1-3-83
Vol. 48 No. 1
Pages 1-190

federal register

Monday
January 3, 1983

Selected Subjects

Aged
Equal Employment Opportunity Commission

Aliens
Immigration and Naturalization Service

Aviation Safety
Federal Aviation Administration

Banks, Banking
Federal Deposit Insurance Corporation

Classified Information
Treasury Department

Conflict of Interests
Consumer Product Safety Commission

Consumer Protection
Consumer Product Safety Commission

Endangered and Threatened Wildlife
Fish and Wildlife Service
National Oceanic and Atmospheric Administration

Freight
Civil Aeronautics Board

Hazardous Materials
Environmental Protection Agency

Holding Companies
Federal Home Loan Bank Board

Marketing Agreements
Agricultural Marketing Service

Milk Marketing Orders
Agricultural Marketing Service

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 Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers, free of postage, for $300.00 per year, or $150.00 for six months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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

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

Polychlorinated Biphenyls
Environmental Protection Agency

Savings and Loan Associations
Federal Home Loan Bank Board

Toys
Consumer Product Safety Commission

Trade Practices
Federal Trade Commission

Truth in Lending
Farmers Home Administration

Contents

Federal Register
Vol. 48, No. 1
Monday, January 3, 1983

The President
PROCLAMATIONS
1 Closed-Captioned Television Month, National (Proc. 5008)

Executive Agencies

Agricultural Marketing Service
PROPOSED RULES
Milk marketing orders:
28 Texas; hearing
28 Onions grown in Tex.

Agriculture Department
See also Agricultural Marketing Service; Farmers Home Administration; Federal Grain Inspection Service; Rural Electrification Administration; Soil Conservation Service.
NOTICES
Import quotas and fees:
45 Sugar; quarterly determination

Arts and Humanities, National Foundation
NOTICES
Meetings:
100 Humanities Advisory Panel
100 Humanities National Council Advisory Committee

Blind and Other Severely Handicapped, Committee for Purchase from
NOTICES
58 Procurement list, 1983; additions and deletions

Bonneville Power Administration
NOTICES
Federal Columbia River Power System:
59 Surplus firm power marketing; request for recommendations; extension

Civil Aeronautics Board
PROPOSED RULES
Domestic cargo transportation:
30 Long-term contracts; all-cargo air carriers and Defense Department; exemptions
NOTICES
48 Certificates of public convenience and necessity and foreign air carrier permits; weekly applications
47 Commuter fitness determinations
Hearings, etc.:
47 Central Caraibes Air, S.A.
48 Sea & Sun Airlines, Inc.
48 Vacation Air, Inc.; fitness investigation

Civil Rights Commission
NOTICES
107 Meetings; Sunshine Act

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration.

Consumer Product Safety Commission
RULES
14 Conflicts of interest; financial interest reporting requirements
15 Federal Hazardous Substances Act regulations; additions of cross-reference notations
PROPOSED RULES
37 Toys, squeeze; risk of injury regulated under Consumer Product Safety Act procedures
NOTICES
107 Meetings; Sunshine Act

Customs Service
PROPOSED RULES
40 Penalties and penalties procedures; extension of time:

Education Department
NOTICES
Postsecondary education:
58 National direct student loan, college work-study, and supplemental educational opportunity grant programs; eligibility participation determination; closing dates

Employment and Training Administration
NOTICES
Adjustment assistance:
96 American Ship Building Co. et al.

Employment Standards Administration
NOTICES
110 Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications, and supersedeas decisions (Ala., Calif., Hawaii, Ind., La., Nev., N.Y., and Tex.)

Energy Department
See Bonneville Power Administration; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department.

Environmental Protection Agency
RULES
Toxic substances:
124 Polychlorinated biphenyls (PCBs); manufacturing, processing, distribution in commerce, authorization for PCB railroad transformers
PROPOSED RULES
Hazardous waste management system:
118 Generators of hazardous waste, standards; accumulation time
NOTICES
74 Agency forms submitted to OMB for review
Meetings:
75 Construction Grants Program Management Advisory Group
77 Outer Continental Shelf; oil and gas operations off California; NPDES permit
76 Outer Continental Shelf; oil and gas operations off California; NPDES permit; correction

Toxic and hazardous substances control:
73 Confidential business information; disclosure to GAO
65 Premanufacture notices; monthly status reports
72 Premanufacture notices receipts
74 Premanufacture notification requirements; test marketing exemption applications
75 Test guidelines; annual review process initiation; inquiry; extension of time

Equal Employment Opportunity Commission
RULES
Age discrimination in employment:
138 Procedures

Farmers Home Administration
RULES
3 Truth in lending disclosure requirements and real estate settlement procedures

Federal Aviation Administration
RULES
Airworthiness directives:
10 McCauley
11 Piper
13 Rajay Industries, Inc.
PROPOSED RULES
29 Transition areas

Federal Communications Commission
PROPOSED RULES
40 Home video markets, measurement of concentration; staff report

Federal Deposit Insurance Corporation
RULES
Interest on deposits:
9 Nondeposit obligations restrictions; retail repurchase agreements

Federal Energy Regulatory Commission
PROPOSED RULES
Practice and procedure:
40 Wholesale electric rate cases; reconsideration of decisions; extension of time
NOTICES
Hearings, etc.:
59 Alabama Power Co.
60 Algonquin Gas Transmission Co.
60 Florida Power Corp.
61 Kansas City Power & Light Co.
62 Naperville, Ill., et al.
63 Northern States Power Co. (2 documents)
63 Phelps-Dodge Corp.
64 Puget Power & Light Co.
64 Southwestern Public Service Co.
64 West Texas Utilities Co.
65 Wisconsin Public Service Co.

Federal Grain Inspection Service
NOTICES
Agency designation actions:
44 Michigan
45 Ohio
44 Ohio and Virginia

Federal Home Loan Bank Board
RULES
Federal savings and loan system, etc.:
178 Application processing
173 Interim savings and loan associations used for holding company reorganization and formation and insured institution acquisitions; processing of applications, etc.; final rule
Savings and loan holding companies:
170 Acquisition applications; antitrust criteria, etc.

Federal Maritime Commission
NOTICES
107 Meetings; Sunshine Act

Federal Reserve System
NOTICES
79 Agency forms submitted to OMB for review
Applications, etc.:
78 Barnett Banks of Florida, Inc.
77 Colonial Bancorporation, Inc., et al.
78 Ranchers Investment Corp.
Bank holding companies; proposed de novo nonbank activities:
78 Security Pacific Corp.
78 Straz Investment Co., Inc., et al.
Federal Reserve Bank services; fee schedules and pricing principles:
79 Check collection

Federal Trade Commission
PROPOSED RULES
Prohibited trade practices:
32 Xidex Corp.

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
42 Sea turtles; review; advance notice

Health and Human Services Department
See Health Resources and Services Administration.

Health Resources and Services Administration
NOTICES
82 Medical reimbursement rates: inpatient and outpatient medical care; 1983 FY

Hearings and Appeals Office, Energy Department
NOTICES
144 Special refund procedures; implementation and inquiry

Immigration and Naturalization Service
RULES
8 Inspection of persons applying for admission; processing of aliens classified as conditional entrants; elimination of references

Interior Department
See also Fish and Wildlife Service; Land Management Bureau; National Park Service.
NOTICES
Environmental statements; availability, etc.:
86 Draft statements withdrawn

International Trade Administration
PROPOSED RULES
31 Export trade certificates of review; correction
NOTICES
Antidumping:
49 Elemental sulphur from Mexico

50 Tempered sheet glass from Japan
49 Cheese, quota; foreign government subsidies, annual list
Countervailing duties:
52 Stainless steel wire rod from Spain
51 Steel products from Spain
53 Tool steel from Brazil
Meetings:
56 Electronic Instrumentation Technical Advisory Committee

Interstate Commerce Commission
PROPOSED RULES
41 Bus Regulatory Reform Act; implementation; fare flexibility proceeding disconntinued
NOTICES
Motor carriers:
94 Agricultural cooperative transportation; filing notices
87 Finance applications
95 Ligon Transport, Inc.; purchase exemption
88, 89 Permanent authority applications (2 documents)
90 Temporary authority applications
Rail carriers; contract tariff exemptions:
95 Union Pacific Railroad Co. et al.
Railroad operation, acquisition, construction, etc.:
94 Garden City Co-Op, Inc.

Justice Department
See Immigration and Naturalization Service.

Labor Department
See also Employment and Training Administration; Employment Standards Administration; Mine Safety and Health Administration.
NOTICES
98 Agency forms submitted to OMB for review

Land Management Bureau
NOTICES
Alaska native claims selection; applications, etc.:
82 Choggiung Ltd.
84 Saguyak Inc.
Authority delegations:
85 BLM Manual Section 1203—Delegation of Authority; availability

Mine Safety and Health Administration
NOTICES
Petitions for mandatory safety standard modifications:
96 Acme Coal Co.
97 International Salt Co. (2 documents)
98 Jeff Coal Co.
98 New River Co.

National Aeronautics and Space Administration
NOTICES
Meetings:
99 Aeronautics Advisory Committee

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
26 Pacific Coast groundfish; deferral of effective date and request for comments
PROPOSED RULES
Marine mammals:
42 Sea turtles; review; advance notice
NOTICES
Meetings:
58 Caribbean Fishery Management Council; correction
57 Pacific Fishery Management Council
57 Western Pacific Fishery Management Council

National Park Service
NOTICES
85 Land protection policy; acquisition policy statement and implementation guidelines withdrawn

Nuclear Regulatory Commission
NOTICES
102, 103 Agency forms submitted to OMB for review (4 documents)
Applications, etc.:
100 Carolina Power & Light Co.
101 Commonwealth Edison Co. et al.
101 Consolidated Edison Co. of New York, Inc.
101 Niagara Mohawk Power Corp.
102 Northern States Power Co.

Pension Benefit Guaranty Corporation
NOTICES
Multiemployer pension plans; special withdrawal liability rules approval requests:
104 Division 1181 Amalgamated Transit Union-New York Employees Pension Fund & Plan

Rural Electrification Administration
NOTICES
Environmental statements; availability, etc.:
46 Caney Valley Electric Cooperative Association, Inc.

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
47 Smithfield Farm Irrigation RC&D Measure Plan, Utah

Tennessee Valley Authority
NOTICES
107 Meetings; Sunshine Act

Transportation Department
See Federal Aviation Administration.

Treasury Department
See also Customs Service.
RULES
16 National security information program; implementation

Separate Parts in This Issue

Part II
110 Department of Labor, Employment Standards Administration

Part III
118 Environmental Protection Agency

Part IV
124 Environmental Protection Agency

Part V
138 Equal Employment Opportunity Commission

Part VI
144 Department of Energy, Office of Hearings and Appeals

Part VII
170 Federal Home Loan Bank Board

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.

