerce Street, Room 812-A, Federal Building, Dallas, Texas 75242
2514 Federal Building, Little Rock, Arkansas 72201
210 Walnut Street, Room 167, Des Moines, Iowa 50309
200 Fourth Street, Southwest, Room 207, Huron, South Dakota 57350
100 Centennial Mall North, Room 276, Lincoln, Nebraska 68508
Drake Executive Plaza, Suite 220, 2625 Redwing Road, Fort Collins, Colorado 80526
P.O. Box 29383, New Orleans, Louisiana 70189

1520 Market Street, Room 1624, Box 14153 Main Post Office, St. Louis, Missouri 63178
300 N. Los Angeles Street, Room 3251, Los Angeles, California 90012
511 Northwest Broadway, Room 304, Portland, Oregon 97209
915 Second Avenue, Room 312, Seattle, Washington 98174

OIG/Investigation Suboffices

Deguetau Federal Building, Room 581, Carlos E. Chardon Avenue, Hato Rey, Puerto Rico 00918
Waltham Federal Center, Building 124–S, 424 Trapelo Road, P.O. Box 429, Waltham, Massachusetts 02154
120 South Warren Road, King of Prussia, Pennsylvania 19406
4908 Northwest 34th Street, Suite A, Gainesville, Florida 32605
Federal Building, Suite 1412, 100 West Capitol Street, Jackson, Mississippi 39269
4004 Hillsboro Road, Room 211, Nashville, Tennessee 37215
310 New Bern Avenue, Room 328, Raleigh, North Carolina 27611
200 North High Street, Room 350, Columbus, Ohio 43215
Manley-Miles Building, Room 107, 1405 South Harrison Road, East Lansing, Michigan 48823
Suite 1804, 5610 Crawfordsville Road—Suite 1804, Indianapolis, Indiana 46224
333 Sibley, Suite 560, St. Paul, Minnesota 55101
1100 Commerce Street, Room 14B23, Federal Building, Mailing address: P.O. Box 50606, Dallas, Texas 75250
215 Dean A. McGee Street, Mailing address: P.O. Box 1235, Oklahoma City, Oklahoma 73102
Federal Building Customs House, 721 19th Street, Room 475, Denver, Colorado 80202
300 N. Los Angeles Street, Room 3251, Los Angeles, California 90012
Federal Building, 915 Second Avenue, Room 312, Seattle, Washington 98104

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

OIG temporary and permanent employees, former employees of OIG and predecessor offices, and applicants for employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records show or related to employment, personnel management and work-related information, including position, classification, title, grade, pay rate, pay, temporary and permanent address, phone number, program and performance evaluations, promotions, retirement, discipline, appeals, incentive programs, unemployment compensation, leave, complaints and grievances health benefits, equal employment opportunity, automation of personnel data, travel information, accident reports and related information, activity reports, participation in savings and contribution programs, availability for employment, for assignment, or for transfer, qualifications, awards, hours worked, issuance of credentials, passports, and other identification, assignment and accountability of property and other things of value, parking space assignments, training and development, and special assignments. Records in system do not include employee Official Personnel Folder (OPF) data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 95–452, as amended, 5 U.S.C. App.; 5 U.S.C. 301; 7 U.S.C. 2270; 7 CFR 2.33.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To other agencies in the Department including OP, and Executive Branch agencies, such as the Office of Personnel Management (OPM), as necessary, for proper personnel actions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on computer and in file folders, notebooks, and card file boxes.

RETRIEVABILITY:

By name of individual employee.

SAFEGUARDS:

Available on official need-to-know basis. Kept in locked offices after office hours.

RETENTION AND DISPOSAL:

Records are retained as long as needed and then discarded. Personal information that might be considered derogatory or embarrassing is shredded when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Programs and Liaison Staff (PPLS), OIG, U.S. Department of Agriculture, Washington, D.C. 20250.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to Director, PPLS, OIG, U.S. Department of Agriculture, Washington, D.C. 20250.

RECORD ACCESS PROCEDURES:

To gain access to information in the system, send request to Director, PPLS, OIG, USDA, Washington, D.C. 20250.

CONTESTING RECORD PROCEDURES:

To contest information in this system, send request to Director, PPLS, OIG, USDA, Washington, D.C. 20250.

RECORD SOURCE CATEGORIES:

The primary information is furnished by the individual employee. Additional information is provided by supervisors, coworkers, references, and others.

USDA/OIG–2

SYSTEM NAME:

Intelligence Records, USDA/OIG.

SYSTEM LOCATION:

In the Headquarters Office in the Agriculture Administration Building, 14th and Independence Avenue, SW., Washington, D.C. 20250, and in the OIG offices listed in the system of records designated USDA/OIG–1.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Suspects and unpaid informats.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, occupations, other information about suspects and allegations against them; and types of information previously furnished by or to be expected from informants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 95–452, as amended, 5 U.S.C. App.; 5 U.S.C. 301; 7 U.S.C. 2270; 7 CFR 2.33.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses for law enforcement purposes will include referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on sheets of paper and index cards.

RETRIEVABILITY:

Retrievable by name of individual subject.

SAFEGUARDS:

Available on an official need-to-know basis and kept in locked storage when not in use.

RETENTION AND DISPOSAL:

Kept indefinitely and continually updated; out-of-date material is shredded.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigations (AIG/I), Office of Inspector General, Washington, D.C. 20250. Inquiries and requests should be addressed to: Director, Management and Budget Staff, USDA, OIG, Washington, D.C. 20250.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k) this system has been exempted from the following provisions of 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f) as investigatory material compiled for law enforcement purposes. This exemption is contained in 7 CFR 1.123.

USDA/OIG-3

SYSTEM NAME:

Investigative Files and Subject/Title Index, USDA/OIG.

SYSTEM LOCATION:

In the Headquarters Office in the Argiculture Administration Building, 14th and Independence Avenue, SW., Washington, D.C. 20250, and in the OIG Regional and Investigation Suboffices listed in the system of records designated USDA/OIG–1.

Except for inadvertent errors, all entries in regional office indexes are duplicated in the Headquarters index. Thus the Headquarters index is the only complete index in OIG. The Headquarters Files also contain a copy of every investigative report, but not the correspondence in all cases. Older investigative files may be stored in Federal Records Centers or on microfiche. Therefore, delays in retrieving this material can be expected.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individual names in the OIG index fall into one or more of the following categories:

Subjects. These are applicants for OIG employment or individuals against whom allegations of wrongdoing have been made. In some instances, these individuals have been the subjects of investigations conducted to establish whether allegations were true. In other instances, the allegations were deemed too frivolous or indefinite to warrant inquiry.

Principals. These are individuals who are not named subjects of investigative inquiries, but may be responsible for violations. For example, the president of a firm alleged to have violated laws or regulations would likely be individually listed in the OIG index.

Complainants. These are individuals who allege wrongdoing, mismanagement, or unfair treatment relating to USDA employees and/or programs.

Others. These are all other individuals closely connected with a matter of investigative interest or whose names have been checked through the index to determine whether they were of record.

CATEGORIES OF RECORDS IN THE SYSTEM:

The OIG Subject/Title Index and Investigative Files consist of:

1. Index cards and/or a microfiche index filed alphabetically by the names of individuals, organizations, and firms with a separate card or line items for each: dates of entires made into the index or dates of materials containing information about the named subjects; and identification of the OIG file or files containing information on that subject.

2. Files containing bound sheets of paper or microfiche of such sheets from investigative and other reports, correspondence, and informal notes and notations concerning: (a) One investigative matter or (b) a number of incidents of the same sort of alleged violation or irregularity.

If such information was available when an index card or line item was made, the card or microfiche concerning an individual will include the individual's address, date of birth, and Social Security number.

3. Where investigation is being or will be conducted, but has not been completed, various case management records, investigator's notes, statements of witnesses, and copies of records. These are contained on index slips or cards and sheets of paper located in an OIG office or in the possession of the OIG investigator. Certain management records are retained after the investigative report is released as a means of following action taken on the basis of the OIG investigative report.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 95–452, as amended, 5 U.S.C. App.; 5 U.S.C. 301; 7 U.S.C. 2270; 7 CFR 2.33.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses for law enforcement purposes will include referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility for investigating or prosecuting a violation of law or enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, or any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The OIG Subject/Title Index consists of 3 inch by 5 inch cards or microfiche line items stored in steel cabinets. The investigative files are stored in steel lektriever cabinets, on microfiche sheets, or in Federal Records Centers.

RETRIEVABILITY:

The subject cards or line items are arranged alphabetically, and each card or line item identifies one or more OIG investigative case files or administrative files arranged numerically by file number. Information in investigative or administrative files concerning individuals not indexed is considered irretrievable.

SAFEGUARDS:

These records are available within USDA and to others in the Executive Branch only upon proper identification and on a need-to-know basis. These records are kept in limited-access areas during duty hours and in locked offices at all other times.

RETENTION AND DISPOSAL:

The cards or line items are kept indefinitely and investigative case files are maintained for 15 years. However, certain investigative case files of unusual significance are kept indefinitely. Administrative files are kept for five years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Management and Budget Staff, Office of Inspector General, U.S. Department of Agriculture, Washington, D.C. 20250.

RECORD ACCESS PROCEDURES:

To contest information in this system, send request to Director, Management and Budget Staff, Office of Inspector General, U.S. Department of Agriculture, Washington, D.C. 20250.

CONTESTING RECORD PROCEDURE:

To request access to information in this system, write to Director, Management and Budget Staff, Office of

Inspector General, U.S. Department of Agriculture, Washington, D.C. 20250.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k) this system has been exempted from the following provisions of 5 U.S.C. 552a, (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) as investigatory material compiled for law enforcement purposes or compiled solely for determining suitability, eligibility or qualifications for Federal civilian employment. This exemption is contained in 7 CFR 1.123.

USDA/OIG–4

SYSTEM NAME:

Liaison Records, USDA/OIG.

SYSTEM LOCATION:

Headquarters Offices in Agriculture buildings at 14th and Independence Avenue, SW., Washington, D.C. 20250, and in the OIG offices listed in the system of records designated USDA/OIG–1.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees or officials of Federal, State, and local governmental agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Such information as name, title, address, phone number, and type of assistance previously given or interest previously shown or expected.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 95–452, as amended, 5 U.S.C. App.; 5 U.S.C. 301; 7 U.S.C. 2270; 7 CFR 2.33.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosed to other investigative agencies (e.g., FBI, Secret Service, IRS) to coordinate investigative efforts or for those agencies to use in their independent investigations and to facilitate referral to OIG investigative information to other Executive Agencies that have an official interest.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Index cards and sheets of paper.

RETRIEVABILITY:

By name of individual or by name of agency.

SAFEGUARDS:

Information is usually obtained from public records or previous contacts and is generally availabe to OIG employees and others on request. Records are in the custody of OIG employees during working hours and in locked offices at other times.

RETENTION AND DISPOSAL:

Information is kept indefinitely and disposed of when updated. Out-of-date information is discarded.

SYSTEM MANAGER(S) AND ADDRESS:

Directors of the offices indicated in "System location."

NOTIFICATION PROCEDURE:

Inquiries and requsts should be addressed to Director, Management and Budget Staff, Office of Inspector General, U.S. Department of Agriculture, Washington, D.C. 20250.

RECORD ACCESS PROCEDURES:

To gain access to information in this system, send request to Director, Management and Budget Staff, OIG, U.S. Department of Agriculture, Washignton, D.C. 20250.

CONTESTING RECORD PROCEDURES:

To contest information in this system, send request to Director, Management and Budget Staff, OIG, U.S. Department of Agriculture, Washington, D.C. 20250.

RECORD SOURCE CATEGORIES:

Public documents and directors and previous contacts with individuals listed.

USDA/OIG–5

SYSTEM NAME:

Management Information and Data Analysis System, USDA/OIG.

SYSTEM LOCATION:

Computer files are maintained on the Computer Sciences Infonet System with main offices at 650 North Sepulveda, El Segundo, California. Source documents and printouts are kept in OIG Headquarters, U.S. Department of Agriculture, 14th and Independent Avenue, SW., Washington, D.C. 20250 and in the OIG regional offices listed in the system of records designated as USDA/OIG–1 (with the exception of the New York Regional Office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

OIG professional audit employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Management Information and Data Analysis System provides audit management officials with a wide range of information on audit operations, including job performance of OIG professional audit personnel in grade GS–13 and below. The system identifies individual audit assignments of employees and provides information on their use of direct and indirect time; significant dates relating to each audit such as starting date, exit conference date, and report release date; the number and significance of audit findings and the identity of all the professionals who participated in the assignment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 95–452, as amended, 5 U.S.C. App.; 5 U.S.C. 301; 7 U.S.C. 2270; 7 CFR 2.33.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Provided upon request to the General Accounting Office for reviewing OIG audit operations. Disclosure may also be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer discs and/or magnetic tape.

RETRIEVABILITY:

Information in the system can be retrieved by OIG Headquarters and regions. Information can be retrieved by audit report number, employee Social Security number, or geographic location.

SAFEGUARDS:

Normal computer security is maintained over access to discs and magnetic tapes. Printouts are available within USDA as necessary and are kept under lock and key when not in use. Source documents are kept in file cabinets in the offices listed above.

RETENTION AND DISPOSAL:

Discs and/or magnetic tapes are cleared, retired, or destroyed, when no longer useful, in accordance with General Services Administration and USDA retirement and/or destruction schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Audit, Office of Inspector General, U.S. Department of Agriculture, Washington, D.C. 20250.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records, or information as to whether

the system contains records pertaining to him/her, from the Director, Management and Budget Staff, USDA/OIG, Washington, D.C. 20250. A request for information pertaining to an individual should contain: Name, address, and particular information requested.

RECORD ACCESS PROCEDURES:

Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him/her by submitting a written request to the Director, Management and Budget Staff, OIG, U.S. Department of Agriculture, Washington, D.C. 20250.

CONTESTING RECORD PROCEDURES:

Same as access procedures described above.

RECORD SOURCE CATEGORIES:

Information in the system comes entirely from OIG audit employees.

USDA/OIG—6

SYSTEM NAME:

Audit Information System, USDA/OIG.

SYSTEM LOCATION:

Records included in this system may be located at audit sites throughout the United States or at any of the Departmental Computer Centers. The Departmental Computer Centers are: (1) Washington Computer Center, 12th and Independence Avenue, SW., Washington, D.C. 20250; (2) New Orleans Computer Center, P.O. Box 29383, New Orleans, Louisiana 70189; (3) Kansas City Computer Center, P.O. Box 293, Kansas City, Missouri 64141; (4) St. Louis Computer Center, 1520 Market Street, Room 1624, Box 14153 Main Post Office, St. Louis, Missouri 63178; (5) Fort Collins Computer Center, Drake Executive Plaza, Suite 220, 2625 Redwing Road, Fort Collins, Colorado 80526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system employs temporary data sets, computer printouts, and other audit records obtained from USDA agencies, non-Federal sources, and Federal agencies other than USDA. Individuals covered by these records are participants in programs adminsitered and/or funded by the Department of Agriculture; employees of USDA and other Federal, State, county, and municipal agencies; and officials and employees of contractors, grantees, and cooperators that conduct business related to USDA programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system may contain, for short periods of time, various categories of records relating to administration of, or individual participation in, USDA programs. For example, the categories of records may relate to the Department's farm, food, loan and research programs and to payroll records of USDA or other governmental employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 95–452, as amended, 5 U.S.C. App.; 5 U.S.C. 301; 7 U.S.C. 2270; 7 CFR 2.33.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are routinely used for analysis during the course of Office of Inspector General (OIG) audits. To facilitate this analysis, USDA, other Federal, State, or other governmental computer tapes containing program participation or employment information may be matched against themselves or each other to find duplications that indicate possible improper or illegal participation in USDA programs. Matching may be conducted by OIG, other USDA agencies, other Federal agencies, and/or State, county, or municipal agencies. The computer printouts of duplicates may be furnished to OIG auditors and investigators, the nonfederal entity responsible for operating the program, other Executive Branch audit agencies, the General Accounting Office, the Department of Justice, other law enforcement agencies, and the Congress.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored electronically on computer direct access storage devices or magnetic tape and in computer printouts and other audit records.

RETRIEVABILITY:

Electronically stored information may be retrieved using standard audit software analysis and retrieval packages and is limited only by the data elements maintained in the data set. This information may be transmitted and received using standard teleprocessing procedures. Data elements may include such information as an individual's name, address, social security numbers, employee identification, case or farm number, and specific information about the individual's program participation or employment. Information located in computer printouts and other audit records may be retrieved manually while audits are in process. After an audit is completed, information about individuals can only be retrieved by first identifying the audit involved (by type, location and time conducted) and then retrieving the information from audit work materials by mechanical or electronic search. If individual participation was investigated, personal privacy information about that individual may be retrievable, by name, from system USDA/OIG–3, described above.

SAFEGUARDS:

Normal computer security is maintained over access to electronically encoded data. Computer printouts and other audit records are protected in accordance with the sensitivity of data contained therein.

RETENTION AND DISPOSAL:

Electronically encoded data is seldom retained for more than six months. It is then destroyed either by degaussing or overwriting the computer media. Computer printouts and manually prepared audit records may be incorporated into audit files where they are retrievable only by audit number of report title. Audit files are retained in accordance with General Services Administration retirement and/or destruction schedules. Computer printouts not incorporated into audit files are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The system managers are the USDA Regional Inspectors General for Audit in whose geographical areas the audit sites and Departmental Computer Centers are located. These are as follows: (1) Regional Inspector General for Audit, North Atlantic Region, OIG, USDA, 26 Federal Plaza, Room 17–130, New York, New York 10278; (2) Regional Inspector General for Audit, Northeast Region, OIG, USDA, 6505 Belcrest Road, Room 422, Hyattsville, Maryland 20782 (Washington Computer Center); (3) Regional Inspector General for Audit, Southeast Region, OIG, USDA, 1447 Peachtree Street, NE., Room 900, Atlanta, Georgia 30309; (4) Regional Inspector General for Audit, Midwest Region, OIG, USDA, 165 North Canal Street, Suite 1400 S–C, Chicago, Illinois 60606; (5) Regional Inspector General for Audit, Southwest Region, OIG, USDA, 101 South Main Street, Room 324, Temple, Texas 76501 (New Orleans Computer Center); (6) Regional Inspector General for Audit, Great Plains Region, OIG, USDA, 935 Holmes,

Room 210, Kansas City, Missouri 64131; Mailing Address: P.O. Box 293, Kansas City, Missouri 64141 (Kansas City, Fort Collins, and St. Louis Computer Centers); (7) Regional Inspector General for Audit, Western Region, OIG, USDA, 555 Battery Street, Room 514, San Francisco, California 94111.

NOTIFICATION PROCEDURE:

Any individual may request information contained in this system of records or information as to whether the system contains records pertaining to that individual by contacting the Director, Management and Budget Staff, OIG, USDA, Washington, D.C. 20250.The individual is reminded that this system of records is temporary and usually is accessible only while an audit of a particular program or activity is in process. The period of accessibility normally ranges from one month to approximately six months, depending on the type of audit and the use made of the information. Any request for information pertaining to an individual should contain that person's name, address, the USDA program the individual is participating in, any pertinent identification number such as a case number, and the particular information requested. Proof of identity and/or authorization to access will be required.

RECORD ACCESS PROCEDURES:

Any individual may obtain informaton as to the procedures for gaining access to a record in the system which pertains to that person by submitting a written request to the Director, Management and Budget Staff, OIG, U.S. Department of Agriculture, Washington, D.C. 20250.

CONTESTING RECORD PROCEDURES:

These inquiries also should be sent to the Director, Management and Budget Staff, OIG, U.S. Department of Agriculture, Washington, D.C. 20250.

RECORD SOURCE CATEGORIES:

Information contained in this system of records is obtained mainly from USDA agencies and State and local governments that administer USDA programs on a cooperative basis and may be obtained from other grantees and program participants and other Federal agencies.

Information generally relates to a USDA program or activity which is being audited. Upon conclusion of the audit, the information is either destroyed, returned to the originator, or stored in an audit file from which information about individuals cannot be retrieved without manual and/or electronic search.

Dated: December 6, 1985.

John R. Block,

Secretary of Agriculture.

[FR Doc. 85-29490 Filed 12-11-85; 8:45 am]

BILLING CODE 3410-23-M

Agricultural Stabilization and Conservation Service

OMB Circular A-76 Cost Comparison Studies

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Notice of Schedule.

SUMMARY: This notice provides the schedule for cost comparison studies of commercial activities that will be conducted by the Agricultural Stabilization and Conservation Service (ASCS). These studies will be conducted in accordance with OMB Circular A-76.

FOR FURTHER INFORMATION CONTACT: R. Phil Delashmitt, Management Analysis Branch, Information Resources Management Division, ASCS, U.S. Department of Agriculture, Room 6758-S, Washington, DC 20013, (202) 447-5863.

SUPPLEMENTARY INFORMATION: In accordance with OMB Circular A-76, Performance of Commercial Activities, ASCS will conduct cost comparison studies for the following activities: Aerial Photography Rectification and Reproduction, Salt Lake City, Utah, study to begin in December 1985; and High Speed Digital Facsimile Network (FAX), Washington, DC study to begin in May 1987.

Signed at Washington, DC, on December 6, 1985.

Everett Rank,

Administrator.

[FR Doc. 85-29444 Filed 12-11-85; 8:45 am]

BILLING CODE 3410-05-M

Statistical Reporting Service

Discontinuance of Pasture and Range Condition Maps

The Statistical Reporting Service (SRS) of USDA is proposing to discontinue publishing Pasture and Range Condition Maps and tables and Crop Prospects maps in the Crop Production reports. These data series have decreased in importance over the years and have become increasingly difficult to defend statistically. The pasture and crops maps will be replaced by the crop moisture map prepared by the NOAA/USDA Joint Agricultural Weather Facility. The new map will provide a more accurate description of some of the conditions that affect pastures and crops. Resources saved by this change will be redirected toward maintaining timely and reliable data series important in monitoring changes in the agricultural sector. If this change is adopted, it will become effective with the April 1986 Crop Production report.

Comments from data regarding the proposed change should be addressed to John Witzig, Chief, Crops Branch, Estimates Division, Room 5175-S, SRS/USDA, Washington, DC 20250. The comment period will close January 6, 1986.

Done at Washington, DC, this 5th day of December 1985.

W.E. Kibler,

Administrator.

[FR Doc. 85-29349 Filed 12-11-85; 8:45 am]

BILLING CODE 3410-20-M

Modification of Estimates of Poultry Production, Disposition and Income

The Statistical Report Service (SRS) of USDA is proposing to discontinue making estimates of amount and value for Home Consumption of Chickens and Eggs. These data series have decreased in importance over the years and have become increasingly difficult to defend statistically. Resources saved by this monor program modification will be redirected to maintaining the poultry series of estimates. If this proposed change is adopted, it will be effective with the April 1986 release of Poultry Production, Disposition and Income estimates for 1985.

Comments from data users regarding the proposed change should be sent to Robert L. Freie, Chief, Livestock Dairy and Poultry Branch, Estimates Division, Room 5897-S SRS/USDA, Washington, DC 20250. The comment period will close January 6, 1986.

Done at Washington, DC, this 5 day of December 1985.

W.E. Kibler,

Administrator.

[FR Doc. 85-29350 Filed 12-11-85; 8:45 am]

BILLING CODE 3410-20-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Number of Employees; Payrolls; Georgraphic location; Kind of Business for Single-Establishment Employers; Consideration for Surveys

Notice is hereby given that the Bureau of the Census proposes to conduct a survey of single-establishment employers as part of the 1985 Company

Organization Survey under the provisions of Title 13, United States Code, sections 182, 224, 225. This survey collects information on the number of employees, payrolls, geographic location, and kind of business for single-establishment employers. The information obtained will be used to maintain the Census Bureau file of company and establishment records and will be used for the continuing updating of the Standard Statistical Establishment List. The data will have significant application to the needs of the public and to governmental agencies and are not publicly available from non-governmental or governmental sources.

The survey, if conducted, shall begin not earlier than March 1, 1986.

Copies of the proposed form are available on request to the Director, Bureau of the Census, Washington, DC 20233.

Any suggestions or recommendations concerning the subject of the proposed survey submitted to the Director in writing within 60 days after the date of this publication will receive consideration.

Dated: December 9, 1985.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 85-29491 Filed 12-11-85; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Decision of Application for Duty-Free Entry of Scientific Instrument; NCI-Frederick Cancer Research Facility

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 98-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 84-70. Applicant: NCI-Frederick Cancer Research Facility, Frederick, MD 21701. Instrument: Integrated Mass Spectrometer and Data System, Model MM 7250E. Manufacturer: VG Instruments, United Kingdom. Intended use: See notice at 49 FR 8055.

Comments: None received.

Decision: Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (August 26, 1983).

Reasons: The foreign instrument provides: (1) a mass range of 1 to 3000 atomic mass units at an accelerating voltage of 4000 electron volts, (2) a capillary/packed GC interface with a scan speed of 0.2 seconds per decade for mass up to 2000 and (3) fast atom bombardment. The capabilities of the foreign instrument described above are pertinent to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purpose of comparison with the foreign instrument. Where an applicant, as in this case, received no response to a formal request for quotation sent to the Nuclide Corporation, it is apparent that the domestic manufacturer was either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument. Accordingly, the Department of Commerce finds that no domestic manufacturer was both "able and willing" to manufacture a domestic instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-29445 Filed 12-11-85; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Spectrophotometers; Pennsylvania State University et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket number: 85-215. Applicant: The Pennsylvania State University, University Park, PA 16802. Intended use: See notice at 50 FR 29243.

Docket number: 85-233. Applicant: The University of South Carolina, Columbia, SC 29208. Intended use: See notice at 50 FR 30217.

Instrument: FT-IR Spectrophotometer, Model IZMO5. Manufacturer: Bomem, Incorporated, Canada.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States.

Reasons: The foreign instruments provide an unapodized resolution of 0.002 cm^{-1}. The capability of the foreign instruments described above is pertinent to the applicants' intended purposes. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instruments for the applicants' intended uses.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-29446 Filed 12-11-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-549-502]

Certain Circular Welded Carbon Steel Pipes and Tubes From Thailand; Postponement of Final Antidumping Duty Determination

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The final antidumping duty determination involving certain welded carbon circular steel pipes and tubes from Thailand is being postponed until not later than January 16, 1986.

EFFECTIVE DATE: December 12, 1985.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel or Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202)377-5404 or (202)377-5288.

SUPPLEMENTARY INFORMATION: On September 26, 1985, we made an affirmative preliminary antidumping duty determination that certain circular welded carbon steel pipes and tubes are being, or are likely to be, sold in the United States at less than fair value (49 FR 40427). The notice stated that we would issue our final determination by December 10, 1985. As detailed in the notice, we found, preliminarily, that imports from Thailand of certain circular welded carbon steel circular pipes and tubes are being, or are likely to be, sold in the United States at less than fair value. On November 13, 1985, counsel for the repondents requested that the Department extend the period for the final determination for 30 days, i.e., until not later than 105 days after the date of publication of the preliminary determination in accordance with section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act). The respondents are exporters who account for a significant proportion of the exports of the merchandise under investigation. Accordingly, the period for the final determination in this case is hereby extended. We intend to issue the final determination not later than January 16, 1986.

Scope of Investigation

The products under investigation are: certain circular welded carbon steel pipes and tubes, also known as "standard pipe" or "structural tubing," as currently provided in items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258 and 610.4925 of the *Tariff Schedules of the United States Annotated*.

This notice is published pursuant to section 735(d) of the Act.

The United States International Trade Commission is being advised of this postponement in accordance with section 735(d) of the Act.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

December 6, 1985.

[FR Doc. 85-29485 Filed 12-11-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-403]

Certain Welded Rectangular Carbon Steel Pipes and Tubes From Taiwan; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that certain welded rectangular carbon steel pipes and tubes (rectangular pipes and tubes) from Taiwan are being, or are likely to be sold in the United States at less than fair value. We have also determined that critical circumstances do not exist with respect to imports of rectangular pipe and tube from Taiwan. We have notified the U.S. International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to continue to suspend the liquidation of all entries of rectangular pipes and tubes from Taiwan that are entered, or withdrawn from warehouse, for consumption, on or after July 22, 1985, and to require a cash deposit or bond for each entry in an amount equal to 7.09 percent *ad valorem*.

EFFECTIVE DATE: December 12, 1985.

FOR FURTHER INFORMATION CONTACT: Karen L. Sackett or John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5050 or (202) 377-3965.

Final Determination

Based upon our investigation, we have determined that rectangular pipes and tubes from Taiwan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act).

We made fair value comparisons for all sales of merchandise to the United States during the period of investigation. Margins were found on 75 percent of the sales. The weighted-average margin is 7.09 percent *ad valorem*.

Case History

On December 18, 1984, we received a petition from the Mechanical Tubing Subcommittee of the Committee on Pipe and Tube Imports on behalf of the U.S. industry producing rectangular pipes and tubes. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of rectangular pipes and tubes from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or threaten material injury to, a United States industry.

After reviewing the petition, we determined it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and announced initiation of such an investigation on January 11, 1985 (50 FR 1614). On February 1, 1985, the ITC determined that there is a reasonable indication that imports of rectangular pipes and tubes from Taiwan are materially injuring, or threatening material injury to, a United States industry (50 FR 5326).

On February 14, 1985, a questionnaire was sent to counsel for Yieh Hsing, a Taiwan producer of rectangular pipe and tube. Yieh Hsing responded to our questionnaire on April 9, 1985.

After reviewing the questionnaire response, petitioner alleged that sales of rectangular pipe and tube from Taiwan are being made at below the cost of production, and requested that the deadline for the preliminary determination be extended for 50 days in order to allow sufficient time for the cost of production investigation. On May 8, 1985, we postponed the preliminary antidumping duty determination for 50 days, or not later than July 16, 1985 (50 FR 20255). On May 23, 1985, we sent a cost of production questionnaire to the respondent. On June 27, 1985 we received a response to our questionnaire. The response was deficient in that it did not properly allocate costs for the various sizes of pipes and tubes under investigation, and that theoretical instead of actual weights were used for the cost of production. Therefore, we used the best information available to determine the cost of production. The best information available was cost information submitted by petitioner, which was

based on costs of raw materials, labor, and general expenses, excluding profit, incurred by a domestic manufacturer in producing such or similar merchandise.

On July 26, 1985, the respondent requested that we extend the final determination until not later than December 4, 1985. On August 21, 1985, we granted that request (50 FR 32243). On September 3, 1985, we received a supplemental cost of producton response from Yieh Hsing.

We verified Yieh Hsing's response in October 1985.

On November 8, 1985, a public hearing was held.

Scope of Investigation

The products under investigation are welded rectangular (including square) carbon steel pipes and tubes having a wall thickness of less than 0.156 inch, as currently classified in the Tariff Schedules of the United States, Annotated (TSUSA), under item 610.4928.

Since Yieh Hsing produced and exported virtually all of the rectangular pipes and tubes from Taiwan during the period of investigation, we limited our investigation to them.

We investigated sales of rectangular pipes and tubes from Taiwan during the period from July 1 through December 31, 1984.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of pipes and tubes to represent the United States price for sales by the respondent because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated the purchase price on the c. & f. price to unrelated purchasers in the United States. We made deductions, where appropriate, for inland freight, ocean freight, brokerage and handling, stamp tax, and export charges.

Foreign Market Value

In calculating foreign market value we used constructed value in accordance with section 773(e) of the Act. There was no viable home market. Petitioner alleged and we found that virtually all sales of rectangular pipe by Yieh Hsing to the largest third country market, Saudi Arabia, were at prices below the cost of production, as defined in section 773(b) of the Act. We examined the production costs, which included all appropriate material and fabrication costs, selling, general, and administrative expenses. We have insufficient sales made at prices above the cost of production for purposes of determining fair market value. Accordingly, we disregarded third country prices and used constructed value in making our comparisons.

We calculated constructed value by totalling the cost of materials, fabrication, general expenses, profit, and the cost of the packing. Where the amount of general expenses was less than the statutory minimum of ten percent of the cost of materials and fabrication, we used the statutory minimum. We calculated profit on the basis of the statutory minimum of 8 percent of the sum of materials, fabrication costs, and general expenses because the company had insufficient home market sales of merchandise of the same general class or kind and the overall profit that was related to sales to countries other than the U.S. was below the statutory minimum. Where there were commissions in the U.S., we offset the commissions with indirect selling expenses incurred in selling to other markets, in accordance with § 353.15(c) of the Regulations.

In calculating foreign market value we made currency conversions from New Taiwan Dollars to United States Dollars in accordance with § 353.56(a)(1) of our regulations.

Petitioner's Comment 1

The petitioner disputes the respondent's claim that products 1.60 mm or less in wall thickness were produced using hot rolled coil which was further processed on a rerolling mill but without cold-rolling. The petitioner argues that since products of these wall-thicknesses must use cold-rolled coil, cold rolling costs must be included in the cost of production.

DOC Position

The Department did not accept the respondent's claim that the rerolling operation alone reduced the gauge of 1.75 mm hot-rolled coil to thicknesses of 1.575 mm or less. Raw material, labor and overhead costs were calculated for products 1.575 mm or less using a weighted-average of hot-rolled and cold-rolled coil purchases of gauges below 1.75 mm and 1.75 mm hot-rolled coil purchases plus the cost of cold-rolling to reduce to the appropriate gauge.

Petitioner's Comment 2

The petitioner states that the Department must follow its usual practice of using the weighted-average cost for raw materials, including first, second, and third tier prices.

DOC Position

The Department followed its usual practice and used the weighted-average costs.

Petitioner's Comment 3

The petitioner argues that the scrap rate and weight savings gain reported by respondent significantly understate the per ton price of coil used. The petitioner believes that the yields reported by the respondent could not be verified, and that the yield rate calculated during verification based on total input tons of coil versus total output tons of pipe should be the basis for revising reported raw material costs.

POC Position

The Department concluded that the yields reported in the respondent's cost submission were the result of theoretical calculations and therefore did not reflect the actual experience of the respondent. The raw material costs in the final cost determination were adjusted using the yield rate calculated at verification as the best information available.

Petitioner's Comment 4

The petitioner claims that the respondent is not entitled to a weight savings gain if sales are made on an actual weight basis rather than a theoretical weight basis.

DOC Position

Sales by Yieh Hsing were not made on an actual weight basis.

Petitioner's Comment 5

The petitioner argues that, contrary to respondent's proposed allocation, pipe production should consume more overhead per ton than should the production of cold-rolled coil. The petitioner also challenges the respondent's claim that high overhead expenses are incurred for circular pipe than for rectangular pipe production.

POC Position

In calculating production cost, the Department allocated overhead costs evenly between rectangular and circular pipe production. However, the Department did not find any evidence to support a revision in the allocation of overhead costs between production of cold-rolled coil and pipe production.

Petitioner's Comment 6

The petitioner argues that the allocation of interest on long-term debt should be based upon sales instead of

fixed assets. The petitioner also claims that the interest on bank financed purchases of raw materials should be allocated to the costs of raw materials rather than to selling, general, and administrative expenses (SG&A).

DOC Position

The Department concluded that the allocation of long-term interest based on fixed assets is appropriate under the presumption generally made by the Department that long-term loans are most commonly used to finance fixed assets. The Department reclassified short-term interest, which was included in the cost of raw materials by the respondent, to SG&A. It is the practice of the Department to classify interest expenses as an SG&A expense regardless of how the interest expense arises.

Petitioner's Comment 7

In constructing the value of the product sold in the United States, the Department should determine coil costs for hot-rolled coil, .072 inches and above in wall thickness, and for cold-rolled coil .063 inches and below in wall thickness.

DOC Response

The constructed value, including the coil cost, has been calculated for product groupings differentiated by both outside diameter and wall thickness.

Respondent's Comment 1

The respondent claims that the exchange rate used in the verification report is inconsistent and incorrect.

DOC Position

The exchange rate used by the Department in the verification report was intended to show approximate U.S. dollar costs as a frame of reference only. Cost figure used in this final determination are in local currency.

Respondent's Comment 2

The respondent argues that the yield rate calculated by the Department during verification is less reliable than the scrap factor and yield results reported by the respondent.

DOC Position

See DOC Response to petitioner's comment 3.

Respondent's Comment 3

The respondent challenges a statement in the verification report that there was a discrepancy in the respondent's methodology for converting theoretical weights to actual weights.

DOC Position

The Department concluded that there was a discrepancy resulting from a flaw in the methodology used to convert theoretical weights to actual weights. As stated above in the response to petitioner's comment 3, respondent's methodology was not used by the Department.

Respondent's Comment 4

The respondent argues that its methodology for allocating overhead to circular and rectangular pipe is appropriate. The respondent claims that it has provided sufficient support for its allocation of additional fixed and variable overhead to circular pipe production in Exhibit XIII to the cost verification report.

DOC Position

The Department concluded that the respondent has not provided sufficient evidence that circular pipe is more expensive to produce than rectangular pipe. According, costs have been restated in the cost determination to eliminate the factor which reduced the overhead costs allocated to rectangular pipe in the cost submission.

Respondent's Comment 5

The respondent argues that the interest rate on short-term bank loans noted in the verification report is incorrect.

DOC Position

The interest rate noted in the verification report was based upon documentation collected by the verification team.

Respondent's Comment 6

The respondent argues that certain repairs and maintenance expenses, which respondent maintains extended the useful life of the assets, should be capitalized under Taiwan tax law.

DOC Position

Capitalization of these expenses rather than classification of them as general expenses was accepted by the Department because it is in accordance with company practice and Taiwan tax law.

Respondent's Comment 7

The respondent challenges the petitioner's claim that the company continues to use one average coil cost for all coil gauges. The respondent asserts that its coil costs are broken out separately for each gauge and are the proper basis for calculating the cost of production. Therefore, as noted in response to petitioner's comment 1, we recalculated raw materials cost for certain sizes of pipe.

DOC Position

The Department concluded that the respondent did not actual coil costs broken out by gauge. However, the respondent was not able to demonstrate that the coil gauges listed in its response were in fact the actual coil gauges used in producing the particular sizes of pipe and tube investigated.