3 CFR
Proclamations:
5008....1

7 CFR
1807....3
1872....3
1901....3
1910....3
1924....3
1940....3
1941....3
1943....3
1944....3
1945....3
1962....3
1990....3
Proposed Rules:
959....28
1126....28

8 CFR
235....8

12 CFR
329....9
541....173
543 (2 documents)....173, 178
545 (2 documents)....173, 178
546 (2 documents)....173, 178
552 (2 documents)....173, 178
562....173
563 (2 documents)....173
584....170

14 CFR
39 (3 documents)....10–13
Proposed Rules:
71....29
291....30

15 CFR
Proposed Rules:
325....31

16 CFR
1030....14
15....15
1507....15
Proposed Rules:
13....32
1145....37

18 CFR
Proposed Rules:
385....40

19 CFR
Proposed Rules:
134....40
148....40
162....40
171....40
172....40

29 CFR
1626....138

31 CFR
2....16

40 CFR
761....124
Proposed Rules:
262....118

47 CFR
Proposed Rules:
76....40

49 CFR
Proposed Rules:
Ch. X....41

50 CFR
663....26
Proposed Rules:
17....42
227....42

Federal Register
Vol. 48, No. 1
Monday, January 3, 1983

Presidential Documents

Title 3—

The President

Proclamation 5008 of December 29, 1982

National Closed-Captioned Television Month

By the President of the United States of America

A Proclamation

Nothing is more important to the welfare and progress of the United States than the assurance that all its people are afforded equality of opportunities. Our Nation's commitment to open new doors of opportunity for people in all walks of life has guided the growth of our Nation and stands as a measure of its greatness.

The realization of our high hopes for a better America can be gauged by our ability to bring the handicapped of our Nation into the mainstream of society. The recent initiation in March 1980 of closed-captioned television, which opened this important communications medium to millions of deaf and hearing-impaired Americans, is a significant achievement toward this end. The development of closed-captioned television marks the culmination of many years of cooperative effort by government, private industry and nonprofit groups. It is breaking down historic communications barriers and opening new social, educational and vocational opportunities for the hearing-impaired.

In recognition of the invaluable service performed by closed-captioned television, and in order to call public attention to the contribution that it is making toward enriching the lives of millions of Americans, the Congress has, by joint resolution, requested that the President designate the month of December 1982 as "National Closed-Captioned Television Month."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate the month of December 1982 as National Closed-Captioned Television Month.

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

Ronald Reagan

[FR Doc. 82-35598
Filed 12-30-82; 10:19 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 48, No. 1
Monday, January 3, 1983

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

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1807, 1872, 1901, 1910, 1924, 1940, 1941, 1943, 1944, 1945, 1962, and 1990

Truth in Lending; Real Estate Settlement Procedures

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) revises, redesignates and amends its regulations concerning Truth in Lending disclosure requirements and Real Estate Settlement Procedures. This action is taken to implement provisions of a public law. The intended effect is to exempt all credit transactions primarily for agricultural purposes from the requirements of the Truth in Lending Act, to reduce the number and complexity of the disclosures, to provide for early disclosure in residential mortgage transactions and to make minor nonsubstantive clarifications in the real estate settlement procedures.

EFFECTIVE DATE: January 3, 1983.

FOR FURTHER INFORMATION CONTACT: Joyce M. Halasz, Loan Specialist, Single Family Housing Processing Division, Room 5341-S, South Agriculture Building, 14th and Independence Avenue, SW., Washington, D.C. 20250, Telephone: 202-382-1480.

SUPPLEMENTARY INFORMATION: This revision implements the Truth in Lending Simplification and Reform Act (Pub. L. 96-221) as required by Regulation Z of the Federal Reserve System and is consistent within the Agency's authority. This rule has been reviewed under USDA procedures established in Secretary's Memorandum 1512-1 which implements Executive Order 12291 and has been determined to be nonmajor. The reasons for this determination are that this action will not have an annual effect on the economy of $100 million or more; or cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Options and projected rules considered were:

1. Leave the present regulation as it stands, in which case FmHA would not be in full compliance with the Truth in Lending Act, as amended, and would be disclosing more credit information than is required by the act, or is necessary for consumers to make credit decisions.

2. Change only those items to bring the present regulation into compliance with the Truth in Lending Act, as amended, with regard to format and timing of credit and rescission disclosure, but continue making complete, detailed disclosure to applicants and borrowers. The complex and numerous disclosures previously required have been shown to be confusing and of no real benefit to credit consumers. In addition, the cost to FmHA of the time for preparation and explanation to applicants would be excessive for actions not required by law and of no benefit to applicants.

3. Completely revise the present regulation to comply with but not to exceed the requirements of the Truth in Lending Act, as amended. This implements the maximum benefits intended by the Truth in Lending Simplification and Reform Act (Pub. L. 96-221) to both credit consumers and the Agency. This option was selected to comply with the act, as amended, and for the other reasons stated above.

There was no response to our request for comments on the proposed rule, published in the **Federal Register** on June 24, 1982 (47 FR 27366).

It has been determined that this change is cost effective since it exempts loans for agricultural purposes from the Truth in Lending requirements and reduces the number and complexity of disclosures for non-exempt loans, thereby substantially reducing the paperwork burden imposed on FmHA, as a lending agency. Simplified disclosures will benefit consumers by providing a more useful basis for credit decisions. This instruction does not directly affect any FmHA programs or projects which are subject to A-95 clearinghouse review.

The Catalog of Federal Domestic Assistance programs affected are 10.404, Emergency Loans, 10.406, Farm Operating Loans, 10.407, Farm Ownership Loans, 10.410, Low to Moderate Income Housing Loans, 10.413, Recreation Facility Loans, 10.415, Rural Rental Housing Loans, 10.416, Soil and Water Loans, 10.417, Very Low-Income Housing Repair Loans and Grants, and 10.432, Biomass Energy and Alcohol Fuels Loan and Loan Guarantees.

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." It is the determination of FmHA that the action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Information collection requirements contained in this regulation (§ 1940.406) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB #0575-0088.

FmHA revises and redesignates Subpart I of Part 1901 to a new Subpart I of a new Part 1940 and amends various sections of Part 1807, Subpart A of Part 1872, Subparts A and B of Part 1910, Subpart A of Part 1924, Subpart A of Part 1941, Subparts A, B, and C of Part 1943, Subparts A, E, and J of Part 1944, Subparts B, C, and D of Part 1945, Subpart A of Part 1962, and Subpart A of Part 1990, Chapter XVIII, Title 7, Code of Federal Regulations. These revisions implement the provisions of the "Truth in Lending Simplification and Reform Act," Pub. L. 96-221, which was enacted on March 31, 1980, and make minor editorial clarifications.

List of Subjects in 7 CFR Part 1901

Administrative practice and procedure, Credit, Legal services, Mortgages, Truth in lending.

Therefore, Chapter XVIII of Title 7, Code of Federal Regulations, is amended as follows:

PART 1807—TITLE CLEARANCE AND LOAN CLOSING

§ 1807.1 [Amended]

1. Section 1807.1(j) is amended by changing the reference from "§ 1901.406(c)" to "§ 1940.406(c)".

PART 1872—REAL ESTATE SECURITY

Subpart A—Servicing and Liquidation of Real Estate Security for Loans to Individuals and Certain Note—Only Cases

2. Section 1872.18(g)(2)(iii) is amended by removing the reference to Form FmHA 440–41, "Disclosure Statement for Loans Secured by Real Estate", and inserting the reference to Form FmHA 1940–41, "Truth in Lending Disclosure Statement," and by removing the reference to Form FmHA 440–43, "Notice of Right to Rescind," and inserting the reference to Form FmHA 1940–43, "Notice of Right to Cancel," by adding a reference to footnote 3 beside Form FmHA 1940–43, and by revising footnotes 7 and 8 to read as follows:

§ 1872.18 Transfer of real estate security.

* * * * *

(g) *Processing transfer by assumption of indebtedness.* * * *

(2) *Preparation and distribution of transfer docket.* * * *

(iii) *Distribution of transfer docket forms.* * * *

[7] In right to cancel cases, original and sufficient copies for each person who has the right to cancel in accordance with Subpart I of Part 1940 of this Chapter.

[8] Original and 1 copy to transferee: 2 copies to each other person who has the right to cancel in accordance with Subpart I of Part 1940 of this Chapter. If the person exercises the right to cancel, she/he will sign one copy of the form and return it to the County Office. * * *

* * * * *

PART 1901—PROGRAM RELATED INSTRUCTIONS

Subpart I—[Removed and Reserved]

3. Subpart I, consisting of §§ 1901.401 through 1901.406 and Exhibit A, is removed and reserved.

PART 1910—GENERAL

Subpart A—Receiving and Processing Applications

4. In § 1910.3, paragraph (l) is added and reads as follows:

§ 1910.3 Receiving applications.

* * * * *

(l) For loans, assumptions and credit sales to individuals for household purposes and subject to the Real Estate Settlement Procedures Act (RESPA), Form FmHA 1940–41, "Truth in Lending Disclosure Statement," completed with "good-faith" estimates, will be delivered or placed in the mail to the applicant within 3 business days of receipt of the written application in the County Office.

Subpart B—Credit Reports (Individual)

§ 1910.62 [Amended]

5. Section 1910.62 (a) is amended by removing the reference to Form FmHA 440–41, "Disclosure Statement for Loans Secured by Real Estate," inserting the reference to Form FmHA 1940–41, "Truth in Lending Disclosure Statement" and in the last line changing the word "Issue" to "Insert" and renumbering Form FmHA 440–59 to 1940–59.

PART 1924—CONSTRUCTION AND REPAIR

Subpart A—Planning and Performing Construction and Other Development

6. Section 1924.5 (f)(2)(xii) is revised to read as follows:

§ 1924.5 Planning development work.

* * * * *

(f) *Responsibilities for planning development.* * * *

(2) *Responsibility of the County Supervisor or District Director.* * * *

(xii) Under certain conditions prescribed in Exhibit H of this Subpart, provide the applicant with a copy of the leaflet, "Lead-Based Paint Hazards, Symptoms, Treatment, and Techniques for Eliminating Hazards," which is available in FmHA County Offices, and the warning sheet, "Caution Note on Lead-Based Paint Hazard," which is Attachment 1 of this Exhibit.

* * * * *

7. Exhibit H, Paragraph IV.C., is revised to read as follows:

Exhibit H—Prohibition of Lead Based Paints

* * * * *

IV. Requirements:

* * * * *

C. For all *existing housing* or buildings constructed before 1950 on which a loan is closed after July 19, 1978, FmHA requires that the applicant, borrower, or tenant be notified as in paragraph IV B and a copy of Exhibit H, Attachment 2, "Caution Note on Lead-Based Paint Hazard" be delivered to the hands of the borrower. The caution note shall read as follows:

"This housing was constructed before 1950. There is a possibility that it may contain some lead-based paint that was in use before 1950. See 'Lead-Based Paint Hazards,' leaflet, available in all FmHA County Offices, for more information."

For all property transfers and inventory property sales, the caution note Exhibit H, Attachment 1, and the information leaflet, "Lead-Based Paint Hazards," shall be handed to the purchaser by the FmHA representative.