Respondent's Comment 8

The respondent challenges the petitioner's statement that it did not adequately report the expenses involved in the rerolling of coil for pipe below 1.575 mm wall thickness.

DOC Position

Although labor costs and production records for the rerolling operation were reviewed at verification, the Department concluded that respondent was unable to provide sufficient support at verification to establish that the rerolling operations reportedly conducted are adequate to reduce the width of the coil to the required degree.

Respondent's Comment 9

The respondent argues that certain reclassifications of costs, primarily amortized start-up expenses, from overhead in their books to SG&A in their submission were reasonable and appropriate.

DOC Position

The Department concluded that the original classifications of these items as overhead expenses were more appropriate than the respondent's reclassifications, and adjusted the cost submission to reflect these changes.

Negative Determination of Critical Circumstances

The petitioner has alleged that imports of rectangular pipes and tubes from Taiwan present critical circumstances. Under section 735(a)(3) of the Act, critical circumstances exist when the Department finds that: (1)(a) There is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation, or (b) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value, and (2) there have been massive imports of the class or kind of merchandise which is the subject of the

investigation over a relatively short period.

In determining whether there have been massive imports over a relatively short time period, we considered the following factors: (1) Whether imports have surged recently, (2) recent trends in imports penetration levels, (3) whether the recent imports are significantly above the average calculated over the last three years, and (4) whether the pattern of imports over that three year period may be explained by seasonal swings.

We have reviewed recent import statistics and have determined that there have not been massive imports of rectangular pipes and tubes from Taiwan over a relatively short period. Since we did not find massive imports over a relatively short period, we did not need to consider whether there is a history of dumping of the subject merchandise from Taiwan or whether the importers knew or should have known that the merchandise was being sold for less than fair value.

For the reasons described above, we determine that "critical circumstances" do not exist with respect to retangular pipes and tubes from Taiwan.

Verification

In accordance with section 776(a) of the Act, we verified the information provided by the respondent by using standard verification procedures, including examination of relevant sales and accounting records of the company.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of rectangular pipes and tubes from Taiwan that are entered, or withdrawn from warehouse, for consumption, on or after June 22, 1985. The United States Customs Service shall require a cash deposit or bond equal to the weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/Producer/Exporter	Weighted-average margin percentage
Yieh Hsing	7.09
All others	7.09

ITC Determination

In accordance with section 733(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information, relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration.

The ITC make its determination whether these imports are materially injuring, or threatening to materially injure, a U.S. industry within 45 days of the publication of this notice.

If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on certain welded rectangular carbon steel pipes and tubes from Taiwan entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

Dated: December 4, 1985.

Theodore W. Wu,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 85-29484 Filed 12-11-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

International Whaling Commission; Meetings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of meetings.

SUMMARY: NOAA makes use of an Interagency Committee to assist in preparing for meetings of the International Whaling Commission (IWC). This notice sets forth guidelines for participation on the Committee and a tentative schedule of meetings and other important dates.

DATE: December 12, 1985.

FOR FURTHER INFORMATION CONTACT: Becky Rootes, Office of International Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, DC 20235. Phone: (202) 634-7303.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce is charged with the responsibility of discharging the obligations of the United States under the International Convention for the Regulation of Whaling, 1946. This authority has been delegated to the Administrator of NOAA. The U.S. Commissioner to the IWC has primary responsibility with the Secretary of State fot the preparation and negotiation of United States positions on international issues concerning whaling and for all matters involving the IWC. He is assisted by the Department of the Interior, the Marine Mammal Commission, and other interested agencies.

Each year NOAA conducts a series of meetings and other actions to prepare for the annual meeting of the IWC which is held in the summer. The major purpose of the preparatory meetings is to provide for participation in the development of policy by members of the public and non-governmental organizations interested in whale conservation. NOAA believes that this participation is important for the effective development and implementation of United States policy concerning whaling, and such participation is and shall continue to be a prerequisite to the establishment of United States negotiating positions for IWC meetings.

Because the meetings discuss United States negotiating positions, the substance of the meetings must be kept confidential. For example, proposed positions papers that may be circulated at a meeting for discussion cannot be removed from the meeting site and must be collected at the close of each meeting.

And United States citizen with an indentifiable interest in United States whale conservation policy may participate, but NOAA reserves the authority to inquire about the interests of any person who appears at a meeting and to determine the appropriateness of that person's participation. Persons who represent foreign interests may not attend. These stringent measures are necessary to protect the confidentiality of United States negotiating positions and are a necessary basis for the relatively open process of preparing for IWC meetings that characterizes current practice.

The tentative schedule of meetings and deadlines, including those of the IWC and deadlines for the preparation of position papers during 1985 is as follows:

December 15—Publish **Federal Register** notice of the following information: (1) IWC catch level for U.S. aboriginal/subsistence bowhead whale harvest, (2) summary of available science information including current population level and annual estimated recruitment rates, (3) summary of information on nature and extent of aboriginal/subsistence need, (4) range of aboriginal/subsistence harvest limits which could be implemented domestically and (5) a list of documents reviewed by NOAA and relied on by the Administrator in making the above findings.

January 22—Interagency Committee Meeting to initiate preparations for the July IWC meetings. Any subcommittees that may be required to address specific issues will be constituted. Interested persons who are unable to attend are welcome to submit comments and recommendations to the U.S. Commissioner should be sent to: The United States Commissioner to the International Whaling Commission, c/o NOAA, Room 5804, Herbert C. Hoover Building, 14th and Constitution Avenue, Washington, DC 20230, with a copy to Becky Rootes at the address above.

February 28—Nominations for the United States Delegation to the June IWC meetings are due to the U.S. Commissioner, with a copy to Becky Rootes at the address above. All persons wishing to be considered pursuant to the U.S. Commissioner's recommendation to the Department of State concerning the composition of the Delegation should ensure that nominations are received by this date. Prospective Congressional advisors to the Delegation should contact the Department of State directly.

March 17—(approximate date) Anticipated Interagency Committee meeting following receipt of the preliminary agenda for the June IWC meetings which is due to be circulated by the IWC Secretariat on or before March 2. The meeting will review the preliminary agenda and proposed additions to this agenda, all of which will be available at the meeting. The date and location for this meeting will be confirmed as soon as the preliminary agenda is received.

March 24—Forward United States agenda changes to the IWC Secretariat.

April 2—Draft position papers due to the U.S. Commissioner.

April 2–June 8—Prenegotiations.

April 11—Due date for circulation of the provisional agenda by the IWC Secretariat. This "second draft" of the agenda reflects any additions submitted by member countries and stands until considered by the Commission at the opening session of its Annual Meeting.

April 14—Publish in the **Federal Register** the Agency views on (1) the current population level and annual net recruitment rate of bowhead whales, (2) the nature and extent of the aboriginal/subsistence need for bowhead whales, (3) the level of take of bowhead whales that is consistent with the provisions of the IWC aboriginal/subsistence whaling management scheme and (4) a list of documents reviewed by NOAA and used by the Administrator in formulating these views.

May 7—Revised position papers due to the U.S. Commissioner.

May 16—Final Interagency Committee Meeting to consider United States position papers and discuss arrangements for the Delegation's work.

May 19–31—Annual Meeting of the Scientific Committee, Bournemouth, U.K.

June 2–7—Technical Committee subcommittee and working group meetings (on aboriginal/subsistence need for whaling, scientific permits, infractions, humane killings, and such other meetings as may be scheduled), and preliminary meetings of the Finance and Administration Committee.

June 8—Meeting of the United States Delegation, site to be determined, Malmo, Sweden.

June 9–13—38th Annual Meeting of the IWC, Malmo, Sweden.

Persons who would like to be included in IWC Interagency Committee meetings may contact Becky Rootes at the address or telephone number provided above to obtain meeting times and locations.

Dated: December 9, 1985.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 85-29483 Filed 12-9-85; 4:30 pm]

BILLING CODE 3510-22-M

National Technical Information Servcie

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Dental Radiographic Devices, having a place of business at 1922 Norvale Road, Silver Spring, Maryland 20906, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Process and Device for X-Ray System Quality Assurance," U.S. Patent 4,550,422. The patent rights in this invention are being assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Robert P. Auber, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Serice.

[FR Doc. 85-29416 Filed 12-11-85; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Changes in Officials Authorized To Issue Export Visas for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

December 9, 1985.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended and extended, between the Governments of the United States and Mexico, the Government of Mexico has notified the United States that twelve additional officials are authorized to issue export visas for the textile and apparel products subject to the terms of the bilateral Agreement. The following is a complete list of the officials of the Government of Mexico who are currently authorized to issue export visas. This list cancels and supersedes all previous lists.

Tomas Rodriquez Weber
Julia Medina Medina
Cecilio Gutierrez Chavez
Jose Manuel Martinez Ayala
Jose H. Delgado Gonzalez
Saturnino Lopez Hidalgo
Hector Hernandez Hernandez
Miquel Franco Gutierrez
Hector Palacios Gavira

Domingo Yorio Saqui
Carlos F. Ostos O.
Jorge Jure Cejin
Hermenegildo Gervantes Martinez
Adan Ravelero Vazquez
Ernesto B. Ascencio Esparza
Rogelio Lopez Lucio
Alma Rosa Curiel Montiel
Delfino Gonzalez Munoz
Javier Inzunza Angulo
Hedilberto Cobos Rodriquez
Enrique Cisneros Tevera
Marco A. Abente Aramburo
Ana Amelia Cortazar Navarrete
Jose Ramon Buenrostro Mendoza
Roberto Pareyon Torreblanca
Miquel Valazco Bustamante
Rogelio Sada Madero
Guillermo Bahena Azomulco
Oscar Federico de la Garza Vargas
Antonio Guzman Landero
Yolanda Cecilia Villalva Garcia
Jaime Zorrilla San German
Domingo Esparza Filigrana
Elizabeth Acosta Mendia
Teodoro Pedro Cantu Trevino
Claudia Casas Iniguez
Alfredo Valenzuela Ruelas
Laura E. Ruiz Herrera
Alfredo Valdes Gaxiola

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-29486 Filed 12-11-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Court of Military Appeals Code Committee; Meeting

ACTION: Notice of Public Hearing.

SUMMARY: This notice announces the forthcoming public meeting of the Code Committee established by Article 67(g), Uniform Code of Military Justice, 10 U.S.C. 867(g), to be held at 2:00 p.m. on December 18, 1985, in the Judge William Holmes Cook Conference Room at the Courthouse of the United States Court of Military Appeals, 450 E Street, Northwest, Washington, DC 20442-0001. The agenda for this meeting will include various matters relating to the operation of the Uniform Code of Military Justice throughout the Armed Services.

DATE: December 18, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas F. Granahan, Clerk of Court, United States Court of Military Appeals, 450 E Street, Northwest, Washington, DC 20442-0001; telephone (202) 272-1448.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 16, 1985.

[FR Doc. 85-29451 Filed 12-11-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Scientific Advisory Committee; Meetings

ACTION: Notice of Closed Meetings.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463,as amended by section 5 of Pub. L. 94-409, notice is hereby given that closed meetings of a panel of the DIA Scientific Advisory Committee have been scheduled as follows:

DATES: January 15, and February 19, 1986 9:00 a.m. to 5:00 p.m. each day.

ADDRESS: The DIAC, Bolling AFB, D.C.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20301 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meetings are devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Microelectronics and Computers.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 9, 1985.

[FR Doc. 85-29452 Filed 12-11-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Scientific Advisory Committee; Meeting

ACTION: Notice of Closed Meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee have been scheduled as follows:

DATE: January 28, 1986, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20301 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting are devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on future initatives in emergency planning.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 9, 1985.

[FR Doc. 85-29453 Filed 12-11-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Scientific Advisory Committee; Meeting

ACTION: Notice of Closed Meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463,as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: January 31, 1986, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Bolling AFB, DC.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20301 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Space Activities.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 9, 1985.

[FR Doc. 85-29454 Filed 12-11-85; 8:45 am]

BILLING CODE 3810-01-M

Renewal of the DoD-University Forum

Under the provisions of Pub. L. 92-463, "Federal Advisory Committee Act," notice is hereby given that the DoD-University Forum has been found to be in the public interest in connection with the performance of duties imposed on the Department of Defense by law.

The Forum will enable DoD and the universities to address together the range of mutual concerns and opportunities that will shape future research and education programs of importance to national defense.

Membership of the forum will be drawn equally from DoD and the university community. This will ensure

that membership is balanced in terms of the functions to be performed.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 9, 1985.

[FR Doc. 85-29450 Filed 12-11-84; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

December 4, 1985.

The USAF Scientific Advisory Board Ad Hoc Committee on Monitoring Underground Nuclear Testing in the late 1990s will meet at Patrick Air Force Base, Florida, on January 16–17, 1985, 8:30 a.m. to 5:00 p.m. on both days.

The purpose of the meeting will be to review current technology in the nuclear testing field and Air Force Technical Applications Center mission requirements.

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.

Patsy J. Conner,

Air Force Federal Register Liaision Officer.

[FR Doc. 85-29428 Filed 12-11-85; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers; Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS); Ice Related Flood Control Project, Delaware River at Port Jervis, New York Area

AGENCY: Philadelphia District, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. The proposed action is an outcome of a Congressionally authorized study, "Delaware River Basin Ice Jams Study", completed in March 1985. That basinwide planning study screened potential damage areas from ice-related flooding. Various alternative methods were investigated to see if Federal participation was warranted. Alternatives considered included:

Dikes/floodwalls
Channel improvements
In-river detention structures
Ice booms
Diversion channels
Dusting
Blasting
Mechanical removal
Floodproofing

Based on technical and economic feasibility that study concluded that only the Port Jervis Area warranted further study and this study should be undertaken under Section 205 of the Corps of Engineers' Continuing Authorities Program. The recommended plan consisted of a diversion channel at Mashipacong Island, N.J. and two removable ice-booms upstream of Port Jervis, N.Y.

2. As a result of the above recommendations, detailed studies under Section 205 were undertaken. Environmental and technical analysis were conducted to refine and assess the previous recommended solution. Based on ice data collected by the Corps of Engineers' Cold Regions Engineering and Research Laboratory and subsequent analysis the ice boom portion was eliminated leaving the diversion channel as the only remaining viable solution.

3. The diversion channel consists of three alternatives involving clearing along a bottomland forested back channel of Mashipacong Island, Delaware River. Ice jams would not be prevented under this alternative, but ice and flows would be diverted around the river blockage thereby preventing damages in the communities of Port Jervis, Matamoris, and Westfall Township. Alternatives being considered in this detailed project phase of this study include:

Variations in tree clearing width
Partial tree clearing
Channel realignment
Entrance modification (excavation)

The project would not impact normal river flows.

4. Several meetings have been held with agency participation from the National Park Service, the U.S. Fish and Wildlife Service, the New Jersey Department of Environmental Protection, Pennsylvania Department of Environmental Resources, New York Department of Environmental Conservation, and the Delaware River Basin Commission. Significant areas to be addressed in the EIS include:

Flooding
Vegetation and wetlands
Fish & Wildlife
Recreation
Cultural Resources
Mitigation

5. It is anticipated that further scoping meetings will be unnecessary.

6. The DEIS is scheduled to be released for public comment in December 1985.

ADDRESS: Questions about the proposed action and DEIS can be answered by: Mr. William Mueller (Telephone No. 215–597–4833), Environmental Resources Branch, U.S. Army Corps of Engineers, Philadelphia District, Custom House, 2d & Chestnut Streets, Philadephia, Pennsylvania 19106–2991.

John O. Roach II,

Department of the Liaison Officer with the Federal Register.

[FR Doc. 85-29473 Filed 12-11-85; 8:45 am]

BILLING CODE 3710-GR-M

Intent To Prepare an Environmental Impact Statement; New York and New Jersey

SUMMARY: 1. Description of Proposed Action. Operational Program to dispose of dredged material in existing or new subaqueous borrow pits. The source of the dredged material is navigation projects in the Port of New York and New Jersey. This disposal action is primarily intended for disposal of material which has not satisfied EPA's testing criteria for unrestricted ocean disposal. Existing pits and potential areas for the excavation of new pits are located primarily in Lower New York Harbor.

2. Reasonable Alternatives.

(a) Alternative borrow pit sites:

(1) Selection of one or more suitable existing pit(s)
(2) Excavation of new pits

(b) Alternative methods of filling pit(s):

(1) Fill completely
(2) Fill incomplete so that same depression remains
(3) Capping alternative (sand vs. mud vs. no cap)

(c) Alternative methods of dredged material disposal:

(1) Ocean disposal
(2) Wetlands creation
(3) Containment islands and areas (land extensions)
(4) Upland disposal
(5) Sanitary landfill cover

3. Scoping Process.

(a) Public Involvement. A public meeting will be held on Monday, December 16, 1985, in room 2038, 26 Federal Plaza, N.Y., N.Y. 10278–0090 at 10 a.m. The public is encouraged to attend and submit their verbal and/or written comments on the proposed EIS. Scoping comments should be received by January 15, 1986. The draft and final EIS will be distributed for comment to

all known interested parties and appropriate agencies. Public meetings will be held as appropriate during the EIS development process.

(b) Significant Issues Requiring In-depth Analysis.

(1) The impacts of filling pits to fisheries, benthos and water quality in N.Y. Harbor
(2) The impact of filling pits on present and future sand mining operations
(3) Site selection criteria (including the use of existing vs. new pits)
(4) Trade-offs involved in implementing borrow pit disposal vs. other means of disposal.

(c) Assignments. Agencies having jurisdiction under law will be asked to be cooperating agencies.

(d) Environmental review and consultation. Appropriate concerned agencies and the Dredged Material Management Plan Steering Committee and Public Involvement Coordinating Group will be consulted during EIS preparation. Comments or question should be addressed to Robert Will, Borrow Pit EIS Coordinator, at (212) 264–4662 or Environmental Analysis Branch, U.S. Army Corps of Engineers, New York District, 26 Federal Plaza, N.Y., N.Y. 10278–0090.

4. Scoping meeting will be held on December 16, 1985 at 10 a.m. in Room 2038, 26 Federal Plaza, N.Y., N.Y. 10278–0090.

5. Estimate date of statement availability April 1, 1986.

ADDRESS:

Project manager	EIS coordinator
Mario Paula	Robert Will
ATTN: NANOP-RQ	ATTN: NANPL-E
Tel. No. (212) 264-5622	Tel. No. (212) 264-4662
FTS 264-5622	FTS 264-4662

U.S. Army Engineer District, New York,
26 Federal Plaza,
New York, N.Y. 10007.

John O. Roach, II,

Department of the Army Liaison Officer with the Federal Register.

[FR Doc. 85–29474 Filed 12–11–85; 8:45 am]

BILLING CODE 3710-06-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs; Closing Date for Institutions To File "Request for Institutional Eligibility for Programs"

AGENCY: Department of Education.

ACTION: Notice of Closing Date for Institutions to File "Request for Institutional Eligibility for Programs" to Participate in the National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs for the 1986–87 Award Year.

SUMMARY: The Secretary invites currently ineligible institutions of higher education that wish to participate in the "campus-based programs" in the 1986–87 award year to submit to the Secretary an institutional eligibility application form.

The campus-based programs are the National Direct Student Loan Program, the College Work-Study Program, and the Supplemental Educational Opportunity Grant Program and are authorized by Title IV of the Higher Education Act of 1965. The 1986–87 award year is July 1, 1986 through June 30, 1987.

(20 U.S.C. 1087aa–1087ii; 42 U.S.C. 2751–2756b; and 20 U.S.C. 1070b–1070b–3)

Closing Date For Filing Application. To participate in a campus-based program in the 1986–87 award year, an institution must mail or hand deliver its "Request for Institutional Eligibility for Programs" form to the address indicated below on or before January 17, 1986.

Applications Delivered by Mail. An institutional eligibility application delivered by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: DEAE/OHEP/OPE, 400 Maryland avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) A dated shipping label, invoice, or receipt from a commercial carrier; (4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Institutions which submit eligibility applications that are received after the closing date will not be considered for funding under the campus-based programs for award year 1986–87.

Applications Delivered by Hand. An institutional eligibility application that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center (ACC), Room 3633, Regional Office Building 3, 7th & D Streets, SW., Washington, D.C. The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Eastern Standard Time) daily, except Saturdays, Sundays, and Federal holidays. An application for the 1986–87 award year eligibility that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Supplementary Information. Under the three campus-based programs, the Secretary allocates funds to eligible institutions of higher education. The Secretary will not allocate funds under the campus-based programs in award year 1986–87 to any currently ineligible institution unless the institution files its "Request for Institutional Eligibility for Programs" form (ED Form 1059) by January 17, 1986. If the institution submits its institutional eligibility application after the closing date, the Secretary will use this application in determining the institution's eligibility to participate in the campus-based programs beginning with the 1987–88 award year.

Ineligible institutions include:

(1) An institution that has not been designated as an eligible institution by the Secretary.

(2) A location of an eligible institution that was not included in the Department's eligibility certification but has been included on the institution's Fiscal-Operations Report and Application to Participate (FISAP).

(3) A branch campus that is currently part of an eligible institution but has filed its own FISAP and is seeking eligibility as a separate institution of higher education. (ED Form 1059, OMB #1840–0098, Approved through January 31, 1986)

The Secretary wishes to advise institutions that the institutional eligibility form "Request for Institutional Eligibility for Programs" (ED Form 1059) should not be confused with the FISAP (ED Form 646–1) that institutions were required to sumbit by October 4, 1985, in order to receive funds under the campus-based programs for the 1986–87 award year.

Applicable Regulations. The following regulations apply to the campus-based programs:

(1) Student Assistance General Provisions, 34 CFR Part 668.

(2) National Direct Student Loan Program, 34 CFR Part 674.

(3) College Work-Study Program, 34 CFR Part 675.

(4) Supplemental Educational Opportunity Grant Program, 34 CFR Part 676.

For Further Information Contact. For information concerning designation of eligibility, contact: Dr. Morris L. Brown, Director, Division of Eligibility and Agency Evaluation, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., (Mail Stop 3329, ROB–3), Washington, D.C. 20202. Telephone (202) 245–9703.

For technical assistance concerning the FISAP and/or other operational procedures of the campus-based programs, contact: Robert R. Coates, Chief, Campus-Based Programs Branch, Division of Program Operations, 400 Maryland Avenue, SW., (Mail Stop 4621, ROB–3), Washington, D.C. 20202. Telephone: (202) 245–2320.

(20 U.S.C. 1087 *et. seq.*; 42 U.S.C. 2751 *et. seq.*; and 20 U.S.C. 1070b *et. seq.*

(Catalog of Federal Domestic Assistance No. 84.038, National Direct Student Loans; 84.033, College Work-Study Program; and 84.007, Supplemental Educational Opportunity Grant)

Dated: December 5, 1985.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 85–29471 Filed 12–11–85; 8:45 am]

BILLING CODE 4000–02–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 85–32–NG]

El Paso Gas Marketing Co.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration.

ACTION: Notice of application to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on November 25, 1985, of an application from El Paso Gas Marketing Co. (El Paso Gas), to import on a blanket basis a maximum of 400,000 Mcf of Canadian natural gas per day. El Paso proposes to purchase a daily amount of up to 200,000 Mcf of gas from Northridge Petroleum Marketing, Inc. (Northridge) with the remaining 200,000 Mcf to be supplied by various unspecified Canadian suppliers from British Columbia. The gas will be resold on a short-term spot basis primarily to customers currently served by El Paso's parent firm, El Paso Natural Gas Company (EPNG).

The application was filed with the ERA pursuant to Section 3 of Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., January 13, 1986.

FOR FURTHER INFORMATION CONTACT:

Olga T. Ronkovich, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–9482

Diane J. Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–6667

SUPPLEMENTARY INFORMATION: On November 25, 1985, El Paso filed an application for blanket authorization to import up to 400,000 Mcf of Canadian natural gas per day for a two-year period beginning on the date of first delivery. As proposed, El Paso will purchase half of the gas from Northridge under a sales agreement dated October 29, 1985, and the remainder from Canadian suppliers yet to be designated by El Paso. The gas will be sold on a short-term and spot basis primarily to customers currently served by EPNG.

El Paso states that the agreement with Northridge for the purchase of 200,000 Mcf per day is intended to be effective for an initial two-year term and will be automatically renewed for successive two-year terms unless terminated in writing by either party. El Paso states that the agreement contains a pricing mechanism to establish purchase prices competitive with domestic gas acquired by El Paso for resale in the spot market. Purchase price levels under the agreement are to be established incrementally on a net-back basis. The purchase price for each increment of imported gas acquired to resell to spot market customers will be established by reference to El Paso's sales price for such volumes, subject to a price floor equal to the higher of the then-effective, applicable border price established for gas exports by the Canadian government, or the then-current lowest published price paid for gas sold by El Paso in spot-market sales delivered at the inlet of EPNG's interstate transmission system, less transportation costs from the points of importation to the EPNG system.

El Paso will transact individual arrangements to acquire up to 200,000 Mcf of gas per day in addition to those supplies from Northridge. They will be purchased from reliable gas producers in British Columbia at negotiated prices which will be competitive with domestic suppliers, utilizing net-back pricing formulae comparable to that included in the Northridge agreement.

El Paso proposes to make regular quarterly reports to the ERA on all purchase and sales transactions made under the requested blanket authorization. The total volume of imports involved in all transactions under the primary term of the proposed authorization could be as high as 240 Bcf.

El Paso asserts that no new pipeline facilities will be required in order to import the gas. The points of importation under the Northridge agreement will be Kingsgate, British Columbia and Emerson, Manitoba. Transportation for the Northridge volumes will be provided by Pacific Gas Transmission Company and other pipeline facilities to EPNG's system which would complete the ultimate delivery of gas. The point of importation for gas purchased from El Paso's other suppliers will be at the interconnection of facilities owned by Westcoast Transmission Company, Ltd. and Northwest Pipeline Corporation near Sumas, Washington.

In support of its application, El Paso Gas asserts that the gas will be imported at rates which, when delivered, will be competitive with available domestic gas supplies.

The decision on this application will be made consistent with the Secretary of Energy's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). The objective of this policy, is to free commercial parties from undue government interference in determining contract terms and reflects the importance of buyer-seller negotiation. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Other Information

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person

wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076-A, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585. They must be filed no later than 4:30 p.m., January 13, 1986.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision on the proceeding, and demonstrate why an oral representation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of El Paso Gas's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on December 6, 1985.

Robert L. Davies,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-29497 Filed 12-11-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP86-209-000 et al.]

ANR Pipeline Co. et al.; Natural Gas Certificate Filings

December 6, 1985.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP86-209-000]

Take notice that on November 18, 1985 ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243 (Applicant) filed in Docket No. CP86-209-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing ANR to provide a transportation service on behalf of Texas Eastern Transmission Corporation (TETCO), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR proposes to provide a transportation service to assist TETCO in effectuating receipt of the natural gas TETCO proposes to purchase from Arco Oil an Gas Company (Arco) in Ship Shoal Block 178, offshore Louisana. Pursuant to the letter agreement dated October 23, 1985, between ANR and TETCO, ANR states that it has agreed to receive the equivalent of up to 10,000 dt equivalent of natural gas per day at the interconnection of ANR's offshore system and a lateral pipeline constructed by Arco to connect the Block 178 production platform to ANR's facilities. ANR states it would transport and make deliveries of gas onshore, reduce by one percent for fuel use, to TETCO at an existing interconnection between the pipeline systems of TETCO and ANR located in St. Landry Parish, Louisiana. As consideration for providing the service, TETCO has agreed to pay ANR 14.3 cents for each dt redelivered to it at the existing interconnection.

Comment date: December 27, 1985, in accordance with Standard Paragraph F At the end of this notice.

2. Black Marlin Pipeline Company

[Docket Nos. CP75-93 (Remand) and CP75-93-007 (Remand)]

Take notice that on October 30, 1985, Black Marlin Pipeline Company (Black Marlin), P.O. Box 1188, Houston, Texas 77001, and Union Carbide Corporation (Union Carbide), Old Ridgebury Road, Danbury, Connecticut 06817 (Petitioners), filed in Docket Nos. CP75-93 (Remand) and CP75-93-007 (Remand) a petition to amend the Commission's Order Approving Settlement Agreement (settlement order) issued January 29, 1981, and a certificate order issued March 30, 1981, granting authorization for Black Marlin to implement the settlement order. Petitioners state that their petition is being filed with the concurrence of Transcontinental Gas Pipe Line Corporation (Transco), the purchaser of the natural gas under the settlement and certificate orders. Petitioners' proposals are more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners state that, under the orders, Black Marlin is obligated to sell and deliver to Transco 25 percent of the gas produced by Shell Oil Company (Shell) from the Den Field, offshore, Gulf of Mexico, and sold to Union Carbide. Petitioners also state that Transco is obligated either to purchase such gas at the same wellhead price that Shell charges Union Carbide or, alternatively, to terminate the Black Marlin/Transco agreement for sale and purchase of such gas (agreement). The petition notes that deliveries of gas were temporarily interrupted for operational reasons as of February 4, 1983, and that when deliveries could be resumed Transco declined to take the gas due to worsening market conditions and the fact that Shell and Union Carbide had renegotiated the wellhead price, increasing it to $3.42 per Mcf as of February 1983. In these circumstances, rather than requiring Transco either to pay for such gas at uneconomic levels or alternatively requiring Transco to terminate the agreement altogether, Petitioners state that Black Marlin and Transco have renegotiated the agreement to give Transco a one-time opportunity to resume its purchase of then-current Den Field gas production whenever Transco determines, in its sole discretion, that it can receive, pay for, and market such production at the wellhead price level then being charged. Subject to Transco's right to resume such purchases, Petitioners request the Commission to modify the settlement order and certificate order to authorize

the termination of the obligations of Union Carbide and Black Marlin to sell and deliver Den Field production for resale.

Comment date: December 27, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Consolidated System LNG Company, Consolidated Gas Transmission Corporation

[Docket No. CP86-208-000]

Take notice that on November 18, 1985, Consolidated System LNG Company (Consolidated LNG) and Consolidated Gas Transmission Corporation (Consolidated Transmission), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP86-208-000 an application pursuant to section 7 of the Natural Gas Act for an order permitting the abandonment and transfer of certain natural gas pipeline and related and appurtenant facilities by Consolidated LNG to Consolidated Transmission, and for a certificate of public convenience and necessity authorizing the acquisition and the operation of such facilities in interstate commerce by Consolidated Transmission, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Consolidated LNG seeks authorization to abandon by sale to Consolidated Transmission its wholly-owned Line No. PL-1 and related facilities, consisting primarily of 109.8 miles of 30-inch transmission pipeline, extending from its southern terminus at Loudoun, in Loudoun County, Virginia, through Virginia, Maryland and Pennsylvania to its northern terminus at Perulack in Juniata County, Pennsylvania. Consolidated LNG states that the subject facilities were constructed by Consolidated LNG for use in a liquefied natural gas (LNG) project originally authorized by the Commission in Opinion Nos. 622 and 622-A. Consolidated LNG indicates that the facilities have been idle since the termination of deliveries of LNG in December 1980, except for their occasional use in rendering short-term transportation services, which terminated in June 1983.

Consolidated Transmission seeks authorization to acquire the subject facilities and operate them in its natural gas business. Consolidated Transmission states that the facility acquisition would take place at a mutually agreeable date following the receipt of all necessary regulatory approvals. Consolidated Transmission states further that it would pay Consolidated LNG the net book value for the facilities, estimated to be $35,555,654.86 as of March 31, 1987. Consolidated Transmission proposes to utilize the facilities to render firm, long-term sale and transportation services for Baltimore Gas and Electric Company and Washington Gas Light Company, as proposed in its application in Docket No. CP85-766-000, filed August 2, 1985. No new facilities, sales or services are proposed in the subject application.

Comment date: December 27, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Colorado Interstate Gas Company, Ralston Processing Associates, Inc.

[Docket No. CP86-167-000]

Take notice that on November 1, 1985, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, and Ralston Processing Associates, Inc. (RPA), P.O. Box 18348, Capital Hill Station, Denver, Colorado 80218, (Applicants) filed in Docket No. CP86-167-000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing the construction and operation of facilities by CIG, the exchange of natural gas by Applicants, and a request for a waiver of any reporting requirements which might otherwise be required of RPA as a result of the proposed exchange, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants propose the exchange of plant-reduction volumes of natural gas with certain replacement volumes of natural gas as agreed upon under a gas processing agreement, dated October 31, 1985, between Applicants. It is asserted that CIG would initially deliver up to 8,000 Mcf of natural gas per day to RPA for processing by RPA at its Oregon Basin plant in Park County, Wyoming. It is further asserted that the residue volumes, approximately 7,000 Mcf per day, would be redelivered to CIG at the outlet of RPA's plant. It is proposed that RPA would redeliver to CIG replacement volumes of gas thermally equivalent to the fuel and shrinkage volumes retained by RPA, approximately 1,000 Mcf per day, at an existing interconnection with the McClave gasoline plant and CIG's facilities in Kiowa County, Colorado, and other mutually agreeable points.

In order to deliver the natural gas to be processed by RPA, CIG proposes the construction and operation of a 4-inch side tap on CIG's facilities which interconnect with the facilities of Colorado Transmission Company in Park County, Wyoming, and the construction and operation of a 4-inch measuring facility. It is asserted that RPA would construct and operate a 6-inch, 4-mile gathering line which would connect CIG's proposed tap with its Oregon Basin plant. It is asserted that the proposed gathering line would be non-jurisdictional under section 1(b) of the NGA. In order to accept the residue volumes from the Oregon Basin plant, CIG requests authority to relocate and expand its existing Planet meter station located at the tailgate of RPA's Oregon Basin plant. It is estimated that the cost for the facilities to be built by CIG would be approximately $151,200. This cost would be financed by funds on hand, it is stated.

In order to redeliver thermally equivalent volumes replacing the plant volume reduction, RPA requests a limited jurisdiction certificate authorizing RPA to have natural gas delivered to CIG in Kiowa County, Colorado. Additionally, RPA seeks blanket authority to add or delete redelivery points to CIT as mutually agreed upon. The proposed redelivery of replacement gas would be without charge by either party, it is stated. RGA further requests for the Commission find that RPA's proposed limited jurisdiction certificate would be confined to the proposed exchange with CIG and that RPA's other operations including the processing and gathering of natural gas to its plant would be exempt from the provisions of the NGA and the Commission's Regulations. Finally, RGA requests a waiver with respect to any provisions pursuant to the Commission's Uniform System of Accounts or any other reporting requirements which otherwise would apply to RGA.

The agreement provides that Applicants would share in the revenues from the sale of the liquid hydrocarbon products; CIG would receive 25 percent of the new profits during the period prior to recovery of RPA's investment in the proposed 6-inch gathering line and a cryogenic processing unit to be placed into its Oregon Basin plant; afterwards CIG's share of the net profits would increase to forty percent, it is alleged. It is also asserted that all risk of loss would be borne by RPA.

Comment date: December 27, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. Colorado Interstate Gas Company

[Docket No. CP86-118-000]

Take notice that on October 31, 1985, Colorado Interstate Gas Company

(CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP96-118-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for The Gates Rubber Company (Gates) and for permission and approval to abandon such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG proposes to transport up to 6,500 Mcf of natural gas per day on an interruptible basis for Gates pursuant to a gas transportation agreement dated August 1, 1983, as amended. It is stated that the gas would be delivered to CIG for Gates' account by Williston Basin Interstate Pipeline Company (Williston Basin) at a point of interconnection between CIG and Williston Basin in Park County, Wyoming. CIG indicates that it would then redeliver thermally equivalent volumes, less fuel gas and unaccounted-for gas, to Public Service Company of Colorado (PSCo) for Gates' account at an existing interconnection between CIG and PSCo in Adams County, Colorado.

GIG proposes to charge Gates for the transportation service 64.29 cents per Mcf of natural gas, inclusive of the 1.25-cent Gas Research Institute funding fee. It is stated that this rate is set forth in CIG's Rate Schedule EUS-1, CIG's FERC Gas Tariff, Original Volume No. 1.

CIG states that until October 31, 1985, it had been transporting this gas for Gates pursuant to blanket authorization granted to CIG in Docket No. CP83-21-000 and pursuant to Subpart F of Part 157 of the Commission's Regulations.

CIG further states that no new facilities are necessary for this proposed service and that the service would terminate October 31, 1987.

Comment date: December 27, 1985, in accordance with Standard Paragraph F at the end of this notice.

6. Columbia Gulf Transmission Company

[Docket No. CP86-150-000]

Take notice that on November 1, 1985, Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027, filed in Docket No. CP86-150-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Corning Glass Works under the certificate issued in Docket No. CP83-496-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia Gulf proposes to transport up to 2.8 billion Btu equivalent of natural gas, less retainage, on behalf of Corning Glass Works through the later of any extension of the existing authority to transport under § 157.209 of the Commission Regulations, and/or such period of time established by the Commission in the final rule issued in Docket No. RM85-1-000, up to the end of the term of the transportation agreement. Columbia Gulf, it is said, would receive the gas in Louisiana from United Gas Pipe Line Company (United) and would deliver the gas to Columbia Gas Transmission Corporation for redelivery to Columbia Gas of Pennsylvania, Inc. (CPA), the distribution company serving Corning Glass Works. It is indicated that Corning Glass Works would purchase this gas from Energy Management, Inc. (EMI), to be used as boiler fuel and process gas in its plant in Charleroi, Pennsylvania.

Columbia Gulf states that it would charge one of the rates in its Rate Schedule T-2 for its transportation service: offshore to Kentucky—23.92 cents per dt equivalent of gas and retain 1.69 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas; lateral onshore to Kentucky—14.28 cents per dt equivalent of gas and retain 1.50 percent; Rayne, Louisiana, to Kentucky—12.76 cents per dt equivalent of gas and retain 1.50 percent; and Corinth, Mississippi, to Kentucky—6.38 cents per dt equivalent of gas and retain 0.75 percent.

It is also explained that Columbia Gulf has not released any gas supplies of EMI and that the price charged to Corning Glass Works under the gas purchase contract would not exceed the applicable maximum lawful price.

Comment date: January 21, 1986, in accordance with Standard Paragraph G at the end of this notice.