* * * * *

8. Title 7, Chapter XVIII is amended to add a new Part 1940 to read as follows:

PART 1940—GENERAL

Subparts A through H—[Reserved]

Subpart I—Truth in Lending—Real Estate Settlement Procedures

Sec.

1940.401 Truth in lending.
1940.402 Through 1940.405 [Reserved]
1940.406 Real estate settlement procedures.
1940.407 Through 1940.450 [Reserved]

Authority: Pub. L. 96–221, 7 U.S.C. 1989; 42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70.

Subparts A through H—[Reserved]

Subpart I—Truth in Lending—Real Estate Settlement

§ 1940.401 Truth in Lending.

(a) *General.* This section provides instructions for compliance with the Truth in Lending Act, as implemented by Regulation Z of the Federal Reserve System, to assure that individual Rural Housing (RH) applicants are informed of:

(1) the cost and terms of credit, and

(2) Their right to cancel certain credit transactions resulting in a lien or mortgage on their home.

(b) *Scope.* This section applies to all individuals who apply for loans, assumptions, or credit sales (hereafter described as transactions) for household purposes.

(1) Special rules for the right to cancel transactions not for purchase, acquisition or initial construction of a home broaden the scope of this section to include individuals who have an ownership interest in, and reside in as a principal dwelling, property which will be security for a mortgage, even though they may not execute the promissory note or assumption agreement. Such persons have the right to receive credit disclosures and the notice of the right to cancel and may cancel the transaction.

(2) This section does *not* apply to:

(i) Applicants who are corporations, associations, cooperatives, public bodies, partnerships, or other organizations;

(ii) Individual applicants for multiple family housing transactions (rural rental

or labor housing), unless for a two-family dwelling in which the applicants will reside, and other business and commercial type loans; or

(iii) Applicants involved in credit transactions primarily for agricultural purposes.

(c) *Disclosure of the cost and terms of credit.*—(1) *Form and content.* Form FmHA 1940–41, "Truth in Lending Disclosure Statement," will be used to provide the following required disclosures:

(i) Annual percentage rate;

(ii) Finance charge;

(iii) Amount financed;

(iv) Total of payments;

(v) Total sale price (required for credit sales only);

(vi) Payment schedule;

(vii) A separate itemization of the amount financed, if the applicant requests it. Normally this required disclosure will have been met in transactions subject to the Real Estate Settlement Procedures Act (RESPA) by providing the applicant with Form FmHA 440–58, "Estimate of Settlement Costs";

(viii) The lender's identity;

(ix) Prepayment or late payment penalties;

(x) Security interest;

(xi) Insurance requirements;

(xii) Assumption policy; and

(xiii) Referral to other loan documents.

(2) *Timing, use of estimates and required redisclosure.* (i) In transactions for the purchase or construction of a home subject to RESPA, Form FmHA 1940–41, completed using "good faith" estimates based on the best information available, will be delivered or placed in the mail to the applicant no later than three (3) business days after receipt of a written application in the County Office.

(ii) In transactions *not* subject to RESPA, such as RH Section 502 transactions for repairs or refinancing or RH Section 504 transactions, Form FmHA 1940–41, completed using the actual terms of the transaction, will be delivered to each applicant (and in transactions which are subject to cancellation, each non-applicant with the right to cancel) at the time of loan approval.

(iii) In the event of a change in rates and terms between the time of initial disclosure and closing, whereby the annual percentage rate varies by more than one-eighth of one percent, redisclosure must be made. This may be done by entering the changes on all copies of the initial Form FmHA 1940–41, or by preparing a new Form FmHA 1940–41. When required, redisclosure may be made at the time the transaction is approved or at the time of the change, but the form must be delivered to the applicant before the signing of the promissory note or assumption agreement.

(3) *Special instructions for assumption, reamortization, refinancing and multiple transactions.* (i) Assumptions, within the scope of paragraph (b) of this section, at new rates and terms or of existing obligations which were for purchase, acquisition or initial construction of a residence, require new credit disclosure before the assumption occurs. Since assumptions are not subject to RESPA, early disclosure is not required.

(ii) Reamortization, as described in § 1944.37(g) of Subpart A of Part 1944 and § 1951.314 of Subpart G of Part 1951 of this chapter, when the borrower is in default or delinquent, does not require new credit disclosure. In all other cases reamortization requires new credit disclosure.

(iii) Refinancing of debts in accordance with § 1944.22 of Subpart A of Part 1944 of this chapter, though not subject to RESPA or early disclosure, does require credit disclosure at the time the transaction is approved.

(iv) Multiple transactions.

(A) When a subsequent loan is financed along with another transaction and both transactions require credit disclosure, a separate Form FmHA 1940–41 will be prepared for each transaction.

(B) Transactions with multiple advances will be treated as one transaction for the purpose of credit disclosure, in accordance with the Forms Manual Insert (FMI) for Form FmHA 1940–41.

(d) *Notice of the right to cancel.* The right to cancel applies only to transactions within the scope of paragraph (b) of this section, which are *not* for purchase, acquisition or initial construction of *and* which result in a mortgage on an individual's principal residence, such as RH Section 502 transactions for refinancing, repairs or rehabilitation or RH Section 504 transactions.

(1) *Form and Content.* Form FmHA 1940–43, "Notice of Right to Cancel", will be used to notify individuals of their right to cancel those transactions, within the scope of paragraphs (b) and (d) of this section, which result in a mortgage on their principal residence *except* when the transaction is for its purchase or initial construction. This notice will identify the transaction and disclose the following:

(i) The acquisition of a security interest in the individual's principal residence.

(ii) The individual's right to cancel the transaction.

(iii) How to exercise the right to cancel the transaction, with a form for that purpose.

(iv) The effects of cancellation.

(v) The date the cancellation period expires.

(2) *Timing.* (i) Two copies of Form FmHA 1940–43, and one copy of Form FmHA 1940–41, in accordance with the FMI's, will be given to each individual entitled to cancel, not later than loan closing.

(ii) Any entitled individual may cancel the transaction until midnight of the third business day following whichever of the following events occurs last:

(A) The date the transaction is closed.

(B) The date Truth in Lending credit disclosures were made.

(C) The date notice of the right to cancel was received.

(3) *Disbursement of funds.* In a transaction subject to cancellation funds will not be disbursed, other than to a designated attorney or title insurance company preparatory to closing, until:

(i) Forms FmHA 1940–43 have been given to the appropriate individuals,

(ii) The three-day cancellation period has expired, and

(iii) The loan approval official is reasonably assured that the transaction has not been cancelled. This assurance may be obtained by:

(A) Waiting a reasonable period of time after the expiration of the cancellation period to allow for the delivery of a mailed notice, or

(B) Obtaining a written statement from each individual entitled to cancel that the right has not been exercised.

(iv) This delay in disbursing funds may be waived in cases of a bonafide personal financial emergency, which must be met within the cancellation period, when the individual submits a signed and dated statement describing the nature of the emergency and waiving the right to cancel. Such a statement must be signed by all individuals entitled to cancel.

(4) *Effects of cancellation.* (i) When an individual cancels a transaction, the mortgage securing the transaction becomes void and the borrower will not be liable for any amount, including any finance charge.

(ii) Within twenty (20) calendar days after receipt of a notice of cancellation the loan approval official will:

(A) Notify all interested parties of the cancellation;

(B) Return, and/or request the return of any money or property given to anyone in connection with the transaction; and

(C) Take the necessary action to terminate the mortgage.

(iii) Once evidence has been presented to the borrower that the mortgage has been terminated, the borrower must return any funds advanced by FmHA to the FmHA County Office or surrender any property at his/her residence within twenty (20) calendar days.

(e) *Advertisements.* An "advertisement" is defined as a commercial message in any medium that promotes, directly or indirectly, a credit transaction. Advertisements for credit sales of Government inventory property, within the scope of pararaph (b) of this section, are subject to the following requirements.

(1) If an advertisement states specific credit terms, it shall state only those terms that actually are or will be arranged or offered.

(2) If an advertisement states a rate of finance charge, it shall state the rate as an "annual percentage rate," using that term.

(3) Terms requiring additional disclosures.

(i) If any of the following terms is set forth in an advertisement:

(A) The amount or percentage of any down payment,

(B) The number of payments or period of repayment,

(C) The amount of any payment, or

(D) The amount of any finance charge,

(ii) The advertisement must also state:

(A) The amount or percentage of down payment,

(B) The terms of repayment, and

(C) The "annual percentage rate," using that term.

§§ 1940.402 through 1940.405 [Reserved]

§ 1940.406 Real estate settlement procedures.

(a) *General.* This section provides the instructions for compliance with the Real Estate Settlement Procedures Act (RESPA), as amended, and Regulation X of the Department of Housing and Urban Development.

(b) *Scope.* (1) This section applies to loans and credit sales, including Section 502 Rural Housing, 1–4 family Rural Rental Housing; 1–4 family Labor Housing, and Farm Ownership involving tracts of less than 25 acres, whether made to an individual, corporation, partnership, association or other entity, which meet the following requirements:

(i) The proceeds of the loan or the credit extended are used in whole or in part to finance the purchase and transfer of title of the property to be mortgaged by the borrower, and

(ii) The loan or credit sale is secured by a first lien covering real estate on which is located a structure designed principally for the occupancy of from 1–4 families, or on which a structure designed principally for the occupancy of from 1–4 families is to be constructed using proceeds of the loan.

(2) Exempt transactions include:

(i) Loans for repairs, improvements, or refinancing if the proceeds are not used to finance the purchase of the property.

(ii) Loans to finance the construction of a 1–4 family structure if the tract of land is already owned by the applicant/borrower.

(iii) Assumptions or transfers.

(c) *Action required.* (1) The information booklet entitled "Settlement Costs" will either be given to the applicant at the time the completed application is received, or mailed to the applicant no later than three (3) business days after receipt of the application in the County Office.

(i) Form FmHA 440–58, "Estimate of Settlement Costs," is to be used to provide a "good faith" statement of estimated closing costs. Form FmHA 440–58 will be completed by the County Supervisor and mailed or delivered to the applicant with the Settlement Costs booklet. Costs will vary between geographic areas; therefore, information supplied on this form must be based upon (A) the County Supervisor's best estimate of charges the borrower will pay for each service in connection with the transaction, or (B) a range of charges at which such service is available to the borrower from all providers in the area.

(ii) Form FmHA 440–58 does not replace Truth in Lending forms. Appropriate forms listed in § 1940.401 will be used for Truth in Lending purposes.

(2) Form FmHA 1940–59, "Settlement Statement," will be completed as indicated in the form and FMI by the designated attorney or title company for all transactions described in paragraph (b) of this section. The purpose of this form is to provide a uniform settlement statement prescribed by RESPA.

(i) During the business day immediately preceding the date of settlement, the closing agent, if requested by the applicant, must permit the applicant to inspect the settlement statement, completed for those items which are then known to the closing agent.

(ii) A copy will be given to both the borrower and seller at the time of closing or settlement or will be mailed as soon as practicable if the borrower or seller are not present at closing.

§§ 1940.407 through 1940.450 [Reserved]

PART 1941—OPERATING LOANS

Subpart A—Operating Loan Policies, Procedures and Authorizations

§ 1941.23 [Amended]

9. Section 1941.23(a)(4) is removed.

Exhibit A [Amended]

10. In Exhibit A, the paragraph entitled "Docket Preparation" is amended by removing the references to Forms FmHA 440–41, FmHA 440–41A, and FmHA 440–43.

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

Subpart A—Insured Farm Ownership Loan Policies, Procedures, and Authorizations.

11. In § 1943.23, paragraphs (e) and (g)(1) are revised to read as follows:

§ 1943.23 General provisions.

* * * * *

(e) *Real Estate Settlement Procedures Act.* The provisions of the Real Estate Settlement Procedures Act outlined in § 1940.406 of Subpart I of Part 1940 apply when FO funds are used involving tracts of less than 25 acres, if:

(1) Any part of the loan is used to purchase all or part of the land to be mortgaged, and

(2) The loan is secured by a first lien on the property where a dwelling is located.

* * * * *

(g) *Compliance with special laws and regulations.* (1) Applicants will be required to comply with applicable Federal, State and local laws and regulations governing building construction; diverting, appropriating, and using water including use for domestic or nonfarm enterprise purposes; installing facilities for draining land; and making changes in the use of land affected by zoning regulations.

* * * * *

§ 1943.32 [Amended]

12. Section 1943.32(a) is amended by removing references to Forms FmHA 440–41, FmHA 440–42, and FmHA 440–43, removing footnotes 9 and 10 and renumbering footnotes 11, 12, and 13 to 9, 10, and 11, respectively, including those footnote references in the loan docket processing forms list.

Subpart B—Insured Soil and Water Loan Policies, Procedures, and Authorizations

13. Section 1943.73(e) is removed, paragraphs (f) and (g) are redesignated as paragraphs (e) and (f) respectively, and (f)(1) is revised to read as follows:

§ 1943.73 General provisions.

* * * * *

(f) *Compliance with special laws and regulations.* (1) Applicants will be required to comply with applicable Federal, State and local laws and regulations governing construction; diverting, appropriating, and using water including use for domestic purposes; installing facilities for draining land; and making changes in the use of land affected by zoning regulations.

* * * * *

§ 1943.82 [Amended]

14. Section 1943.82(a) is amended by removing references to Forms FmHA 440–41, FmHA 440–42, and FmHA 440–43, removing footnotes 8 and 9 and renumbering footnotes 10 and 11 to 8 and 9, respectively, including those footnote references in the loan docket processing forms list.

Subpart C—Insured Recreation Loan Policies, Procedures, and Authorizations

15. Section 1943.123 (e) and (g)(1) are revised to read as follows:

§ 1943.123 General provisions.

* * * * *

(e) *Real Estate Settlement Procedures Act.* The provisions of the Real Estate Settlement Procedures Act outlined in § 1940.406 of Subpart I of Part 1940 of this Chapter apply to any applicant when RL funds are used and less than 25 acres of land are involved, if:

(1) Any part of the loan is used to purchase all or part of the land to be mortgaged, and

(2) The loan is secured by a first lien on the property where a dwelling is located.

* * * * *

(g) *Compliance with special laws and regulations.* (1) Applicants will be required to comply with applicable Federal, State and local laws and regulations including those governing building constuction; diverting, appropriating, and using water including use for domestic or recreational enterprise purposes; installing facilities for draining land; and making changes in the use of land affected by zoning regulations.

* * * * *

§ 1943.132 [Amended]

16. Section 1943.132(a) is amended by removing references to Forms FmHA 440–41, FmHA 440–42, and FmHA 440–43, removing footnotes 9 and 10 and renumbering footnotes 11 and 12 to 9 and 10, respectively, including those footnote references in the loan docket processing forms list.

PART 1944—HOUSING

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

§ 1944.30 [Amended]

17. Section 1944.30(a) is amended by removing the reference to Form FmHA 440–41 and inserting reference to Form FmHA 1940–41, "Truth in Lending Disclosure Statement," by removing the reference to Form FmHA 440–42, and by removing the reference to Form FmHA 440–43 and inserting reference to Form FmHA 1940–43, "Notice of Right to Cancel".

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

§ 1944.33 [Amended]

18. Section 1944.233(b)(1)(iii) is amended by changing the reference from "§ 1901.406 of Subpart I of Part 1901 (FmHA Instruction 1901–I)" to "§ 1940.406 of Subpart I of Part 1940 of this Chapter".

Subpart J—Section 504 Rural Housing Loans and Grants

19. In § 1944.469, paragraph (d) and the introductory text of paragraph (f) are revised to read as follows:

§ 1944.469 Loan and/or grant closing.

* * * * *

(d) *Mortgage.* Form FmHA 427–1, "Real Estate Mortgage for (State)," will be used for each loan to be secured by a real estate mortgage. Each change made in the text by deletion, substitution or addition (excluding filling in the blanks) will be initialed in the margin by each person signing the mortgage and by the FmHA official making the change. Mortgages for loans on leasehold interests will be taken according to § 1944.18(a)(5) and § 1944.15(a)(5) (iv) and (v) of this Chapter. Form FmHA 1940–43, "Notice of Right to Cancel," on 504 loans secured by a real estate mortgage will be given at closing to all entitled individuals according to § 1940.401(d)(3) of this chapter.

* * * * *

(f) *Disbursement of funds.* The proceeds of a 504 loan secured by a real estate mortgage may not be disbursed until the right to cancel has expired.

* * * * *

PART 1945—EMERGENCY

Subpart B—Emergency Loan Policies, Procedures and Authorizations for Those Applications Associated With Disaster Designations Having a Beginning Incidence Period Date Prior to May 26, 1981

20. Section 1945.73 (f) and (h)(1) are revised to read as follows:

§ 1945.73 General provisions—compliance requirements.

(f) *Real Estate Settlement Procedures Act.* The provisions of the Real Estate Settlement Procedures Act outlined in § 1940.406 of Subpart I of Part 1940 of this Chapter apply when EM funds are used involving tracts of less than 25 acres, if:

(1) Any part of the loan is used to purchase all or part of the land to be mortgaged, and

(2) The loan is secured by a first lien on the property where a dwelling is located.

* * * * *

(h) *Compliance with special laws and regulations.* (1) Applicants will be required to comply with applicable Federal, State and local laws and regulations governing building construction; diverting, appropriating, and using water including use for domestic or nonfarm enterprise purposes; installing facilities for draining land; and making changes in the use of land affected by zoning regulations.

* * * * *

Exhibit A [Amended]

21. Exhibit A, paragraph IV. D., is amended by removing the references to Forms FmHA 440–41, FmHA 440–41A, and FmHA 440–43.

Subpart C—Economic Emergency Loans

Exhibit A [Amended]

22. In Exhibit A to Subpart C of Part 1945, the paragraph entitled Docket Preparation is amended by removing the references to Forms FmHA 440–41, FmHA 440–41A, and FmHA 440–43.

Subpart D—Emergency Loan Policies, Procedures, and Authorizations for Applications Associated With FmHA Disaster Designations Having a Beginning Incidence Period Date on or After May 26, 1981

§ 1945.173 [Amended]

23. Section 1945.173(f) is amended by changing the reference from "1901.406" to "1940.406 of Subpart I of Part 1940 of this chapter."

Exhibit A [Amended]

24. Exhibit A, Paragraph IV. D., is amended by removing the references to Forms FmHA 440–41, FmHA 440–41A, and FmHA 440–43 from the Docket Preparation List.

PART 1962—PERSONAL PROPERTY

Subpart A—Servicing and Liquidation of Chattel Security

§ 1962.34 [Amended]

25. In § 1962.34, paragraphs (f)(10) and (f)(11) are removed and paragraphs (f)(12) and (f)(13) are redesignated as paragraphs (f)(10) and (f)(11), respectively.

PART 1990—BIOMASS ENERGY AND ALCOHOL FUELS LOANS AND GUARANTEES

Subpart A—General Provisions

26. Section 1990.23(g) is revised to read as follows:

§ 1990.23 Compliance with statutes and regulations.

* * * * *

(g) *Real Estate Settlement Procedures Act.* Procedures for compliance with the Real Estate Settlement Procedures Act stated in § 1940.406 of Subpart I of Part 1940 of this Chapter will apply to this part.

* * * * *

(Pub. L. 96–221, 7 U.S.C. 1989; 42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70)

Dated: December 3, 1982.

Frank W. Naylor,

Under Secretary for Small Community and Rural Development.

[FR Doc. 82-35547 Filed 12-30-82; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 235

Inspection of Persons Applying for Admission

AGENCY: Immigration and Naturalization, Justice.

ACTION: Final rule.

SUMMARY: This rule eliminates references to the processing and inspection of aliens who were classified as conditional entrants under section 203(a)(7) of the Immigration and Nationality Act. Section 203(a)(7) was repealed by the Refugee Act of 1980, on March 17, 1980, and the Act now limits processing aliens either as refugees or asylees.

EFFECTIVE DATE: January 3, 1983.

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

For specific information: Burwell O. Buchanan, Immigration Inspector, Immigration and Naturalization Service, 425 I Street, N.W., Washington, D.C. 20536, Telephone: (202) 633–2361.

SUPPLEMENTARY INFORMATION: The repeal of section 203(a)(7) of the Immigration and Nationality Act by the Refugee Act of 1980, Pub. L. 96–212 (94 Stat. 109), nullified the processing instructions for conditional entrants abroad. The inspection of conditional entrants and refugee parolees for permanent resident status has been reserved for those aliens who entered the United States in those classes prior to April 1, 1980. Since there was a strong possibility that a number of aliens were still in these categories, the pertinent processing procedures for those categories had not been removed. This situation no longer exists; hence, all references to conditional entrants are now removed from the regulations.

The following is a section by section description of the revisions made in 8 CFR Part 235.

8 CFR 235.8(d) is amended to change the term "special inquiry officer" to "immigration judge".

8 CFR 235.9 (a), (a–1), (b), (c), and (d) are removed since these paragraphs were repealed by the amendments to section 207 of the Act.

8 CFR 235.9(e) is redesignated 8 CFR 235.9(a), amended to require a conditional entrant or parolee under 212(d)(5) of the Act to appear before an immigration officer within one year of entry or parole, and revised to improve readability.

Paragraphs 8 CFR 235.9 (f) and (g) are redesignated (b) and (c) respectively.

Compliance with 5 U.S.C 553 as to notice if proposed rulemaking and delayed effective date is unnecessary because the changes are mandated by law and delay would be contrary to the public interest.

In accordance with 5 U.S.C. 605(d) the Commissioner of Immigration and Naturalization certifies that this rule will not have significant economic impact on a substantial number of small entities.

This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 235

Administrative practice and procedure, Aliens, Inspections, Refugees.