7. Columbia Gas Transmission Corporation

[Docket No. CP86-148-000]

Take notice that on November 1, 1985, Columbia Gas Transmission Corporation (Columbia Transmission), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP86-148-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of General Refactories Company (General Refactories) under the certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia Transmission proposes to transport up to 800 million Btu equivalent of natural gas per day on behalf of General Refactories through the later of any extension of the existing authority to transport under § 157.209 of the Commission Regulations, and/or in the event Columbia Transmission files a statement of notification pursuant to § 284.223(g) of the Commission's Regulations and thereafter files for a blanket certificate unde § 284.221 of the Commission's Regulations, such period of time as may be established by the Commission in any final rule issued in Docket No. RM85-1-000, up to the end of the term of the transportation agreement. Columbia Transmission would redeliver gas to the Inland Gas Company (Inland), the local distributor serving General Refactories' plant in Hitchins, Kentucky, it is explained. It is also stated that Columbia Transmission, which is acting as agent for the producer, J.D. Drilling Company, has not released gas for such sale to General Refactories.

Columbia Transmission states that it would charge one of the rates set forth in the Rate Schedule T-2 of its transportation service: gas received from Columbia Gulf at Leach, Kentucky—32.50 cents; received from receipt points other than Leach—41.27 cents per million Btu; and retain 2.43 percent for company—use and unaccounted—for gas. In addition, General Refactories is being charged the current General R&D Funding Unit of the Gas Research Institute for all quantities transported under the transportation arrangement.

Comment date: January 21, 1986, in accordance with Standard Paragraph G at the end of this notice.

8. Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company

[Docket No. CP86-207-000]

Take notice that on November 15, 1985, Columbia Gas Transmission Corporation (Columbia Transmission), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, and Columbia Gas Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027 (Applicants), filed in Docket No. CP86-207-000 a request pursuant to §§ 157.205, 157.209, and 284.223 of the

Commission's Regulations under Natural Gas Act, as amended, for authority to transport natural gas on behalf of Chevron U.S.A., Inc. (Chevron), under their certificates issued in Docket Nos. CP83-76-000 and CP83-496-000, respectively, pursuant to section 7 of the Natural Gas Act, as amended, all as more fully set forth in their request on file with the Commission and open to public inspection.

Specifically, Applicants propose to transport up to 1.3 billion Btu equivalent of natural gas per day on behalf of Chevron through the later of any extension of the existing authority to transport under § 157.209 of the Commission Regulations, and, pursuant to Columbia Transmission's filing of a statement of notification pursuant to § 284.223(g) of the Regulations, such period of time established by the Commission in Order No. 436 and appropriated clarifications, up to the end of the term of the transportation agreement in the request as Exhibit Z-1. It is explained that the transportation contract provides that Columbia Gulf would receive the quantities at existing points of interconnection between the facilities of United Gas Pipe Line Company and Columbia Gulf at Erath and Olla, Louisiana, and redeliver to Columbia Transmission which would redeliver to Cincinnati Gas and Electric (CG&E) for ultimate delivery to Chevron at its Fort Bend, Ohio plant.

Columbia Gulf states that it would charge one of the rates in its Rate Schedule T-2 for its transportation service: offshore to Kentucky—23.92 cents per dt equivalent of gas and retain 1.69 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas; lateral onshore to Kentucky—14.24 cents per dt equivalent of gas and retain 1.50 percent; Rayne, Louisana, to Kentucky—12.76 cents per dt equivalent of gas and retain 1.50 percent; and Corinth, Mississippi, to Kentucky—6.38 cents per dt equivalent of gas and retain 0.75 percent.

Columbia Transmission states that it would charge one of the rates in its Rate Schedule TS-1 for its transportation service: gas received from Columbia Gulf at Leach, Kentucky—21.16 cents per dt equivalent and gas received from Columbia Gulf at receipt points other then Leach, Kentucky—29.93 cents per dt equivalent provided the volumes are within the CG&E's total daily entitlements (TDE). However, Columbia Transmission states it would charge 32.50 centeper dt equivalent for gas it received from Columbia Gulf at Leach, Kentucky; and 41.27 cents per dt equivalent for gas received from receipt points other than Leach, Kentucky if the volumes are in excess of CG&E's TDE's. Columbia Transmission further states it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. In addition, Columbia Transmission states it would collect the Gas Research Institute surcharge for all quantities transported under the transportation agreement.

Applicants estimate average day, peak day and annual volumes of 1.3 billion Btu, 1.1. billion Btu and 475 billion Btu, respectively, and that the gas would be used for boiler fuel and process gas at Chevron's plant. CG&E submitted an affidavit indicating it has sufficient capacity on its system to transport the gas without detriment to its existing customers. Applicants also included an affidavit from Chevron's supplier, EnTrade Corporation, indicating the gas to be transported was not committed or dedicated to interstate commerce prior to November 8, 1978, and that the sales price would not exceed the maximum lawful price permissible under the Natural Gas Policy Act of 1978.

Applicant also request flexible authority to add or delete sources of supply and receipt points if such altered service is on behalf of the same end-user at the same end-user location and would be within the maximum daily and annual volumes authorized therein. Within 30 days of the addition or deletion of any gas suppliers and/or receipt points, Applicants indicate that they would file certain information in this docket, where applicable to the changes in service.

Comment date: January 21, 1986, in accordance with Standard Paragraph G at the end of this notice.

9. El Dorado Interstate Transmission Company

[Docket No. CP86-205-000]

Take notice that on November 14, 1985, El Dorado Interstate Transmission Company (Applicant), 950 One Energy Square, Dallas Texas 75206, filed in Docket No. CP86-205 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of pipeline and related facilities and the transportation of up to 520,000 Mcf of natural gas per day for others through such facilities, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant states that it is a general partnership organized under the laws of the State of Delaware by PGC Interstate Transmission Company, a wholly-owned subsidiary of Lear Petroleum Company, and TransCanada PipeLines El Dorado Ltd., a wholly-owned subsidiary of TCPL Resources U.S.A. Ltd., each of which would initially own a 50 percent interest in the partnership. It is explained that TCPL Resources U.S.A. Ltd. is controlled by TransCanada PipeLines Limited, a Canadian corporation.

Applicant requests authorization to render a transportation service for contract shippers engaged in enhanced oil recovery (EOR) and/or cogeneration operations in Kern County, California. Applicant also requests authorization to construct and operate certain pipeline, measurement and other related facilities which would be required to enable Applicant to render the proposed transportation services.

Applicant proposes to construct and operate 381 miles of pipeline and related facilities in order to transport gas from Topock, Arizona, to eleven delivery points near Bakersfield, California. Applicant's proposed project consists of a mainline, a receipt lateral and two delivery laterals. It is explained that the north receipt lateral consists of approximately 16.5 miles of 24-inch diameter pipeline extending from near Oatman, Arizona, to a point of interconnection with the pipeline facilities of El Paso Natural Gas Company in Topock, Arizona, and that the mainline pipeline consists of approximately 255.7 miles of 42-inch diameter pipline extending west from Topock, Arizona, across the Colorado River to a point approximately 4 miles south of Arvin, California, in the San Joaquin Valley in central California. Applicant states that at this location, the mainline is divided into two delivery laterals. Applicant explains that the east delivery lateral consists of approximately 26.4 miles of 30-inch diameter pipeline and approximately 9.4 miles of 12.75-inch diameter pipeline extending from the mainline pipeline system to points near the Kern Front Oil Field, approximately 10 miles north of Bakersfield, California, and that the west delivery lateral consists of approximately 47.7 miles of 30-inch diameter pipeline and approximately 20.9 miles of 24-inch diameter pipeline extending from the mainline pipeline system to a point near the Kern Ridge Oil Field, north and west of Bakersfield, California. This lateral also includes approximately 3.9 miles of 8.625-inch

diameter pipeline to an area near Maricopa, California, it is said.

Applicant states that, as demonstrated in Exhibit I of the application, a significant demand for natural gas exists in the San Joaquin Valley and particularly in Kern County, California. It is asserted that the use of gas would enable EOR operators to increase net production by reducing the amount of crude oil burned in their operations. Additionally, it is said that the use of gas would allow EOR operators to increase oil production while not exceeding pertinent air pollution control levels. Certain shippers which Applicant plans to serve have identified their initial gas requirements at approximately 520,000 Mcf per day. The shippers estimate their need for gas to equal or exceed approximately 1,000,000 Mcf per day by the mid 1990s. Applicant states that the capactiy of the proposed system is 520,000 Mcf per day without the use of compression and that with the addition of one compressor station, system capacity can be increased to 1.05 billion cubic feet of gas per day.

Applicant states that sufficient supplies of natural gas exist in Canada to meet the needs of the EOR operators in Kern County, California. Information is provided concerning the gas supplies of Columbia Gas Development of Canada Ltd., Westcoast Transmission Company Limited, and TransCanada PipeLines, Ltd. Applicant further states that its proposed system can result in the increased utilization of excess capacity on several existing transmission systems throughout the United States which could represent a substantial savings to the customers on those systems.

Applicant states that the proposed transportation services are based upon the terms and conditions of the *pro forma* tariff contained in Exhibit P. It is stated that the tariff is submitted for illustrative purposes only. The proposed transportation services would be rendered for fifteen years, it is submitted. Applicant states its firm transportation rate under Rate Schedule T–I would consist of a monthly demand charge of $8.5007 per million Btu and a commodity charge of $.1196 per million Btu. Applicant also proposes to offer a best-efforts service to the firm transportation shippers at rates set forth in Rate Schedule AO–I

Applicant states that the estimated cost of the proposed pipeline and related facilities (including a minimum of 13 meter stations) is approximately 281 million dollars, which cost would initially be financed as set forth in Exhibit L of the application. Exhibit L indicates, among other things, that 25 percent of the project would be financed with equity receiving a 16 percent return and 75 percent with debt receiving a 12.5 percent return.

The Notice of Intent to Prepare a Draft Environmental Impact Statement in Docket Nos. CP85–437–000 and CP85–552–000, issued August 23, 1985, indicates that the staff of the FERC has determined that approval of the projects applied for in those dockets would be a major Federal action significantly affecting the equality of the human environment. The notice also states that the Draft Environmental Impact Statement (DEIS) noticed in that documents is intended to analyze the facilities required for Applicant's proposal together with those proposed in the other EOR applications analyzed in that DEIS.

Comment date: December 17, 1985, in accordance with Standard Paragraph F at the end of this notice.

10. El Paso Natural Gas Company

[Docket No. CP86–197–000]

Take notice that on November 8, 1985, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP86–197–000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the firm transportation and delivery of natural gas in interstate commerce to points of delivery at or near Arizona/California border and at other existing points along its system, and the construction and operation of facilities, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

El Paso proposes to offer a firm transportation service for up to 400,000 Mcf of natural gas per day. This proposed transportation and delivery service would be performed under the terms of a proposed Rate Schedule T–3 of its FERC Gas Tariff, Original Volume No. 1–A. It is explained that the proposed Rate Schedule T–3 would be available to anyone who desires to have volumes transported on a firm basis, but El Paso states that the service would be used primarily by enhanced oil recovery users in the heavy oil fields of central California. El Paso states that the proposed rates schedule provides for a reservation charge, a commodity charge, a San Juan triangle facilities charge and a fuel reimbursement charge. El Paso also states that if its system capacity is impaired so that it is unable to meet both its firm sales and firm transportation requirements, then available capacity would be shared by both on a *pro rata* basis.

El Paso states that it does not now have the available pipeline capacity to effectuate its proposed firm transportation service. It, therefore, requests authority to construct and operate approximately 19.8 miles of 24-inch pipeline looping segments of its Ignacio-to-Blanco pipeline and San Juan Mainline pipeline and 3,580 additional compressor horsepower at its existing Bondad compressor station. El Paso states that piping modifications at its Wenden compressor station would also be required. The proposed loop on the Ignacio-to-Blanco pipeline would consist of 14.6 miles of pipe, with appurtenances, all located in San Juan County, New Mexico. The proposed loop of the San Juan Mainline would consist of 5.2 miles of pipeline and appurtenant facilities all located in McKinley County, New Mexico. El Paso estimates that the total cost of its proposed facility modifications to be $11,490,753.00 and states that such cost would be financed from internally generated funds.

El Paso states that its proposed facility modifications are based on an assumption that it would receive for firm transportation 100,000 Mcf of natural gas per day at its Ignacio, Colorado, receipt point and 300,000 Mcf of natural gas per day on the eastern portion of its system at the Keystone/Waha receipt points.

In addition to its proposed facility modifications, El Paso incorporated into its application two additional engineering studies. One of the studies assumed that all volumes to be transported on a firm basis would be delivered at the Keystone/Waha delivery points. It is explained that under that case it would need only pipeline modifications at the Wenden compressor station estimated to cost $340,000. The other case is said to require installation of 93.8 miles of 24, 30 and 34-inch loop pipeline, 7,160 compressor horsepower, and certain other facility modifications all of which are estimated to cost $82,386,000.

Comment date: December 27, 1985, in accordance with Standard Paragraph F at the end of this notice.

11. Honeoye Storage Corporation

[Docket No. CP80–277–003]

Take notice that on November 1, 1985, Honeoye Storage Corporation (Honeoye), c/o Energy Storage Ventures, 89 State Street, Boston, Massachusetts 02109, filed in Docket No. CP80–277–003 a petition to amend, as supplemented on November 5, 1985, and on November 21, 1985, the order issued October 31, 1980, in Docket No. CP80–

277 pursuant to section 7 of the Natural Gas Act requesting authorization to reduce the maximum operating storage capacity of the Honeoye gas field, to allocate storage capacity among its existing customers, to establish terms and conditions related to each customer's rights to inject and withdraw storage volumes and to establish an alternative delivery for Honeoye's customers, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Honeoye states that by order of October 31, 1980, Honeoye received authority to construct and operate facilities sufficient to render 4,880,000 Mcf of storage service and authority to render 4,000,000 Mcf of storage service. Honeoye proposes to reduce the maximum operating storage capacity of its gas field from 4,880,000 Mcf to 4,800,000 Mcf. Honeoye also proposes to provide 4,440,000 Mcf of storage service in the 1985–86 winter heating season and 4,800,000 Mcf of storage service commencing in the 1986–87 winter heating season and thereafter to Honeoye's five existing customers. The following chart shows annual storage service by customer as presently authorized and as proposed to be authorized:

Customer[1]	Existing in Mcf, 1984	Proposed in Mcf	
		1985	1986 and thereafter
ConEd	1,000,000	1,110,000	1,200,000
LILCO	1,000,000	1,110,000	1,200,000
BUG	1,000,000	1,110,000	1,200,000
BGC	800,000	888,000	960,000
GSI	200,000	222,000	240,000
Total	4,000,000	4,440,000	4,800,000

[1] Consolidated Edison Company of New York, Inc. (ConEd), Long Island Lighting Company (LILCO), The Brooklyn Union Gas Company (BUG), Boston Gas Company (BGC) and Gas Service, Inc. (GSI).

Honeoye proposes to operate the field up to a maximum reservoir pressure of 927 psia at a total reservoir volume of 8,710,000 Mcf. Honeoye further proposes to establish a new delivery point for its customers at the existing interconnection of the facilities of Honeoye and New York State Electric & Gas Company.

Honeoye states that no additional facilities are requested to provide the proposed service. Honeoye also states that there would be no increase either in current rates charged by Honeoye or total revenues received by Honeoye.

Comment date: December 27, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

12. K N Energy, Inc.

[Docket No. CP86–159–000]

Take notice that on November 1, 1985, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP86–159–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap on its line in Graham County, Kansas, for natural gas service to Producers Gas Equities, Inc. (Producers), under the certificate issued in Docket Nos. CP83–140–000, CP83–140–001 and CP83–140–002 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

K N proposes to install the tap in order to deliver up to 15 Mcf of gas per day to Producers for resale as part of Producers' daily contract demand of 12,700 Mcf pursuant to K N's service agreement with Producers. It is stated that the volumes delivered at the new tap would come from the contract demand and would involve no reallocation of volumes. It is further stated that the addition of the tap would have no adverse impact on other existing customers of K N or Producers.

It is estimated that the cost of installing the tap would be $850, less the $250 connection charge paid to K N by Producers. It is explained that the end use of the gas delivered at the new tap would be for oil field production operations.

Comment date: January 21, 1986, in accordance with Standard Paragraph G at the end of this notice.

13. Mississippi River Transmission Corporation

[Docket No. CP86–138–000]

Take notice that on November 1, 1985, Mississippi River Transmission Corporation (Applicant), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP86–138–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to provide interruptible, best-efforts transportation of natural gas service for K N Energy Inc. (K N), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant is seeking authorization which would permit the transportation of gas for K N of up to 1,000 Mcf per day on a best efforts basis, fully interruptible at Applicant's discretion and subject to the availability of sufficient capacity in Applicant's system. Applicant has previously provided such transportation service for K N pursuant to self-implementing authority under Subpart G of Part 284 of the Commission's Regulations.

Applicant is proposing a transportation rate of 16.77 cents per MMBtu. Such rate is based upon settlement costs contained in Applicant's most recent general rate filing in Docket No. RP84–63–000.

Applicant indicates that the gas, for the account of K N, is delivered to Applicant in a commingled stream with Applicant's purchased gas at the inlet side of Applicant's wellhead metering facilities located at or near the wellhead of the U.S.A. No. 1–22 well located in Roger Mills County, Oklahoma. Applicant redelivers or causes the redelivery of equivalent volumes of gas to K N in a commingled stream with Applicant's purchased gas at the point of interconnection between Applicant's and K N's pipeline facilities located in the North Reydon Field, Roger Mills County, Oklahoma. It is stated that the agreement provides for an initial term of two years beginning on the date deliveries and transportation of the gas commence and thereafter for successive two-year periods unless terminated by either party giving sixty days prior notice.

Comment date: December 27, 1985, in accordance with Standard Paragraph F at the end of this notice.

14. Natural Gas Pipeline Company of America

[Docket No. CP86–107–000]

Take notice that on October 31, 1985, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP86–107–000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Wabash Alloys, Inc. (Wabash), and for permission and approval to abandon such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport, on an interruptible basis, up to 1.3 billion of natural gas per day on behalf of Wabash for a term to expire on April 30, 1987. It is stated that the gas would be used for the smelting of aluminum in Wabash's plant in Wabash, Indiana. It is explained that Applicant would receive the gas at existing points of interconnection in Woodward County, Oklahoma, from Oklahoma Natural Gas Company and in Washita County,

Oklahoma, form Mustang Fuel Corporation and deliver it to Northern Indiana Public Service Company, the distribution company serving Wabash.

Applicant proposes to charge Wabash rates of 28.2 cents per million and 27.2 cents per million for gas received in Washita and Woodward Counties, Oklahoma, respectively. Applicant also proposes to charge Wabash the currently effective GRI surcharge.

Applicant states that no new facilities would be required for this service. Applicant also requests authorization to add additional receipt points in the future necessary to support this service. Applicant further requests that for services to be provided by interastate pipelines related to the service proposed herein, to the extent necessary, a waiver of the limitations of § 284.122(b) of the Commission's Regulations.

Comment date: December 27, 1985, in accordance with Standard Paragraph F at the end of this notice.

15. Northern States Power Company (Wisconsin)

[Docket No. CP76-84-002]

Take notice that on October 23, 1985, Northern States Power Company, Wisconsin (Petitioner), 100 North Barstow Street, P.O. Box 8, Eau Claire, Wisconsin 54702, filed in Docket No. CP76-84-002 a petition to amend the order issued January 20, 1984, in Docket No. CP76-84-001 pursuant to section 7(c) of the Natural Gas Act so as to authorize Petitioner to sell liquefied natural gas (LNG) to Wisconsin Gas Company (Wisconsin Gas) for cash, instead of exchanging the LNG for volumes of vaporous gas, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that it had been authorized to exchange LNG with Wisconsin Gas for twice the equivalent volumes of vaporous natural gas, by order issued March 15, 1979, in Docket No. CP74-147, *et al.* (6 FERC ¶ 61,236), as extended on January 20, 1984, in Docket No. CP74-147-003, *et al.* (26 FERC ¶ 61,064).

Petitioner reports that on September 18, 1985, it concluded a new agreement with Wisconsin Gas that would replace the previously-certificated arrangement. Under the new proposal, Petitioner proposes to sell up to 50,000 Mcf LNG per year to Wisconsin Gas for cash on a best-efforts basis.

Petitioner states that it would deliver these volumes to Wisconsin Gas at Petitioner's Eau Claire LNG plant in Wisconsin. Wisconsin Gas would store its pruchased volumes of LNG in its own satellite LNG facilities near Rice Lake, in order to supplement the natural gas it get from its pipeline supplier, says Petitioner.

Wisconsin Gas would pay Petitioner a service charge of $5.10 per Mcf and a commodity charge of $3.429 per Mcf, Petitioner reports. It further states that the commodity charge would increase or decrease by the difference between Petitioner's base cost of gas $3.429 per Mcf and Petitioner's average commodity cost of gas at the time of its LNG sale to Wisconsin Gas.

The proposed arrangement would extend to November 26, 1988, states Petitioner, and continue on a year-by-year basis thereafter, subject to cancellation upon one year's prior written notice by either party.

Comment date: December 27, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

16. Southern Natural Gas Company

[Docket No. CP86-210-000]

Take notice that on November 19, 1985, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202-2563 filed in Docket No. CP86-210-000 an application pursuant to Section 7 of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas for Georgetown Steel Corporation (Georgetown), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport, on an interruptible basis, up to 10 billion Btu of natural gas per day on behalf of Georgetown for a term of one year from the date of the transportation agreement between Applicant and Georgetown. It is stated that Georgetown would purchase such gas from Exxon Corporation. It is explained that Applicant would receive the gas at the existing point of interconnection located on production platform A in Block 268, Mississippi Canyon area, offshore Louisiana, from Exxon and deliver it to South Carolina Pipe Line Corporation (South Carolina) for redelivery by South Carolina to Georgetown.

Applicant states that Georgetown has agreed to pay the following transportation charge:

(a) Where the aggregate of the volumes transported and redelivered by Applicant on any day to South Carolina under any and all transportation agreements with Applicant, when added to the volumes of gas delivered under Applicant's OCD Rate Schedule on such day to South Carolina do not exceed the daily contract demand of South Carolina, the transportation rate would be 48.2 cents per million Btu; and

(b) Where the aggregate of the volumes transported and redelivered by Applicant on any day to South Carolina under any and all transportation agreements with Applicant, when added to the volumes of gas delivered under Applicant's OCD Rate Schedule on such day to South Carolina exceed the daily contract demand of South Carolina, the transportation rate for the excess volumes would be 77.6 cents per million Btu. Applicant also proposes to charge Wabosh the currently effective GRI surcharge.

Applicant also requests flexible authority to provide transportation from additional delivery points in the event Georgetown obtains alternative sources of supply of natural gas for use at its plant.

Comment date: December 27, 1985, in accordance with Standard Paragraph F at the end of this notice.

17. Southern Natual Gas Company

[Docket No. CP86-54-000]

Take notice that on October 18, 1985, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP86-54-000 an application, as clarified by letter filed October 31, 1985, pursuant to section 7(b) of the Natural Gas Act for permission and approval for the abandonment and removal of certain measurement and related facilities located at its Calhoun meter station in Gordon County, Georgia, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern states that the subject facilities were used to receive gas transported by the Water, LIght and Sinking Fund Commission of the City of Dalton, Georgia (Dalton), and to effect the delivery of such gas to Atlanta Gas Light Company (Atlanta) at Southern's Calhoun meter station.

Southern further states that it entered into a transportation agreement with Dalton dated April 19, 1955, pursuant to which Dalton agreed to transport up to 5,500 Mcf of gas per day from its delivery point with Southern at Southern's Dalton meter station No. 1 through its distribution facilities to Southern's Calhoun meter station, in order to ensure delivery of Atlanta's contract demand at the Calhoun meter station, which is located at the terminus of Southern's 4-inch Rome-Calhoun line. It is explained that this small diameter pipeline, under certain operating conditions, coud not accommodate

Atlanta's requirements and that in 1984 Southern interconnected its 12-inch Chattanooga branch line and its 4-inch Rome-Calhoun line at its Calhoun meter station so that deliveries to Atlanta through this station could be supplied through either pipeline, thus eliminating the need for the Dalton transportation service. Southern states that on August 24, 1984, it cancelled the transportation agreement with Dalton.

Southern proposes to abandon by removal the subject measurement and related facilities, which are located at Mile Post 67.7 ± on Southern's 4-inch Rome-Calhoun line in Gordon County, Georgia.

Comment date: December 27, 1985, in accordance with Standard Paragraph F at the end of this notice.

18. Tennessee Gas Pipeline Company, A Division of Tenneco Inc.

[Docket No. CP86-121-000]

Take notice that on October 31, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston Texas 77001, filed in Docket No. CP86-121-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the Transportation of natural gas for Columbia Gas Transmission Corporation (Columbia), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennesee proposes to transport up to 1,000 Mcf of natural gas per day for Columbia for a primary term of two years. Tennessee states that the natural gas would be received into its transmission system at the interconnection between Amoco Production Company's production platform located on State Lease 3258, Lake Raccouri field, LaFourche Parish, Louisiana, and Tennessee's existing facilities at such platform. Tennessee further states it would transport the natural gas to a point of delivery located at the terminus of Columbia Gulf Transmission Company's and Tennessee's jointly-owned blue Water Project, Terrebonne Parish, Louisiana.

Tennessee indicates that it would charge Tennessee for the proposed transportation service a volume charge equal to the product of 4.15 cents multiplied by the total volume in Mcf of natural gas delivered by Tennessee for the account of Columbia at the point of delivery during the month. In addition, Tennessee states it would charge Columbia a minimum monthly bill which would consist of a volume charge of 4.51 cents multiplied by the number of days in said month, multiplied by 66⅔ percent of the transportation quantity. Tennessee further states that Columbia would provide, at no cost to Tennessee, a daily volume of Natural gas for Tennessee's system fuel and uses equal to 1.2 percent of the volumes received from Columbia on any day. Tennessee indicates that the proposed service would be performed on a best-efforts basis.

Comment date: December 27, 1985, in accordance with Standard Paragraph F at the end of this notice.

19. Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Texas Eastern Transmission Corporation

[Docket No. CP86-123-000]

Take notice that on November 1, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston Texas 77001, and Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP86-12-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Tennessee and Texas Eastern to exchange natural gas, all as more fully set forth within the application which is on file with the Commission and open to public inspection.

In accordance with a November 24, 1982, transportation and exchange agreement between the two parties, Texas Eastern would receive up to 6,000 Mcf of nautral gas per day that Tennessee has made available at the producer's platform in Ship Shoal Block 295, offshore Louisiana. Texas Eastern would transport and deliver such quantity to Tennessee at their subsea interconnection at Tennessee's 8-inch side valve No. 523M-5111, it is explained. Tennessee in turn would accept and receive up to 16,000 Mcf of natural gas made available by Texas Eastern at the above same subsea interconnection for further transportation to a jointly-owned 30-inch pipeline subsea interconnection in Eugene Island Block 302, it is stated. It is indicated that Tennessee would also transport Texas Eastern's gas, in addition to the gas received in exchange from Texas Eastern, to the 30-inch subsea pipeline.

Applicants state that the proposal would enable them to take gas into their respective system without constructing costly duplicative facilities.

Comment date: December 27, 1985, in accordance with Standard Paragraph F at the end of this notice.

20. Texas Eastern Transmission Corporation

[Docket No. CP86-193-000]

Take notice that on November 6, 1985, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP86-193-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a new sales delivery point to Consolidated Gas Supply Corporation (Consolidated), an existing resale customer, and construct and operate minor appurtenant pipeline facilities incidental thereto, under the certificate issued in Docket No. CP82-535-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is explained that the new delivery point would be located on Texas Eastern's 6-inch Line #1-X in Somerset County, Pennsylvania, and would be connected with the facilities of The Peoples Natural Gas Company (Peoples), an existing full requirements customer and affiliate of Consolidated. Texas Eastern states that Peoples would furnish and install the sales measuring station on a site to be provided by Texas Eastern at the proposed location on Peoples' 16-inch pipeline and that Texas Eastern would install approximately 665 feet of 6-inch pipeline from a tap at mile post 2.85 on its Line #1-X to the measuring station site.

Texas Eastern states that it and Consolidated are preparing to execute a superseding service agreement which would provide for the delivery to Consolidated of quantities of natural gas pursuant to Texas Eastern's Rate Schedules DCQ-C, DCQ-D, I-C and I-D which would establish a maximum daily delivery obligation (MDDO) at the new delivery point of 3,000 dt equivalent of gas.

Texas Eastern states that there would be no changes in MDDO at the other delivery points listed in the superseding service agreement, nor in the total contract obligation, and that to the extent that natural gas is delivered at the new delivery point, deliveries may be reduced at other points of delivery to Consolidated under Texas Eastern's current service agreement on a day-to-day operational basis. Therefore, it is asserted, the total volumes delivered under the current service agreement would not change.

Texas Eastern states that it would deliver natural gas at the new delivery

point to Peoples for the account of Consolidated which would use the gas for general system supply and Consolidated would in turn deliver gas to Peoples under an existing full requirements rate schedule. Consolidated has advised Texas Eastern that its total contractural obligations to deliver gas to Peoples would remain unchanged.

Texas Eastern states that the new delivery point would enable it to make minor changes in its existing filed operations to accommodate strip mining operations proposed by Svonavec, Inc. (Svonavec), in the area. Texas Eastern proposes to isolate the portion of Line #1-X which traverses the area of Svonavec's proposed strip mining operations. It is stated that natural gas which is currently flowing through this section of pipeline into Texas Eastern's 24-inch Line No. 1 would be diverted to the proposed new delivery point, thus enabling Texas Eastern to avoid incurring the higher costs of relocating Line #1-X around the strip mining operations.

Comment date: January 21, 1986, in accordance with Standard Paragraph G at the end of this notice.

21. United Gas Pipe Line Company

[Docket No. CP86-195-000]

Take notice that on November 6, 1985, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001 filed in Docket No. CP86-195-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 700 Mcf of natural gas per day to be sold to Farmer's Grain Terminal, Inc. (Farmer's), to be used by Farmer's in its grain dryer as burner fuel in the process of removing moisture from grain before storing it for agricultural use, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

The rate to be paid for this service, it is stated, would be provided for in Applicant's Rate Schedule #85-59A and would consist of the following: (1) A base rate equal to Applicant's weighted average cost of gas plus $.85 per Mcf, (2) a minimum monthly bill equal to $150.00, and (3) an additional charge of $.40 per Mcf retroactive to the date of first deliveries in the event Farmer's purchases or otherwise obtains any of its fuel requirements from another supplier.

Applicant also requests authorization to utilize an existing sales tap for the proposed service located near Mounds in Madison Parish, Louisiana.

Applicant states that such sale of gas to Farmer's would terminate upon 30 days written notice by either party at any time after December 1, 1987.

Comment date: December 27, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29041 Filed 12-11-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of November 8 Through November 15, 1985

During the week of November 8 through November 15, 1985, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: December 4, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Nov. 8 through Nov. 15, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Nov. 12, 1985	Bill's Oil Co., Watertown, MA	KEE-0008	Exception to the reporting requirements. If granted: Bill's Oil Co. would not be required to file Form EIA-782B "Reseller/Retailers' Monthly Petroleum Product Sales Report."

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Nov. 8 through Nov. 15, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Do	Napakiak Corp., Napakiak, AK	KEE-0007	Exception to the reporting requirements. If granted: The Napakiak Corp. would not be required to file Form EIA-782B "Resellers/Retailers' Monthly Petroleum Product Sales Report."
Do	Peat, Marwick & Mitchell, Washington, DC	KFA-0004	Appeal of an information request denial. If granted: The Oct. 30, 1985 Freedom of Information Request Denial issued by the Assistant Administrator for Management Services would be rescinded and Peat, Marwick & Mitchell would not have to pay a fee of $288 for a non-clerical search for information regarding a contract award.
Do	Dr. Ping-Wha Lin, Angola, Indiana	KFA-0003	Appeal of an information request denial. If granted: The Oct. 17, 1985 Freedom of Information Request Denial issued by the Contracting Officer of the Pittsburgh Energy Technology Center would be rescinded, and Dr. Ping-Wha Lin would receive access to names and addresses of the reviewers and their technical critiques of contract proposal PRDA RA-85PC81001.
Nov. 13, 1985	Texaco, Inc., White Plains, NY	KRH-0003 and KRZ-0007	Requests for evidentiary hearing and interlocutory Order. If granted: An evidentiary hearing would be convened in connection with a Proposed Remedial Order issued to Texaco, Inc. (Case No. DRO-0199) and portions of the firm's Statement of Factual Objections would be amended.
Do	Texaco, Inc., White Plains, NY	KRZ-0008	Interlocutory order. If granted: The Statement of Factual Objections submitted on behalf of Texaco, Inc. in response to a Proposed Remedial Order (Case No. DRO-0199) would be amended.
Nov. 14, 1985	MGPC, Inc., Washington, DC	KCX-0005	Supplemental order. If granted: The Feb. 16, 1983 Decision and Order (Case No. HRX-0072) issued to MGPC, Inc., by the Office of Hearings and Appeals would be modified in connection with a Sept. 30, 1985 Order issued by the Federal Energy Regulatory Commission.

REFUND APPLICATIONS RECEIVED

[Week of Nov. 8 to Nov. 15, 1985]

Date received	Name of refund proceeding/name of refund applicant	Case No.
11/12/85	Saber/Tenneco Oil Company	RF192-10
11/12/85	Saber/Kerr-McGee Corporation	RF192-8
11/12/85	Saber/The Coastal Corporation	RF192-9
11/12/85	Midway/Fred's 66 Wrecker Service	RF207-2
11/8/85	Quaker State/Lilly & Rudolph Service Station	RF213-1
11/13/85	Gulf/Ricks Car Wash	RF40-3071
11/12/85	Northeast/Exxon Co., USA	RF214-1
11/13/85	Saber/Duquesne Light Company	RF192-11
11/12/85	Oneok/Chevron (Gulf)	RF212-1
11/14/85	Gulf/Frankenmuth Oil Company	RF40-3073
11/14/85	Gulf/City Coal Company of New London Inc.	RF40-3072
11/15/85	Gate/Hi-Way Market	RF205-2
11/15/85	True/Farmers Union Central Exchange	RF195-6
11/15/85	Gulf/Willie's Quail Gulf Service, Inc	RF40-3074
11/4/85	Moyle/3 Forks Country Store	RF201-2

[FR Doc. 85-29498 Filed 12-11-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order; Week of November 18 Through November 22, 1985

During the week of November 18 through November 22, 1985, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals by the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of the proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: December 4, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

City Ice and Fuel Company, Florence, South Carolina; KEE-0003

City Ice and Fuel Company filed an Application for Exception from the provisions of the mandatory Form EIA-782B filing requirement. The exception request, if granted, would remove City Ice from the list of firms required to file Form EIA-782B each month. On November 19, 1985, the Department of Energy issued a Proposed Decision and Order which tentatively determined that the exception request should be denied.

[FR Doc. 85-29499 Filed 12-11-85; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Orders Filed; Period of October 21 Through November 1, 1985

During the period of October 21 through November 1, 1985, the notices of objection to proposed remedial orders

listed in the Appendix to this Notice were filed with the office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: December 4, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Trigon Exploration, Inc., Lafayette, Louisiana; KRO-0110, crude oil

On October 28, 1985, Trigon Exploration, Inc., P.O. Box 52544, Lafayette, Louisiana 70505, filed a Notice of Objection to a Proposed Remedial Order which the DOE Houston Office of the Economic Regulatory Administration issued to the firm on August 30, 1985. In the PRO, the Houston Office found that during the period June 1, 1979 to December 31, 1980, Trigon charged prices in the first sale of newly discovered domestic crude oil that were in excess of ceiling prices. According to the PRO, the violation resulted in $624,208.51 of overcharges.

Tri-Service Drilling Co., Midland, Texas; KRO-0120, crude oil

On November 1, 1985, Tri-Service Drilling Company, 901 First National Bank Building, Midland, Texas 79701, filed a Notice of Objection to an Amended Proposed Remedial Order which the DOE Dallas Office of the Economic Regulatory Administration issued to the firm on October 16, 1985. In the Amended PRO, the Dallas Office found that during the period September 1, 1973 to December 31, 1976, Tri-Service Drilling Company had overcharged its customers by $394,837.39 in sales of crude oil.

[FR Doc. 85-29500 Filed 12-11-85; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Order Filed; Week of November 4 Through November 8, 1985

During the week of November 4 through November 8, 1985, the notice of objection to proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine these persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: December 4, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Strasburger Enterprises, Inc., Temple, Texas; KRO-0130

On November 4, 1985 Strasburger Enterprises, Inc., 4 North 3rd Street, Temple, Texas 76501, filed a Notice of Objection to a Revised Proposed Remedial Order which the Economic Regulatory Administration issued to the firm on October 25, 1985. In the Revised PRO, the ERA found that during the period from January 1, 1979 through September 30, 1979, Strasburger charged excessive prices in sales of motor gasoline in violation of 10 CFR Part 212, Subpart F. The revisions in the PRO were made pursuant to the Decision and Order of the Office of Hearings and Appeals in *Strasburger Enterprises, Inc.*, 13 DOE ¶ 83,014 (1985), and resulted in a lowering of the alleged overcharge amount from $1,469,954 to $1,075,674.

[FR Doc. 85-29501 Filed 12-11-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-210001; FRL 2882-6]

Guidance for Petitioning the Environmental Protection Agency Under Section 21 of the Toxic Substances Control Act

Correction

In FR Doc. 85-26938 beginning on page 46825 in the issue of Wednesday, November 13, 1985 the last line of the **SUMMARY** should read, "most pertinent available support material".

BILLING CODE 1505-01-M

[A-9-FRL-2937-1]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Biogen Power, Incorporated (EPA Project Number SE 85-01)

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on April 4, 1985 the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct a power generating plant in the Ivanpah Valley of northeastern San Bernadino County, California. The plant will consist of a coal-fired circulating fluidized bed combustor which has a rated capacity of 16.55 MW (net 14.2 MW) of electric power. The permit is subject to certain conditions, including an allowable emission rate as follows: NO_x at 9.2 lbs/hr, SO_2 at 9.4 lbs/hr, particulate matter at 4.5 lbs/hr, and CO at 25.2 lbs/hr.

FOR FURTHER INFORMATION: Copies of the permit are available for public inspection upon request; address request to: Anita Tenley (A-3-1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8240, FTS 454-8240.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include: the use of NH_3 injection (SNCR), limestone injection, baghouse and boiler combustion controls.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by February 10, 1986.

Dated: December 3, 1985.

Carl C. Kohnert,

Acting Director, Air Management Division, Region 9.

[FR Doc. 85-29425 Filed 12-11-85; 8:45 am]

BILLING CODE 6560-50-M

[A-9-FRL-2936-9]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Shell California Production Incorporated (EPA Project Number SJ 79-26)

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on April 22, 1985 the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants aproval to a modification at their facility located in the Kernridge Division in Bakersfield, Kern County, California. The modification will allow Shell to connect a casing vapor recovery system in lieu of shutting in all new wells, and allow steam generator #65 (Section 29, T28S, R21E) to emit 0.057 lb/MMBtu of particulate matter. The permit is subject to certain conditions, including an allowable emission rate as follows: particulate matter at 0.057 lb/MMBtu (2 hour average).

FOR FURTHER INFORMATION: Copies of the permit are available for public inspection upon request; address request to: Anita Tenley (A-3-1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8240, FTS 454-8240.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include the use of scrubber equipment.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by February 10, 1986.

Dated: December 3, 1985.

Carl C. Kohnert,

Acting Director, Air Management Division Region 9.

[FR Doc. 85-29469 Filed 12-11-85; 8:45 am]

BILLING CODE 6560-50-M

[A-6-FRL-2936-7]

Approvals and Extensions of PSD Permits; Region 6

Notice is hereby given that the Environmental Protection Agency (EPA), Region 6, has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. PSD-TX-650—Northern Cogeneration One Company: This permit, issued on July 1, 1985, authorizes the construction of a cogeneration facility to be located at the intersection of Grant Avenue and Fifth Avenue South in Texas City, Galveston County, Texas.

2. PSD-TX-453M-1—American Petrofina Company of Texas: Petroleum refinery located at the intersection of Highway 366 and 32nd Street in Port Arthur, Jefferson County, Texas. PSD-TX-453M-1 consolidates and modifies PSD-TX-59, PSD-TX-453, and PSD-TX-456 to allow for several design changes to unit heaters, the change in location of certain point sources and to standard the format for the Special Provisions. The consolidated permit was issued on July 5, 1985.

3. PSD-TX-659—Ross-Pope Drilling Equipment Company: This permit, issued on July 11, 1985, authorizes the construction of a natural gas sweetening plant to be located approximately nine miles southwest of Floresville, Wilson County, Texas.

4. PSD-TX-635—Lower Colorado River Authority: This permit, issued on July 12, 1985, authorizes the construction of the Fayette Power Project Unit 4 at the existing plant located approximately seven miles east of La Grange, Fayette County, Texas.

5. PSD-TX-654—Marathon Oil Company: This permit, issued on July 19, 1985, authorizes the installation of additional gas compression, sweetening and dehydration equipment at the natural gas compressing plant located approximately two miles southwest of Iraan, Pecos County, Texas.

6. PSD-TX-469S-1—Cabot Corporation: Turkey Creek Gas Processing Plant (formerly owned by Pioneer Gas Products) located approximately seven miles south of Fritch, Potter County, Texas. PSD-TX-469S-1 modifies PSD-TX-469 by using catalytic converters in lieu of exhaust gas recirculation systems. This modified permit was issued on July 24, 1985.

7. PSD-TX-612M-1—Big Three Industries, Incorporated: Cogeneration facility located at 11400 Bay Area Boulevard in Pasadena, Harris County, Texas. PSD-TX-612M-1 modifies PSD-TX-612 to delete the requirement for stack sampling of sulfur dioxide in Special Provision No. 3B. This modified permit was issued on August 28, 1985.

8. PSD-TX-656—Tenneco Oil Company: This permit, issued on August 28, 1985, authorizes the construction of a natural gas sweetening and glycol dehydration facility located approximately seven miles north of Calliham, McMullen County, Texas.

9. PSD-TX-474M-1—Exxon Company U.S.A.: Petroleum refinery located at 2800 Decker Drive, Baytown, Harris County, Texas. PSD-TX-474M-1 modifies PSD-TX-474 to authorize changes in the design of the flexicoking unit and associated facilities. This modified permit was issued on September 6, 1985.

10. PSD-TX-491M-1—Temple-Eastex, Incorporated: Pulp and paper mill located on FM Road 105, approximately two miles southeast of Evadale, Jasper County, Texas. PSD-TX-491M-1 modifies PSD-TX-491 to authorize the installation of a single, larger variable-throat venturi scrubber instead of the two smaller units originally permitted. This modified permit was issued on September 12, 1985.

11. PSD-TX-634M-1—Koch Refining Company: Petroleum refinery located approximately ½ mile north of Interstate 37 on the Viola Turning Basin in Corpus Christi, Nueces County, Texas. PSD-TX-634M-1 modifies PSD-TX-634 to authorize the deletion of the converted CO boiler, Emission Point No. AA-1, from the original permit. The boiler will be decommissioned. This modified permit was issued on September 18, 1985.

These permits have been issued under EPA's Prevention of Significant Air Quality Deterioration Regulations at 40 CFR 52.21, as amended August 7, 1980. The time period established by the Consolidated Permit Regulations at 40 CFR 124.19 for petitioning the Administrator to review any condition of the permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. No petitions for review of these permits have been filed with the Administrator.

Notice is hereby given that the Environmental Protection Agency (EPA), Region 6, has extended the expiration date of the following Prevention of Significant Deterioration (PSD) permits:

1. PSD-TX-478—Houston Lighting and Power Company: This permit was issued on May 18, 1984, authorizing the construction of a lignite-fired steam electric generating station to be located approximately three miles southwest of Malakoff, Henderson County, Texas. The company has postponed the start of construction due to delays in the project schedule, resulting from public utility commission decertification proceedings. The extension was granted on August 5, 1985, to a new expiration date of May 18, 1987.

2. PSD-TX-458—The BF Goodrich Company: This permit was issued on December 13, 1983, authorizing the construction of a polyvinyl chloride manufacturing facility to be located on Miller Cut-Off Road in LaPorte, Harris County, Texas. The company has postponed the start of construction due to economic conditions. The extension was granted on August 29, 1985, to a new expiration date of December 13, 1986.

The PSD regulation at 40 CFR 52.21(r)(2) states that the Administrator may extend the 18-month period in which construction must commence if

the company shows that an extension is justified.

A notice of EPA's proposed action to extend the PSD permits was published in a newspaper in the affected area of the facility.

Documents relevant to the above actions are available for public inspection during normal business hours at the Air, Pesticides and Toxics Division, U.S. Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270.

Under section 307(b)(1) of the Clean Air Act, judicial review of the approval of these actions is available, if at all, only by the filing of a petition for a review in the United States Fifth Circuit Court of Appeals within 60 days of December 12, 1985. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

This notice will have no effect on the National Ambient Air Quality Standards.

For Further Information Contact: Donna Ascenzi at (214) 767–1594.

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

Dated: November 29, 1985.

Dick Whittington, P.E.,

Regional Administrator, Region 6.

[FR Doc. 85–29468 Filed 12–11–85; 8:45 am]

BILLING CODE 6560–50–M

[ORD–4–FRL–2936–8; Docket No. ECAO–HA–81–1]

Draft Final Health Assessment Document for Nickel; Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency has completed a draft final Health Assessment Document for Nickel as part of its regulatory initiatives for air pollutants under the Clean Air Act. This notice announces the availability of this draft final for public review and comment.

DATES: The Agency will make this document available on or about Monday, December 16, 1985. Comments must be postmarked by Friday, February 7, 1986.

ADDRESSES: The draft final is available in single copy quantity from EPA at the following address: ORD Publications Center, CERI–FRN, U.S. Environmental Protection Agency, 26 W. St. Clair Street, Cincinnati, OH 45268, (513) 569–7562, (FTS: 684–7562). Requestors should provide their names, mailing addresses, and the EPA number assigned to the document, EPA–600/8–83–012F. Names and addresses should be sent to CERI at this time to receive the document.

The document will also be available for public inspection and copying at the EPA library at Waterside Mall, 401 M Street, SW., Washington, DC 20460.

Comments must be in writing and should be sent to Project Manager, Health Assessment Document for Nickel, Environmental Criteria and Assessment Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Ray, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office (MD–52), Research Triangle Park, NC 27711, (919) 541–3637.

SUPPLEMENTARY INFORMATION: An earlier external review draft of Nickel was reviewed by the general public and the Agency's Science Advisory Board at a public meeting in September 1983. At that time, specific recommendations were made that the external review draft be revised: (1) To include recently published studies pertinent to assessing carcinogenic risks associated with exposure to nickel compounds, and (2) to present, to the Agency's best ability, quantitative carcinogenic analyses based upon exposure to individual nickel compounds. Based upon the best information currently available, the final review draft has been revised according to these recommendations. The Agency is seeking public comments on these two major issues.

The conclusions reached in the draft final reflect the degree of certainty with which the scientific literature on nickel can presently be viewed. Quantitative unit risk estimates have been derived for the two nickel compounds (nickel subsulfide and nickel refinery dust) most clearly shown to be human carcinogens. No risk estimates have been derived for nickel carbonyl (known to be an animal carcinogen) due to the lack of sufficient dose-response data by which to estimate risk. The available evidence for other nickel compounds has been deemed to be insufficient to derive quantitative risk estimates. A thorough discussion of the available qualitative information has been presented for individual nickel compounds and the implications of this information for human health have been provided where possible.

In order to have a thorough review of the scientific information, this document has been transmitted to the SAB for review and is being made available for public review and comment. After receipt of all comments, the SAB will hold a public meeting to review the document. An advance notice announcing the time and place for the SAB public meeting and agenda will be made in the **Federal Register.**

Dated: December 5, 1985.

Donald J. Ehreth,

Acting Assistant Administrator for Research and Development.

[FR Doc. 85–29470 Filed 12–11–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1549]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

Correction

In FR Doc. 85–27053, appearing on page 47113 in the issue of Thursday, November 14, 1985, the second line of the second column should read "Incorporated on 10–25–85."

BILLING CODE 1505–01–M

[Report No. 1555]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

December 6, 1985.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to § 1.429(e). Oppositions to such petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the **Federal Register.** Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of §§ 73.3572 and 73.3573 Relating to Processing of FM and TV Broadcast Applications. (MM Docket No. 84–750)

Filed by: Eric. R. Hilding on 11–19–85.

Subject: Guidelines for Dominant Carriers' MTS Rates and Rate Structure Plans. (CC Docket No. 84–1235)

Filed by: John R. Hoffman, Attorney for US Telecom, Inc., on 11–18–85. Thomas S. Martin, Anthony C. Epstein & Glenn B. Manishin, Attorneys for MCI Telecommunications Corporation on 11–22–85. John A. Ligon, Attorney for ITT Communications Services, Inc., on 11–

22–85. Philip L. Verveer, Sue D. Blumenfeld & Mary P. Jaffee, Attorneys for TDX Systems, Inc., on 11–25–85.

Subject: Amendment of Parts 1 and 21 of the Commission's Rules to Establish Procedures for Processing Mutually Exclusive Applications for Digital Termination Systems in the Digital Electronic Message Service. (CC Docket No. 85–42)

Filed by: Paul J. Berman & Michael St. Patrick Baxter, Attorneys for Associated Information Services Corporation on 12–2–85.

Subject: Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Yosemite Village and Merced, California)

Filed by: Richard Hildreth, Attorney for Pappas Telecasting Incorporated on 11–15–85.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–29418 Filed 12–11–85; 8:45 am]

BILLING CODE 6712–01–M

Family Television of Dalton, Inc. et al.; Hearing Designation Order

In re applications of MM Docket No. 85–382

	File No.
Family Television of Dalton, Inc.	BPCT–850613LD
Dalton Television Associates, Ltd.	BPCT–850815KO
Southern Television, Inc.	BPCT–850816KG

For construction permit, Dalton, Georgia

Adopted: November 25, 1985.
Released: December 6, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Family Television of Dalton, Inc. (Family), Dalton Television Associates, Ltd. (Associates), and Southern Television, Inc. (Southern) for authority to construct a new commercial television station on Channel 23, Dalton, Georgia; and petitions to deny filed by Family against Associates and Southern.[1]

2. In Section III, Item 1, FCC Form 301, Southern indicated that, upon completion of its financial arrangement, it would provide financial certification. It has not done so. Accordingly, the applicant will be given 20 days from the release date of this Order to review its financial proposal in light of the Commission's requirements, to make any changes that may be necessary, and, if appropriate, to submit a certification to the presiding Administrative Law Judge in the manner called for in section III, Form 301, as to its financial qualifications. If the applicant cannot make the certification, if shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

3. An applicant who proposes to employ five or more full-time station employees must establish a program designed to assure equal opportunity for women and minority groups. This program must be submitted to the Commission. Although Southern states that it will employ more than five full-time persons, it has not included a copy of its equal employment opportunity (EEO) program. Accordingly, Southern will be required to submit a copy of its EEO program to the presiding Administrative Law Judge, within 20 days after this Order is released.

4. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population which would be served by each. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

5. On June 26, 1985, the Commission issued a Public Notice (Mimeo No. 5421) requiring all applicants for new broadcast stations to certify that they have obtained reasonable assurance that their specified transmitter sites will be available to them. Family has not submitted such a certification. Accordingly, Family will be given 20 days from the date of release of this Order to file such a certification, in the form required by the Commission, with the presiding Administrative Law Judge. If the applicant cannot make the certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

6. No determination has been reached that the tower height and location proposed by each of the applicants would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

7. Southern's proposed site is 40 miles from the reference point for channel 24, Athens, Tennessee, whereas § 73.610 of the Commission's Rules requires a minimum separation of 55 miles between a station operating on Channel 23 and station or city to which Channel 24 is allocated. Southern would, therefore, be short-spaced 15 miles. Accordingly, an issue will be specified to determine whether circumstances exist to warrant a waiver of the rule. Since an applicant proposing a short-spaced site is required to make the threshold showing that no suitable fully-spaced site is available, the Administrative Law Judge will, in assessing those circumstances, consider the fact that the other applicants in this proceeding have specified fully-spaced sites.

8. Question 11, section V–C, FCC Form 301, requires the applicant to state whether the entire principal comunity would be within the station's predicted City Grade contour, without major terrain obstruction. Associates responded negatively to that question. The application reports that line-of-sight is obstructed by a major terrain feature and has requested a waiver of § 73.685(b) of the Commission's Rules. An issue will be specified to determine whether a waiver of the rule is warranted.

9. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

10. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by each of the applicants would each constitute a hazard to air navigation.

2. To determine, with respect to Southern Television, Inc., whether its proposed site is consistent with the minimum mileage separation requirements of § 73.610 of the Commission's Rules, and if not, whether

[1] Family filed petitions to deny against the other two competing applicants. Each petition is, in essence, a pre-designation petition to specify issues. Since such petitions are no longer permitted, they will be dismissed. *Revised Procedures for the Processing of Contested Broadcast Applications*, 72 FCC 2d 202 (1979).

circumstances exist which would warrant a waiver of the rule.

3. To determine, with respect to the application of Dalton Television Associates, Ltd., whether operation with the facilities proposed would be consistent with § 73.685(b) of the Commission's Rules and, if not, whether circumstances exist which would warrant a waiver of the rule.

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

11. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

12. It is further ordered, That the petitions to deny filed by Family Television of Dalton, Inc. ARE DISMISSED.

13. It is further ordered, That Southern Television, Inc. shall, within 20 days of the release of this Order, submit a financial certification in the form required by section III, FCC Form 301, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate.

14. It is further ordered, That Southern Television, Inc. shall file a copy of its equal employment opportunity program, with the presiding Administrative Law Judge within 20 days after this Order is released.

15. It is further ordered, That Family Television of Dalton, Inc. shall, within 20 days after the release of this Order, file with the presiding Administrative Law Judge, a site availability certification, in the form required by the Commission, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate.

16. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

17. It is further ordered, That the applicants herein shall, pursuant to § 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-29420 Filed 12-11-85; 8:45 am]

BILLING CODE 6712-01-M

Leininger-Geddes Partnership; Hearing Designation Order

In re applications of MM Docket No. 85-361

	File No.
Leininger—Geddes Partnership.	BPCT-850607KO
Capitol Communications Corporation.	BPCT-850725LB
Maumelle TV	BPCT-850725LF
U.S. McPherson d/b/a Magnolia Communications.	BPCT-850725LJ

For construction permit, Little Rock, Arkansas

Adopted: November 25, 1985.

Released: December 6, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captined mutually exclusive applciations for authority to construct a new commercial television station on channel 42, Little Rock, Arkansas.

2. On September 13, 1985, the Association of Maximum Service Telecasters, Inc. (AMST) filed informal objections to the applications of U.S. McPherson d/b/a Magnolia Communications (Magnolia) and Maumelle TV (Maumelle) on the grounds that the site proposed by Magnolia would be 15.1 miles from the site of Station KJTM-TV, channel 38, Pine Bluff, Arkansas, whereas § 73.610 of the Commission's Rules require a minimum separation of 19.5 miles between a station operating on channel 42 and one operating on channel 38. Magnolia would, therefore, be short-spaced 4.4 miles. The site proposed by Maumelle would be 45 miles from the reference point for channel 28 at Russellville, Arkansas, whereas the Commission's separation rules require a minimum separation of 59.5 miles between a station operating on channel 42 and a station or city to which channel 28 is allocated. Maumelle would, therefore, be short-spaced 14.5 miles. Issues will be specified, therefore, to determine whether circumstances exist to warrant a waiver of the rule. In assessing those circumstances, the presiding Administrative Law Judge will consider the fact that the other applicants in this proceeding have specified fully-spaced sites.

3. There is pending before the Commission a rulemaking proceeding in Docket No. 84-82 (RM-4901) in which it is proposed to substitute channel 54 for channel 28 in Russellville, Arkansas. If this proposal is adopted, the Maumelle short-spacing would be eliminated, but Magnolia's short-spacing to the Pine Bluff station would be unaffected. The Commission is also considering an alternate plan to substitute channel 47 for channel 42 in Little Rock. If this alternative proposal is adopted, there would be no short-spacing of any of the pending Little Rock applications. If the Commission should decide to adopt both proosals, the Maumelle site would still be short-spaced to Russellville. Consequently, a grant of any of these applications will be subject to the outcome of the rulemaking proceeding.

4. The effective radiated visual power, antenna height above average terrain and other technical data submitted to each applicant indicate that there would be a significant difference in the size of the area and population which would be served by each. Consequently, the areas and populations which woud be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

5. No determination has been reached that the tower height and lcoation proposed by each of the applicants would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

6. Section 73.2080(c) of the Commission's Rules requires applicants employing at least five persons full-time to file with the Commission programs designed to provide equal employment opportunities. Capitol Communications Corporation (Capitol) indicates that it will employ five or more full-time employees. However, Capitol has not submitted an EEO program. Accordingly, Capitol will be required to submit a copy of its EEO program to the presiding Administrative Law Judge, within 20 days after this Order is released.

7. Steve Stephens is Chairman of the Board and Vice President of Capitol and has a 20% interest in the applicant. Mr. Stephens is also an officer and owner of 38.61% of the common voting stock of Central Arkansas Television, Inc., which is a 5% limited partner in the license of

Station KLRT(TV), Little Rock, Arkansas. Mr. Stephens' interest in Central Arkansas may be inconsistent with the Commission's cross-interest policy. However, Mr. Stephens has represented to the Commission that, in the event of a grant of Capitol's application, he would divest himself of all interest in Central Arkansas. Accordingly, a grant of the application will be made subject to a divestiture condition.

8. Maumelle states that it is a limited partnership. Section II, Item 5(a), FCC Form 301, requires that if the applicant is a partnership, the requested information must be given for each general or limited partner. Maumelle's application identifies only the general partner with an 85% ownership interest and does not indicate that there are any limited partners nor does it identify ownership of the remaining 15%. Section 73.3514(a) of the Commission's Rules requires an applicant to provide all information called for by FCC forms, unless the information is inapplicable. However, in *Attribution of Ownership Interests*, 97 FCC 2d 997 (1984), *recon. granted in part*, FCC 85–252, released June 24, 1985, the Commission stated that, henceforth, limited partnership interests were not attributable for the purposes of the multiple ownership rules if the applicant can certify that the limited partners will not be involved in any material respect in the business or operation of the station, 97 FCC 2d at 1023. The Commission defined the degree of noninvolvement in paragraphs 48–50 of the June 24 decision on reconsideration. Further, the Commission directed that FCC Form 301, among others, be amended to conform to the new attribution standards, 97 FCC 2d at 1034. Although changes in the form have not yet been made, there is now no need to provide information as to the limited partners if Maumelle can submit the necessary certification and showing that limited partnership interest will be sold only to individuals or entities that are sufficiently insulated. If the certification or showing is not appropriate, of course, the necessary information as to them would have to be filed as an amendment. Further, the Commission retained the cross-interest policy as to other attributable media interests in the same area. *Id.* at 1030. Accordingly, Maumelle will be required either to state that the limited partners have or will have no other media interests subject to the cross-interest policy or identify the limited partners with such interests, identify the other local media and state the nature and extent of the ownership interest.

9. Section V–C, Item 10, FCC Form 301, requires an applicant to submit figures for the area and population within its predicted Grade B contour. Maumelle has not submitted figures for the population. Accordingly, Maumelle will be required to submit an amendment showing the required information, within 20 days after this Order is released, to the presiding Administrative Law Judge.

10. Section I, Item 4(a), FCC Form 301, asks whether any adverse finding has been made, adverse final action taken or consent decree approved by any court or administrative body as to the applicant or any party to the application in any civil or criminal proceeding brought under the provisions of any law related to any felony, antitrust, unfair competition, fraud, unfair labor practices or discrimination. Magnolia has answered affirmatively, but has not submitted the required exhibit. Accordingly, Magnolia will be required to file an amendment explaining its response to Item 4(a), section II, FCC Form 301, with the presiding Administrative Law Judge within 20 days after this Order is released.

11. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issue specified below.

12. According, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Maumelle TV and Magnolia Communications, whether the proposals are consistent with § 73.610 of the Commission's Rules and, if not, whether circumstances exist which would warrant a waiver of the rule.

2. To determine with respect to each of the applicants, whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

13. It is further ordered, That Capitol Communications Corporation shall submit a copy of its EEO program to the presiding Administrative Law Judge within 20 days after this Order is released.

14. It is further ordered, That in the event of a grant of Capitol Communications Corporation's application, it will be conditioned as follows: Prior to the commencement of operation of the television station authorized herein, permittee shall certify to the Commission that Steven Stephens has divested himself of all interest in and connection with Central Arkansas Television, Inc.

15. It is further ordered, That, Maumelle TV shall submit the certification, statement and/or information required by paragraph 8, *supra*, to the presiding Administrative Law Judge within 20 days after this Order is released.

16. It is further ordered, That Maumelle TV shall submit the population figures required by Item 10, section V–C, FCC Form 301, in amendment form, to the presiding Administrative Law Judge within 20 days after this order is released.

17. It is further ordered, That Magnolia Communications shall submit an amendment explaining its response to Item 4(a), section I, FCC Form 301, to the presiding Administrative Law Judge within 20 days after this Order is released.

18. It is further ordered, That the Association of Maximum Service Telecasters, Inc. is made a party respondent with respect to issue 1.

19. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 2.

20. It is further ordered, That grant of any of the applications shall be subject to final communication action in MM Docket No. 84–82 (RM–4901).

21. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the parties respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

22. It is further ordered, That the applicants herein shall, pursuant to

section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-29421 Filed 12-11-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

Citizens Savings and Loan Association, Salem, OR; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in Section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Citizens Savings and Loan Association, Salem, Oregon, on December 4, 1985.

Dated: December 6, 1985.

Jeff Sconyers,

Secretary.

[FR Doc. 85-29401 Filed 12-11-85; 8:45 am]

BILLING CODE 6720-01-M

Guaranty Savings and Loan Association; Harrison, AR; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Guaranty Savings and Loan Association, Harrison, Arkansas, on December 6, 1985.

Dated: December 9, 1985.

Jeff Sconyers,

Secretary.

[FR Doc. 85-29492 Filed 12-11-85; 8:45 am]

BILLING CODE 6720-01-M

U.S.M. Savings Bank, F.S.B.; Ann Arbor, MI; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for USM Savings Bank, F.S.B., Ann Arbor, Michigan, on November 26, 1985.

Dated: December 9, 1985.

Jeff Sconyers,

Secretary.

[FR Doc. 85-29493 Filed 12-11-85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-009735-014.

Title: Steamship Operators Intermodal Committee Agreement.

Parties:

Associated Container Transportation (Australia Ltd.)
Atlantic Container Line G.I.E.
Barber Blue Sea Line
Companhia de Nevegacao Maritima Netumar
Coordinated Caribbean Transport, Inc.
Evergreen Marine Corp., Ltd.
Farrell Lines, Inc.
Flota Mercante Grancolombiana
Columbus Line
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Lykes Bros. Steamship Co., Inc.
A.P. Moller-Maersk Line
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Sea-Land Service, Inc.
South African Marine Corp.
United States Lines, Inc.
Venezuelan Line
Yamashita-Shinnihon Steamship Co., Ltd.
Yang Ming Line
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment would restate the agreement to conform to the Commission's regulations concerning form and format.

Agreement No.: 202-010693-007.

Title: Florida/Caribbean Liner Association.

Parties:

Bernuth Lines, Ltd.
West Indies Shipping Corp.
Sea-Land Service, Inc.
Shipping Corporation of Trinidad and Tobago
Calypso Lines
Tropical Shipping & Construction Co., Ltd.
Concorde/Nopal
Tecmarine Lines, Inc.

Synopsis: The proposed amendment would expand the scope of the agreement to include Jacksonville, Florida in regards to cargo dstined for nations in the Leeward/Windward Islands excluding Trinidad and Tobago, Suriname and Guyana. Additionally, certain other nonsubstantive changes would be made. The parties have requested a shortened review period.

Agreement No.: 217-010858.

Title: CAMSHIP/BWAL Westbound Space Charter Agreement.

Parties:

Cameroon Shipping Lines, S.A. (CAMSHIP)
Barber West Africa Line (BWAL)

Synopsis: The proposed agreement would permit BWAL to charger vessel space to CAMSHIP for the carriage of cargo in the trade from the Republic of Cameroon to ports on the United States Atlantic and Gulf Coasts. The parties have requested a shortened review period.

By order of the Federal Maritime Commission.

Dated: December 6, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-29448 Filed 12-11-85; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public; Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance); Carnival Cruise Lines, Inc.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and

Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Carnival Cruise Lines, Inc. and Celebration Shipping Company Limited, c/o Carnival Cruise Lines, 5225 N.W. 87th Avenue, Miami, Fl 33166.

Dated: December 6, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-29447 Filed 12-11-85; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Under Review by the Office of Management and Budget; Statement of Personal History

AGENCY: Office of Administration, GSA.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the General Services Administration (GSA) requests the Office of Management and Budget (OMB) to reinstate a previously approved information collection for which approval has expired.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to William W. Hiebert, GSA Clearance Officer, General Services Administration (CAID), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Irene Arvey, Public Buildings Service (202-566-0494).

SUPPLEMENTARY INFORMATION:

a. *Purpose.* This collection provides information for determining the suitability of individuals applying for clearner or guard positions under GSA contracts.

b. *Annual reporting burden.* Respondents, 14,400 and hours, 6,000.

c. *Copies of proposal.* Copies may be obtained from the Directives and Reports Management Branch (CAID), Room 3913, GS Building, Washington, DC 20405 (202-566-0666).

Dated: December 5, 1985.

Johnny T. Young,

Acting Director, Information Management Division.

[FR Doc. 85-29423 Filed 12-11-85; 8:45 am]

BILLING CODE 6820-23-M

[GSA Bulletin FPMR A-87, Supp. 1]

Use of Government Contract Airfares by Cost-Reimbursable Contractors

AGENCY: Federal Supply Service, GSA.

ACTION: GSA Bulletin.

SUMMARY: This supplement removes attachment A from GSA Bulletin FPMR A-87, and advsies agencies to consult the Federal Travel Directory (FTD), published monthly by GSA and the Department of Defense, for a listing of contract airlines that have agreed to permit cost-reimbursable contractors to purchase contract fares when traveling on official Government business. The required method of payment for tickets and use of a standard letter of identification vary by airlines, and are so noted in the FTD. In addition, the point of contact for questions concerning provisions of this bulletin is changed.

FOR FURTHER INFORMATION CONTACT: General Services Administration, Travel and Transportation Management Division, Washington, DC 20406. Telephone: FTS 557-1264/(703)557-1264.

November 27, 1985.

General Services Administration

GSA Bulletin FPMR A-87

General

Supplement 1

To: Heads of Federal agencies

Subject: Use of Government contract airfares by cost-reimbursable contractors

1. *Purpose.* This supplement informs agencies that the listing of contract airlines that have agreed to permit cost-reimbursable contractors to purchase contract fares (see FPMR Temporary Regulations A-22) when traveling on official Government business will be published in the Federal Travel Directory (FTD) commencing with the October 1985 edition. The FTD listing describes the airlines' methods of payment for tickets and whether a standard Federal agency letter of identification (illustrated in attachment B) is required. In addition, paragraph 7 is revised to reflect organizational and personnel changes.

2. *Expiration date.* This supplement contains information of a continuing nature and will remain in effect until revised or canceled.

3. *Background.* GSA Bulletin FPMR A-87, published April 9, 1985, contains information in attachment A that was derived from a survey of all airlines that were parties to the GSA 1984-85 airline city-pairs contracts. The airline listing in the October 1985 FTD is based on the new airline city-pairs contracts effective October 1, 1985.

4. *Action.* Remove attachment A. With pen and ink, delete par. 3c; in par. 7, remove reference to Mr. John J. Whalen, Jr., and delete the words "Travel and Transportation Services Division (FTE)" and insert "Travel and Transportation Management Division"; and in par. 5b, delete the words "in attachment A" and Insert "as indicated in the FTD."

By delegation of the Commissioner.

James J. Grady, Jr.,

Assistant Commissioner for Policy and Agency Liaison.

[FR Doc. 85-29427 Filed 12-11-85; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Notice of Meetings Amendment

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the notice that announced forthcoming meetings of public advisory committees (November 18, 1985 (50 FR 47457) to change the location for the Cardiovascular and Renal Drugs Advisory Committee meetings scheduled for December 16 and 17. To accommodate a larger audience, the meetings, instead of being held at "Auditorium, Lister Hill Center, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD., will be held at "Jack Masur Auditorium, NIH Campus, Bldg. 10, Clinical Center, 9000 Rockville Pike, Bethesda, MD. Parking is available in Lot 41B behind the Lister Hill Auditorium. A shuttle bus will operate between Lot 41B and Bldg. 10 from 7:45 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m.

Dated: December 10, 1985.

Robert L. Spencer,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-29627 Filed 12-11-85; 10:34 am]

BILLING CODE 4160-01-M

Public Health Service

Statement of Organization, Functions and Delegations of Authority; Assistant Secretary for Health

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 61318, December 2, 1977, as amended most recently at 50 FR 13666, April 5, 1985) is amended to reflect the

establishment of the Office of Minority Health in the Office of the Assistant Secretary for Health reporting directly to the Assistant Secretary for Health. The Office of Minority Health will serve as the DHHS focal point to implement the recommendations in the "Report of the Secretary's Task Force on Black and Minority Health," August 1985, and will monitor DHHS progress in achieving the objectives. The Office of Minority Health will receive administrative and management support from the Deputy Assistant Secretary for Health Operations and Director, Office of Management.

Office of the Assistant Secretary for Health

Under Part H, Chapter HA, Office of the Assistant Secretary for Health Section HA-10, Organization, after item 8, *Office on Smoking and Health* (HAG), add a new item 9, *Office of Minority Health (HAM)* and renumber items 9 through 17 as items 10 through 18.

Under Section HA-20, Functions, after the statement for the *Office on Smoking and Health (HAG),* add the following title and statement:

Office of Minority Health (HAM)

The Director serves as the principal advisor to ASH for health program activities that address black and minority populations and as chairman of the Minority Health Coordinating Committee composed of relevant staff of PHS and HHS. The Office, working closely with PHS agencies and other HHS OPDDIVs and STAFF DIVs in a coordinative and advocacy role: (1) Establishes near-term and long-range objectives for HHS health activities addressing minority populations; (2) develops reporting and monitoring requirements for those objectives; (3) organizes and plans specific activities to meet minority health needs and monitors the DHHS budget to assure an appropriate share of funds is devoted to minority health problems; (4) provides ongoing technical assistance to States and works closely with public and private sectors to assure minority health issues are addressed; (5) serves as a resource in the promotion, investigation, development and implementation of innovative health care models culturally unique to minority populations; (6) conducts, reviews, and develops strategies to improve the availability and accessibility of health professionals to minority communities; (7) conducts, sponsors, and facilitates conferences on minority health; (8) assures that steps are taken to improve data sources and to integrate data systems reflecting minority populations; and (9) facilitates research in and fosters public awareness of research in factors affecting minority health.

Effective date: November 27, 1985.

James O. Mason,

Acting Assistant Secretary for Health.

[FR Doc. 85-29502 Filed 12-11-85; 8:45 am]

BILLING CODE 4160-17-M

Statement of Organization, Functions and Delegations of Authority; Program Development and Review Division

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 61318, December 2, 1977, as amended most recently at 50 FR 13666, April 5, 1985), is amended to retitle the Division of Planning and Evaluation, Legislation and Regulations to the Division of Program Development and Review. The title change is intended to more accurately define the primary responsibilities of the office.

Under Part H, Chapter HA, Office of the Assistant Secretary for Health (OASH), Section HA-20 Functions, delete the title for the *Division of Planning and Evaluation, Legislation and Regulations (HA9-3)* and insert the following:

Division of Program Development and Review (HA9-3)

Effective date: November 26, 1985.

Wilford Forbush,

Director, Office of Management.

[FR Doc. 85-29503 Filed 12-11-85; 8:45 am]

BILLING CODE 4160-17

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary For Housing—Federal Housing Commissioner

[Docket No. N-85-1567]

Fleetwood Enterprises, Inc. and Fleetwood Homes of Texas, Inc.; Hearing

Correction

In FR Doc. 85-28343 beginning on page 48840 in the issue of Wednesday, November 27, 1985, make the following corrections:

1. On page 48840, in the second column, in **SUPPLEMENTARY INFORMATION,** in the first paragraph, in the last line, "Part 2180" should read "Part 3280".

2. Also on page 48840, in the third column, in the third line from the bottom, "expeditions" should read "expeditious".

3. On page 48841, in the first column, in the eight line from the top, "former" should read "formal".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Colorado; Filing of Plats of Survey

December 4, 1985.

The plat of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., December 4, 1985.

This plat represents the dependent resurvey of a portion of Mineral Survey No. 2535, Connor Placer, and the survey of the Lot 53 in section 18, Township 10 South, Range 84 West, Sixth Principal Meridian, Colorado, Group No. 783, was accepted November 26, 1985.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

Duane E. Olsen,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 85-29422 Filed 12-11-85; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Reclamation

Change in Discount Rate for Federal Water Resources Planning

SUMMARY: This notice sets forth the discount rate to be used in Federal water resources planning for fiscal year 1986.

DATE: This discount rate is to be used for the period October 1, 1985, through and including September 30, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Norman H. Starler, Bureau of Reclamation, Department of the Interior, Washington, DC 20240. Telephone: 202/343-5605.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the discount rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 8⅝ percent for fiscal year 1986.

This rate has been computed in accordance with section 80(a), Pub. L. 93-251 (88 Stat. 34) and 18 CFR 704.39, and, accordingly, is to be used by all Federal agencies in the formulation and evaluation of water and related land

resources plans for the purpose of discounting future benefits and computing costs, or otherwise converting benefits and costs to a common time basis.

Dated: December 6, 1985.

Clifford I. Barrett,

Commissioner.

[FR Doc. 85-29472 Filed 12-11-85; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-235]

Certain Human-Powered Vehicles With Combination Steering, Braking and Propulsion Means; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 6, 1985, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Nashville Diversified, Inc., 2605 Fessey Park Road, Nashville, Tennessee 37204. Supplemental exhibits were filed on November 22, 1985. The complaint as supplemented alleges unfair methods of competition and unfair acts in the importation of certain human-powered vehicles with combination steering, braking and propulsion means into the United States, or in their sale, by reason of alleged infringement of claim 1 of U.S. Letters Patent 3,663,038. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation, and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Deborah S. Strauss, Esq., or Gary L. Kaplan, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-523-1233 and 202-523-1088, respectively.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of investigation: Having considered the complaint, the U.S. International Trade Commission, on December 3, 1985, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain human-powered vehicles with combination steering, braking and propulsion means into the United States , or in their sale, by reason of alleged infringement of claim 1 of U.S. Letters Patent 3,663,038, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Nashville Diversified, Inc., 2605 Fessey Park Road, Nashville, Tennessee 37204.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Cargee Enterprises Co., Ltd., P.O. Box 2037, Taichung, Taiwan

Cutimax Enterprises Co., Ltd., 4F No. 245 Chi Lin Rd., Taipei, Taiwan

Axis World Trade, Inc., P.O. Box 2307, Menlo Park, California 94026

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§201.16(d) and 210.21(a) of the rules (19 C.F.R. 201. 16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202-523-0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: December 3, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 29405 Filed 12-11-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-223]

Certain Key Telephone Systems and Components Thereof; Commission Decision Not To Review Initial Determination Terminating Investigation Based Upon Withdrawal of Complaint

AGENCY: International Trade Commission.

ACTION: Nonreview of initial determination (ID) terminating the investigation.

SUMMARY: The Commission has determined not to review ID terminating the above-captioned investigation on the basis of withdrawal of the complaint.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, telephone 202-523-0493. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202-724-0002.