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

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

1. In § 235.8, paragraph (d) is revised to read as follows:

§ 235.8 Temporary exclusion.

* * * * *

(d) *Hearing by immigration judge.* If the regional commissioner directs that an alien temporarily excluded be given a hearing or further hearing before an immigration judge, the hearing and all further proceedings in the matter shall be conducted in accordance with the provisions of section 236 and other applicable sections of the Act to the same extent as though the alien had been referred to an immigration judge by the examining immigration officer; except, that if confidential information, not previously considered in the matter, is adduced supporting the exclusion of the alien under paragraph (27), (28), or (29) of section 212(a) of the Act, the disclosure of which, in the discretion of the immigration judge, may be prejudicial to the public interest, safety, or security, the immigration judge may again temporarily exclude the alien under the authority of section 235(c) of the Act and further action shall be taken as provided in this section.

* * * * *

2. Section 235.9 is revised to read as follows:

§ 235.9 Conditional entries.

(a) *Inspection of conditional entrant and refugee parolee as to admissibility for permanent residence.* Each alien

who has been admitted under section 203(a)(7) as a conditional entrant, or paroled under section 212(d)(5) of the Act as a refugee prior to September 30, 1980, and who is not otherwise eligible for retroactive adjustment of status to permanent resident, shall be required to appear before an immigration officer within one year following conditional entry or parole. If over 14 years of age, the conditional entrant or parolee shall be interrogated under oath by an immigration officer and a determination of admissibility shall be made under parts 235 and 236 of this chapter. Except as provided in parts 245 and 249 of this chapter, an application under this part shall be the sole method of requesting the exercise of discretion under section 212 (g), (h), or (i) of the Act, insofar as it relates to the excludability of an alien in the United States. Any alien who is inspected and admitted under this part who is eligible for and wishes to apply for naturalization immediately shall be processed under § 235.9(b)(3) of this chapter.

(b) *Request to "roll back" permanent residence date by permanent resident who was paroled into the United States as a refugee.*—(1) *General.* A request by a permanent resident who was originally paroled into the United States as a refugee before September 30, 1980 to "roll back" the date of acquiring permanent residence to the date of original parole as a refugee shall be made in writing to the district director having jurisdiction over the applicant's place of residence. Each request must be accompanied by the Alien Registration Card, Form I-151 or Form I-551, previously issued to the applicant, and completed forms G-325 and FD-258. Where an applicant is eligible for and wishes to apply immediately for naturalization, the request must contain a statement to that effect. The decision on the request shall be made by the district director. There is no appeal from the district director's decision.

(2) *Applicant for "roll back" who is not eligible for or who does not wish to file an application for naturalization immediately.* Where the recipient of a "roll back" would not be immediately eligible to apply for naturalization, or if eligible, does not wish to do so immediately, the "roll back" request must be accompanied by three identical color photographs taken within the past thirty days. The photographs must comply with the requirements for an ADIT card. These requirements may be obtained from any office of the Immigration and Naturalization Service. If the request is approved, the applicant shall be furnished a new Alien Registration Card bearing the new date lawful admission for permanent residence is recorded.

(3) *Where "roll back" would make applicant immediately eligible for naturalization and applicant intends to file the application immediately.* Where a "roll back" of the date of permanent residence under this regulation would make the applicant immediately eligible for naturalization, and the applicant indicates a desire to file an application for naturalization immediately, the district director shall receive the "roll back" application and process it. If the "roll back" application is granted, the new date lawful admission for permanent residence is recorded shall be entered on Form I-181 and placed in the applicant's file. The applicant shall then be furnished the appropriate forms and instructions for filing the application for naturalization. A new Alien Registration Card need not be issued under these circumstances. Where a new Alien Registration Card is not issued, Form I-181 will be so noted.

(c) *Termination of conditional entrant or refugee parole status.* Whenever a district director has reason to believe that a conditional entrant under section 203(a)(7) of the Act or an alien paroled or a refugee under section 212(d)(5) of the Act before September 30, 1980, whose status has not otherwise been terminated or changed, it or has become inadmissible to the United States under any provision (except paragraph (20)) of section 212(a) of the Act, the district director shall, in the case of a parolee, comply with § 212.5(d) of this chapter, and thereafter serve on either class of alien, Notice to Alien Detained for Hearing Before Immigration Judge, Form I-122, in accordance with § 235.6 of this part. The alien shall be referred for a hearing before an immigration judge under sections 235, 236, and 237 of the Act and Parts 235, 236, and 237 of this chapter. If the immigration judge determines that the alien is not inadmissible to the United States or, if inadmissible, that the alien is prima facie eligible for a waiver on the grounds of excludability under section 212 (g), (h), or (i) of the Act, the judge shall order the proceedings terminated and refer the matter to the district director for further proceedings under section 203(g) of the Act. The order shall be without prejudice to renewing proceedings or instituting new proceedings under this section. There is no appeal from a decision by a district director denying an application for a waiver under section 212 (g), (h), or (i) of the Act, but the denial is without prejudice to the renewal of the application in proceedings before an immigration judge. If the immigration judge determines that the alien is inadmissible to the United States for permanent residence under any provision of the Act, except section 212(a)(20), and that the alien is not entitled to the benefits of section 212 (g), (h), or (i) of the Act, the judge shall order the termination of the alien's conditional entry and make such further order as may be proper. The decision of the immigration judge may be appealed under § 236.7 of this chapter.

(Secs. 103, 235 of Immigration and Nationality Act as amended; (8 U.S.C. 1103, 1225))

Dated: December 14, 1982.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 82-35537 Filed 12-30-82; 8:45 am]

BILLING CODE 4410-10-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 329

Concerning Retail Repurchase Agreements; Final Amendment

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: This final rule amends the FDIC's regulations by eliminating the requirement that retail repurchase agreements ("repos") be issued for 89 days or less. The current regulatory environment favoring the removal of interest rate controls renders the restrictions obsolete.

EFFECTIVE DATE: January 3, 1983.

FOR FURTHER INFORMATION CONTACT: F. Douglas Birdzell, Counsel, or Fredric H. Karr, Attorney, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429 (202-389-4171).

SUPPLEMENTARY INFORMATION: Part 329 of the FDIC's regulations (12 CFR Part 329) prescribes rates of interest that may be paid on deposits by FDIC-supervised commercial banks and mutual savings banks. Prior to August 1, 1979, § 329.10(b)(2) of the FDIC's regulations exempted from the coverage of Part 329 any obligation other than a deposit obligation of an insured nonmember bank that:

(2) Evidences an indebtedness arising from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or

any agency thereof, that the bank is obligated to repurchase.

In August 1979, the FDIC, the Board of Governors of the Federal Reserve System and the Federal Home Loan Bank Board issued final rules narrowing the exemption for "retail" repos by requiring that repos for less than $100,000 mature in less than 90 days and not be automatically renewed or extended (12 CFR 329.10(b)(2), 217.1(f)(2), 563.8–4, respectively) (*see* 44 FR 46264–66 (1979) for the FDIC). At the same time, a grandfather provision was added which allowed banks to continue to issue repos of less than $100,000 with maturities of 90 days or more as long as the aggregate amount did not exceed that of such obligations outstanding on August 1, 1979 (footnote 17a, 12 CFR 329.10(b)(2)). Since that time, certain relevant changes have occurred in the financial environment. While retail repos were one device used by financial institutions to circumvent interest rate ceilings, in March 1980, the Depository Institutions Deregulation Act of 1980 (Pub. L. 96–221) was enacted, mandating the elimination of interest rate ceilings by March 31, 1986. In this regard, a phased deregulation schedule (12 CFR Part 1204) has been adopted so that interest rate ceilings on all categories of interest-bearing deposits will be phased out by mid-1986. In addition, section 327 of the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97–320) amends section 204 of Public Law 96–221 by providing for, by mid-December 1982, a new deposit instrument "directly equivalent to and competitive with money market funds . . ." and free from any interest rate ceilings. Therefore, the underlying basis (interest rates) for the use of (and the restrictions on) repos will soon cease to exist.

On August 25, 1982, the FDIC issued for public comment a proposed rule that would eliminate the requirement that retail repos be issued for 89 days or less (47 FR 37248–49 (1982)). In response to this request for comments, a total of 30 comments were filed, 28 favoring the elimination of this requirement and two being against this elimination. The reasons given in favor of removing the 89-day limit include the need to give commercial banks more flexibility in competing with thrift institutions and money market funds, the questionable utility of the 89-day restriction, the need for more competition and freedom from restrictions in an era of deregulation, and administrative convenience by eliminating customer paperwork. Of the two commentators who commented unfavorably on the proposal to remove the 89-day requirement, one said that commercial banking was already too "wide-open" while the other admitted to a pre-existing anti-repo bias.

This final rule eliminates the 89-day requirement of § 329.10(b)(2) and removes footnote 17a—the grandfather provision—which will no longer be relevant. The principal result of this change will be a reduction in banks' administrative activities stemming from the more frequent maturities and reinvestments of repos occasioned by the existing requirements. The rule will not have a direct or noticeable effect on the competitive relationships among banks and between banks and nonbanks. Accordingly, the FDIC's Board of Directors hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Consequently, as provided in section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), initial and final regulatory flexibility analyses were not prepared. For the same reason a cost-benefit analysis, with a small bank impact statement, as otherwise required by the Corporation's statement of policy, "Development and Review of FDIC Rules and Regulations," was not prepared. Further, since this rule does not entail any additional reporting or recordkeeping requirements, the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) is not applicable. Finally, since this rule relieves a restriction, good cause exists for the Board to find that the normal 30-day delayed effective date is not necessary. Hence, this rule will be effective immediately upon publication in the **Federal Register.**

List of Subjects in 12 CFR Part 329

Banks, banking.

In consideration of the foregoing, 12 CFR Part 329 is amended as follows:

PART 329—INTEREST ON DEPOSITS

Part 329 of chapter II of title 12 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 329 reads as follows:

Authority: Secs. 9 and 18, Pub. L. 797, 64 Stat. 881, 891 (12 U.S.C. 1819, 1828); sec. 303, Pub. L. 96–221, 94 Stat. 146 (12 U.S.C. 1832).

2. In Part 329, footnote 17a is removed and § 329.10(b)(2) is revised to read as follows:

§ 329.10 Obligations other than deposits.

* * * * *

(b) * * *

(2) Evidences an indebtedness arising from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof, that the bank is obligated to repurchase;

* * * * *

By Order of the Board of Directors, December 23, 1982.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[FR Doc. 82–35589 Filed 12–30–82; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 82–ANE–47; Amdt. 39–4520]

Airworthiness Directives; McCauley Accessory Division, Model 1A170/FFA Fixed Pitch Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing Airworthiness Directive (AD) 80–04–05 applicable to McCauley Model 1A170/FFA fixed pitch propellers installed on, but not limited to, Gulfstream Aerospace Model AA–5B airplanes. The AD adds a repetitive dye penetrant inspection to the one-time inspection required by AD80–04–05 and is necessary to detect cracks in the propeller hubs.

DATES: Effective December 30, 1982. Compliance schedule—As prescribed in body of AD. Comments on the rule must be received on or before February 28, 1983.

ADDRESSES: The applicable service information may be obtained from:

McCauley Accessory Division, Cessna Aircraft Company, 3535 McCauley Drive, P.O. Box 430, Vandalia, Ohio 45377;

Gulfstream Aerospace Corporation, Light Aircraft Customer Service, P.O. Box 2206, Travis Field, Savannah, Georgia 31402.

A copy of the applicable service documents and a historical file on this AD are contained in the Rules Docket at the FAA, Office of Regional Counsel, New England Region, Attn: Rules Docket No. 82–ANE–47, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined weekdays, except Federal holidays, between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Henry L. Weiss, Chicago Aircraft Certification Office, Propulsion Branch, ACE-140C, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (312) 694-7134.

SUPPLEMENTARY INFORMATION: After issuing AD80-04-05, Amendment 39-3689, which requires a one-time inspection of the propeller, there have been reports of cracking of the propeller hub after such inspection. Since this condition is likely to exist or develop in other propellers of the same type design, an AD is being issued which requires repetitive inspection of the propellers and, if found cracked, replacement with a serviceable propeller.

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

Request for Comments on the Rule

Although this action, which involves requirements affecting immediate flight safety is in the form of a final rule and, thus, was not preceded by notice and public comment, comments are now invited on the rule. When the comment period ends, the FAA will use the comments submitted together with other available information, to review the regulation. Public comments are helpful in evaluating the effects of the rule and in determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule. Send comments to FAA, Office of Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

List of Subjects in 14 CFR Part 39

Propellers, Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by superseding Amendment 39-3689, AD 80-04-05, by adding the following new AD:

McCauley Accessory Division: Applies to all McCauley Accessory Division Model 1A170/FFA fixed pitch propellers installed on, but not limited to, Gulfstream Aerospace Model AA-5B aircraft certificated in all categories.

Compliance is required as indicated, unless already accomplished.

To prevent propeller failure, accomplish the following:

(a) For propellers with 190 or more hours time in service since new or since last dye penetrant type inspection, inspect in accordance with paragraph (c) within the next 10 hours time in service and every 200 hours time in service thereafter.

(b) For propellers with less than 190 hours time in service since new or since last dye penetrant type inspection, inspect in accordance with paragraph (c) prior to the accumulation of 200 hours time in service and every 200 hours time in service thereafter.

(c) Inspection procedure:

(1) Remove propeller from the aircraft and remove spacer from the propeller.

(2) Thoroughly remove and clean all paint material down to the anodize surface and inspect the center relief bore (hole), all mounting bolt holes, and all external surfaces in the entire propeller hub area (faces and sides) for cracks using dye penetrant inspection methods.

(3) If a crack is found, replace the propeller with a serviceable propeller before further flight.

(d) A special flight permit may be issued in accordance with Federal Aviation Regulations (FARs) 21.197 and 21.199 to operate the aircraft to a base where this AD can be accomplished.

(e) Upon request of the operator, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

This AD supersedes Amendment 39-3689 (45 FR 8947) AD 80-04-05.

This amendment becomes effective December 27, 1982.

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

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise an evaluation is not required). A copy of it when filed may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Burlington, Massachusetts, on December 10, 1982.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 82-34923 Filed 12-30-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 82-CE-37-AD; Amendment 39-4529]

Airworthiness Directives; Piper Model PA-38-112 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule, superseding existing AD.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Piper Model PA-38-112 airplanes, which supersedes AD 81-04-07R1. It requires inspection and appropriate repair or replacement of certain fin and related fuselage structural components and establishes a service life for the forward fin spar attachment plate. Service reports and manufacturer's investigation establish that cracks will develop in the affected structure due to normal flight loads. The required inspection and parts retirement will preclude progression of these cracks to failure of the fin or its supporting structure.

DATES: Effective January 10, 1983. Compliance: As prescribed in the body of the AD.

ADDRESSES: Piper Service Bulletins No. 710 and No. 745, both dated October 10, 1982, applicable to this AD may be obtained from Piper Aircraft Corporation, 820 East Bald Eagle Street, Lock Haven, Pennsylvania 17745. A copy of this information is also contained in the Rule Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: J. Maher, Airframe Section, ANE-172, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581, Tel. No. 516-791-6221.

SUPPLEMENTARY INFORMATION: The discovery of cracks in the forward fin spar and its attaching bulkhead on several Piper Model PA-38-112 airplanes led to the issuance of AD 81-04-07, Amendment 39-4044 (46 FR 12472), and its subsequent revision AD 81-04-07R1, Amendment 39-4272 (46 FR 59530). This AD required a repetitive inspection and repairs, if needed, in the forward fin spar and fuselage bulkhead.

Subsequently, Piper Aircraft Corporation initiated a structural fatigue investigation program to determine the cause of the cracking of the fin and fuselage attaching structure and find a permanent solution to this problem. This resulted in a redesign of this area which

was incorporated in 1981 model airplanes. It also resulted in issuance of S/B 745 which requires inspections, repairs and replacements on pre-1981 model airplanes and established retirement times on the forward fin spar attachment plate P/N 77553-05 on all model year airplanes. Piper has also issued S/B No. 710 which provides for increasing the retirement time on the forward fin spar attachment plate from 3000 hours to 5000 hours. Piper also published Airplane Flight Manuals on the most recently delivered airplanes to incorporate the retirement time for the attachment plate. This action makes existing AD 81-04-07R1 inadequate and/or inappropriate on certain airplanes to which it is applicable. Since the conditions described herein are likely to exist or develop on other airplanes of the same type design, the FAA is superseding existing AD 81-04-07R1 with a new AD, applicable to Piper Model PA-38-112 airplanes, which contains the basic requirements of the superseded AD and incorporates additional provisions. These additional provisions allow for (1) discontinuing the repetitive inspection of the forward fin spar P/N 77601-03 by incorporating Piper Kit No. 764427; (2) an increase in the inspection interval for fuselage bulkhead P/N 77553-02, plus discontinuing the repetitive inspection when fuselage bulkhead assembly P/N 77553-06 is installed; (3) adding an inspection or modification of the fin aft spar P/N 77601-02 and aft fuselage bulkhead assembly P/N 77554-02; and (4) the establishment of replacement times for the forward fin spar attachment plate P/N 77553-05. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

Piper: Applies to Model PA-38-112 (S/Ns 38-78A0001 thru 38-82A0122) airplanes certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent possible inflight failure of the fin and associated fuselage structure because of fatigue damage:

(a) On Model PA-38-112 (S/Ns 38-78A0001 through 38-80A0198) airplanes, accomplish the following as indicated:

(1) On airplanes which do not incorporate a Piper Kit (P/N 764427) on an undamaged forward fin spar, within 25 hours time-in-service on airplanes that have 300 or more hours time-in-service on the effective date of this AD or upon the accumulation of 325 hours time-in-service on airplanes that have less than 300 hours time-in-service on the effective date of this AD and at intervals not exceeding 100 hours time-in-service thereafter.

(i) Inspect the forward surface of the forward fin spar web (P/N 77601-03) in the area of the forward fin spar attachment fitting (P/N 77553-05) for cracks using a dye penetrant method. Remove two forward fin attachment bolts and displace fin spar ⅛" laterally in each direction to increase visibility of spar area adjacent to edge of attachment fitting. Remove any scuff marks on spar by burnishing prior to applying dye penetrant.

(ii) Prior to further flight, replace or repair forward fin spars having cracks exceeding one-half inch in length with forward fin spar (P/N 77601-13) and Piper Forward Fin Spar Modification Kit 764427 or an equivalent part. Replace or repair parts which have cracks less than one-half inch within 25 hours time-in-service.

(2) On airplanes which do not incorporate fuselage bulkhead assembly (P/N 77553-06), within 25 hours time-in-service on airplanes that have 300 or more hours time-in-service on the effective date of this AD or upon the accumulation of 325 hours time-in-service on airplanes that have less than 300 hours time-in-service on the effective date of this AD and intervals not exceeding 300 hours time-in-service thereafter:

(i) Inspect the fuselage bulkhead assembly (P/N 77553-02) at fuselage station 221.42, in the area of the forward fin spar attachment plate (P/N 77553-05), for cracks using a dye penetrant method or equivalent. Access to the aft side of the bulkhead may be obtained by removing rudder and adjacent access door and to front side by removing the luggage compartment rear partition. When using luggage compartment, provide a stand to support the aft fuselage and, in order to assure that no associated damage will occur during the inspection, provide a support board for the mechanic.

(ii) Prior to further flight, repair or replace bulkheads having cracks exceeding three-quarter inch in length with bulkhead assembly (P/N 77553-06), or equivalent part. Replace or repair parts which have cracks less than three-quarter inch in length within 25 hours time-in-service.

(3) On airplanes that do not incorporate a Piper (P/N 77601-16) aft vertical fin spar assembly, (P/N 85606-02) upper rudder hinge shim, and (P/N 85615-02) fuselage bulkhead assembly, prior to the accumulation of 2,500 hours time-in-service or within 25 hours time-in-service on airplanes that have 2,475 or more hours time-in-service, whichever is later on the effective date of this AD and at intervals not to exceed 200 hours time-in-service thereafter:

(i) Inspect the aft vertical fin spar (P/N 77601-02) for cracks in accordance with Piper Service Bulletin No. 745, Part IV, Instruction Section, using a dye penetrant method or equivalent.

(ii) Prior to further flight, if cracks are found, repair or replace aft fin spar (P/N 77601-02) and Aft Fuselage Bulkhead Assembly (P/N 77554-02), with Aft Vertical Fin Spar Assembly (P/N 77601-16), Upper Rudder Hinge Shim (P/N 85606-02), and Fuselage Bulkhead Assembly (P/N 85615-02).

(4) Within the next 25 hours time-in-service after the effective date of this AD or upon the accumulation of 3,000 hours time-in-service, whichever is later, and thereafter at intervals not exceeding 3,000 hours time-in-service, replace the forward fin spar attachment plate (P/N 77553-05) with a new part.

(b) On Model PA-38-112 (S/N 38-81A0001 through 38-82A0101) airplanes:

(1) On airplanes which do not have Piper Kit No. 764421 installed, within the next 25 hours time-in-service from the effective date of this AD or upon the attainment of 3,000 hours time-in-service, whichever is later, and at intervals not to exceed 3,000 hours time-in-service, replace the forward fin spar attachment plate (P/N 77553-05) with a new part.

(2) On aircraft with Piper Kit No. 764421 installed, within the next 25 hours time-in-service for the effective date of this AD or upon the attainment of 5,000 hours time-in-service, whichever is later, and at intervals not to exceed 5,000 hours time-in-service, replace the forward fin spar attachment plate (P/N 77553-05) with a new part.

(c) On Model PA-38-112 (Serial Nos. 38-82A0102 thru 38-82A0122) airplanes, within the next 25 hours time-in-service from the effective date of this AD, or upon the attainment of 5,000 hours time-in-service, whichever is later, and at intervals not to exceed 5,000 hours time-in-service, replace the forward fin spar attachment plate (P/N 77553-05) with a new part.