SUPPLEMENTARY INFORMATION: On Aug. 29, 1985, complainant Crest Industries, Inc., moved to withdraw its complaint and terminate the investigation. Respondents TT Systems Corp. and Universal Appliances, Ltd., did not oppose the motion but requested termination with prejudice. On Oct. 28, 1985, the administrative law judge issued an ID terminating the investigation with prejudice on the following terms: (1) Complainant may not file a new complaint against the same respondents on any of the same bases as the present complaint unless complainant presents evidence of changed circumstances sufficient to satisfy 19 CFR 211.57; (2) termination is without prejudice as to the validity or enforceability of the suit patent and

without admission of noninfringement by respondents; (3) there is no determination of violation or no violation in the investigation. The Commission has received neither a petition for review or comments from other government agencies.

Issued: December 2, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-29406 Filed 12-11-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-268 (Final)]

Certain Steel Wire Nails from Yugoslavia

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-268 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. section 1673(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Yugoslavia of one-piece steel wire nails made of round steel wire, provided for in items 646.25 and 646.26 of the Tariff Schedules of the United States (TSUS), and similar steel wire nails of one-piece construction, of any diameter, provided for in item 646.30 of the TSUS, two-piece steel wire nails, provided for in item 646.32 of the TSUS, and steel wire nails with lead heads, provided for in item 646.36 of the TSUS, all of which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before January 27, 1986, and the Commission will make its final injury determination by March 18, 1986, (see sections 735(a) an 735(b) of the act (19 U.S.C 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: November 19, 1985.

FOR FURTHER INFORMATION CONTACT: Bruce Cates (202-523-0369), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Deparmtnet of Commerce that imports of certain steel wire nails from Yugoslavia are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S. 1673). The investigation was requested in a petition filed on June 5, 1985, on behalf of Atlantic Steel Co., Atlas Steel & Wire Corp., Continential Steel Corp., Davis-Walker Corp., Dickson Weatherproof Nail Co., Florida Wire & Fabric Co., and Wire Products Co. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of the investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (50 FR 31057, July 31, 1985).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary of the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report.—A public version of the prehearing staff report in this investigation will be placed in the public record on January 28, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 201.21).

Hearing.—The Commission will hole a hearing in connection with this investigation beginning at 10:00 a.m. on February 11, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15) p.m.) on January 31, 1986. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on February 3, 1986, in room 117 of the U.S. International trade Commission Building. The deadline for filing prehearing briefs is February 7, 1986.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 201.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on February 18, 1986. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before February 18, 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during

regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority. This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: December 2, 1985

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-29409, Filed 12-11-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-246 (Final)]

Low-Fuming Brazing Copper Wire and Rod From New Zealand

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b)of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from New Zealand of low-fuming brazing copper wire and rod, provided for in items 612.62, 612.72, and 653.15 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation following a preliminary determination by the Department of Commerce on August 2, 1985, that imports of low-fuming brazing copper wire and rod from New Zealand were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 21, 1985 (50 FR 33859). The hearing was held in Washington, DC, on October 17, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 29, 1985. The views of the Commission are contained in USITC Publication 1779 (November 1985), entitled "Low-Fuming Brazing Copper Wire and Rod from New Zealand: Determination of the Commission in Investigation No 731-TA-246 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: November 29, 1985.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-29407 Filed 12-11-85; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Vice Chairman Liebeler and Commissioner Lodwick dissenting.

[Investigation No. 731-TA-234 (Final)]

Carbon Steel Structural Shapes From Norway

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1673(b)(1)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Norway of carbon steel angles, shapes, and sections having a maximum cross-sectional dimension of 3 inches or more, provided for in item 609.80 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective June 3, 1985, following a preliminary determination by the Department of Commerce that imports of carbon steel structural shapes from Norway were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 27, 1985 (50 FR 26637). On August 14, 1985, Commerce extended its investigation on structural shapes imported from Norway. The Commission's hearing was held in Washington, DC, on August 20, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 29, 1985. The views of the Commission are contained in USITC Publication 1785 (December 1985), entitled "Carbon Steel Structural Shapes from Norway: Determination of the Commission in Investigation No. 731-TA-234 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: November 29, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 29403 Filed 12-11-85; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Eckes dissenting.

[Investigation No. 337-TA-212]

Certain Convertible Rowing Exercisers; Commission Decision to Partially Review and Reverse Initial Determination; Commission Decision not to Review the Remainder of the Initial Determination; Termination of Investigation on the Basis of No Violation of Section 337 of the Tariff Act of 1930

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined (1) to review and reverse that part of an intitial determination (ID) finding the claims of the patent in controversy invalid for anticipation, (2) not to review the remainder of the ID, and (3) to terminate the investigation on the basis that there is no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

SUMMARY: The Commission has determined to review and reverse that part of an ID that found U.S. Letters Patent 4,477,071 (the '071 patent) invalid for anticipation under 35 U.S.C. 102. The Commission has determined not to review any other portion of ID and, accordingly, the ID as to all other issues has become the determination of the Commission. The investigation is

therefor terminated on the basis that there is no violation of section 337.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, telephone 202–523–0493. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–724–0002.

SUPPLEMENTARY INFORMATION: On October 18, the presiding administrative law judge issued an ID in the above-captioned investigation. The ID found the '071 patent invalid for anticipation and obviousness in light of a prior art device known as the Beacon 3002 rower. The ID further found that complainant Diversified Products Corp. had established all other elements of a violation of section 337.

The Commission determined to review and reverse that portion of the ID finding the '071 patent invalid for anticipation on the ground that all the elements of the claims of the patent do not read on the Beacon 3002 rower. The Commission determined not to review the ID as to any other issue. Accordingly, the ID became the determination of the Commission on all issues except anticipation, and the Commission determined that there was no violation of section 337.

Issued: December 5, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–29404 Filed 12–11–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 701–TA–242 and 731–TA–253 (Final)]

Certain Welded Carbon Steel Line Pipes and Tubes from Venezuela

AGENCY: International Trade Commission.

ACTION: Termination of final antidumping investigation; withdrawal of countervailing duty petition.

SUMMARY: On November 13, 1985, the Commission received a letter from counsel for the petitioners in the subject investigations withdrawing their countervailing duty and antidumping petitions concerning imports of certain welded carbon steel line pipes and tubes from Venezuela. Accordingly, pursuant to § 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the antidumping investigation concerning certain welded carbon steel line pipes and tubes from Venezuela (investigation No. 731–TA–253 (Final)) is terminated.

On November 13, 1985, the Department of Commerce published notice in the Federal Register of its affirmative preliminary determination that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930 (19 U.S.C. 1671) are being provided to manufacturers, producers, or exporters in Venezuela of certain circular welded carbon steel line pipes and tubes. Because the countervailing duty petition concerning imports of welded carbon steel line pipes and tubes from Venezuela has been withdrawn, the Commission will not institute a final countervailing duty investigation on this subject.

EFFECTIVE DATE: December 4, 1985.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202–523–1369), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Authority: The subject antidumping investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.40 of the Commission's rules (19 CFR 207.40).

Issued: December 5, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–29412 Filed 12–11–85; 8:45 am]

BILLING CODE 7020–02–M

Certain Upper Body Protector Apparatus for Use in Motosports; Investigation

[Investigation No. 337–TA–234]

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 28, 1985, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of J.T. Racing, Inc., 515 Otay Valley Road, Chula Vista, California 92011, and John Gregory, 515 Otay Valley Road, Chula Vista, California 92011. A supplement to the complaint was filed on November 19, 1985. The complaint as supplemented alleges unfair methods of competition and unfair acts in the importation of certain upper body protector apparatus for use in motosports in the United States, or in their sale, by reason of alleged: (1) Infringement of claims 1–6 and 8–10 of U.S. Letters Patent 4,467,475; (2) infringement of claims 1, 3–8, 10, 11, and 13–17 of U.S. Letters Patent 4,516,273; (3) infringement of the claims of U.S. Letters Patent Des. 277,236; (4) infringement of California Trademark Registration No. 69351; (5) common law trademark infringement; and (6) false advertising. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substanitally injure an industry, efficiently and economically operated, in the United States.

The complainants request that the Commission institute an investigation, and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Gary Rinkerman, Esq., or Stephen L. Sulzer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–523–1273 and 202–523–0419, respectively.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on November 26, 1985, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain upper body protector apparatus for use in motosports into the United States, or in their sale, by reason of alleged: (1) Infringement of claims 1–6 and 8–10 of U.S. Letters Patent 4,467,475; (2) infringement of claims 1, 3–8, 10, 11, and 13–17 of U.S. Letters Patent 4,516,273; (3) infringement of the claim of U.S. Letters Patent Des. 277,236; (4) common law trademark infringement; and (5) false advertising, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

J.T. Racing, Inc., 515 Otay Valley Road, Chula Vista, California 92011

John Gregory, 515 Otay Valley Road, Chula Vista, California 92011

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Stilmotor, Via Traversa IV, #7, Loc Ponticelli, 56020 Santa Maria A. Monte, Pisa, Italy

Torsten Hallman Racing, Inc., 315 West Bradley, El Cajon, California 92020

Sinisalo USA Corporation, 15510 Rockfield Boulevard, Unit C, Irvine, California 92714

(c) Gary Rinkerman, Esq., and Stephen L. Sulzer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 128 and Room 124, respectively, Washington, DC 20436, shall be the Commission investigative attorneys, party to this investigation;

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge; and

(4) The following entities are not named as respondents in this investigation but shall be served with a copy of the notice of investigation, the complaint, and § 210.26 of the rules:

Penguin, An Ping Industrial District, No. 20 Guang Jou Road, Tainan, Taiwan

U.F.O. Plast SNC, Via A. Barducci, #16, 56030 Calcinaia, Pisa, Italy

Responses must be submitted by the named respondents in accordance with §210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Purusant to §§201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses will not be granted unless good cause therefore is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: December 3, 1985

Kenneth R. Mason,

Secretary.

[FR Doc. 85-29411 Filed 12-11-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-210 and 211 (Preliminary) and 731-TA-167 and 168 (Preliminary)]

Certain Table Wine From France and Italy

Determinations

In accordance with the August 8, 1985, judgment of the U.S. Court of International Trade [1] reversing and remanding the Commission's negative preliminary determinations in Investigations Nos. 701-TA-210 and 211 (Preliminary) and 731-TA-167 and 168 (Preliminary) [2], the Commission makes the following preliminary determinations:

1. Pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), there is a reasonable indication that an industry in the United States is materially injured and threatened with material injury by reason of imports from France (Investigation No. 701-TA-210 (Preliminary)) and Italy (Investigation No. 701-TA-211 (Preliminary)) of certain table wine,[3] provided for in item 167.30 of the Tariff Schedules of the United States (TSUS), which are alleged to be subsidized by the Governments of France and Italy.

2. Pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673(a)), there is a reasonable indication that an industry in the United States is materially injured and threatened with material injury by reason of imports from France (Investigation No. 701-TA-167 (Preliminary)) and Italy (Investigation No. 701-TA-168 (Preliminary)) of certain table wine,[3] provided for in item 167.30 of the Tariff Schedules of the United States (TSUS), which are alleged to be sold in the United States at less than fair value.

Background

On January 27, 1984, petitions were filed with the United States International Trade Commission and the U.S. Department of Commerce by counsel on behalf of the American Grape Growers Alliance for Fair Trade (Alliance), alleging that imports of the subject merchandise are being subsidized, and are being sold in the United States at less than fair value. Accordingly, effective January 27, 1984, the Commission instituted preliminary countervailing and antidumping investigations under sections 703(a) and 733(a), respectively, of the Tariff Act of 1930 to determine whether there is a reasonable indication that an industry in the United States is materially injuried, or is threatened with material injury, or establishment of an industry in the United States is materially retarded, by reasons of imports of such merchandise.

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** on February 6, 1984 (49 FR 4440). The conference was held in Washington, DC, on February 17, 1984, and all persons who requested the opportunity were permitted to appear in person or by counsel.

On March 12, 1984, the Commission issued negative preliminary determinations in all four investigations. 49 FR 10587 (March 21, 1984). These negative preliminary determinations, accompanied by the views of the Commission and the public version of its report, were subsequently published as *Certain Table Wine from France and Italy*, Investigations Nos. 701-TA-210 and 211 (Preliminary) and Investigations Nos. 731-TA-167 and 168 (Preliminary), USITC Publication 1502 (March 1984) ("*Table Wine I*").

On April 20, 1984, the petitioners sought judicial review of the Commission's determination by commencing a civil action in the U.S. Court of International Trade (CIT) under 28 U.S.C. 1581(c).

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[1] American Grape Growers Alliance for Fair Trade v. United States, Slip Opinion 85-84, U.S. Court of International Trade (August 8, 1985). Both the Commission and defendant-intervenor Banfi Products Corporation have appealed the CIT's judgment. Appeals No. 85-2717 and 86-556, respectively.

[2] Vice Chairman Liebeler and Commissoner Rohr did not participate in the Commission's original investigation that is the subject of the remand.

[3] Certain table wine is defined as still wine produced from grapes, containing not over 14 percent of alcohol by volume, other than wines categorized by the appropriate authorities in France or Italy as "Appelation d'Origine Controlee" or "Vins Delimites de Qualite Superieure" or "Denominaizone di Origine Controllata," respectively.

On August 8, 1985, the CIT entered a judgment reversing and remanding the Commission's determinations and ordering the Commission to make new determinations consistent with the CIT's opinion.[4] In the course of its discussion of the issues of cumulation and the standard for preliminary determinations, the CIT's opinion makes clear that, in the court's view, there was "no justification" for the Commission to terminate the investigations and that only affirmative preliminary determinations would be consistent with its analysis.

On August 15, 1985, the Commission appealed the CIT's judgment to the United States Court of Appeals for the Federal Circuit (CAFC).[5]

On October 7, 1985, the CIT denied the Commission's August 30, 1985, motion for a stay of enforcement of judgment pending disposition of the Commission's appeal.[6]

On November 22, 1985, the CAFC denied the Commission's motion for a similar stay pending appeal, but, *sua sponte*, stayed all proceedings in the appeals pending disposition of the Commission's related appeal in *American Lamb Company v. United States*, Appeal No. 86-560. That same day, the CIT granted petitioners' October 21, 1985, motion for enforcement of the CIT's August 8, 1985, judgment, giving the Commission ten days to issue new determinations.[7] The denial of the Commission's motions for a stay pending appeal and the grant of an order enforcing the CIT's August 8, 1985, judgment require the Commission to issue preliminary determinations in the subject investigations. Consistent with the CIT's opinion and judgment, all four determinations are affirmative. The issuance of these affirmative preliminary determinations does not affect the Commission's appeal seeking reversal of the CIT's August 8, 1985, judgment, nor does it amount to a predetermination of the outcome of any final investigations which may be instituted.[8]

[4] *See* note 1, *supra*.

[5] Appeal No. 85-2717. On October 4, 1985, defendant-intervenor Banfi Products Corporation filed its own appeal. Appeal No. 86-556. These appeals were consolidated on November 22, 1985.

[6] American Grape Growers Alliance for Fair Trade v. United States, Slip Opinion 85-104, U.S. Court of International Trade (October 7, 1985).

[7] American Grape Growers Alliance for Fair Trade v. United States, Slip Opinion 85-118, U.S. Court of International Trade (November 22, 1985). The Commission had already indicated to the CIT that it intended to discharge the CIT's August 8, 1985, judgment without undue delay if the CAFC denied the Commission's motion for a stay.

[8] The issuance of these determinations also does not affect the recent determinations of the Commission in Certain Table Wine from the Federal Republic of Germany, France and Italy, Investigations Nos. 701-TA-258-260 (Preliminary) and Investigations Nos. 731-TA-283-285 (Preliminary), USITC Pub. No. 1771 (October 1985), which are the subject of a separate civil action in the CIT.

The Commission transmitted these determinations to the Secretary of Commerce on December 3, 1985.

By order of the commisson.

Issued: December 3, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-29410 Filed 12-11-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-240 and 241 (Final)]

Photo Albums and Photo Album Filler Pages From Hong Kong and the Republic of Korea

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from Hong Kong and the Republic of Korea (Korea) of photo albums and photo album filler pages, provided for in items 256.60 (albums) and 256.87, 256.90, and 774.55 (filler pages) of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Further, pursuant to section 735 (b)(4)(A) of the Act (19 U.S.C. 1673d(b)(4)(A)), the Commission also unanimously determines that the material injury in the case involving imports from Korea is not by reason of massive imports over a relatively short period to an extent that, in order to prevent such material injury from recurring, it is necessary to impose the antidumping duty retroactively on these imports.

Background

The Commission instituted these investigations effective July 16, 1985, following preliminary determinations by the Department of Commerce that imports of photo albums and photo album filler pages from Hong Kong and Korea were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and a public hearing to be held in a connection there with was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 31, 1985 (50 FR 31055). Commerce subsequently extended the investigations by 30 days and, accordingly, the Commission revised its hearing date (50 FR 40244, Oct. 2, 1985). The hearing was held in Washington, DC, on November 1, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on December 6, 1985. The views of the Commission are contained in USITC Publication 1784 (December 1985), entitled "Photo Albums and Photo Album Filler Pages from Hong Kong and the Republic of Korea: Determinations of the Commission in Investigations Nos. 731-TA-240 and 241 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By Order of the Commission.

Issued: December 2, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-29408 Filed 12-11-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-259 and 260 (Final)]

Offshore Platform Jackets and Piles From the Republic of Korea and Japan

AGENCY: International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-259 and 260 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Republic of Korea and Japan of offshore platform jackets and piles, provided for in item 652.97 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in its

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

preliminary determinations, to be sold in the United States at less than fair value (LTFV). Unless the investigations are extended, Commerce will make its final LTFV determinations on or before January 29, 1986, and the Commission will make its final injury determinations by March 14, 1986 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concening the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: November 25, 1985.

FOR FURTHER INFORMATION CONTACT: Dan Dwyer (202-523-4618), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Backgound

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of offshore platform jackets and piles from the Republic of Korea and Japan are being sold in the United States at less then fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigations were requested in petitions filed on April 18, 1985 by Kaiser Steel Corp., Napa, CA, and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Kansas City, KS. In response to those petitions the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (50 FR 24716, June 12, 1985).

Participation in the investigations.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report.—A public version of the prehearing staff report in these investigations will be placed in the public record on January 17, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with these investigation beginning at 10:00 a.m. on February 3, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on January 24, 1986. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on January 30, 1986, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is January 27, 1986.

Testimony at the public hearing is governed by § 207.23 of the Commission's rule (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factural materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on February 10, 1986. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertient to the subject of the investigations on or before February 10, 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These invetigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of thie Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: December 9, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-29504 Filed 12-11-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-265-266 (Preliminary) and 731-TA-297-299 (Preliminary)]

Porcelain-on-Steel Cooking Ware From Mexico, the People's Republic of China, and Taiwan

AGENCY: International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with these investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigations Nos. 701-TA-265-266 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is

materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Mexico and Taiwan of cooking ware, including teakettles, not having self-contained electric heating elements, all the foregoing of steel and enameled or glazed with vitreous glasses (porcelain), provided for in item 654.08 of the Tariff Schedules of the United States, except kitchen ware (currently reported under item 654.0828 of the Tariff Schedules of the United States Annotated), which are alleged to be subsidized by the Governments of Mexico and Taiwan. As provided in section 703(a), the Commission must complete preliminary countervailing duty investigations in 45 days, or in these cases by January 21, 1986.

The Commission also gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–297–299 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Mexico, The People's Republic of China, and Taiwan of cooking ware, including teakettles, not having self-contained electric heating elements, all the foregoing of steel and enameled or glazed with vitreous glasses (porcelain), provided for in item 654.08 of the Tariff Schedules of the United States, excluding kitchen ware (currently reported under item 654.0828 of the Tariff Schedules of the United States Annotated), which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in these cases by January 21, 1986.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and E (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: December 4, 1985.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–523–0296) or Vera Libeau (202–523–0268), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to petitions filed on December 4, 1985, by General Housewares Corp., Terre Haute, IN.

Participation in the investigations.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to these investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on December 27, 1985, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, DC. Parties wishing to participate in the confernece should contact Vera Libeau (202–523–0368) not later than December 23, 1985, to arrange for their appearance. Parties in support of the imposition of countervailing and/or antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before January 2, 1985, a written statement of information pertinent to the subject of these investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: December 9, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–29505 Filed 12–11–85; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–3; Sub-No. 53]

Missouri Pacific Railroad Co.; Abandonment; in Mississippi and Scott Counties, MO; Findings

The Commission has found that the public convenience and necessity permit the Missouri Pacific Railroad Company to abandon its 29.8-mile rail line: (1) Between milepost 160.2 at Newman Spur and milepost 179.6 at Charleston, MO, and (2) between milepost 216.4 at Buckeye and milepost 226.8 at Charleston, MO, in Mississippi and Scott Counties, MO.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously

made must be remade within this 10-day period.

Information and provisions regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 85-29467 Filed 12-11-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Act of 1984; Bell Communications Research, Inc.

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98-462 ("the Act"), Bell Communications Research, Inc. ("Bellcore") has filed a written notification on behalf of Bellcore and Hitachi, Ltd. (herein after "Hitachi") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties to the joint venture and (2) the nature and objectives of the joint venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 West Mount Pleasant Avenue, Livingston, New Jersey 07039.

Hitachi is a Japanese corporation located at 6, Kanda Surugadai 4 chome, Chiyoda-ku, Tokyo 101, Japan.

Bellcore and Hatachi entered into a collaborative research agreement on September 30, 1985 to cooperate in the following areas:

(1) To better understand the applications of technology and equipments for optical transmission for telecommunications exchange and exchange access services, and

(2) To demonstrate the feasibility of research concepts by experimental prototypes and experimental systems of such technologies and equipments.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85-29431 Filed 12-11-85; 8:45 am]

BILLING CODE 4410-01-M

United States v. Baxter Travenol Laboratories, Inc. and American Hospital Supply Corporation; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a complaint, proposed final judgment, stipulation, and competitive impact statement have been filed with the United States District Court for the Northern District of Illinois, Eastern Division, in *United States of America* v. *Baxter Travenol Laboratories, Inc. and American Hospital Supply Corporation.*

The complaint of the United States in this case alleges that the effect of the merger of Baxter Travenol Laboratories, Inc. (Baxter) and American Hospital Supply Corporation (American) may be substantially to lessen competition in the United States markets for the manufacture and sale of parenteral solutions, fluid administration sets, electronic flow control devices, therapeutic hemapheresis equipment, and surgeons and procedure gloves, in violation of Section 7 of the Clayton Act (15 U.S.C. 18).

Parenteral solutions are sterile intravenous (IV) fluids, including general IV solutions, premix specialty IV solutions, nutritional fluids, irrigation and urological solutions, and peritoneal dialysis solutions. These solutions are used to provide nutrition to patients suffering from metabolic disturbances, in the treatment of kidney failure and for many other purposes. The three largest manufacturers of parenteral solutions account for about 95% of the $1 billion market for such solutions in the United States. Baxter and American have the largest and third largest shares of this market, approximately 50% and 16%, respectively.

Fluid administration sets are disposable devices that are attached to parenteral solutions or blood containers, and through which parenteral solutions or blood flows to patients. The three largest sellers of fluid administration sets account for about 90% of the more than $400 million in annual sales of such sets in the United States. Baxter and American have the second and third largest shares of this market, approximately 39% and 14%, respectively.

Electronic flow control devices are electro-mechanical devices that pump, infuse or meter fluids, including parenteral solutions and drugs, at pre-determined rates to patients during intravenous therapy. The five largest firms in the electronic flow control devices market account for about 90% of the more than $100 million in annual United States sales in that market. American has the second largest share of this market, about 21%, while Baxter has the fifth largest share, about 9.5%.

Therapeutic hemapheresis equipment is used to separate blood into components for therapeutic uses. The three largest producers of therapeutic hemapheresis equipment account for about 85% of the approximately $23 million in annual United States sales in this market. Baxter and American have the second and third largest shares of this market, approximately 28% and 23%, respectively.

Surgeons gloves are used in gowned surgical procedures performed inside the operating room and non-gowned surgical procedures performed outside the operating room. Procedure gloves are used in non-gowned surgical procedures performed outside the operating room. Surgeons and procedure gloves sales are approximately $112 million annually in the United States. The six largest producers account for about 90% of such sales. Baxter and American have the largest and second largest shares of this market, approximately 26% and 13%, respectively.

Prior to the filing of the complaint in this action, the defendants entered into a series of contracts providing for the divestiture of American's American McGaw and American Haemonetics divisions and certain glove manufacturing assets, which, if executed, would solve the competitive problems that otherwise would be created by the merger. The contracts involved have been signed and there are no conditions precedent to their execution. However, under their terms the contracts will not be executed until a short time after Baxter acquires all of the stock of American. The purpose of the proposed final judgment is to ensure that the defendants execute, close on and perform each of the contracts involved and also to ensure, if they do not do so, that independent, viable competitors nevertheless will be created in each of the relevant product markets. The proposed final judgment accomplishes this by providing that if all of the tangible and intangible assets to be transferred by the defendants under these contracts are not transferred by the date of entry of this proposed final judgment, that these assets shall be immediately transferred to a trustee who will proceed to sell the assets to a purchaser acceptable to the plaintiff. The proposed final judgment also requires the defendants to comply with the terms of the Infusion Device

Distribution and Option Agreement, which is incorporated by reference into the contract to sell American's American McGaw division, and not to in any way modify that agreement to permit Baxter or American to sell electronic flow control devices to The Kendall Company, the purchaser of the McGaw division, at a price that is dependent in any way on the price at which Kendall resells those devices.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the court. Comments should be directed to Judy Whalley, Chief Midwest Office, Antitrust Division, United States Department of Justice, Room 3820 Kluczynski Federal Building, 230 South Dearborne Street, Chicago, Illinois 60604 (telephone (312) 353-7530).

United States District Court for the Northern District of Illinois, Eastern Division

United States of America, Plaintiff, v. Baxter Travenol Laboratories, Inc. and American Hospital Supply Corporation Defendants.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Douglas H. Ginsburg, *Assistant Attorney General.*
Mark Leddy,
Roger B. Andewelt,
Judy Whalley,
Attorneys, Antitrust Division, United States Department of Justice.

For the Defendants:

Stephen B. Paige, *Deputy General Counsel, Attorney for American Hospital Supply Corporation.*
David Marx, Jr.,
Lorenzo E. Bracy,
Beverly A. Sharpe,
Attorneys, Antitrust Division, United States Department of Justice, 230 S. Dearborn, Chicago, Illinois 60604, (312) 353-7538
Bell, Boyd & Lloyd, *Three First National Plaza, Chicago, Illinois 60602*
By: Victor E. Grimm,
By: Michael Sennett
Arthur F. Staubitz,
Deputy General Counsel, Attorney for Baxter Travenol Laboratories.

Final Judgment

Plaintiff, United States of America, having filed its Complaint herein on November 22, 1985, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against, or any admission by, any party with respect to any issue of fact or law herein;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

This Court has jurisdiction of the subject matter herein and of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

Definitions

As used in this Final Judgment:

A. "American" means American Hospital Supply Corporation, each division, subsidiary or affiliate thereof, each successor or assign, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them.

B. "Baxter" means Baxter Travenol Laboratories, Inc., each division, subsidiary or affiliate thereof, each successor or assign, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them.

C. "McGaw Contract" means the "Purchase and Sale Agreement Dated November 1, 1985 Among American Hospital Supply Corporation and American Hospital Supply Del Caribe, Inc., and The Kendall Company, NDM Corporation, NDM Corporation of Puerto Rico, Inc. and Anatros Corporation Relative to the Assets of the McGaw Division and the NDM and Anatros Operations," and all schedules and exhibits thereto, as modified on November 19, 1985.

D. "McGaw Assets" means all of the tangible and intangible assets of American and Baxter to be sold or otherwise transferred to The Kendall Company pursuant to the McGaw Contract.

E. "Haemonetics Contract" means the "Asset Purchase Agreement" dated October 18, 1985 among American Hospital Supply Corporation, American Haemonetics Corporation, AHS/Deutschland GmbH, American Hospital Supply Del Caribe, Inc., and Latham Labs, Inc. relating to the business of the American Haemonetics Corporation, and all schedules and exhibits thereto.

F. "Haemonetics Assets" means all of the tangible and intangible assets of American to be sold or otherwise transferred to Latham Labs, Inc. pursuant to the Haemonetics Contract.

G. "Glove Contract" means the "Purchase Agreement" dated November 15, 1985 between American Hospital Supply Corporation and Ansell, Inc. relating to medical glove manufacturing and packaging facilities, and all schedules and exhibits thereto, as modified on November 18, 1985.

H. "Glove Assets" means all of the tangible and intangible assets of American to be sold or otherwise transferred to Ansell, Inc. pursuant to the Glove Contract.

I. "Person" means any individual, partnership, firm, corporation, association, or any other business or legal entity.

J. "Infusion Device" means any electronic intravenous infusion control device.

III

The provisions of this Final Judgment shall apply to the defendants and to each of their subsidiaries, succcessors and assigns, and to each of their officers, directors, agents, employees, and attorneys, and to all persons in active concert of participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

The purpose of this Final Judgment is to ensure that the defendants execute, close on and perform the McGaw Contract, the Haemonetics Contract and the Gloves Contract. Each of these contracts have been filed with the Court.

V

Should American or Baxter retain any of the McGaw Assets, the Haemonetics Assets, or the Glove Assets beyond the effective date of this Final Judgment, defendants shall immediately provide written notice of such retention to plaintiff. Upon an application by the plaintiff thereafter, the Court shall immediately appoint an independent trustee, acceptable to the plaintiff, who shall have the power and authority to sell the McGaw Assets, the Haemonetics Assets, and the Glove Assets at the best price then obtainable to a buyer or buyers acceptable to the plaintiff. The defendants, immediately upon the appointment of the independent trustee, shall transfer all retained McGaw Assets, Haemonetics Assets, and Glove Assets to the trustee. The defendants shall provide to the trustee such information, capital, personnel, or other assistance as the trustee may request. The trustee shall serve at the cost and expense of the defendants. Any such assets for which the trustee has not found a purchaser within three months after he receives them shall be sold at auction at the best obtainable price. The defendants are prohibited from purchasing or bidding for the McGaw Assets, the Haemonetics Assets or the Glove Assets, or any combination thereof, to be sold by the trustee. All money derived by the trustee from the sale of assets, after expenses, shall be turned over to the defendants.

VI

The terms of the Stipulated Hold Separate Order entered into by the plaintiff and the defendants, filed with the Court, and attached hereto as Exhibit A, are incorporated herein by reference.

VII

Baxter and American shall comply with all terms and conditions of the Infusion Device Distribution and Option Agreement ("Infusion Agreement") incorporated by reference in, and made an Exhibit to, the McGaw Contract. Baxter and American shall not in any way modify the Infusion Agreement to permit either of them to sell infusion devices to The Kendall Company at a price that is dependent in any way on the price at which Kendall resells those devices.

VIII

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted:

1. Access during the office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees and agents or such defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to any defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

C. If at the time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

IX

This Final Judgment will expire on the tenth anniversary of its date of entry or upon motion by plaintiff.

X

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XI

Entry of this Final Judgment is in the public interest.

U.S. District Judge.

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), the United States of America files this competitive Impact Statement relating to the proposed Final Judgment against the defendants in this civil antitrust proceeding.

I

Nature and Purpose of the Proceedings

On November 22, 1985, the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, 15 U.S.C. 25, challenging the acquisition of, and the merger with, American Hospital Supply Corporation ("American") by Baxter Travenol Laboratories, Inc. ("Baxter") as a violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The complaint alleges that the effect of the acquisition may be substantially to lessen competition in United States markets for the manufacture and sale of parenteral solutions, fluid administration sets, electronic flow control devices, therapeutic hemapheresis equipment, and surgeons and procedure gloves.

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act. Entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations of the proposed Final Judgment.

II

Events Giving Rise to the Alleged Violations

On July 15, 1985, Baxter and American entered into an agreement and plan of

acquisition pursuant to which Baxter will acquire all of the outstanding stock of American at a price of $51 per share in cash, or cash in combination with Baxter securities. Both companies' shareholders are scheduled to meet on November 22 to vote on the proposed acquisition. The sale would, in effect, merge all of American's businesses into Baxter, and give Baxter complete control of American's operations.

Baxter and American are both large, diversified healthcare companies. Baxter's net sales of all products were about $1.8 billion in 1984. American's net sales of all products in 1984 were about $3.4 billion, 46 percent of which represented the sale of products manufactured by American and the remainder consisting of products made by other companies but distributed by American. Both Baxter and American manufacture and sell, among other things, parenteral solutions, fluid administration sets, electronic flow control devices, therapeutic hemapheresis equipment, and surgeons and procedures gloves.

A. *Parenteral Solutions.* Parenteral solutions are sterile intravenous ("IV") fluids, including: General IV solutions (such as sterile water and dextrose, sodium, chloride, or electrolytes); premix specialty IV solutions (such as dopamine in dextrose and sterile water); nutritional fluids (such as amino acids, fats, and carbohydrates); irrigation and urological solutions (such as saline, distilled water, glycine, and sorbitol irrigation solution); and peritoneal dialysis solutions. Parenteral solutions have five major uses: the replcement of fluids and electrolytes; the provision of nutrition to patients suffering from a disturbance of the normal metabolic flow of nutrients; as a medium for administering drugs; as a cleansing, washing, or irrigating agent in procedures requiring the use of sterile fluids; and in the treatment of kidney failure.

Most parenteral solutions are packaged in glass containers and either flexible plastic bags or semi-rigid plastic containers. Baxter manufactures parenteral solutions packaged in glass containers and flexible plastic bags. American manufactures parenteral solutions packaged in glass and semi-rigid plastic containers. Customers consider a particular kind of solution packaged in any of the three types of containers to be substitutes. Most hospitals contract to purchase all of their parenteral solutions from one manufacturer pursuant to contracts that run for two to five years.

Baxter and American are direct competitors in the manufacture and sale of parenteral solutions in the United States. Baxter is the largest manufacturer of parenteral solutions in the United States. In 1984, Baxter's sales of parenteral solutions in the United States were approximately $505.6 million, accounting for approximately 50.5% of total sales of parenteral solutions in the United States. American, through its American McGaw division, is the third largest manufacturer of parenteral solutions in the United States. In 1984, American's sales of parenteral solutions in the United States were approximately $166.4 million, accounting for approximately 16.6% of the total sales of parenteral solutions in the United States.

The manufacture and sale of parenteral solutions is highly concentrated. In 1984, the three largest manufacturers in the United States accounted for about 95% of the total sales of parenteral solutions in the United States. The Herfindahl-Hirschman Index ("HHI"), a measure of market concentration, calculated on the basis of 1984 sales in the United States is about 3648. Baxter's proposed acquisition of American would increase this HHI by about 1682 to about 5330.

Based upon the foregoing and other facts, the complaint alleges that the manufacture and sale of parenteral solutions comprises a relevant product market for antitrust purposes and that the effect of the acquisition may be substantially to lessen competition in the manufacture and sale of parenteral solutions in the United States in violation of section 7 of the Clayton Act.

B. *Fluid Administration Sets.* Fluid administration sets are disposable devices and related add-on components which are attached to parenteral solution or blood containers and through which the parenteral solution or blood flows to the patient. Basic fluid administration sets consist of single-use plastic tubing, filters, and clamps. Fluid administration sets are pre-assembled and packaged in a wide variety of configurations; and additional add-on components, such as extension sets, Y-sites, backcheck valves, and filters may be purchased separately and added to the pre-assembled sets.

The three major parenteral solution producers (Baxter, American and Abbot) are also the primary suppliers of fluid administration sets. The fluid administration sets manufactured by the three parenteral solutions producers generally may be used with each other's parenteral solutions containers. Nevertheless, hospitals generally contract to purchase all of their fluid administration sets from one manufacturer, usually their parenteral solutions supplier. In fact, both parenteral solutions and fluid administration sets are often purchased pursuant to the same contract.

Baxter and American are direct competitors in the manufacture and sale of fluid administration sets in the United States. Baxter is the second largest manufacturer of these sets in the United States. In 1984, Baxter's sales in the United States of fluid administration sets were approximately $172.2 million, accounting for approximately 39.3% of total sales in the United States. American, through its American McGaw division, is the third largest manufacturer of fluid administration sets in the United States. In 1984, American's sales in the United States were approximately $61 million, accounting for approximately 13.9% of total sales in the United States.

The manufacture and sale of fluid administration sets is highly concentrated. In 1984, the three largest firms accounted for about 90% of the total sales of fluid administration sets in the United States. The HHI calculated on the basis of 1984 sales in the United States is approximately 3307. Baxter's proposed acqusition of American would increase this HHI by about 1098 to about 4405.

Based upon the foregoing and other facts, the complaint alleges that the manufacture and sale of fluid administration sets comprises a relevant product market for antitrust purposes and that the effect of the acquisition may be substantially to lessen competition in the manufacture and sale of fluid administration sets in the United States in violation of section 7 of the Clayton Act.

C. *Electronic Flow Control Devices.* Electronic flow control devices are electro-mechanical intravenous fluid infusion control devices which are designed to pump, infuse or meter fluids, including parenteral solutions and drugs, at pre-determined rates into a patient during intravenous therapy. There are two basic types of electronic flow control devices: IV pumps, which monitor and regulate the fluid infusion rate by pumping the fluid into the patient under positive pressure; and IV controllers, which mediate the rate of infusion by electronically monitoring the flow rate of the fluid, but do so only under the force of gravity. These devices are used in conjunction with the administration of parenteral solutions and/or blood and ensure that the fluid and/or blood is infused into the patient at the rate requested by the user. Because electronic flow control devices

allow parenteral solutions to be administered far more accurately than is possible through the use of fluid adminstration sets, they serve a distinct set of hospital patients—primarily patients in the critical and intensive care units.

Most electronic flow control devices require the use of a dedicated fluid administration set that plugs directly into the device. A manufacturer's dedicated administration set will work only in conjunction with its electronic flow control device, and the two products are marketed together. Contracts for the purchase of electronic flow control devices and their dedicated administration sets typically run for two to three years.