Note.—Retirement time for the forward fin spar attachment plate (P/N 77553-05) on S/N 38-82A0123 and higher airplanes is contained in the Airplane Flight Manuals delivered with these airplanes.

(d) Airplanes may be flown to a location where the inspection, modification or repairs required by this AD may be accomplished in accordance with FAR 21.197 with prior approval of the Manager, New York Aircraft Certification Office, FAA, New England Region (see address below).

(e) Upon submission of substantiating data by an owner or operator through an FAA Maintenance Inspector, the Manager, New York Aircraft Certification Office, FAA, New England Region may adjust the compliance times specified in this AD.

Piper Service Bulletins Nos. 710 and 745, both dated October 10, 1982, refer to this subject.

(f) Repairs, equivalent parts or equivalent methods of compliance with this AD if used must be approved by the Manager, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue,

Valley Stream, New York 11581; Telephone 516-791-6221.

This amendment supersedes AD 81-04-07R1, Amendment 39-4272 (46 FR 59530). This amendment becomes effective on January 10, 1983.

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

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

Issued in Kansas City, Missouri, on December 23, 1982.

Murray E. Smith,

Director, Central Region.

[FR Doc. 82-35494 Filed 12-30-82; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 82-ANE-44; Amdt. 39-4515]

Airworthiness Directives; Roto-Master, Inc. (Rajay Industries, Inc.) Turbocharger Model 325E10 or 3AT6EE10J2

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires inspection and replacement, if necessary, of the turbocharger turbine housing on the Rajay Industries, Inc. Turbocharger Model 325E10 and 3AT6EE10J2. The AD is prompted by reports of hairline cracks developing in the inlet area of the turbocharger turbine housing which could result in the possibility of a powerplant system fire and/or engine mount heat damage.

DATES: Effective December 30, 1982. Compliance schedule—As prescribed in body of AD. Comments on the rule must be received on or before February 23, 1983.

ADDRESS: Information supporting this AD is in the Rules Docket, Federal Aviation Administration, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Guy Dalla Riva, Propulsion Engineer, Federal Aviation Administration, Western Aircraft Certification Field Office, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009; telephone (213) 536-6381.

SUPPLEMENTARY INFORMATION: There have been reports of hairline cracks or burn through holes in the inlet area of the turbocharger turbine housing used on Rajay turbochargers. In some cases, the crack in the above referenced area (tongue area) may have propagated through the outer-wall of the turbine housing thus allowing the engine exhaust gases to jet-flow through the opening, potentially causing annealing and corrosion of a specific area of the engine mount.

There can be heat damage to other parts of the powerplant installation including ducting, fuel and oil lines, and the V-band clamping bolt with an attendant fire hazard. Therefore, visual inspection is required to detect the possible formation and/or propagation of hairline cracks and/or burn through holes in the turbine housing. Since this condition could result in an in-flight fire and is likely to exist or develop on other aircraft engine installations using the same Rayjay Turbochargers, an Airworthiness Directive is being issued which requires inspection and possible replacement of the turbocharger turbine housing. Replacement of the subject turbine housing with a new improved material turbine housing is terminating action for the inspections required by this AD.

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

Request for Comments on the Rule

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule.

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

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulation (14 CFR 39.13) is amended, by adding the following new Airworthiness Directive:

Note.—Service letter number 27 which contains figures referred to below is filed with the original.

Roto-Master, Inc. (Rajay Industries, Inc.): Applies to Rajay Model 325E10 and 3AT6EE10J2 turbochargers, installed on but not limited to: Continental Engine Models TSIO-360, 0-470, IO-470, IO-520, TIO-520; Lycoming Engine Models O-320, IO-320, LIO-320, O-360, IO-360, TO-360, O-540, IO-540, TIO-540. These engines are installed on, but not limited to the following aircraft: Piper PA-28R-201T, PA-28-RT-201T, PA-28-201T series; PA-34-200, PA-34-200T, series; PA-30 and—39 series; Mooney M-20 A thru K series; Lake LA-4, LA-4A, and LA-200 Series.

Compliance is required as indicated, unless already accomplished.

To prevent the possibility of a fire in the powerplant nacelle and/or heat damage to the powerplant installation caused by the engine exhaust gases escaping through a cracked turbocharger turbine housing, accomplish the following:

(a) Within 50 hours of time in service after the effective date of this AD inspect the engine turbocharger exhaust systems and determine whether or not the turbine housing Rajay P/N TC-60-11 or Rajay P/N 600510, 600510-01, 600510-02 or TCM P/N 643930 of turbocharger model 325E10 or 3AT6EE10J2 is installed. If any of these part numbers are installed, or if the turbine housing part number can not be determined, before further flight, and thereafter at intervals not to exceed 200 hours time in service from the last inspection, comply with paragraph (b) through (g) of this AD.

(b) Remove the turbocharger turbine housing exhaust coupling V-Band and tailpipes (see Figure 1).

(c) Visually inspect the turbocharger turbine housing for cracks using a dye penetrant inspection method.

Note.—The suspect area can be viewed through the exhaust port to ascertain possible

presence of cracks penetrating through the outer wall as shown in Fig. 2.

(d) Inspect coupling V-Band clamp for cracks by spreading the band segments and checking for failed spot welds and for indication of exhaust flanges bottoming in coupling V-Band (see Figure 1) and clamp bolt for bending, overstress, thread damage and cracks (see Figure 1).

(e) Inspect turbochargers and tailpipe flanges for cracks and distortion (see Figure 1). Remove all carbon deposits from mating flanges before reassembly.

(f) Inspect mating area of turbocharger exhaust flange to exhaust tailpipe connection for proper mating of surfaces.

(g) Inspect engine mount for indication of overheat, warpage, and corrosion, or rust. Repair as required.

(h) If during inspection required by paragraph (c), an internal crack is found that either exceeds the limit shown in Figure 2, View 1 or 2, or a crack penetrates the outer wall of a turbine housing as shown in Figure 2, View 3, the existing turbine housing must be removed from service and replaced with a serviceable turbine housing prior to the next flight.

(i) If during the inspections required by paragraphs (d) through (g), cracked, distored, or otherwise damaged parts, components, or assemblies are found, before further flight repair or replace with serviceable parts, components, and assemblies of the same part number.

(j) The inspections required by this AD may be discontinued when the turbine housing is replaced with a Roto-Master part number 600510-04 (TCM P/N 643931).

(k) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate aircraft to a base for the accomplishment of inspections required by this AD.

(l) Alternative inspections, modifications or other actions which provide an equivalent level of safety may be used when approved by the Manager, Western Aircraft Certification Field Office, FAA Northwest Mountain Region, Hawthorne, California.

Note.—Roto-Master, Inc. Service Letter Number 27, Rev. A dated September 24, 1982 refers to the above procedures.

(Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and sec. 1189 Federal Aviation Regulation (14 CFR 11.89))

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the person identified above under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Burlington, Massachusetts, on December 8, 1982.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 82-34230 Filed 12-30-82; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1030

Revisions to Financial Interest Reporting Requirements

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission is revising its regulations pertaining to the submission of Confidential Statements of Employment and Financial Interests by updating the list of positions whose incumbents are required to submit statements, and clarifying the requirement for annual reporting. This is being done to reflect recent changes in the Commission's organizational structure, and to include certain data processing and contract personnel.

EFFECTIVE DATE: January 3, 1983.

FOR FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207. Telephone (301) 492-6980.

SUPPLEMENTARY INFORMATION: Subpart F of Part 1030 of Title 16 of the Code of Federal Regulations contains the Commission's regulations regarding the submission of Confidential Statement of Employment and Financial Interests (CPSC Form 219). The statements are used to ascertain possible employee conflicts of interest. Submission of these forms by employees in positions such that their individual decisions could have an economic impact on private enterprises is mandated by Executive Order 11222 and regulations promulgated by the Office of Personnel Management. The actual list of such positions has been located in an Appendix at the end of Part 1030, printed several pages from Subpart F in the Code of Federal Regulations.

The list of positions required to submit Confidential Statements of Employment and Financial Interests has been revised to reflect recent changes in the Commission's organizational structure, and has been made a section of Subpart F itself so that it will be physically contiguous to the applicable regulations. Only minor substantive changes have been made in the grades required to report, but the list has been simplified by omitting position classification schedule numbers, and by defining the reporting positions in certain organizations as Merit Pay positions. Merit Pay employees are those in grades 13-15 with managerial or supervisory authority.

The list has also been revised in two other respects. All contract specialists at grade 7 and above in the Directorate for Administration are now required to report because their role in supervising contracts and selecting contractors makes them susceptible to conflicts of interest. Also, certain data processing positions at grade 7 and above which are sufficiently sensitive, under Office of Personnel Management regulations, to require background checks have been added to the list because they have the opportunity to manipulate critical data which underlies the Commission's decision making processes.

Section 1031.602 has been revised to give the Ethics Counselor the primary responsibility for determining which positions should be subject to the reporting requirement. Previously, the Executive Director had this responsibility.

Section 1030.604 has been revised to indicate that senior employees subject to the financial reporting requirements of the Ethics in Government Act are not also subject to the reporting requirements of Subpart F.

Sections 1030.605 and 1060.606 have been simplified and combined to specifically indicate when submissions are due, and to inform employees that they may be subject to disciplinary action for failing to report as required.

Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553 the Commission finds that notice and other public procedures with respect to this rule are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register.** Further, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612, and thus is exempt from the provisions of that act.

List of Subjects in 16 CFR Part 1030

Government employees and conflict of interest

PART 1030—[AMENDED]

Accordingly, Part 1030 of Title 16 of the Code of Federal Regulations is amended as shown.

1. The authority citation for Part 1030 is as follows:

Authority: E.O. 11222, 30 FR 6469, 3 CFR 1964–1965 Comp., p. 306; 5 CFR Part 735; Pub. L. 95–521, 92 Stat. 1824, as amended by Pub. L. 96–19, 93 Stat. 37 (5 U.S.C. App.).

§ 1030.601 [Amended]

2. Section 1030.601 is amended by removing the words "Appendix E" and inserting, in their place, "§ 1030.611".

3. Section 1030.602 is revised to read as follows:

§ 1030.602 Inclusion or removal of positions.

The Ethics Counselor shall, in accordance with the criteria in § 1030.601 and after consultation with the Executive Director, identify positions to be added to or removed from the listing in § 1030.611.

4. Section 1030.604 is revised to read as follows:

§ 1030.604 Employees not required to submit statements.

(a) Employees in positions that meet the criteria of § 1030.601, as listed in § 1030.611, may be excluded from the reporting requirement when the Ethics Counselor determines that:

(1) The duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests by the incumbent is not necessary because of the degree of supervision and review over the incumbent; or

(2) The duties of a position are such that the likelihood of the incumbent's involvement in a conflict of interest situation is remote.