Baxter and American are direct competitors in the sale of electronic flow control devices in the United States. Baxter is the fifth largest seller of electronic flow control devices in the United States. The company manufactures some of the devices it sells and also acts as the exclusive distributor of a substantial number of devices that are manufactured by other companies, but sold under the Baxter name. In 1984, Baxter sold approximately 8,900 electronic flow control devices in the United States, accounting for approximately 9.5% of the total sales of electronic flow control devices in the United States.

American is the second largest seller of electronic flow control devices in the United States. American Edwards, a subsidiary of American, manufactures IV pumps which are sold exclusively by American's American McGaw division. The McGaw division also distributes electronic flow control devices for other manufactures, and, under its own name, IV controllers manufactured for it by IVENT. In 1984, American sold approximately 20,000 electronic flow control devices in the United States, accounting for approximately 21.3% of the total sales of electronic flow control devices in the United States.

The manufacture and sale of electronic flow control devices is highly concentrated. In 1984, the five largest firms accounted for about 91% of the total United States sales of electronic flow control devices. The HHI calculated on the basis of 1984 unit sales in the United States is about 1917. Baxter's proposed acquisition of American would increase the HHI by about 402 to about 2319.

Based upon the foregoing and other facts, the complaint alleges that the manufacture and sale of electronic flow control devices comprises a relevant product market for antitrust purposes and that the effect of the acquisition may be substantially to lessen competition in the manufacture and sale of electronic flow control devices in the United States in violation of Section 7 of the Clayton Act.

D. *Therapeutic Hemapheresis Equipment.* Therapeutic hemapheresis equipment includes centrifugal blood cell separators and plasma membrane separators, and related disposable systems, that are used to separate whole blood into components for therapeutic purposes.

Baxter and American are direct competitors in the manufacture and sale of therapeutic hemapheresis equipment in the United States. In 1984, the three largest producers accounted for about 85% of all sales of therapeutic hemapheresis equipment and products in the United States.

Baxter is the second largest manufacturer of therapeutic hemapheresis equipment in the United States. The company manufactures and sells both centrifugal blood cell separators and plasma membrane separators, and their related disposable products, in the United States. In 1984, Baxter sold approximately 91 machines and 75,665 disposable products in the United States, accounting for approximately 28% of the total United States sales of therapeutic hemapheresis equipment.

American, which manufactures and sells centrifugal blood cell separators and disposable products through its American Haemonetics subsidiary, is the third largest producer of therapeutic hemapheresis equipment in the United States. In 1984, it sold in the United States approximately 74 machines and 75,000 disposable products, accounting for approximately 23% of total sales of hemapheresis therapeutic equipment in the United States.

The manufacture and sale of therapeutic hemapheresis equipment is highly concentrated. The HHI calculated on the basis of 1984 sales of therapeutic hemapheresis equipment in the United States is about 2700. Baxter's proposed acquisition of American would increase this HHI by about 1300 to about 4000.

Based upon the foregoing and other facts, the complaint alleges that the manufacture and sale of therapeutic hemapheresis equipment comprises a relevant product market for antitrust purposes and that the effect of the acquisition may be substantially to lessen competition in the manufacture and sale of therapeutic hemapheresis equipment in the United States in violation of section 7 of the Clayton Act.

E. *Surgeons and Procedure Gloves.* Surgeons gloves are anatomically correct (right and left handed with an offset thumb), long cuffed, talc-free, sterile, thin latex gloves that are sized according to palm circumference and designed specifically for use in gowned surgical procedures performed inside the operating room and non-gowned surgical procedures performed outside the operating room. Procedure gloves are designed for use in ungowned surgical procedures, such as biopsies, suturing, and lumbar punctures, performed outside the operating room. Procedure gloves are either cosmetically defective surgeons gloves or anatomically correct, sized, talc-free, sterile thin latex gloves with slightly shorter cuffs. Surgeons and procedure gloves, because of their design, sizing, and thinness, closely resemble the shape of a surgeon's hand and fit the hand more exactly, thereby allowing the surgeon dexterity and tactile sensitivy while decreasing the possibility of hand fatigue. Surgeons and procedure gloves are generally purchased pursuant to one year contracts, but surgeons have strong brand preferences and are reluctant to switch their sources of supply of surgeons and procedure gloves.

Baxter and American are direct competitors in the manufacture and sale of surgeons and procedure gloves in the United States. Baxter is the largest manufacturer of surgeons and procedure gloves in the United States. In 1984, Baxter sold approximately 71 million pair of surgeons and procedure gloves in the United States, accounting for approximately 26.2% of total United States sales of surgeons and procedure gloves.

American is the second largest manufacturer of surgeons and procedure gloves in the United States and is the only company that produces a procedure glove using specially-designed molds that are shorter than surgeons gloves molds, as opposed to selling cosmetically defective surgeons gloves as procedure gloves. American's Pharmaseal division is responsible for manufacturing and marketing American's surgeons gloves made in Tucson, Arizona and procedure gloves made in Johnson City, Tennessee. In 1984, American sold approximately 36.5 million pairs of surgeons and procedure gloves in the United States, accounting for approximately 13.5% of the total sales of surgeons and procedure gloves in the United States.

The production and sale of surgeons and procedure gloves is highly concentrated. In 1984, the six largest producers accounted for about 90% of all United States sales of surgeons and procedure gloves. The HHI calculated on the basis of 1984 sales in the United

States is about 1667. Baxter's proposed acquisition of American would increase this HHI by about 708 to about 2375.

Based upon the foregoing and other facts, the complaint alleges that the manufacture and sale of surgeons and procedure gloves comprises a relevant product market for antitrust purposes and that the effect of the acquisition may be substantially to lessen competition in the manufacture and sale of surgeons and procedure gloves in the United States in violation of Section 7 of the Clayton Act.

III

Explanation of the Proposed Final Judgment

The United States brough this action because the acquisition of American by Baxter would likely lessen competition in violation of section 7 of the Clayton Act in the manufacture and sale of parenteral solutions, fluid administration sets, electronic flow control devices, therapeutic hemapheresis equipment, and surgeons and procedure gloves. American and Baxter are among the most significant competitors in each of these five highly concentrated markets.

Prior to the filing of the complaint in this action, the defendants entered into a series of contracts, described below, which, if executed, would solve the competitive problems that otherwise would be created by the merger. These contracts, through the divestiture of assets or by other means, would create an independent, viable competitor in each of the markets, thereby replacing the significant competitor being eliminated by the merger.

The contracts involved have been signed and there are no conditions precedent to their execution. However, under their terms the contracts will not be executed until a short time after Baxter acquires all of the stock of American. The purpose of the proposed Final Judgment is to ensure that the defendants execute, close on and perform each of the contracts involved and also to ensure, if they do not do so, that independent, viable competitors nevertheless will be created in each of the relevant product markets. The proposed Final Judgment accomplishes this by providing that if all of the tangible and intangible assets to be transferred by the defendants under these contracts are not transferred by the date of entry of this proposed Final Judgment, that these assets shall be immediately transferred to a trustee who will proceed to sell the assets to a purchaser acceptable to the plaintiff.

Since the proposed Final Judgment provides for divestiture of the assets defined in existing contracts, a brief description of these contracts is appropriate to understand the scope of the relief secured.

The contract that addresses potential competitive problems in the parenteral solutions, fluid administration sets and electronic flow control devices markets is the "Purchase and Sale Agreement Dated November 1, 1985 Among American Hospital Supply Corporation and American Hospital Supply Del Caribe, Inc., and The Kendall Company, NDM Corporation, NDM Corporation of Puerto Rico, Inc. and Anatros Corporation Relative to the Assets of the McGaw Division and the NDM and Anatros Operations." This contract, with incorporated ancillary agreements, provides that Kendall, a subsidiary of Colgate-Palmolive, will acquire, among other things, all of the tangible and intangible assets of American's American McGaw division. American McGaw manufactures all of American's parenteral solutions and fluid administration sets and has its own sales force.

In addition to divestitute of McGaw, the ancillary agreements contain a series of short term provisions that Kendall negotiated to assure its competitive viability. These agreements provide, among other things, that Kendall will have access to American's distribution centers for about one year; that Kendall will receive the right to use certain significant technology from Baxter, not presently available to American, relating to the packaging of parenteral solutions in flexible plastic bags; that Baxter will not actively solicit, for a limited period of time not to exceed 18 months, current customers under contract with McGraw; and that American will buy a fixed amount of certain parenteral solutions from McGaw for the next five years. Taken together, these provisions should create an independent and effective competitor to Baxter in parenteral solutions and fluid administration sets.

As to the electronic flow control devices market, Kendall becomes an independent, effective competitor through an ancillary agreement, which gives Kendall immediate distribution rights to certain products and access to the technology necessary to independently manufacture, or have manufactured for it, certain products.

American currently manufactures and distributes one flow control device, the "Accupro" pump, and distributes, under its own name, one flow control device manufactured by IVENT, an independent firm. The "McGaw Contract" provides for an assignment to Kendall of American's rights to distribute IVENT's product. In addition, Kendall receives a three-year nonexclusive right to distribute (at a firm purchase price) three other flow control devices: the Accupro pump, the "Flo-Guard" pump, currently manufactured by Baxter, and the Anatros controller, currently manufactured by Anatros Corp., now a subsidiary of Kendall. Anatros Corp. will be divested to American as part of the "McGaw contract."[1] Kendall also receives the right to have Baxter modify the Flo-Guard pump and to exclusively distribute that product for three years. In addition, American agreed to develop jointly with Kendall an improved Accupro pump.

With respect to the technology necessary to manufacture these products, Kendall receives an option for a 5% royalty license on all technology related to the Accupro pump, the improved Accupro pump, and the Anatros pump. In addition, if an improved Accupro pump is not developed by July 1987, Kendall receives a nonexclusive 5% royalty license to all technology necessary to manufacture the modified Flo-Guard pump, and if there is not a modified Flo-Guard pump in existence at that time, to the existing unmodified Flo-Guard pump. In combination, these provisions create a firm that is a current threat to Baxter in the electronic flow control devices market and a firm that should remain so for the foreseeable future.

We were concerned, however, that if Baxter and Kendall agreed to modify the ancillary agreement's terms relating to the prices at which Baxer will sell electronic flow control device to Kendall, some of the incentive for Kendall to compete with Baxter could be thwarted. Therefore, the Final Judgment provides that Baxter and American shall not in any way modify the contract to sell electronic flow control devices to Kendall at a price that is dependent in any way on the price at which Kendall then resells the devices. This provision ensures that Kendall will be in a position to independently price the devices that it is distributing.

The therapeutic hemapheresis market is addressed by an October 18, 1985 contract between American and Latham Labs, Inc. American manufactures and distributes its therapeutic hemapheresis equipment through its American

[1] Kendall will receive the right to distribute cassettes used in these pumps and controllers for six years.

Haemonetics subsidiary. Under the contract, American will sell all the relevant assets to current Haemonetics management. This should have the effect of reestablishing American Haemonetics under a different name as an independent competitor to Baxter in the marketplace.

The potential competitive problem in the surgeons and procedure glove market is addressed in a contract between American and Ansell, Inc. Under the contract, Ansell will acquire American's Tucson, Arizona surgeons glove manufacturing facility, American's Juarez, Mexico plant, which includes glove packaging equipment, and all procedure glove molds that American currently owns that are not presently in the Tucson plant. This divestiture should enable Ansell immediately to produce and market the identical surgeons and procedure gloves currently manufactured by American. In addition, American will not have the immediate capablity to manufacture these same gloves.

However, the ability to manufacture a quality glove does not assure its acceptance in this market. Brand name recognition is very significant in this market, and surgeons are hesitant to purchase a product without an established brand name. To address this problem, Ansell secured the exclusive right for one year to use the "Pharmaseal" trademark on its surgeons and procedure gloves. American currently uses this mark on the gloves it sells. This one year period during which Ansell can market the product as "Pharmaseal by Ansell" should permit Ansell to develop the reputation for quality necessary to compete effectively in the market.

Ansell also negotiated other provisions intended to assure its viability as a seller, including a two year ancillary agreement obligating American to purchase from it a fixed amount of gloves per year at a fixed price, and an agreement by American not to use the "Pharmaseal" mark on surgeons or procedure gloves for three years.

After a careful and lengthy investigation, the United States concluded, for the reasons explained above, that the proposed transfers of assets provided in these contracts would solve all competitive problems in the five markets potentially affected. Therefore, the proposed Final Judgment was designed to assure that if for some reason these transfers did not occur pursuant to the contracts, that they would be accomplished through sale by a trustee. The trustee will have three months after he receives the asset to find a purchaser. If no purchaser is found within that time for any of the assets, they will be sold at auction at the best obtainable price.

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The proposed Final Judgment constitutes no adminission by either party as to any issue of fact or law. Under the provisions of the Antitrust Procedures and Penalties Act, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Final Judgment is in the public interest.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V

Procedure Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Antitrust Procedures and Penalties Act, provided that the United States has not withdrawn its consent. The Act conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The Act provides a period of at least sixty (60) days preceding the effective date of proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed final Judgment. Any person who wants to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Judy Whalley, Chief, Midwest Office, Antitrust Division, United States Department of Justice, Room 3820 Kluczynski Federal Building, 230 South Dearborn Street, Chicago, Illinois 60604.

VI

Alternatives to the Proposed Final Judgment

As an alternative to a consent decree, the United States had considered seeking a preliminary injunction to block Baxter's acquisition of, and merger with, American. The United States decided to accept the proposed Final Judgment rather than seek to enjoin the acquisition because it concluded, for the reasons stated above, that the divestiture of the relevant assets should create independent, viable competitors in each of the relevant markets and prevent the merger from having anticompetitive effects.

In this regard, in the electronic flow control devices market, after careful examination, we concluded that it was not necessary that the proposal include the divestiture of the assets now used by American to manufacture its pumps at its American Edwards subsidiary. We concluded that the combination of distribution and technology rights secured by Kendall would put Kendall in at least as good a competitive position as it would be in if it acquired American Edwards' pump manufacturing capability. With respect to surgeons and procedures gloves, we concluded that it was not necessary that American divest its Johnson City, Tennessee plant, which manufactures procedures gloves. The divestiture of American's Tucson facility plus the transfer of the procedure glove molds will give Ansell the capability to manufacture twice as many surgeons and procedure gloves as American sold in 1984. Ansell will thus be in a position to increase output sufficiently to constrain any collusive price increase.

VII

Determinative Documents

The United States considered determinative in formulating this proposed Final Judgment the contracts summarized above. There are no other determinative materials or documents.

Respectfully submitted,

Judy L. Whalley, David Marx, Jr., Lorenzo Bracy, Beverly A. Sharpe, Mildred L. Calhoun, *Attorneys, Department of Justice.*

Room 3820, John C. Kluczynski Bldg., Chicago, Illinois 60604, (312) 353-7530.

[FR Doc. 85-29433 Filed 12-11-85; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act of 1984 Intel Corporation/Xicor Corporation

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98-462 (the "Act"), Intel Corporation and Xicor Corporation have filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to a cooperative venture and (2) the nature and objectives of the cooperative venture. The notification was filed for the purpose of invoking the Act's provision limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the cooperative venture and general areas of planned activities are given below.

Intel Corporation, a California Corporation having a business address at 3065 Bowers Ave., Santa Clara, CA, 95051 and Xicor Corporation, a California Corporation having a business address at 851 Buckeye Court, Milpitas, CA, 95035 entered into an agreement on August 2, 1985 to engage in cooperative activities in the joint development of EEPROM devices. The principal nature of the cooperative venture is to develop such EEPROM devices for manufacture using a jointly developed process. EEPROM devices are nonvolatile computer memory circuits that may be used to store digital information at specified memory locations. The devices may be updated on a location by location basis and will retain such stored information indefinitely, without the need to maintain a power source on the circuit.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85-29432 Filed 12-11-85; 8:45 am]

BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

Statement of Policy on Confidentiality

Correction

In FR Doc. 85-28089, beginning on page 48506 in the issue of Monday, November 25, 1985, make the following correction:

On page 48509, second column, eighth line of the third paragraph, "grant confidentiality" should have read "grant of confidentiality".

BILLING CODE 1505-01-M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision

2. The title of the information collection: 10 CFR Part 95, "Security Facility Approval and Safeguarding of National Security Information and Restricted Data."

3. The form number if applicable: Not applicable

4. How often the collection is required: On Occasion

5. Who will be required or asked to report: Licensees and others requiring access to NRC classified information

6. An estimate of the number of responses: 63

7. An estimate of the total number of hours needed to complete the requirement or request: 904

8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Not applicable

9. Abstract: Licensees and other organizations are requried to provide information to ensure that an adequate level of protection is provided for NRC classified information.

Copies of the submittal may be inspected or obtained for a free from the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 395-7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492-8585. Dated at Bethesda, Maryland this 5th day of December 1985.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 85-29508 Filed 12-11-85; 8:45 am]

BILLING CODE 7590-01-M

Abnormal Occurrences for Second Quarter CY 1985; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incidents were determined to be abnormal occurrences using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). These abnormal occurrences are described below, together with the remedial actions taken. These events are also being included in NUREG-0090, Vol. 8, No. 2 ("Report to Congress on Abnormal Occurrences: April-June 1985"). This report will be available in the NRC's Public Document Room, 1717 H Street NW, Washington, DC about three weeks after the publication date of this **Federal Register** Notice.

Nuclear Power Plants

Inoperable Safety Injection Pumps

One of the general abnormal occurrence criteria notes that a major degradation of essential safety-related equipment can be considered an abnormal occurrence.

Date and Place—On December 28, 1984, Consolidated Edison Company of New York (the licensee) declared all three safety injection pumps inoperable at Indian Point Unit 2. The plant, which utilizes a Westinghouse-designed pressurized water reactor, is located in Westchester County, New York.

Nature and Probable Consequences—On December 28, 1984 with the reactor critical, operators attempted to top off the emergency core cooling system (ECCS) accumulator tanks by running safety injection (SI) pump #23. The pump developed a discharge head of 1100 psig, but then dropped to about 700 psig (which corresponds to the pressure in the accumulator tanks). The pump was secured and SI pump #22 was started to top off the accumulator tanks.

After topping off two of the four accumulator tanks, and while in the process of topping off the third, the #22 pump was observed to drop in discharge pressure from 1500 psig to the accumulator tank pressure of about 700 psig. This pump was also secured.

The piping to the third SI pump #21 precluded its use to top off the accumulator; however, an attempt was made to manually turn over the pump. This attempt was unsuccessful. Therefore, the licensee declared all

three SI pumps inoperable. Because the reactor was critical at this time, the licensee manually scrammed the control rods to shutdown the reactor and implemented an orderly approach to cold shutdown conditions. At no time during the event were the SI pumps required to perform their safety function. However, with all three SI pumps inoperable for a period of up to nine days (one day with the reactor critical), the automatic capability to deal with a design basis accident (i.e., steam line break) was significantly degraded.

As discussed further below, investigation showed that SI pumps #22 and #23 were degraded due to partial blockage of their suction path by solidified boric acid, together with gas entrapment causing the pumps to bind. For SI pump #21, total blockage of its suction line occurred due to solidified boric acid.

The licensee has commissioned Westinghouse to perform analysis to determine the feasibility of either removing the BIT or reducing the boric acid concentration of the BIT.

Background Information

The three "intermediate" head SI pumps are part of the plant's ECCS. The pumps have a nominal 1700 psig discharge pressure. There is no installed ECCS capability at full system pressure.

Boron injection tanks (BITs) were installed in Westinghouse plants as a measure to ensure that sufficient negative reactivity would be inserted during a steam line break event to compensate for the positive reactivity addition resulting from the rapid cooldown. This ensures complete reactor shutdown and thus, minimizes the potential for fuel failures. The BITs contain a high concentration (20,000 ppm boron) of boric acid. Upon receipt of a safety features actuation, the SI pumps sweep the contents of the BIT into the reactor coolant system. Before the BIT is emptied, the suction of the pumps switches automatically to the refueling water storage tank (RWST) which contains boric acid with a concentration of 2,000 ppm boron.

The Indian Point Unit 2 plant is unusual in that the BIT discharge line is aligned to the suction of the SI pumps. Nitrogen overpressure in the BIT provides the motive force to inject its contents into the SI pumps suction header in advance of the RWST contents when the isolation valves are signaled to open. In the usual Westinghouse-designed plant however, the BIT is located on the discharge side of high head charging pumps; in this case, during the initial stages of safety injection, the charging pumps take suction from the RWST and discharges through the BIT, sweeping the latter's contents into the reactor coolant system. In this case, the highly concentrated boric acid from the BIT does not flow through pumps as it does in Indian Point Unit 2.

In highly concentrated solutions, boric acid will precipitate and solidify if the solution is not heated. The BIT in Indian Point Unit 2 utilizes electric tank heaters and line heat tracing to keep the temperature of the boric acid above the solubility limit; however, the SI pumps are not heat traced.

Cause or Causes—The cause is attributed to boric acid precipitating from a highly concentrated solution, solidifying and preventing suction flow. In addition, a gas caused the SI pumps to bind. There was total blockage of pump #21 by solidified boric acid and partial blockage of the #22 and #23 pumps. While venting the pumps, only gas was emitted from pump #21, only water flowed from pump #23, and both gas and water were vented from pump #22.

The source of the boric acid is believed to be the BIT. The BIT was leaking past closure valves 1822A and 1822B which isolate the BIT from the SI pump suction. The BIT solution apparently precipitated and solidified because the SI pumps are not heat traced.

Incomplete flushing of the SI pumps following SI actuation could also result in the BIT contents reaching the SI pumps. On December 19, 1984, the SI pumps operated during the plant trip. The contents of the BIT discharged into the SI lines, but did not inject into the reactor coolant system because the reactor coolant system did not depressurize below the discharge head of the SI pumps.

Following the trip, the SI pumps were flushed in accordance with plant Procedure E-4, "Recovery From a Spurious Safety Injection"; however, the procedure did not refer to SOP 10.11, "Filling, Draining, Flushing SI system," a procedure that more clearly defines the SI pump flushing and BIT filling metods.

While venting SI pump #21, the licensee took a gas sample for analysis and found that the major constituent was nitrogen (97%). There are several potential sources for nitrogen gas, i.e., (1) the isolation valve seal water system (IVSWS), which injects nitrogen between some SI valves in order to seal them to provide improved containment isolation following an accident, (2) the nitrogen cover gas in the ECCS accumulators, and (3) the nitrogen cover gas in the BIT.

The licensee initially believed that the most likely source of the gas in the pumps was from the nitrogen cover in the BIT. The licensee commissioned their consultant at Lehigh University (which has a scale model of the licensee's SI system) to perform theoretical and experimental analyses to determine the feasibility of the BIT being the source of the gas in the pumps. The consultant concluded that the BIT was not likely to be the source of the gas; therefore, the licenses is continuing its investigations.

Actions Taken To Prevent Recurrence

Licensee—The BIT discharge line boric acid concentration is being monitored on a daily basis and is flushed upon detection of increasing boric acid. The SI pumps are vented daily and monitored for gas. The emergency procedure for recovery from a spurious safety injection has been clarified to provide for adequate flushing of the BIT discharge line. The IVSWS nitrogen header to the SI system has been isolated. The licensee is also preparing a Technical Specification Amendment request to allow removal of the BIT (see Editor's Note below).

NRC—The NRC monitored the licensee's response to this event and confirmed completion of the corrective and preventive actions taken as described above. The NRC performed an inspection of the circumstances associated with the event. The results are contained in the NRC Inspection Report 50-247/84-33 dated February 14, 1985.

Editor's Note

Over the past severl years, the analysis methods for calculating the consequences of steam line breaks have improved. These revised calculations demonstrate that the negative reactivity that must be added to meet current requirements is lower than originally thought. Consequently, the need for highly concentrated boron injection may be reduced or eliminated.

Because of various operational problems and possible safety risks associated with the high boron concentrations in the BITs, and the improved calculations, many licensees with Westinghouse plants have requested that they be allowed to either physically remove the BIT from the safety injection piping, or at least reduce boron concentrations in the tank to the levels safely used in other sections of the safety injection piping and RWST (e.g., to 2,000 ppm). To support their requests, licensees have submitted new analyses of the steam line break event

that demonstrated the regulatory criteria (i.e., 10 CFR Part 100 guidelines dose values) were met.

The NRC staff has reviewed these analyses and has approved these requests. The plants which have received approval for removal of the BIT, or changes to Technical Specification requirements on boron concentration in the BIT, include: Turkey Point Units 3 and 4, Surry Units 1 and 2, Beaver Valley Unit 1, McGuire Unit 1 (Unit 2 was licensed without a BIT), Catawba Units 1 and 2, Callaway Unit 1, Farley Units 1 and 2, Trojan, South Texas and Harris (the latter two plants are presently under licensing review).

In addition to the above licensing action, the NRC Office of Nuclear Reactor Regulation is currently working on two initiatives which address the BIT issue generically. A generic letter to the appropriate licensees is being prepared which informs them of staff approval of the improved steam line break analysis methods and encourages them to reevaluate the need for maintaining high concentrations of boron in the BIT. In addition to this, a study has been initiated to determine whether or not a stronger position on the BIT removal issue is apprporiate; i.e., whether higher boron concentrations in the BIT should be prohibited rather than simply discouraged. This study will also be used to identify the schedule and the appropriate level of resources to be allocated for resolution of this issue.

* * * * *

Significant Deficiencies in Reactor Operator Training and Material False Statements

Example I.D.3 of the abnormal occurrence criteria notes that serious deficiencies in management or procedural controls in major areas can be considered in abnormal occurrence. In addition, one of the general criteria notes that major deficiencies in use of, or management controls for licensed facilities can be considered an abnormal occurrence.

Date and Place—By letter of June 3, 1985, the NRC issued to Mississippi Power and Light Company (MP&L), licensee of the Grand Gulf facility, a Notice of Violation and Proposed Imposition of Civil Penalties for identified deficiencies in the reactor operator training program and for making material false statements to the NRC. Applications for reactor operator licenses containing apparently false information were submitted to the NRC in September 1981, March 1982, and May 1982. The Grand Gulf plant utilizes a General Electric-designed boiling water reactor and is located in Claiborne County, Mississippi.

Nature and Probable Consequence—The June 3, 1985 NRC letter identified serious failures to comply with NRC regulatory requirements at Grand Gulf. Most of the violations pertained to the reactor operator (RO) and senior reactor operator (SRO) training program, including: (1) Inadequate procedures, instructions, and procedural controls; (2) training certifications which contained material false statements; and (3) failure to correct false submittals once the licensee became aware of them. The violations, classified as high as Severity Level I, were documented by special inspections by the Region II Office and by investigations by the NRC Office of Investigations.

Discrepancies in documentation of operator training were identified during a special training assessment conducted in February 1983 and a special safety inspection conducted by the Region II Office during August and September 1983. The Region II staff evaluated these inspections and concluded that these discrepancies were not limited to documentation errors. At Region II's request, the Office of Investigations conducted investigations during the period of October 18, 1983 through May 9, 1984. The investigations included a revew of the circumstances surrounding the submittal of false and undocumented information on operator license applications. As a result of these inspections and the investigation efforts, significant failures to comply with NRC regulatory requirements were identified.

The inspection and investigation findings demonstrate that the program for training ROs and SROs at the Grand Gulf facility had not been established in accordance with commitments made in the Final Safety Analysis Report (FSAR) and as required by NRC regulations. The investigation also determined that 46 applications for SRO and RO licenses, containing certification by MP&L that each individual applicant had completed required training or courses of instruction, contained material false statements. The information provided was false in that the amount of training actually completed was less than that described in the operator license applications. The information was material because had the complete and accurate information been known to the NRC, the applicants would not have been permitted to participate in the NRC licensing examination and, consequently, would not have received licenses. In addition, even after MP&L officials became aware in 1982 that false information had been submitted, they failed to notify the NRC or to correct the submittals. This constitutes a separate material false statement by omission.

Item 1 in the Notice of Violation and Proposed Imposition of Civil Penalties addresses the training program inadequacies. In the case, MP&L had not established an effective program for assuring commitments made in the FSAR were implemented in the operator license training program. Specifically, MP&L delegated control of the training program to a contractor and did not exercise adequate oversight of training activities. This contributed directly to the failure to meet the commitment for comprehensive and adequate training of operator license candidates.

Items 2 and 3 of the Notice concern the material false statements. The NRC requires extrarodinary care be taken to assure information provided in applications is complete and accurate. MP&L did not adequately verify the information prior to its submittal to the NRC, vigorously implement a program to identify and document the false information after being informed of its existence by a licensee employee, or inform the NRC that false information had been submitted once it became aware that the submittals contained false information.

Item 4 of the Notice addresses a procedural violation involving failure of a mechanical maintenance supervisor to correctly complete a practical factors book for a mechanic. The cause of this violation was that inadequate instructions on how to accomplish the tasks were provided to supervisors responsible for following the procedures.

Item 3 of the Notice was characterized as a Severity Level I violation because it was a knowing failure to correct previously submitted false information. Items 1 and 2 of the Notice were classified as Severity Level II, and Item 4 was classified as Severity Level IV.

Had these problems gone undetected, the probable consequences are that the plant would have continued operation with operators not fully tranined to accomplish their jobs. These were serious violations and positive corrective actions were not taken until the NRC became involved. The violations occurred in careless disregard for NRC requirements.

Cause or Causes—The cause of these occurrences was failure to exercise management control. The licensee management gave low priority to the reactor operator training program, and relied heavily on unmonitored contractors to train and certify completion of training.

Actions Taken to Prevent Recurrence

Licensee—As a result of the 1983 management meetings (described below) held at the Region II Office, MP&L committed to conduct a review of the previous training of all licensed operators, shift technical advisors, and on-shift operations advisors. Certain operators were removed from licensed duties until they could be retrained and retested. These commitments were confirmed by a letter dated December 5, 1983.

As a result of these commitments, MP&L examined each operator on each of 68 systems listed on the Grand Gulf licensed operator qualification card. These examinations were monitored by MP&L management, representatives of two other utilities, the Nuclear Steam Supply System vendor (General Electric), and the NRC. At the completion of this examination process, the records of the operators were reviewed by a Grand Gulf recertification board consisting of plant management. The board examined operator training records, the results of the examinations, and conducted additional oral examinations as necessary. Out of 27 individuals examined by the board, one was found to be unqualified and three needed training.

Region II conducted licensed operator recertification and walk through examinations in February 1984 after each licensed operator had undergone the MP&L examinations. The results of the independent NRC recertification examination were that 23 of the 26 operators passed. The three who failed have been removed from licensed duties. Management was responsive and aggressively sought improvements to plant training programs. A change of management personnel in the plant training staff improved the overall tranining program administration. This reorganization resulted in better documentation of training, clearer standards of acceptable performance for both students and training staff, and improved adherence to regulations, procedures and commitments.

The consolidation of the entire training organization into the new training facility has also improved the quality of training. These actions provide reasonable assurance that operators presently at the controls of the facility have met NRC requirments for training.

NRC—As previously mentioned, the discrepancies in documentation of operator training were identified during a special training assessment conducted in February 1983 and a special safety inspection conducted by the NRC Region II Office during August and September 1983. Investigations regarding submittal of false and undocumented information on operator license applications were made by the NRC Office of Investigations during the period of October 18, 1983 through May 9, 1984.

Management meetings to discuss the NRC Region II Office findings were held in the Region II Office on September 23, October 12, November 11 and 18, 1983. On June 3, 1985, the NRC issued the previously mentioned Notice of Violation and Proposed Imposition of Civil Penalties in the amount of $500,000. The licensee responded on September 12, 1985. The NRC is reviewing the licensee's response to assure that all of the issues are satisfactorily resolved.

* * * * *

Loss of Main and Auxiliary Feedwater Systems

One of the general abnormal occurrence criteria notes that a major degradation of essential safety-related equipment can be considered an abnormal occurrence. In addition, Example I.D.3 of the criteria notes that serious deficiencies in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and Place—On June 9, 1985, the Davis-Besse Nuclear Power Plant experienced a complete loss of main and auxiliary feedwater for about 12 minutes during an event involving an automatic shutdown from operation at 90% power. Davis-Besse utilizes a Babcock & Wilcox—designed pressurized water reactor. The plant is operated by Toledo Edison Company (the licensee) and is located in Ottawa County, Ohio.

The event involved several equipment malfunctions and extensive operator actions, including operator actions outside the control room.

Nature and Probable Consequences—Early in the morning on June 9, 1985, the plant was operating at 90% power with the No. 1 main feedwater pump (MFP) operating in in automatic and the No. 2 MFP in manual control. This configuration was established to limit the susceptibility of the No. 2 MFP to automatic control problems which had affected the operation of both MFPs since April 1985. (At the time of the event, troubleshooting had neither identified the root cause of, nor resolved the root cause of the problems.) The plant's integrated control system (ICS) and associated instrumentation were automatically monitoring and controlling the thermohydraulic balance between the reactor coolant system and the secondary coolant system.

At 1:35 a.m., a control system failure caused the No. 1 MFP to trip on overspeed. Since the No. 2 MFP was in manual control, it did not respond to the ICS demand to automatically increase feedwater flow. The control room operators thus manually increased the No. 2 MFP speed (to increase feedwater flow). Meanwhile, the ICS attempted automatically to run back rector/turbine power by inserting control rods. However, these actions were insufficient to prevent the reactor coolant pressure from rising excessively. At about 80% reactor power, the pressure reached the high pressure reactor trip set point of 2,300 psig (normal operating pressure is 2,150 psig). The reactor trip (which occurred 30 seconds after the trip of the No. 1 MFP) automatically tripped the turbine. As part of the normal reactor trip procedure, the operator isolated the reactor coolant system (RCS) letdown and started a second RCS makeup pump in anticipation of the pressurizer inventory decreasing as a result of the reactor trip.

The MFPs at Davis-Besse are turbine driven by steam taken from downstream of the main stream isolation valves (MSIVs). As long as the MSIVs remain open and the steam generators are producing sufficient steam to drive the MFPs to generate a discharge pressure greater than steam generator pressure, the MFPs can provide feedwater to the steam generators.

However, one second after reactor/turbine trip, the steam and feedwater rupture control system (SFRCS) activated due to a spurious low steam generator water level signal. The signal was spurious since the actual steam generator level was not low at the time. A partial actuation of the SFRCS occurred which closed both MSIVs (both were closed within six seconds after the SFRCS actuation), isolating the main steam supply from the MFPs. Three seconds after the partial actuation, the SFRCS automatically reset. However, the MSIVs remained closed. At this time, the water level in the steam generators was a normal post-trip level of 35 inches. About four minutes later, the No. 2 MFP discharge pressure dropped below the steam generator pressure which terminated main feedwater flow.

After the MSIVs closed, steam pressure in the steam generators increased until the main steam valves lifted to relieve the pressure. Without feedwater, as in this event, the once-through steam generators (OTSGs) in Babcock & Wilcox-designed plants can boil dry in as little as three minutes; therefore, it is vital to restore some

feedwater quickly to avoid loss of this heat transfer path from the primary system to the secondary system. Even though the reactor was shut down, heat continues to be generated by the radioactive decay of the fission products in the fuel. The SFRCS will automatically actuate the auxiliary feedwater system (AFWS) when the steam generator level decreases to a low water level (26.5 inches) to maintain the heat transfer to the OTSGs.

The AFWS utilizes two turbine driven pumps with their motive force provided by steam taken from the main steam system at a point upstream of the MSIVs. Therefore, even with the MSIVs closed, there is a motive force for these pumps as long as steam is being generated in the OTSGs. About 5½ minutes after reactor trip, the water level in OTSG No. 1 reached the low level setpoint of 26.5 in. which actuated channel No. 1 of the SFRCS. This started AFW pump No. 1 and initiated alignment of it to OTSG No. 1. Before this automatic actuation, however, an operator who realized an automatic actuation was imminent (due to the decreasing water levels in the OTSGs) went to the back panel to manually trip the SFRCS. The operator had been trained to manually trip certain systems which he felt were going to trip automatically. For example, tripping the SFRCS early could conserve steam generator water inventory.

Thus, four seconds after the automatic initiation of SFRCS started aligning AFW pump No. 1, the operator manually tripped the SFRCS. However, he inadvertently pushed the wrong two buttons (i.e. actuating the SFRCS on low OTSG pressure rather than on low OTSG water level). This signalled the SFRCS that both OTSGs had experienced a steamline break and the system responded, as designed, to close the isolation valves between each OTSG and its associated AFW train. Therefore, even though the AFWS was started and aligned to provide emergency feedwater, both OTSGs were isolated from all auxiliary feedwater. Within less than a minute after the operator pushed the wrong buttons, both AFW pumps tripped on overspeed (a commonmode failure of the AFWS).

The control room operator quickly determined that the valves in the AFWS were improperly aligned. He reset the SFRCS actuation on low pressure and retripped it on low level. This action commanded the SFRCS to realign itself such that each AFW pump would deliver flow to its associated OTSG. This action should also have automatically opened the AFWS isolation valves. However, these valves did not open (common mode failure of the AFWS). Backup manual attempts to open them from the control room were also unsuccessful.

Operators were sent to locally start the AFW pumps and to open the AFWS isolation valves. The assistant shift supervisor made the decision to place the startup feedwater pump (SUFP) in service to supply feedwater to the OTSGs.

The SUFP is part of the main feedwater system, but is isolated from the system during power operations. The pump is motor driven and therefore is not dependent upon steam for its motive force. The SUFP is normally used during plant startup. When the plant is in Mode 3 (hot standby), the SUFP maintains OTSG water level. When reactor power reaches about 1%, a main feedwater pump is placed in service and the SUFP is shut down. Per a commitment to the NRC, the SUFP is then isolated by locally closing four manual valves and removing the fuses from the motor control circuit. The non-safety-related SUFP does not meet high energy line break design requirements and under postulated conditions its failure could affect the performance of the safety-related AFWS.

While the assistant shift supervisor was making the SUFP operational, operators were opening the AFWS isolation valves to make the AFW system operational and were working to open the pumps' trip throttle valves so that steam could enter the pumps' turbines. They experienced some difficulties with the latter efforts.

Meanwhile, the OTSGs continued to boil dry. Pressure and temperature in the reactor coolant system continued to rise due to insufficient heat transfer to the OTSGs. Abut 13 minutes after reactor trip, RCS pressure reached the setpoint (2,425 psig) of the pressurizer pilot operated relief valve (PORV). During about the next two minutes, the PORV opened three times, relieving pressurizer pressure to the quench tank. After the third opening, the PORV failed to close. A rapid RCS depressurization occurred. The reactor operator noticed the depressurization but did not attribute it to the PORV. Nevertheless, he closed the PORV block valve and took other actions as precautionary measures. Two minutes later, he opened the block valve to ensure the PORV was available. Fortunately, the PORV valve had closed by itself while the block valve was closed.

Plant emergency procedures stipulate that when both OTSGs are "dry", make-up/high pressure injection (MU/HPI) cooling (known as "feed-and-bleed") must be initiated for decay heat removal. An OTSG is considered "dry" when its pressure falls below 960 psig and is decreasing, or when its water level is below eight inches on the startup range instrumentation. Due to inadequate and inoperable instrumentation, the operators may not have recognized that at about 1:47 a.m., both OTSGs were dry. The shift supervisor was aware of the reactor core status and that MU/HPI cooling may be necessary. Even though other personnel recommended that MU/HPI be initiated [based on the elevated primary coolant temperature of 591 °F (normal post-trip temperature is about 550 °F), and delays in initiating feedwater flow], the shift supervisor decided to wait and see if feedwater became available within a short time. He was concerned that MU/HPI cooling would complicate matters further by creating an adverse environment in the containment.

At about 16 minutes after the reactor trip, the SUFP started to provide feedwater, nearly all of it directed to the No. 1 OTSG. The No. 1 OTSG pressure increased sharply and its water level slowly increased. At about two minutes and four minutes later, AFW train Nos. 2 and 1 respectively became available and produced significant feedwater flow to their respective OTSGs. However, the flow from the AFW trains (which was being controlled locally by operators manipulating the trip throttle valves of the AFW pumps) was excessive and the RCS experienced an overcooling transient. RCS temperature peaked at about 592 °F (at about 1:53 a.m.) and decreased sharply to 540 °F in about six minutes. Overfilling of the OTSGs decreased RCS pressure towards the setpoint (1650 psig) of the safety features actuation system. To avoid this actuation, the operators aligned a portion of the emergency core cooling system to the primary system to inject borated water to raise RCS pressure. However, by the time injection took place, RCS pressure increased so only about 50 gallons of borated water was actually injected.

At about 1:58 a.m., the No. 1 AFW pump suction transferred spuriously from the condensate storage tank (CST) to the service water system. The operator manually realigned the suction back to the CST. This malfunction was not significant in regard to event recovery, but the problem had occurred previous to this event and had not been corrected. Other malfunctions which occurred during the event (and had occurred previously and had not been

properly repaired) included loss of a source range nuclear instrument after reactor trip (the other channel was already inoperable before the trip), and tripping of control room ventilation system into its emergency recirculation mode. Both channels of the safety parameter display system were inoperable prior to, and throughout the event.

By 2:04 a.m., plant conditions were essentially stable which terminated the event. This was about 30 minutes, and twelve equipment malfunctions (including multiple common mode failures), after the event began.

A total loss of feedwater is considered a significant event. Unless prompt and effective recovery actions are taken, severe consequences could occur (e.g., fuel damage, break of primary system, significant release of radioactivity). For this event, compensatory actions were complicated due to many equipment malfunctions and various operator errors. Nevertheless, the operators were successful in bringing the plant to a stable shutdown and in preventing any abnormal releases of radioactivity and any major damage to the plant.

Cause or Causes—As described in more detail above, the event was initiated, and recovery actions made complex, by multiple equipment malfunctions (including several common-mode failures) and a number of personnel errors. The root causes of the various malfunctions and other problems associated with the event are under extensive study.

Actions Taken To Prevent Recurrence

Licensee—The licensee has undertaken an extensive study (including testing programs) of the multiple failures associated with the event to determine root causes and to take effective corrective actions to minimize recurrence. While some tentative conclusions have been made, they may be modified as the ongoing studies continue.

The licensee is keeping the NRC aware of the results of their studies and testing programs. Results of the licensee's actions taken as of July 9, 1985, are contained in their Licensee Event Report (LER) No. 346/85-13. In addition to determining the root causes of the equipment malfunctions and the appropriate corrective actions required, other issues (e.g., operational, management, procedural deficiencies; equipment design, testing, maintenance deficiencies; etc.) may require extensive licensee efforts.

In response to an August 14, 1985 NRC letter to the licensee discussed below, on September 10, 1985, the licensee submitted a course of action to address numerous areas of concern identified by the NRC.

NRC—Upon being notified of the event, the NRC Resident Inspectors for the plant arrived shortly thereafter. They observed licensee actions to assure the plant remained in a stable condition and began an initial investigation of the circumstances associated with the event. Personnel from the NRC Region III Office also went to the site after the event. On June 11, 1985, the responsibility for the incident investigation was assumed by a special NRC Incident Investigation Team described below.

On June 10, 1985, the Regional Administrator of the NRC Region III Office forwarded a Confirmatory Action Letter to the licensee indicating, among other things, that the licensee would not perform any additional work on equipment that malfunctioned during the event until the NRC Incident Investigation Team could review the licensee's proposed actions. The letter also stipulated that the plant was not to be restarted until authorized by the NRC Region III Regional Administrator or his designee.

Also on June 10, 1985, based on the potential safety implications of the event which were worthy of further study, the NRC Executive Director for Operations appointed a special NRC Incident Investigation Team in conformance with a NRC staff-proposed Incident Investigation Program. The Davis-Besse event was the first opportunity for the NRC to utilize this Program. The Team, composed of four technical experts, was to: (1) Fact-find as to what happened; (2) idenfity the probable cause as to why it happened; and (3) make appropriate findings and conclusions to form the basis for possible follow-on actions.

The Team began their investigation at the plant site on June 11, 1985. The equipment which malfunctioned was quarantined.

The Team collected and evaluated information to determine the sequence of operator, plant, and equipment responses during the event and the causes of equipment malfunctions. The sequence of these responses was determined primarily by interviewing personnel who were at the plant during the event and by reviewing plant data for the period immediately preceding and during the event. The Team also toured the plant to examine the equipment which malfunctioned, the equipment that was key to mitigating the transient, and the control room instrumentation and controls. The Team also interviewed plant management personnel and NRC Region III personnel who arrived at the site soon after the plant was stabilized about their knowledge of the plant response and operator actions. By correlating plant records with personnel statements on their actions and observations, the Team was able to compile a picture of the event.

The results of the Team's investigation are contained in NUREG-1154. Problems identified included issues specific to Davis-Besse and several possible generic issues. In addition, the Team made the major conclusion that the underlying cause of the loss of main and auxiliary feedwater event was the licensee's lack of attention to detail in the care of plant equipment. The licensee has a history of performing troubleshooting, maintenance and testing of equipment, and of evaluating operating experience related to equipment in a superficial manner and, as a result, the root causes of problems are not always found and corrected. Engineering design and analysis effort to address equipment problems has frequently either not been utilized or has not been effective. Furthermore, operator interviews made clear that equipment problems were not aggressively addressed and resolved beyond compliance with NRC regulatory requirements.

An advance copy of NUREG-1154 was sent to the licensee on July 26, 1985. Pursuant to the provisions of 10 CFR 50.54(f), the NRC sent a letter to the licensee on August 14, 1985, requiring the licensee to provide plans and programs to resolve numerous areas of concern identified by the NRC. The licensee responded on September 10, 1985. The response is being reviewed by the NRC.

The NRC Executive Director for Operations has assigned specific NRC Office responsibilities for resolution of the problem areas. In addition, general overall responsibilities include: (1) The NRC Office of Nuclear Reactor Regulation for coordination of staff actions relating to restart of the plant, and (2) the NRC Region III Office for followup and reporting on the licensee's continued troubleshooting and determination of the root causes for the equipment failures. The NRC Region III Office also will perform plant inspections, as necessary, and determine possible enforcement actions.

The NRC continues to be involved in the resolution of this event and related matters. The event provides an opportunity for the NRC to learn from experience and to feed back the pertinent lessons into NRC and licensee

activities. The Executive Director for Operations has directed NRC program managers to conduct an in-depth and searching reappraisal of the effectiveness of their programs in light of the lessons of the Davis-Besse event with the view of making the NRC programs more effective and the NRC a better regulatory agency. For example, what actions are needed when a utility continues to receive low overall performance ratings; what impediments or procedures are delaying decisions regarding plant upgrades; how can effective corrective action be achieved when plants have a history of maintenance deficiencies; and what should be done when voluntary licensee improvement programs prove less than satisfactory?

A specific example of the above pertaining to Davis-Besse is that the issue of upgrading the reliability of feedwater flow was first raised in 1979; however, at the time of the June 9, 1985 event, the issue remained unresolved.

The event generated considerable attention by the Commission, the ACRS, the media, the public and Congress. Congressman Edward J. Markey, Chairman, Subcommittee on Energy Conservation and Power, Committee on Energy and Commerce, U.S. House of Representatives, raised a number of issues regarding the event and the methods NRC uses to regulate licensees. A briefing was given to Congressman Markey and his staff. Formal responses have been, and will be, provided to questions as requested.

On July 8, 1985, the NRC issued Inspection and Enforcement Information Notice No. 85–50 to inform licensees of the event.

Other NRC Licensees (Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

Diagnostic Medical Misadministration

The general abnormal occurrence criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—On December 28, 1984, the NRC Region I office received written notification dated December 24, 1984, of a diagnostic misadministration that occurred at the Hospital of St. Raphael (the licensee), New Haven, Connecticut, described as having taken place on August 7, 1984. A patient was administered a 10 millicurie (mCi) dose of iodine-131 instead of an intended 400 microcurie (uCi) dose of iodine-123.

Nature and Probable Consequences—On July 30, 1984, a Nuclear Medicine Technologist received an order by telephone, from the secretary of a referring physician, requesting an iodine scan (or procedure) for one of the physician's patients. A capsule containing 10 mCi of iodine-131 was available. After the technologist received the approval of a resident physician, this capsule was administered orally to the patient at 1:00 p.m. on July 30, 1984. The nominal iodine'131 radioactivity level of the capsule dose was determined to be 15 mCi at 12:00 noon, CDT, July 27, 1984. The technologist was convinced that the patient was to have a diagnostic whole body scan as required in the protocol for the treatment and follow-up of patients with thyroid carcinoma.

The whole body scan of the patient was conducted on August 2, 1984, (rather than August 7, as initially reported by the licensee). The results of the whole body scan performed on the patient revealed to the licensee that an error had been made. Lugol's solution was given to the patient in an attempt to minimize the effects of the iodine-131 uptake by the thyroid.

The original intent of the physician was to perform a diagnostic scan of the patient's thyroid gland using 400 uCi of iodine-123 in an attempt to determine whether excess tissue, apparently observed earlier in July 1984, was part of the thyroid (a goiter) or not. The earlier diagnostic scans were performed using 100 uCi of iodine-123 and 10 mCi of technetium-99m. An error was made in communicating and/or transcribing the July 30 request for a followup scan from the physician through to the technologist.

The licensee stated that in December 1984 the patient's hormone values were in the borderline hypothyroid level and the hospital recommended that the patient be placed on exogenous thyroid medication, which may have to be continued for life. The patient has been placed on this recommended medication and is being followed by the physican. Additional hormone studies will be performed by the hospital.

As a consequence of this misadministration, the hospital determined that the patient received in the order of 2,000 rads to the thyroid from the iodine-131. (NRC Region I personnel estimated an exposure of 8,000 rads to the thyroid based upon the "standard man" parameters.) An NRC medical consultant has been asked to evaluate the difference between the two dose assessments.

Cause or Causes—Based on the inspection findings, the principal cause of this incident appeared to be inadequate communications between physicians and technologists. Other causal parameters were the lack of written orders or schedules; the lack of review, approval and scheduling of procedures through the radiologist; and the possible need for some clinical retraining of the technologists.

Actions Taken To Prevent Recurrence

Licensee—Clinical retraining has been provided for the technologist. Procedures have been established by which all doses, other than those that are routine diagnostic procedures, must be checked by the physician in charge of the clinic that day and not by a resident physician, and all radioiodine and special studies will be scheduled through the radiologist who must review the patients' charts and approve the specific study.

NRC—A special safety inspection was conducted in which this misadministration was reviewed. Several items of noncompliance with regulatory requirements were identified. An NRC medical consultant has been requested to assess the clinical aspects of the occurrence and verify or refute the appropriateness of the licensee's evaluations, dose assessment, and actions. Enforcement action is being reviewed by NRC Region I.

On July 22, 1985, the NRC issued Inspection and Enforcement Information Notice No. 85–61 to all licensees authorized to use byproduct material for human applications, to inform them of this event, as well as of three other misadministrations to patients undergoing thyroid scans.

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Diagnostic Medical Misadministration

The general abnormal occurrence criteria notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—As described in a written notification dated April 1, 1985, to the NRC Region I Office, on March 19, 1985 a patient of Mercy Hospital (the licensee) in Pittsburgh, Pennsylvania, received 5 millicuries of iodine-131 rather than 10 millicuries of technetium-99m for a routine thyroid scan. The normal iodine-131 dose for thyroid uptake and scan is 5 to 100 microcuries.

Nature and Probable Consequences—On March 19, 1985, two out-patients were scheduled for nuclear scans at Mercy Hospital. One was scheduled for a routine thyroid scan using 10 millicuries of technetium-99m. This dose normally results in a dose to the thyroid of about 30 to 40 rads. The second patient was scheduled for an iodine-131 whole body scan. This study is less

common and is normally done following the removal of a cancerous thyroid to detect metastases in other parts of the body. The physician had prescribed 5 millicuries of iodine-131 for this study. When the patient who was scheduled for the routine technetium-99m study arrived, the nuclear medicine technologist gave the patient the dose for the whole body scan without verifying the patient's identity. The mistake was recognized immediately afterwards and potassium perchlorate was promptly given to reduce the thyroid uptake.

The consequence of this incident was that a patient received an unnecessary dose to the thyroid estimated by the licensee to be about 1000 rads. The Nuclear Medicine physician believes this will result in no long or short term complications. An NRC medical consultant is reviewing the case.

Cause or Causes—A nuclear medicine technologist failed to verify identification of the patient prior to administraton of a diagnostic dose.

Actions Taken To Prevent Recurrence

Licensee—Since 1980 the licensee has used an identification system for in-patients that requires both an oral query and check of the patient's wrist bracelet. Out-patients also are identified by oral query and by wrist bracelets which are assigned to out-patients at time of registration. The licensee has re-emphasized to its personnel the importance of correctly identifying patients before administration of doses.

NRC—No violations of NRC regulations were associated with this incident. However, as mentioned previously, the incident is being reviewed by an NRC medical consultant.

On July 22, 1985, the NRC issued Inspection and Enforcement Information Notice No. 85-61 to all licensees authorized to use byproduct material for human applications, to inform them of this event, as well as of three of other misadministrations to patients undergoing thyroid scans.

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Breakdown in Management Controls

Example I.D.3 of the abnormal occurence criteria notes that serious deficiency in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and Place—On May 24, 1985, the NRC issued an Order (effective immediately) to Pittsburgh Testing Laboratory (PTL), Pittsburgh, Pennsylvania which required: (1) The removal of the District Manager and Radiation Safety Officer (DM/RSO) for the licensee's Cleveland, Ohio facility, and (2) the suspension of all licensed activities at the Cleveland, Ohio facility until certain conditions were implemented. This action was taken as a result of: (1) Assigning uncertified people to perform radiography, (2) providing false information to the NRC, and (3) falsifying training records.

Nature and Probable Consequences—During an NRC inspection conducted on August 27 and 29-31, 1984 of the operations at the licensee's facility in Cleveland, Ohio, and corporate office in Pittsburgh, Pennsylvania, violations of NRC requirements were identified which included the use of two uncertified personnel as industrial radiographers.

The first uncertified individual was deliberately directed by the DM/RSO of the Cleveland, Ohio facility to perform the duties of a radiographer on seven occasions (i.e., on February 21 and 24, March 1, 2, 5, 7, and 9, 1984). Members of the corporate office staff subsequently became aware that the individual had acted as a radiographer prior to having been certified to perform radiographic operations, yet apparently took no action to inform corporate management of this violation or to take corrective action to prevent recurrence.

About five months later, the DM/RSO of the Cleveland, Ohio facility deliberately directed another uncertified individual to perform the duties of a radiographer on two occasions (i.e., on August 1 and 2, 1984), again knowing that the individual was not certified.

The investigation also showed that the DM/RSO had falsified the training records of the uncertified individual who performed licensed radiography activities during February and March 1984, so as to indicate that the individual had received the required training.

When questioned about the occurrences during the August inspection, the DM/RSO denied them. In a subsequent NRC investigation, he admitted the occurences and admitted deliberate violation of NRC requirements.

These violations represent a continuing negative trend within the PTL organization involving inadequate control and implementation of radiation safety programs at PTL facilities throughout the country. In the past few years, violations have been identified at several PTL district offices by the NRC or Agreement States. A civil penalty was issued by the NRC in 1984 for violations at the Pittsburgh facility, and by the State of Tennessee in 1983 for violations at the Nashville facility. Following NRC issuance of the civil penalty in 1984, Mr. R. C. DeYoung, then Director of NRC's Office of Inspection and Enforcement (OIE), met with the licensee president on March 22, 1984 in Bethesda, Maryland, to discuss the NRC's concern regarding inadequate management control of licensed activities. At that meeting, the licensee president acknowledged the need for improved corporate control of licensed activities to assure adherence to requirements at all PTL district facilities.

There is no evidence that any overexposures occured while the uncertified personnel performed radiography. However, the use of radiographic devices by these personnel constituted a significant hazard not only to themselves, but also to their fellow workers and to several members of the public who were working in the areas where the radiography was being performed.

Cause or Causes—The root cause of the violations is attributed to a serious breakdown in management controls, both at the licensee's Cleveland facility and at the corporate headquaters in Pittsburgh.

Actions Taken to Prevent Recurrence

Licensee—To date, the licensee has complied with the requirements of the NRC Order described below.

NRC—On February 26, 1985, an enforcement conference was held with the licensee to discuss these violations, their causes and the licensee's corrective actions. Based on this conference and the NRC investigation, the NRC determined that the deliberate actions of the Cleveland Manager in using uncertified individuals to perform radiography, and his subsequent lack of candor with NRC inspectors, demonstrated that there was no longer a reasonable assurance that the licensee would comply with Commission requirements while the Cleveland Manager was the Radiation Safety Officer at the Cleveland facility.

Accordingly, on May 24, 1985, the NRC determined that the public health and safety required issuance of an Order (effective immediately) requiring: (1) The removal of the Manager from the position of Radiation Safety Officer of the Cleveland facility and from all involvement in the performance or supervision of NRC licensed activities and (2) the suspension of all licensed activities at the Cleveland facility until a qualified individual was appointed as Radiation Safety Officer of the Cleveland facility and authorized by the NRC.

Further enforcement action is pending.

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Therapeutic Medical Misadministration

The general abnormal occurence criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—On June 17, 1985, Christ Hospital (the licensee), Cincinnati, Ohio, reported to the NRC that a 57-year old patient had received a 14,000 rad dose to the left lung instead of the prescribed 5,000 rad dose.

Nature and Probable Consequences—The patient was to be treated for lung cancer using implanted iridium-192 radiation sources to deliver a prescribed radiation dose of 5,000 rads to the left lung. In planning the treatment, the radiation physicist determined that 12 seeds (tiny sealed radiation sources), each containing 10 millicuries of iridium-192, would be sufficient for the treatment. The radiation physicist stated that she did not calculate the treatment time needed for delivering the prescribed dose, but the physician on the case stated that a 50-hour treatment period had been proposed by the physicist.

On June 17, 1985, following discussions between the physician and the radiation physicist, the radiation physicist realized that no calculations had been performed to determine the treatment period. The physicist then determined that 14,000 rad had been delivered to the left lung at that time, and the iridium seeds were promptly removed.

The patient is being monitored by the licensee through periodic examinations and bronchoscopy. No short term effects have been observed. The nature of the radiation therapy with the iridium-192 seeds is such that the principal radiation effects would be very localized in the left lung area. An NRC medical consultant has reviewed the case and is satisfied that adequate medical followup is being provided by the licensee.

Cause or Causes—The misadministration was caused by the failure of the radiation physicist to calculate the treatment period for the iridium-192 seeds to remain implanted in the patient. There is a discrepancy between the information supplied by the physician and the radiation physicist—the physician stating that a 50-hour period was proposed by the physicist, and the physicist stating that she had made no calculations for treatment time prior to the treatment and had not proposed a 50-hour treatment period.

The hospital had no quality assurance procedures designed to verify the accuracy of radiation treatment plans to assure that they would deliver the prescribed radiation dosage.

Actions Taken To Prevent Recuurrence

Licensee—On June 19, 1985, the hospital implemented revised treatment procedures requiring that written calculations to determine a radiation therapy plan be performed prior to the initiation of a treatment and that the calculations be reviewed by a second qualified individual. The procedures were submitted to the NRC on June 28, 1985. The licensee's Medical Review Board approved the procedures on August 27, 1985.

NRC—The NRC conducted a special inspection of the licensee's radiation therapy program and the circumstances of the misadministration on June 26, 1985. The licensee's corrective actions were determined to be acceptable, and no violations of NRC requirements were identified in the inspection. Although no violations were identified, the NRC was concerned that appropriate corrective actions would be taken. Therefore, on September 11, 1985, the NRC issued a Confirmatory Order Modifying License requiring the licensee to immediately implement the revised treatment procedures.

Dated in Washington, DC, this 6th day of December 1985.

Samuel J. Chilk,

Secretary of the Commission.

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[Docket Nos. STN 50-529 and STN 50-530]

Arizona Public Service Co. et al.; Amendments to Construction Permits

In the matter of Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, Southern California Edison Company, El Paso Electric Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power,[1] Southern California Public Power Authority, Palo Verde Nuclear Generating Station, Unit Nos. 2 and 3, Notice of Issuance of Amendments to Construction Permits.

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 6 to Construction Permit Nos. CPPR-142 and CPPR-143. The amendments reflect changes to two conditions contained in the Construction Permits CPPR-142 and CPPR-143 to incorporate modifications authorized by an exemption to the General Design Criteria 4 of 10 CFR Part 50, Appendix A. The amendments make effective the schedular partial exemption granted by the Commission, exempting the applcants from the requirement to install pipe whip restraints and jet impingement shields in the Palo Verde, Units 2 and 3 primary coolant piping system.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), 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 amendments. Prior public notice of the amendments was not required since the amendments do not involve a significant hazards consideration.

By January 13, 1986, the applicants may file a request for a hearing with respect to issuance of the amendments to the subject facility construction permits and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licening Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a part to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene.

[1] The Los Angeles Department of Water and Power will not actually become a co-owner until after Palo Verde Unit 1 is placed into commercial operation.

Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has determined that the amendments involve no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendments. Any hearing held would take place while the amendments are in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3727 and the following message addressed to George Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Arthur C. Gehr, Esq., Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85073.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(l)(i)-(v) and 2.714(d).

For further details with respect to this action, see: (1) The application for amendment, dated December 10, 1984 later amended on July 16, 1985; (2) Amendment No. 6 to Construction Permits CPPR–142 and CPPR–143, (3) the Commission's related Safety Evaluation, and (4) Letter to E.E. Van Brunt, Jr., Arizona Nuclear Power Project from G.W. Knighton, dated November 29, 1985, Subject: Request for Exemption from a Portion of General Design Criterion 4 of Appendix A to 10 CFR Part 50 regarding the need to Analyze Large Primary Loop Pipe Ruptures as the Structure Design Basis for Palo Verde Nuclear Generating Station (Units 2 and 3). All of these items are available for public inspection in the Commission's Public Document Room at 1717 H Street, NW., Washington, DC 20555 and at the Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004. Items 2, 3 and 4 may be requested in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 6th day of December, 1985.

For the Nuclear Regulatory Commission.

George W. Knighton,

Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 85–29510 Filed 12–11–85; 8:45 am]

BILLING CODE 7590–01–M

[Dockets Nos. 50–277 and 50–278]

Philadelphia Electric Co. et al.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments 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 (the licensees), for operation of the Peach Bottom Atomic Power Station, Units Nos. 2 and 3 (the facility), located in York County, Pennsylvania.

The amendments would authorize the licensees to increase the storage capacity of the spent fuel pool from the present capacity of 2,608 storage cells to 3,819 storage cells for each unit. The change would be accomplished by the installation of high density fuel rack modules with center to center clearances between cells of 6.28 inches compared to the current design of 7.0 inches, a slight reduction in wall thickness of each cell and closer placement of cell racks to the pool walls of approximately one foot versus the current 2½ feet design. The racks would utilize a neutron absorbing material between cells to assure a subcritical configuration. To provide more room for storage racks, the licensees also propose to remove some of the pool floor swing bolts (no longer functional) to avoid interference with the support feet on the new racks. In order to provide additional floor space for new storage racks, the end sections and diffusers of the spent fuel pool cooling discharge pipe will be removed. The licensees' request for approval of the new spent fuel storage racks is provided in a letter dated June 13, 1985, as supplemented by letters dated August 1, 1985, and October 9, 1985.

Before issuance of the proposed license amendments granting approval of the new spent fuel storage racks, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the license amendments required by this approval involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of these standards by providing examples of amendments considered likely, and

not likely, to involve a significant hazards consideration. These were published in the **Federal Register** on April 6, 1983 (48 FR 14870). Spent fuel pool reracking was specifically excluded from the list of examples considered likely to involve a significant hazards consideration. Pending further study of this matter, the Commission is making a finding on the question of no significant hazards consideration for each reracking application such as this on a case-by-case basis, giving full consideration to the technical circumstances of the case, using the standards of 10 CFR 50.92 (48 FR 14869).

The technical evaluation of whether or not an increased spent fuel pool storage capacity by reracking involves significant hazards considerations is centered on three standards: (1) Does increasing the spent fuel pool storage capactiy significantly increase the probility or consequences of accidents previously evaluated? Reracking to allow closer spacing of fuel assembles does not significantly increase the probability or consequences of accidents previously analyzed. (2) Does increasing the spent fuel pool storage capacity create the possibility of a new or different kind of accident from any accident previously evaluated? With respect to Peach Bottom Atomic Power Station, Units 2 and 3, the Commission's staff has not identified any new categories or kinds of accidents as a result of reracking to allow closer spacing for the fuel assemblies. The proposed reracking does not create the possibility of a new or different kind of accident for the spent fuel pool. In all reracking reviews completed to date, all credible accidents postulated have been found to be conservatively bounded by the evaluations cited in the Safety Evaluation (SEs) supporting each amendment. (3) Does increasing the spent fuel pool storage capacity significantly reduce a margin of safety? The Commission's staff has not identified significant reductions in safety margins due to increasing the storage capacity of the spent fuel pool by reracking. The expansion results in an increased heat load, but this heat load increase is generally well within the design limitations of the installed cooling systems. In some cases, it may be necessary to increase the heat removal capacity by relatively minor changes in the cooling system, i.e., by inceasing a pump capacity. But in all cases, the temperature of the pool will remain below design values. The small increase in the total amount of fission products in the pool is not a significant factor in accident considerations. The increased storage capacity may result in an increase in the pool reactivity as measured by he neutron multiplication factor (K_{eff}). However, after extensive study, the Commission's staff determined in 1976 that as long as the maximum neutron multiplication factor was less than or equal to 0.95, then any change in the pool reactivity would not significantly reduce the margin of safety regardless of the storage capacity of the pool. The licensees have indicated that the K_{eff} would not exceed 0.95. The techniques utilized to calculate K_{eff} have been bench-marked against experimental data and are considered very reliable by the staff. Reracking to allow a closer spacing between fuel assemblies can be done by proven technologies.

In summary, replacing existing racks with a design which allows closer spacing between stored spent fuel assemblies is considered not likely to involve significant hazards considerations if two conditions are met. First, no new technology or unproven technology may be utilized in either the construction process or in the analytical techniques necessary to justify expansion.Second, the K_{eff} of the pool must be maintained less than or equal to 0.95. Reracking to allow closer spacing at Peach Bottom satisfies these conditions.

The licensees have stated that their analysis of the proposed reracking was accomplished using currently acceptable codes and standards and conforms to Commission staff guidance of April 1978. The technical evaluation of whether or not an increased spent fuel pool storage capacity involves significant hazards consideration is centered on three standards:

First Standard

Involve a significant increase in the probability or consequences of an accident previously evaluated.

In the course of the analysis, the licensees identified the following potential accident scenarios in Chapters 3, 4 and 5 of their submittal.

1. A spent fuel assembly drop in the spent fuel pool
2. Loss of spent fuel pool cooling system flow
3. A seismic event
4. A spent fuel cask drop
5. Criticality accident
6. Load handling accident

The probability of the occurrence of any of the first four accidents is not affected by the racks themselves; thus, reracking cannot increase the probability of these accidents.

The consequences of a spent fuel assembly drop in the spent fuel pool are discussed in the licensees' submittal. For this accident condition, the critically acceptance criterion is not violated (Section 4.6.3). The radiological consequences of a fuel assembly drop are not changed from the previous Peach Bottom reracking analysis. The results of the Commission staff's evaluation were transmitted to the licensees on November 30, 1978. The licensees' analysis of the reracked design indicates a dropped fuel assembly would not violate the critically acceptance criteria and the spent fuel pool liner would not be perforated. Thus, the consequences of this kind of accident will not be significantly increased from previously evaluated spent fuel assembly drops, which have been found to be acceptable by the Commission.

The consequences of loss of spent fuel pool cooling system flow have been evaluated for the existing spent fuel pool cooling system design as described in the licensees' submittal (Section 3.4.3). There are three spent fuel pool cooling system pumps and heat exchanger trains. The current cooling system design will provide sufficient cooling capacity for the proposed reracking. The structural integrity of the spent fuel pool will be maintained and no new means of losing cooling water or flow have been identified. Thus, the consequences of this type accident will not be significantly increased from previously evaluated loss of cooling system flow accidents.

The consequences of a seismic event have been evaluated. The new racks will be designed and fabricated to satisfy the Commission's accepted design criteria. The racks are designed to Seismic Category I criteria. The racks are neither anchored to the pool floor nor are they attached to the pool side walls. The racks are structurally adequate to resist normal and accident load combinations. The racks are designed so that the floor loading from the racks filled with spent fuel assemblies does not exceed the structural capacity of the auxiliary building. Therefore, the integrity of the pool will be maintained and no new means of losing cooling water or flow have been identified. Thus, the consequences of a seismic event will not be significantly increased from previously evaluated events.

The consequences of a spent fuel cask drop accident are unchanged by the requested modification. The spent fuel cask handling crane rails do not extend over the spent fuel pool, and the crane is designed to be single failure proof in

accordance with the requirements of NUREG–0554 to preclude a drop on safety related equipment. In addition, the crane meets the guidelines of NUREG–0612. Accordingly, the consequences of a cask drop accident are not significantly increased from previously evaluated events.

All potential events which involve accidental criticality have been examined in the licensees' safety analysis. It was concluded that the bounding accident was a dropped or misplaced fuel assembly outside the periphery of the racks. The probability of dropping or misplacing a fuel assembly during fuel movement operations is not affected by the fuel storage racks themselves. The consequences of a criticality accident will not be significantly increased from previously evaluated events because the licensees' criticality calculations show that K_{eff} would be less than 0.95 and the critically acceptance criterion would not be violated.

The consequences of an installation accident or load handling accident (i.e., dropping of a spent fuel rack or other "heavy" load during rack replacement) are analyzed in Sections 3.4.1 and 4.7 of the licensees' submittal. As indicated in these Sections, precautions will be taken via administrative procedures based upon the criteria of Section 5.1.1 of NUREG–0612 (Control of Heavy Loads at Nuclear Power Plants) to preclude the movement of racks or other "heavy" loads over spent fuel. Thus, the consequences of an accident during rack replacement will not be significantly increased from previously evaluated accidents. The proposed reracking will not involve an increase in the probability of any previously evaluated installations or load handling accident because accepted standard procedures will be utilized as described in the licensees' submittal.

Therefore, it is concluded that the proposed request to rerack the spent fuel pool will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Second Standard

Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed reracking was evaluated by the licensees in accordance with the guidance of the Commission position paper entitled, "OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications", Commission Regulatory Guides, NRC Standard Review Plans, and Industry Codes and Standards as listed in the licensees' submittal. In addition, several previous Commission SEs for rerack applications similar to this proposal have been reviewed. The nuclear criticality design considerations and analysis methods used for Peach Bottom are the same as those used by the Peach Bottom rack vendor (Westinghouse) for several other nuclear power plants which the Commission has previously reviewed and found acceptable (e.g., Shearon Harris 1, 2, 3 and 4 and River Bend 1). Neither the licensees' nor the Commission's staff could identify a credible mechanism for breaching the structural integrity of the spent fuel pool which could result in loss of cooling water such that cooling flow could not be maintained. As a result of this evaluation and these reviews, it is concluded that the proposed reracking does not, in any way, create the possibility of a new or different kind of accident from any accident previously evaluated for the Peach Bottom spent fuel storage racks.

Third Standard

Involve a significant reduction in a margin of safety.

The Commission's staff evaluation review process has established that the issue of margin of safety, when applied to a reracking modification, will need to address the following areas:

1. Nuclear criticality considerations
2. Thermal-hydraulic considerations
3. Mechanical, material and structural considerations

The established acceptance criteria for criticality is that the neutron multiplication factor is spent fuel pools shall be less than or equal to 0.95, including all uncertainties, under all conditions. This margin of safety has been adhered to in the criticality analysis methods for the new rack design as discussed in the licensees' submittals. In meeting the acceptance criteria for criticality in spent fuel pools, such that K_{eff} is always less than 0.95, including uncertainties of 95/95 probability confidence level, the proposed reracking will not involve a signficant reduction in the margin of safety for nuclear criticality.

For thermal hydraulics the relevant considerations for evaluating whether there is a significant reduction in a margin of safety are: (1) Maximum fuel temperature, and (2) the increase in temperature of water in the pool. The licensees have stated in their thermal hydraulic analysis conservative methods were used to calculate the maximum fuel temperature and the increase in temperature of the water in the spent fuel pool. The calculated maximum fuel cladding temperature of 254°F is sufficiently low to preclude structural failure. Boiling would not occur within the storage locations since the calculated maximum water temperature of 225°F under such conditions is below the saturation temperature at the top of the racks of approximately 240°F. The maximum water temperature of 135°F was calculated for a normal refueling operation with two out of three heat exchangers in service. With only one heat exchanger in service, the design basis temperature of 150°F would be reached in approximately 7.3 days. This maximum temperature increase above 150°F after 7.3 days is not significant because the spent fuel pool water temperature is continuously monitored and alarmed in the control room and, therefore, appropriate actions can be taken should the spent fuel pool water temperature approach 150°F during refueling operations. The licensees have calculated that under abnormal conditions, all three heat exchangers must be in service to maintain pool temperature below 150°F. With fewer than three heat exchangers in service and the abnormal conditions outlined by the licensees, maximum spent fuel pool heat loads in excess of 150°F would occur between 7.3 and 28.9 days, assuming an initial temperature of 110°F. In these cases, the Residual Heat Removal (RHR) System would be available, if necessary, to supplement the spent fuel pool cooling system to maintain temperatures below 150°F. These heat loads are well within the capability of the RHR system. Thus, there is no significant reduction in the margin of safety for thermalhydraulic or spent fuel cooling concerns.

The main safety function of the spent fuel pool and the racks is to maintain the spent fuel assemblies in a safe configuration through all normal and abnormal landings, such as an earthquake, impact due to a spent fuel cask drop, drop of a spent fuel assembly, or drop of any other heavy object. The mechanical, material, and structural considerations of the proposed rerack are described in the licensees' submittals. The proposed racks are to be designed in accordance with the applicable portions of the "NRC Position for Review and Acceptance of Spent Fuel Storage and Handling Applications", dated April 14, 1978, as modified January 18, 1979, and Standard Review Plan 3.8.4. The rack materials used are compatible with the spent fuel pool environment and the spent fuel assemblies. The structural

considerations of the new racks address margins of safety against tilting and sliding, including impact on each other, or the pool walls, damage of spent fuel assemblies, and criticality concerns. As previously stated, neither the licensees nor the Commission's staff could identify a credible mechanism for breaching the structural integrity of the spent fuel pool which could result in loss of cooling water such that cooling flow could not be maintained. Thus, the margins of safety in these regards are not significantly reduced by the proposed rerack.

Summary

The licensees' request to modify the spent fuel storage capacity for the Peach Bottom Atomic Power Station, Units 2 and 3, satisfies the following conditions: (1) The storage capacity expansion method consists of modifying the existing racks with a design which allows closer spacing between stored spent fuel assemblies; (2) the storage capacity expansion method does not involve red consolidation or double tiers; (3) the K_{eff} of the pools are maintained less than or equal to 0.95; and, (4) the proposed reracking design is based upon well developed and demonstrated technologies. The request does not involve significant hazards consideration in that it: (1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated, (2) does not create the possibility of a new or different kind of accident from any accident previously evaluated, and (3) does not involve a significant reduction in a margin of safety.

Because the licensees' submittal and the above discussion based upon the licensees' submittal appear to demonstrate that the standards specified in 10 CFR § 50.92 are met, and because this reracking technology has been well developed and demonstrated, the Commission proposes to determine that operation of the facility in accordance with the proposed amendments does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

By January 13, 1985, the licensees may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner is required to file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity, pursuant to 10 CFR 2.714(b). Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under Section 134 of the NWPA, the Commission, at the request of any party to the proceeding, is authorized to use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of Section 134 and set for hearing after oral argument.

The Commission's rules implementing Section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662 (October 15, 1985)). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.109. To be timely, the request must be filed within ten (10) days of an order granting a request or petition to intervene. (As outlined above, the Commission's rules in 10 CFR Part 2, Subpart G, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral

argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding requests oral argument, or if all timely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G, apply.

Subject to the above requirements and any limitations in the order granting leave to intervene, those permitted to intervene become parties to the proceeding and have the opportunity to participate fully in the conduct of any hearing which is held, including the opportunity to present evidence and cross-examine witnesses at such hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 343-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S Nuclear Regulatory Commission, Washington, DC 20555, and to Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, DC 20006, attorney for Philadelphia Electric Company.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the licensees' submittal dated June 13, 1985, as supplemented by letters dated August 1, 1985, and October 9, 1985. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania.

Dated at Bethesda, Maryland, this 3rd day of December 1985.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, BWR Project Directorate No. 2, Division of BWR Licensing.

[FR Doc. 85-25911 Filed 12-11-85; 8:45 am]

BILLING CODE 7590-01-M

Dairyland Power Cooperative; Environmental Assessment and Finding of No Significant Impact

[Docket No. 50-409]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the required on-site primary property damage insurance requirement of 10 CFR 50.54(w)(1) to the Dairyland Power Cooperative (DPC) (the licensee) for the La Crosse Boiling Water Reactor (LACBWR), located at the licensee's site in Vernon County, Wisconsin.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirements of 10 CFR 50.54(w)(1) to reduce the full amount of required on-site primary property damage insurance. By letter dated July 26, 1985, the licensee requested an exemption to reduce the amount of primary property damage insurance from 500 million dollars to 180 million dollars. The reduction in the amount of required on-site primary property damage insurance is the proposed action being considered by the staff.

The Need for Proposed Action

The licensee's February 7 and July 12, 1985 letters provided technical justification that 180 million dollars of primary property damage insurance provides an adequate level of coverage to return the LACBWR plant to a condition ready for decommissioning following an accident resulting in a 50% fuel melt. Granting the exemption request relieves the licensee from the unneccessary financial burden of carrying insurance coverage of $500 million as required by 10 CFR 50.54(w)(1).

Environmental Impacts of Proposed Actions

The proposed exemption affects only the amount of on-site primary property damage insurance coverage and does not affect the manner of normal facility operation or the risk of facility accidents. While the change in insurance coverage may affect the financial arrangements of the licensee and have some economic consequences, the possibility that the environmental impact of licensed activities would be altered by changes in insurance coverage is extremely remote. The exemption in question would not authorize construction or operation, would not authorize a change in licensed activities nor effect changes in the permitted types or amounts of radiological effluents. Post-accident radiological releases will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluents or occupational exposures. With regard to potential non-radiological impacts, the proposed exemption does not affect plant non-radiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or non-radiological environmental impacts

associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative to the exemption would be to require the licensee to continue to carry 500 million dollars of on-site primary property damage insurance. Such an action would not enhance the protection of the environment.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for the La Crosse Boiling Water Reactor.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letters dated February 7, July 12, and July 26, 1985. These letters are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Dated at Bethesda, Maryland, this 6th of December 1985.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, BWR Project Directorate #1, Division of BWR Licensing.

[FR Doc. 85-29509 Filed 12-11-85; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Losses and Goals Advisory Committee; Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Losses and Goals Advisory Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Losses information discussion
- Contributions issue scoping
- Public comment

DATE: December 20, 1985, 9:00 a.m.

ADDRESS: The meeting will be held at the Council's Meeting Room, 1150 SW. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: John Marsh, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-29438 Filed 12-11-85; 8:45 am]

BILLING CODE 0000-00-M

POSTAL SERVICE

Adjustment of Preferred Rates

On December 3, 1985 the Governors of the Postal Service adopted Resolution 85-9, which adjusts preferred rates of postage, effective January 1, 1986, to step 16 of the rate phasing schedule adopted by the Governors on December 11, 1984. These step 16 rates were published on September 17, 1985 at 50 FR 37740.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85-29429 Filed 12-11-85; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review By Office of Management and Budget

Agency Clearance Officer—Kenneth Fogash (202) 272-2142.

Upon written request, copy available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, DC 20549.

Extension

Form F-6, SEC File No. 270-270; Rule 12g3-2, SEC File No. 270-104

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted Form F-6 [17 CFR 239.36] and Rule 12g3-2 [17 CFR 240.12g3-2] for approval of an extension of clearance.

Form F-6 is used by depositary banks to register American Depositary Receipts of foreign companies pursuant to the Securities Act of 1933. All filings on Form F-6 are prepared and filed by a limited number of banks that act as depositaries.

Rule 12g3-2 is an exemptive rule for foreign private issuers pursuant to the authority granted under section 12(g)(3) of the Securities Exchange Act of 1934. Rule 12g3-2 contains several complete exemptions from the Commission's disclosure. The exemption provided in paragraph (b) of that rule requires that companies exempt thereunder furnish to the Securities and Exchange Commission copies of all the material investor information in their home country. Such information is available for public inspection and copying.

Submit comments to OMB Desk Officer: Sheri Fox (202) 395-3785, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, DC 20503.

John Wheeler,

Secretary.

December 6, 1985.

[FR Doc. 85-29457 Filed 12-11-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14832; File No. 812-6240]

Investment Trust of Boston; Application

December 6, 1985.

Notice is hereby given that Investment Trust of Boston ("ITB") and Moseley Capital Management Inc. ("MCM"), both at 60 State Street, Boston, Massachusetts 02109; and Investment Trust of Boston High Income Plus Fund, Inc., Investment Trust of Boston—Massachusetts Tax Free Income Fund, and The Empire Builder Tax Free Bond Fund, all at P.O. Box One, 60 State Street, Boston, Massachusetts 02101 (collectively, with ITB, the "Funds"); Warlick & Baker, Inc. ("W&B"), 163 Washington Street, Morristown, New Jersey 07960; and Empire Group, Inc. ("Empire"), 6 East 43rd Street, New York, New York 10017 (the Funds, MCM, W&B and Empire, collectively, "Applicants") filed an application on October 30, 1985, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicants from the provisions of section 15(a) of the Act to the extent necessary to permit the implementation, without prior shareholder approval of certain new

investment advisory and sub-advisory agreements. 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 and rules thereunder for the text of the applicable provisions thereof.

Applicants state that each of the Funds is registered under the Act as an open-end, management investment company. Applicants further state that MCM is registered under the Investment Advisers Act of 1940 and is a wholly-owned subsidiary of Moseley, Hallgarten, Estabrook & Weeden Holding Corporation ("Holding"), whose principal operating subsidary is Moseley, Hallgarten, Estabrook & Weeden, Inc. ("Moseley"), a New York Stock Exchange member firm. MCM acts as investment adviser to each of the Funds pursuant to advisory agreements ("Existing Advisory Agreements"). W&B is also registered under the Investment Advisers Act of 1940, is 50 percent-owned by MCM, and acts as sub-adviser to Investment Trust of Boston High Income Plus Fund pursuant to a sub-advisory agreement with MCM. Both of the above mentioned sub-advisory agreements are referred to as "Existing Sub-Advisory Agreements".

The Existing Advisory Agreements and the Existing Sub-Advisory Agreements (collectively "Existing Agreements") each provides that it will terminate in the event of its "assignment" as that term is defined in section 2(a)(4) of the Act. The Existing Sub-Advisory Agreements further provide that each will terminate upon termination of its respective Existing Advisory Agreement.

On October 4, 1985, Holding and Amwal American Investment Limited ("Amwal") entered into a stock purchase agreement ("Purchase Agreement") pursuant to which amwal agreed to purchase up to 1,200,000 shares of Series B Preferred Stock ("Preferred Stock") of Holding. After the first closing under the Purchase Agreement, Amwal acquired 500,000 shares. According to the applicaiton, the second closing was scheduled to take place on November 26, 1985, or such other time as agreed between the parties, at which time Amwal would acquire up to an additinal 700,000 shares of Preferred Stock.

Until July 31, 1986, each share of Preferred Stock is entitled to five votes and is also entitled to be voted together with Holding's common stock on all matters submitted to the common stockholders. On or before July 31, 1986, holders of Preferred Stock may convert all, but not less than all, such shares into shares of common stock. If all 1,200,000 shares of Preferred Stock are so converted, Amwal would own approximately 33.2 percent of the outstanding common stock of Holding. If such shares are not converted, Amwal will hold Preferred Stock representing approximatley 39 percent of the voting power of all the outstanding voting securities of Holding. In addition, two representatives of Amwal have been elected to the ten member Board of Directors of Holding, and have been appointed officers of Holding and/or its subsidiaries (but not MCM). Thus, completion of the second closing under the Purchase Agreement may result in a presumptive change of control of Holding and its subsidiaries and affiliated companies as "control" is defined in section 2(a)(9) of the Act. In such event, an assignment of each of the Existing Advisory Agreements would occur under section 2(a)(4) of the Act resulting in the termination of the Existing Agreements pursuant to their terms.

In order to protect against such an occurrence, the Applicants request relief from the provisions of section 15(a) of the Act so that the Directors or Trustees of each of the Funds may approve, and the Funds may enter into, the respective New Agreements as of the completion of the sale transaction without shareholder approval prior to or at that time. The New Agreements will continue until they are approved, disapproved or replaced by alternative arrangements by action of the shareholders of each of the Funds at the next shareholders' meeting. The next shareholders' meeting of the Funds, other than Empire Builder Fund, will be held no later than 120 days after completion of the sale transaction, and the next shareholders' meeting of The Empire Builder Tax Free Bond Fund will be no later than 240 days after the completion of such transaction.

Applicants state that the Directors or Trustees of each of the Funds have determined that it is in the best interests of the respective Funds and their shareholders to continue the present relationship with MCM, W&B and Empire after the completion of the sale transaction. Applicants assert that the Directors' or Trustees' determinations as to the advisability of entering into the New Agreements complied with the requirements of section 15(c) of the Act.

MCM, W&B and Empire represent that for the period between the completion of the sale transaction and the next shareholders' meetings, there will be no material change in the nature or substance of the services presently provided to the Funds under the Existing Agreements or in the fees charged thereunder, or in the persons providing such services or in their supervision. Applicants have been advised that the Funds will not bear any of the costs of the preparation or filing of this application or of the consideration by shareholders of the New Agreements, except to the extent that such costs also relate to the holding of annual meetings and are in lieu of costs the Funds would have otherwise incurred in connection with such meetings.

For the following reasons, Applicants submit that the exemptions requested are consistent with the standards set forth in section 6(c) of the Act and should be granted: (1) No changes in the management or services rendered will result; (2) Board and shareholder approval will be obtained promptly; (3) the exemption would be consistent with the policies of Rule 15a–4 even though Applicants cannot avail themselves of this Rule; (4) the exemption would avoid certain adverse effects on the Funds not intended by the Act. Applicants state that, for all the foregoing reasons, the exemption requested is consistent with the public interest and with the interest and protection of investors and the purposes fairly intended by the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 30, 1985, 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, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the addresses stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. 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.

John Wheeler,

Secretary.

[FR Doc. 85–29496 Filed 12–11–85; 8:45 am]

BILLING CODE 8010–01–M

[Release Nos. 35-23940; 70-7184]

Midwest Energy Company; Proposed Acquisition of Donovan Companies, Inc.

December 6, 1985.

Midwest Energy ("Midwest"), 401 Douglas Street, P.O. Box 1348, Sioux City, IA 51102, an Iowa corporation, has filed an application pursuant to sections 9(a)(2) and 10 of the Public Utility Holding Company Act of 1935 ("Act") requesting an order of the Commission approving Midwest's acquisition of all of the outstanding common stock of Donovan Companies, Inc. ("DCI"), an Iowa corporation that is primarily a natural gas distribution utility. Midwest's intent is to transfer the utility assets of DCI together with Iowa Gas Company ("IGC") to Iowa Public Service Company ("IPS"). Midwest's wholly-owned public utility subsidiary, and operate DCI's natural gas utility operations and IGC as divisions of IPS. Midwest will pay $33 for each share of DCI common stock currently outstanding for a total purchase price of approximately $51.6 million. The transaction will be completed by merging DCI with Midwest's wholly-owned subsidiary, MWE Acquisition Company, with DCI as the surviving corporation.

IPS is Midwest's most significant subsidiary and only public utility subsidiary. IPS is engaged in the generation, transmission and distribution of electric power and energy to retail residential, commercial and industrial customers in Iowa and South Dakota and wholesale customers in Iowa. IPS purchases natural gas from its sole pipeline supplier, Northern Natural Gas Company ("Northern"), a division of HNG/InterNorth Inc., and provides natural gas service to retail customers in Iowa, Nebraska and South Dakota. Midwest also engages in certain other non-utility businesses.

Midwest is a holding company as defined under section 2(a)(7)(A) of the Act and is an affiliate of a public utility, as defined under section 2(a)(11)(A) of the Act, by virtue of Midwest's ownership of all of IPS's outstanding voting securities. Midwest is exempt under section 3(a)(1) of the Act, except section 9(a)(2). Section 9(a)(2) provides that unless the acquisition has been approved by the Commission, it shall be unlawful for any person to acquire any security of a public utility company if the acquiring person is, or by virtue of such acquisition will become, an affiliate of such public utility and any other public utility company.

DCI is primarily a natural gas distribution utility with its headquarters in St. Paul, Minnesota. As of September 30, 1985, it serves 66,301 natural gas customers. The North Central Public Service Company division ("NCPS") of DCI serves 12,535 customers in north central, central and southeastern Iowa, and 49,525 customers in central Minnesota, including the northern suburbs of St. Paul and Minneapolis. The Southern Gas Company division ("SGC") served 4,241 customers in Florida. NCPS purchases natural gas from Northern, ANR Pipeline Company, Natural Gas Pipeline Company of America ("Natural") and Midwestern Gas Transmission Company. SGC purchases natural gas from Florida Gas Transmission Company, a subsidiary of HNG/Internorth Inc.

DCI has several non-regulated businesses in addition to its natural gas operations. Donovan Construction Co. ("DCCO"), a wholly-owned subsidiary of DCI, provides electrical distribution line construction and maintenance services in Minnesota and Watertown, New York. DCI distributes and markets propane to retail customers in Florida through Mid-Florida Service Corporation, also a wholly-owned subsidiary, and SGC. Golden Rule Oil Co., a division of DCI, markets propane and fuel oil at retail in Wisconsin and NCPS distributes propane to retail customers in Minnesota. DCCO and Ravoux, Inc., a subsidiary of DCCO, have real estate investments in Minnesota and Tennessee.

On October 14, 1985, the Board of Directors of Midwest approved the purchase of IGC, an Iowa corporation and wholly-owned subsidiary of Iowa Resources Inc., also an Iowa corporation. IGC is a natural gas distribution company serving portions of central and southwest Iowa, including the metropolitan Des Moines, Iowa area. Midwest filed an application with the Commission (File No. 7172) on October 24, 1985 seeking approval for the acquisition of IGC.

Midwest intends to operate the public utility systems of DCI and IGC as divisions of IPS. This would be accomplished by merging IGC into DCI and then transferring by way of a property dividend, the utility operations of DCI and IGC to Midwest. Midwest would then make a capital contribution in the form of those same properties to IPS. IPS would organize all of the combined utility operations into an electric division and several natural gas divisions. The electric division would consist of the present IPS electric utility operations only. The gas divisions would be organized to preserve the name recognition IPS, DCI and IGC have developed with their respective gas customers. There may also be some realignment of individual gas properties to the extent operating efficiencies and economies of scale would be realized.

According to the application, Midwest approached DCI concerning the possibility of Midwest acquiring DCI in December, 1984. Discussions between Midwest and DCI were postponed until DCI's investment banker had completed its analysis and prepared bidding documents for review by potential buyers. These documents became available in August, 1985. Midwest subsequently offered to purchase the outstanding DCI Common Stock for $33 per share in cash, contingent upon necessary federal regulatory approvals. This offer was accepted by DCI and formalized as of October 21, 1985, the date of the Agreement and Plan of Merger. No associate company or affiliate of Midwest or affiliate of any such associate company has any direct or indirect material interest in the proposed transaction except as stated above.

The application asserts that with the acquisition of DCI, instead of having access to a single pipeline supplier, IPS would have access to four different midwestern pipeline suppliers, which would facilitate the purchase and delivery of gas supplies to IPS and its gas divisions. The affiliation of IPS and DCI would also allow for gas supply transactions on a much larger scale than either alone could support. The opportunity to purchase gas supplies directly at potentially more competitive prices would be greatly enhanced by the increased number of pipeline companies available to either supply or transport the gas on IPS' behalf. In addition, the quantities of firm natural gas now under contract by IPS and DCI with their suppliers could be aligned more closely with the autual demands of their customers.

Midwest asserts that the proposed acquisiton is consistent with the requirements of section 10, and is not unlawful under the provisions of section 8 of the Act, or detrimental to the carrying out of Section 11 of the Act. Midwest also asserts that it would remain an exempt holding company under section 3(a)(1) of the Act and Rule 2 thereunder after it acquires all of the outstanding DCI Common Stock. Midwest states that no state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

The application 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 December 30, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on Midwest at the address specified above. Proof of service (by affidavit or, in case of attorney at law, by certificate) should be filed with the request. Any request for a hearing must 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, as filed or as it may be amended, may be authorized.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-29495 Filed 12-11-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22691; File No. SR-AMEX-85-39]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc.; Facilitation Order Rule

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 November 20, 1985 the American 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

The American Stock Exchange, Inc. ("AMEX" or "Exchange") proposes to amend Exchange Rule 950(d) to expand the use and clarify the intent of the facilitation order rule.

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

The Exchange's crossing rules provide that in cross transactions both sides of the trade may be competed for by other market participants. Because market participants can compete on either side of the transaction, a public customer order might not be completely filled. To ensure the complete execution of the public customer portion of a cross transaction, the Exchange added a new type of options order in 1983. This facilitation order is defined narrowly in Amex Rule 950(d) as "an order for the proprietary account of a member organization which is only executed, in whole or in part, in a cross transaction with a public customer of the member organization." When a facilitation order is utilized to cross a public customer order, market participants can compete only with the member firm order by accepting the bid or offer made on behalf of the public customer. Market participants may not compete with the public customer side of the order by changing the established market. The member utilizing a facilitation cross order on behalf of his public customer must comply with the following procedure:

(1) Request a market for the option series to be crossed;

(2) Disclose all terms of the public customer order including any contingencies (if possible);

(3) Disclose the fact that the order is subject to facilitation;

(4) On behalf of the public customer, bid above the highest bid or offer below the lowest offer in the market;

(5) Allow an opportunity for other market participants to accept the bid or offer made on behalf of the public customer (other market participants must satisfy any and all contingencies of the public customer order, just as the member firm is committed to do); and

(6) Immediately thereafter, cross all or any remaining part of the customer order and the facilitation order at the customer's bid or offer by announcing to the trading crowd the quantity and price of the orders being crossed.

Under the present rule, a facilitation order can only be used in crosses involving a public customer order on the one hand and an order for the proprietary account of the customer's member firm on the other. The Exchange now proposes that other orders be used to facilitate a public customer order cross transaction. Specifically, the Exchange proposes to allow orders other than member firm proprietary orders to be used in a facilitation order cross. These would include any orders of the member firm, other customer orders, as well as orders from other members and member firms. By expanding the number of facilitation orders, the proposed rule change will enable public customers to receive executions on orders which may not have been otherwise executable. Therefore, public customers would benefit from the proposed rule change.

The Exchange also proposes to clarify the intent of Rule 950(d) by deleting an ambiguous phrase in the commentary. The phrase "at the same price" could be read to provide market participants with a second opportunity to make a quotation which could block the customer side of the order by changing the established market.[1]

The proposed change is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange by expanding the scope of a rule which will enhance the execution of public customers' orders. Therefore, the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organizations's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Options Committee, a committee of the AMEX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

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[1] This revision, however, would not preclude persons in the trading crowd from accepting the customer's bid or offer or providing the customer with an improved execution price. *See* letter from Heidi L. Spitzer, Senior Attorney, Amex, to Eneida Rosa, Branch Chief, Division of Market Regulation, SEC, dated November 26, 1985.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization and in particular, the requirements of Section 6 and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the Commission previously approved as substantially identical proposal by the Chicago Board Options Exchange, Inc. and has not received any adverse comments on that rule change.[2]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all writtten statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. 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 by January 2, 1986.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be and hereby is, approved.

For the commission by the Division of Market Regulation, pursuant to delegated authority.

[2] *See* Securities Exchange Act Release Nos. 22102 (May 31, 1985), 50 FR 24073 (File No. SR-CBOE-83-61), and 22273 (July 29, 1985), 50 FR 31449 (File No. SR-CBOE-85-23).

Dated: December 5, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-29458 Filed 12-11-85 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22692 File No. SR-OCC-85-15]

Self-Regulatory Organizations; Options Clearing Corp.; Order Approving a Proposed Rule Change

The Options Clearing Corporation ("OCC") on September 6, 1985, submitted a proposed rule change to the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The Commission published notice of the proposal to solicit public comment on October 17, 1985, (Securities Exchange Act Release No. 22521 (October 9, 1985), 50 FR 42110 (October 17, 1985)). No comments were received. This Order approves the proposal.

OCC's proposal would amend OCC By-Law Article VI, section 3, to authorize clearing members to open a stock market-maker's or stock specialist's options account.[1] Specifically, the proposal would permit clearing members who carry accounts for, or are themselves, market-makers or specialists in underlying stocks to carry options positions on those stocks ("specialty options") in a separate stock market-maker's or stock specialist's account with OCC.[2] The proposal would limit the use of such accounts to transactions in options on the stocks for which the person having the account is a market-maker or specialist. Furthermore, market-makers or stock specialists could not use combined market-maker accounts [3] because their use would enable the stock market-maker or stock specialist to commingle its specialty options positions with other market-makers' or specialists' options positions. The proposal also would not allow use of the new accounts by stock market-makers or stock specialists who are also market-makers, specialists or registered traders in specialty options.

OCC's proposal includes technical amendments to its Market-Maker's, Specialist's and Registered Trader's Account agreements adapting them for use by stock market-makers and stock specialists. Furthermore, the proposal contains corresponding revisions to OCC's Joint Account Agreement for Market-Makers, Specialists and Registered Traders, which would be used if two or more stock market-makers or stock specialists choose to open a joint account.

OCC represents in its filing that the proposal is consistent with the Act and, in particular, Section 17A, in that the proposal promotes the safeguarding of securities and funds in OCC's custody or for which it is responsible. OCC states that the proposal should enable stock market-makers and stock specialists to monitor closely their specialty options trading. OCC further states that the proposal should facilitate self-regulatory organization surveillance of stock market-maker and stock specialist specialty options transactions to ensure that those transactions are effected for bona-fide hedging purposes, consistent with the NYSE rule change.

The Commission agrees with OCC that the proposal is consistent with the Act and should be approved. The Commission believes that the proposal should enable stock market-makers and stock specialists to monitor effectively their specialty options positions. By segregating specialty options positions in separate accounts, stock market-makers and stock specialists should be better able to monitor the hedge value of their specialty options in relation to stock specialty positions. This enhanced monitoring ability should enable them and their regulators to determine if the specialty options trading is consistent with the NYSE Rules and should help the marketplace realize the Rule's benefits.

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with section 17A of the Act because it promotes the safeguarding of securities and funds in OCC's custody or for which it is responsible. Furthermore, the proposal is consistent with the Act because it facilitates careful monitoring of specialty options trading of stock market-makers and stock specialists by those market-makers and stock specialists and regulatory authorities responsible for overseeing that activity.

It is therefore ordered, pursuant to section 19(b)(1) of the Act, that OCC's

[1] OCC's proposal would make conforming amendments to OCC By-Law Article I, section 1, by adding definitions for "stock market-maker" and "stock specialist."

[2] The proposal corresponds to the New York Stock Exchange's ("NYSE") recent amendment to NYSE Rule 105. That Rule now permits NYSE specialists to trade in options on their specialty stocks to hedge the risks of making a market in the specialty stocks. *See* Securities Exchange Act Release No. 21710 (February 4, 1985), 50 FR 5708 (February 11, 1985). In that Order, the Commission concluded, among other things, that the Rule should increase stock market liquidity and depth. Because the Rule should enable stock specialists to reduce their market exposure, specialists should be better able to take on larger specialty stock positions.

[3] OCC By-Law Article III, section 3(c), which defines a "combined market-maker account."

proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: December 6, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-29459 Filed 12-11-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22690; File No. SR-PSE-85-25]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

On September 26, 1985, the Pacific Stock Exchange, Inc. filed with the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 under the Act [2] a proposed rule change to establish a schedule of fines for violations of Option Floor Procedure Advice ("OFPA") B-5(C), which prohibits PSE market makers from effecting single or small-lot options trades during limited appearances on the PSE floor solely for the purpose of satisfying the requirement that they execute 40% of their total transactions in person on the PSE floor.[3] The proposed schedule of fines would be as follows:

First offense—Letter of caution

Second offense—Minimum fine of $250.00 plus $10.00 per single or small-lot trade

Third Offense—Minimum fine of $500.00 plus $20.00 per single or small lot trade

Fourth offense—Minimum fine of $1,000.00 plus $40.00 per single or small-lot trade

Additional offenses—May result in minimum fines of $2,000.00 and/or possible suspension

The proposed rule change was noticed in securities Exchange Act Release No. 22575 (September 26, 1985), 50 FR 45697 (November 1, 1985). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6.[4]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 5, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-29460 Filed 12-11-85; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1985).

[3] OFPA B-5(C) was submitted as a part of File No. SR-PSE-85-25 and went into effect on September 26, 1985, pursuant to Section 19(b)(3)(A) of the Act [15 U.S.C. 78s(b)(3)(A) (1982)]. *See* Securities Exchange Act Release No. 22575 (September 26, 1985), 50 FR 45697.

[4] 15 U.S.C. 78f (1982).

[5] 15 U.S.C. 78s(b)(2) (1982).

DEPARTMENT OF THE TREASURY

Public Information Collection Requirement Submitted to OMB for Review

Date: December 4, 1985.

The Department of the Treasury has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of this submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512-0006

Form Number: ATF F 3310.4

Type of Review: Extension

Title: Report of Multiple Sale or Other Disposition of Pistols or Revolvers

Clearance Officer: Howard Hood (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

[FR Doc. 85-29464 Filed 12-11-85; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determination; Amendment; Gallery for a King: Old Master Paintings From Dulwich

On March 1, 1985, notice was published at page 8432 of the **Federal Register** (50 FR 8432) by the United States Information Agency pursuant to Pub. L. 89-259 relating to the exhibit "Gallery for a King: Old Master Painting from Dulwich." The notice was amended on March 27, 1985 to include the dates of exhibition at the Los Angeles County Museum of Art (50 FR 12106). Recently added to the itinerary and to be coverdd by the notice is exhibition at the National Academy of Design in New York City beginning on or about January 21, 1986, to on or about February 26, 1986.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: December 6, 1985

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 85-29507 Filed 12-11-85; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 239
Thursday, December 12, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 52b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, December 16, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for consent to acquire assets and assume liabilities and to establish one branch:

Bank of A. Levy, Oxnard, California, for consent to acquire certain assets of and assume the liability to pay deposits made in the Ojai, California, branch of Ramona Savings and Loan Association, Orange, California, a non-FDIC-insured institution, and for consent to establish that office as a branch of Bank of A. Levy.

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. 46,377-L
Girod Trust Company, San Juan, Puerto Rico

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Summary Audit Report re: Capistrano National Bank, San Juan Capistrano, California (Memo dated November 22, 1985)
Summary Audit Report re: Trend Analysis of Liquidation Site Audit Reports (Memo dated November 22, 1985)
Summary Audit Report re: Analysis of Results of Eight Asset Management Automated System Audits (Memo dated November 26, 1985)

Discussion Agenda:

Memorandum and resolution regarding postponement of the effective date of FDIC's Statement of Policy Regarding Disclosure by the FDIC of Statutory Enforcement Actions.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: December 9, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-29573 Filed 12-10-85; 1:24 p.m.]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, December 16, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2, (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Summary Audit Report re: The Taylor State Bank, Emington, Illinois (Memo dated November 22, 1985)
Summary Audit Report re: Commercial State Bank, Afton, Iowa (Memo dated November 22, 1985)
Summary Audit Report re: Citizens State Bank, Arapahoe, Nebraska (Memo dated November 22, 1985)
Summary Audit Report re: Audit of Selected Liquidation Assets, Midland Consolidated Office (Memo dated November 15, 1985)

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for consent to transfer assets in consideration of the assumption of deposit liabilities:

Heritage Bank and Trust Company, Crest Hill, Illinois, for consent to transfer certain assets to Joliet Federal Savings and Loan Association, Joliet, Illinois, a non-FDIC-insured institution, in consideration of the assumption of the liability to pay deposits made in Heritage Bank and Trust Company.

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. 46,376
Northern California Consolidated Office, San Jose, California

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: December 9, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson

Executive Secretary.

[FR Doc. 85–29574 Filed 12–10–85; 1:24 p.m.]

BILLING CODE 6714–01–M

3

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NO.: 85–29005.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, December 12, 1985, 10:00 a.m.

THE FOLLOWING ITEM HAS BEEN CONTINUED FROM THE MEETING OF DECEMBER 5, 1985: Recommendations regarding the proposed revisions to 11 CFR 110.1 and 110.2.

DATE AND TIME: Tuesday, December 17, 1985, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor.)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates of Future Meetings
Correction and Approval of Minutes
Election of Officers:
  Election of Chairman
  Election of Vice Chairman
Routine Administrative Matters

DATE AND TIME: Tuesday, December 17, 1985, immediately following close of open session.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202–523–4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85–29583 Filed 12–10–85; 2:28 pm]

BILLING CODE 6715–01–M

federal register

Thursday
December 12, 1985

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Parts 212, 217, 218, 219, and 225
Revised Effective Dates; Correction; Control of Alcohol and Drug Use in Railroad Operations

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 212, 217, 218, 219, and 225

[FRA Docket No. RSOR-6, Notice No. 12]

Revised Effective Dates; Correction; Control of Alcohol and Drug Use in Railroad Operations

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of revised effective dates and conforming amendments, correction.

SUMMARY: This notice sets forth new effective dates for the final rule on Control of Alcohol and Drug Use in Railroad Operations, including miscellaneous related amendments to FRA safety regulations. The final rule had been suspended in compliance with a temporary restraining order issued by the U.S. District Court for the Northern District of California. The court has now dissolved the restraining order, permitting the regulations to become effective. The notice also corrects a typographical error in the final rule document as published.

DATES: Part 219 is effective on January 6, 1986. However, compliance by a railroad with Subpart C is not mandatory until February 1, 1986; and compliance by a railroad with Subpart F is not mandatory until April 1, 1986. The final rule amendments to Parts 212, 217, and 225 are effective on January 1, 1986. The editorial amendment to the title of Part 218 is effective on publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Walter C. Rockey, Jr., Executive Assistant to the Associate Administrator for Safety, FRA (Telephone: 202–426–0895), or Grady C. Cothen, Jr., Special Assistant to the Chief Counsel (Telephone: 202–426–9416).

SUPPLEMENTARY INFORMATION: On July 29, 1985, FRA issued a final rule on Control of Alcohol and Drug Use in Railroad Operations (50 FR 31508; Aug. 2, 1985), which included a new part 219 in Title 49, Code of Federal Regulations, and certain amendments to Parts 212, 217, 218, and 225 of that title. FRA published technical corrections and amendments on September 24, 1985 (50 FR 38660) and October 31, 1985 (50 FR 45406).

With certain exceptions, the final rule became effective on November 1, 1985. On that date the U.S. District Court for the Northern District of California (Judge Legge) issued a temporary restraining order (TRO) that prohibited FRA from continuing in effect or further implementing any portion of the final rule. The TRO issued on application of the plaintiffs in *Railway Labor Executives' Association* v. *Dole*, Civil Action No. 85–7958. In compliance with the TRO, FRA published a notice suspending the operation of the final rule, pending further notice, on November 5, 1985 (50 FR 45917).

On November 26, 1985, the court heard arguments on cross motions for summary judgment filed by the plaintiff unions and the Government defendants. At the conclusion of the arguments, Judge Legge ruled orally that the final rule was valid in all respects and that the Government's motion for summary judgment should be granted. On December 9, 1985, the court entered a final order and judgment in the Government's favor and dissolved the TRO, thus allowing FRA to make the final rule effective at its discretion. Judge Legge also denied the plaintiff unions' motion to stay his decision (and enjoin the regulations) pending appeal.

Reviewing the status of the regulations in light of these developments, FRA has determined the regulations should be made effective according to a revised schedule. Fashioning that schedule has required FRA to weigh the benefit to be gained by early implementation of the rule against the risks associated with acting too quickly. The delays associated with the TRO and the uncertainty associated with the litigation have altered the regulatory environment as it existed on the initial planned effective date of November 1, 1985. Dissemination of information throughout the vast railroad system, preparatory contacts with medical facilities, suprvisory training programs, and a variety of other steps have been brought to a halt. Considerable effort has been expended by FRA, the Association of American Railroads, and others in acquainting managers, supervisors and employees of the status of the regulations; and considerable additional effort will be required to inform all relevant parties of the new effective dates.

In addition, counsel for plaintiffs in the litigation have represented their intention to seek an order from the U.S. Court of Appeals for the Ninth Circuit suspending the final rule, again temporarily, pending the outcome of plaintiffs' appeal of Judge Legge's ruling in the Government's favor. FRA firmly believes any such request for suspension pending appeal should be denied. Nevertheless, it is clearly in the interest of the regulated community to have information concerning the outcome of plaintiffs' likely request before the new effective dates to avoid any confusion and to ensure full compliance.

Based on these considerations, FRA has chosen effective dates designed to permit complete and timely dissemination of relevant information to the regulated community and resolution of plaintiffs' request prior to those dates. There is, of course, no guarantee that plainiffs' request for suspension pending appeal will be resolved before the new effective dates. The Government will urge the Court of Appeals to decide this issue promptly. In any event, FRA cannot, consistent with public and employee safety, hold the final rule in abeyance indefinitely.

Accordingly, the several components of the final rule shall become effective as displayed in the following table:

Part 219—Control of Alcohol and Drug Use

Subparts A and B, January 6, 1986 (General, Prohibition)
Subpart C (authorized), January 6, 1986 (Post-Accident Tox. Testing) (mandatory), February 1, 1986
Subpart D, January 6, 1986 (Authorization to Test for Cause)
Subpart E, January 6, 1986 (Identification of Troubled Employees)
Subpart F (authorized), January 6, 1986 (Pre-Employment Drug Screens) (mandatory), April 1, 1986

Part 212—State Safety Participation Regulations

(Amendments to State Participation Regulations), January 1, 1986

Part 217—Railroad Operating Rules

(Amendments to § 217.13 and Appendix A, regarding annual reports of operational tests and inspections), January 1, 1986

Part 218—Railroad Operating Practices

(Editorial change in part name.), (On publication)

Part 225—Railroad Accidents/Incidents: Reports, Classification, and Investigations

(Amendment to § 225.17 re: alcohol/drug involvement in train accidents), January 1, 1986

Certain of the effective date provisions in the new Part 219 were incorporated in the rule text. Therefore, in consideration of the foregoing, Part 219, title 49, Code of Federal Regulations, is further amended as follows:

PART 219—[AMENDED]

1. *The authority for Part 219 continues to read as follows:*

Authority: Secs. 202 and 209, Pub. L. No. 91–458, 84 Stat. 971 and 975, as amended (45 U.S.C. 431, 438) and 49 CFR 1.49. Subpart C also issued under sec. 208, Pub. L. No. 91–458, 84 Stat. 974, as amended (45 U.S.C. 437).

§ 219.11 [Amended]

2. Section 219.11 is amended by deleting "November 1, 1985" from paragraphs (a) and (f) and by inserting in lieu thereof "January 6, 1986".

§ 219.201 [Amended]

3. Section 219.201 is amended by deleting "December 1, 1985" in paragraph (a) and by inserting in lieu thereof "February 1, 1986".

§ 219.501 [Amended]

4. Section 219.501 is amended by deleting "March 1, 1986" in paragraph (a) and by inserting in lieu thereof "April 1, 1986".

Correction

The following typographical error in the final rule document (50 FR 31508, 31573; August 2, 1985) should have been corrected in the notice of September 24, 1985 (50 FR 38660):

§ 219.301 [Corrected]

On page 31573, third column, beginning on the fourth line from the bottom, "§ 219.101 of this part of a railroad rule" should have read "§ 219.101 of this part or a railroad rule".

Regulatory Impact

The changes in regulatory language made by this notice deal exclusively with effective dates and therefore are non-major under Executive Order 12291. Although the final rule in this proceeding was deemed to be significant under DOT policies and procedures (44 FR 11034), the amendments related to effective dates are not deemed to be significant and will have no economic impact.

FRA determines that there is good cause for making certain portions of the final rule effective less than 30 days after publication of this notice in the **Federal Register**, since the regulations were initially published more than 30 days prior to such dates and since the regulated industry has already had adequate opportunity to prepare for implementation of those provisions.

The effective date amendments will not increase the economic burden of the existing regulation for any person. Accordingly, it is certified that these amendments will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In addition, these amendments do not contain directly or indirectly provisions concerning the collection of information that are subject to the Paper Work Reduction Act of 1980 (5 U.S.C. 3501 *et seq.*).

List of Subjects in 49 CFR Part 219

Railroad safety, Control of alcohol and drug use.

Issued in Washington, DC, on December 10, 1985.

John H. Riley,

Federal Railroad Administrator.

[FR Doc. 85–29609 Filed 12–11–85; 9:22 am]

BILLING CODE 4910–06–M

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Federal Register

Vol. 50, No. 239

Thursday, December 12, 1985

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H.R. 3235/Pub. L. 99-171

To authorize the Administrator of the National Aeronautics and Space Administration to accept title to the Mississippi Technology Transfer Center to be constructed by the State of Mississippi at the National Space Technologies Laboratories in Hancock County, Mississippi. (Dec. 9, 1985; 99 Stat. 1019; 1 page) Price $1.00.

H.R. 1806/Pub. L. 99-172

To recognize the organization known as the Daughters of Union Veterans of the Civil War 1861-1865. (Dec. 9, 1985; 99 Stat. 1020; 4 pages) Price: $1.00

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