(b) Exclusions under this provision must be documented in writing and retained by the Ethics Counselor.

(c) Employees subject to the more detailed financial reporting requirements of Title II of the Ethics in Government Act of 1978 (Pub. L. 95–521, 5 U.S.C. Appendix), are excluded from the reporting requirements of this subpart.

5. Section 1030.605 is revised to read as follows:

§ 1030.605 Submission of statements.

(a) An employee required to submit a statement of employment and financial interests under this Subpart shall submit that statement to the Ethics Counselor not later than:

(1) Thirty days after appointment or assignment to a position covered by section 1030.611; and

(2) By June 30 of each succeeding year.

(b) Employees failing to submit a statement in accordance with this section may be subject to disciplinary action.

(c) Notwithstanding the filing of the statements required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflict-of-interest provisions of 18 U.S.C. 208 or this part.

§ 1030.606 [Removed]

6. Section 1030.606 is removed.

7. A new § 1030.611 is added, to read as follows:

§ 1030.611 Positions requiring submission of statement of employment and finanical interests.

(a) *Commissioners' staffs.* All positions grade 13 and above.

(b) *Office of the General Counsel.* All positions grade 11 and above.

(c) *Office of Congressional Relations.* All positions grade 15 and above.

(d) *Office of Public Affairs.* All positions grade 14 and above.

(e) *Office of the Secretary.* All positions grade 13 and above.

(f) *Office of Internal Audit.* All positions grade 14 and above.

(g) *Office of Equal Employment Opportunity and Minority Enterprise.* All positions grade 15 and above.

(h) *Office of the Executive Director.* All Merit Pay positions.

(i) *Office of Program Management.* All Merit Pay positions.

(j) *Office of Budget, Program Planning and Evaluation.* All positions grade 15 and above.

(k) *Office of Outreach Coordination.* All positions grade 13 and above.

(l) *Directorate for Epidemiology.* All Merit Pay positions and all Physiologists grade 11 and above, all Engineering Psychologists grade 11 and above, all Statisticians grade 11 and above, and all Program Analysts grade 12 and above.

(m) *Directorate for Economics.* All positions grade 12 and above.

(n) *Directorate for Engineering Sciences.* All Merit Pay positions.

(o) *Directorate for Health Sciences.* All positions grade 11 and above.

(p) *Directorate for Compliance and Administrative Litigation.* All positions grade 11 and above.

(q) *Directorate for Administration.* All Merit Pay positions and all Contract Specialists grade 7 and above.

(r) *Regional Offices.* All investigative positions grade 5 and above; all other positions grade 13 and above.

(s) *Computer-related positions.* All CPSC computer-related positions grade 9 and above classifiable as ADP–I or ADP–II under Chapter 732 of the Federal Personnel Manual, regardless of organizational unit.

Appendix E—[Removed]

8. Appendix E is removed.

Dated: December 23, 1982.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 82–35324 Filed 12–30–82; 8:45 am]

BILLING CODE 6355–01–M

---

16 CFR Parts 1500 and 1507

Additions of Cross-Reference Notations to Certain Regulations

AGENCY: Consumer Product Safety Commission.

ACTION: Addition of cross-reference notations.

SUMMARY: The Commission is adding to certain regulations under the Federal Hazardous Substances Act cross references to separate provisions that relate to the regulations. The purpose of the cross references is to help users of the Code of Federal Regulations be aware of all relevant provisions on a particular subject.

DATE: The notations are effective on January 3, 1983.

FOR FURTHER INFORMATION CONTACT: Christine Nelson or Paul Galvydis (on fireworks provisions), Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492–6400.

SUPPLEMENTARY INFORMATION: A number of regulations issued under the Federal Hazardous Substances Act ban, or require labeling for, certain household products. These regulations are codified in the Code of Federal Regulations (CFR) at Chapter II, Subchapter C, Part 1500 of Title 16.

Other provisions in the CFR exempt some of these household products from the banning and labeling regulations cited above, and still other provisions clarify or relate to the regulations. Because the related provisions appear separately in the CFR, a person interested in an affected product might refer to an applicable regulation without realizing that an exemption or clarification also exists. Therefore, the Commission is adding to the regulations bracketed notations that reference a user of the CFR to related provisions.

The new notations are merely nonsubstantive cross references, and not rules or amendments. Therefore,

neither the general notice of proposed rulemaking nor the delayed effective date requirements of the Administrative Procedure Act apply. 5 U.S.C. 553.

List of Subjects

Consumer protection, Labeling.

Pursuant to section 10(a) of the Federal Hazardous Substances Act, 15 U.S.C. 1269(a), the following cross-reference notations are added to the following sections of Title 16, Chapter II, Subchapter C of the Code of Federal Regulations (in each case the notation shall be inserted at the end of the listed Part, section, or paragraph):

Regulation	Notation
1500.14(b)(7)	[See also 1500.17(a) (3), (8) and (9); 1500.83(a)(27); 1500.85(a)(2); and Part 1507].
1500.17(a)(3)	[See also 1500.14(b)(7); 1500.17(a) (8) and (9); 1500.83(a)(27); 1500.85(a)(2); and Part 1507].
1500.17(a)(8)	[See also 1500.17(a) (3) and (9)].
1500.17(a)(9)	[See also 1500.17(a) (3) and (8)].
1500.18(a)(1)	[But see 1500.86(a)(1)].
1500.18(a)(3)	[But see 1500.86(a)(2)] [See also 1500.48 and 1500.49].
1500.18(a)(4)	[But see 1500.86(a)(3)].
1500.18(a)(6)	[But see 1500.86(a)(4)].
1500.18(a)(7)	[But see 1500.86(a)(5)].
1500.83(a)(27)	[See also 1500.14(b)(7); 1500.17(a) (3), (8) and (9); 1500.85(a)(2); and Part 1507].
1500.85(a)(2)	[See also 1500.14(b)(7); 1500.17(a) (3), (8) and (9); and Part 1507].
Part 1507	[See also 1500.14(b)(7); 1500.17(a) (3), (8) and (9); 1500.83(a)(27) and 1500.85(a)(2)].

Effective date: The notations shall be effective on January 3, 1983.

15 U.S.C. 1269(a)

Dated: December 23, 1982.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 82-35322 Filed 12-30-82; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 2

National Security Information

AGENCY: Treasury.

ACTION: Final rule.

SUMMARY: This regulation supersedes the Department's regulation at 31 CFR Part 2 which was published at 43 FR 60448, December 28, 1978. This regulation implements Executive Order No. 12356, 47 FR 14874, April 6, 1982, (hereinafter referred to as the Order), and the Information Security Oversight Office Directive, 47 FR 27836, June 25, 1982, (hereinafter referred to as the Directive), which prescribe a uniform system for the classification, downgrading, declassification and safeguarding of national security information. The Order will facilitate the public's access to information about the affairs of government when disclosure would not damage national security. The Order also expressly prohibits the use of the classification system to conceal violations of law, prevent embarrassment, or delay the release of information that does not require protection.

EFFECTIVE DATE: August 1, 1982.

FOR FURTHER INFORMATION CONTACT: Dennis E. Southern, Office of Physical Security, Office of Administrative Programs, Department of the Treasury, Washington, D.C. 20220 (202) 376-0823.

SUPPLEMENTARY INFORMATION: The sections in this regulation follow the format of the Directive. This regulation has been submitted to the Information Security Oversight Office in accordance with § 5.2(b)(3) of the Order.

The Department of the Treasury has determined that this regulation is not a major regulation for purposes of Executive Order 12291, February 17, 1981. Accordingly, a regulatory impact analysis is not required. Additionally, as this regulation is a rule of "agency organization, procedure or practice," notice and public procedure respecting this regulation is not deemed necessary or appropriate under 5 U.S.C. 553(b)(A). Because this regulation is being issued without notice of proposed rulemaking, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601-612, do not apply.

List of Subjects in 31 CFR Part 2

Archives and records, Authority delegations, Classified information, Executive orders, Freedom of information, Information, Intelligence, National defense, National security information, Presidential documents, Security information, Security measures.

Title 31 of the Code of Federal Regulations, Part 2, is revised to read as follows:

PART 2—NATIONAL SECURITY INFORMATION

Subpart A—Original Classification

Sec.
2.1 Classification levels.
2.2 Classification authority.
2.3 Listing classification authorities.
2.4 Record requirements.
2.5 Classification categories.
2.6 Duration of classification.
2.7 Identification and markings.
2.8 Limitations on classification.

Subpart B—Derivative Classification

Sec.
2.9 Use of derivative classification.
2.10 Classification guides.
2.11 Derivative identification and markings.

Subpart C—Downgrading and Declassification

2.12 Listing downgrading and declassification authorities.
2.13 Declassification policy.
2.14 Downgrading and declassification markings.
2.15 Systematic review for declassification.
2.16 Procedures for mandatory declassification review.
2.17 Assistance to the Department of State.
2.18 FOIA and Privacy Act requests.

Subpart D—Safeguarding

2.19 General.
2.20 General restrictions on access.
2.21 Access by historical researchers and former presidential appointees.
2.22 Dissemination.
2.23 Standards for security equipment.
2.24 Accountability procedures.
2.25 Storage.
2.26 Transmittal.
2.27 Telecommunications transmissions.
2.28 Special access programs.
2.29 Reproduction Controls.
2.30 Loss or possible compromise.
2.31 Responsibilities of holders.
2.32 Inspections.
2.33 Security violations.
2.34 Disposition and destruction.

Subpart E—Implementation and Review

2.35 Department administration.
2.36 Bureau administration.
2.37 Emergency planning.
2.38 Emergency authority.
2.39 Security education.

Subpart F—General Provisions

2.40 Definitions.

Authority: Executive Order 12356.

Subpart A—Original Classification

§ 2.1 Classification levels.

(a) National security information (hereinafter also referred to as "classified information") shall be classified at one of the following three levels:

(1) "Top Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security.

(2) "Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security.

(3) "Confidential" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security.

(b) *Limitations [1.1(b)]*[1]. Markings other than "Top Secret," and "Confidential," such as "For Official Use Only" or "Limited Official Use," shall not be used to identify national security information. No other term or phrase shall be used in conjunction with these markings, such as "Secret Sensitive" or "Agency Confidential," to identify national security information. The terms "Top Secret," "Secret," and "Confidenatial" should not be used to identify non-classified Executive Branch information.

(c) *Reasonable Doubt [1.1(c)]*. When there is reasonable doubt the need to classify information, the information shall be safeguarded as if it were "Confidential" information in accordance with Subpart D, of this regulation, pending a determination about its classification. Upon a determination of a need for classification, the information that is classified shall be marked as provided in § 2.7. When there is reasonable doubt about the appropriate classification level, the information shall be safeguarded at the higher level in accordance with Subpart D, pending a determination of its classification level. Upon a determination of its classification level, the information shall be marked as provided in § 2.7.

§ 2.2 Classification authority.

(a) The authority to originally classify national security information as Top Secret, Secret or Confidential within the Department of the Treasury may be exercised by the Deputy Secretary, the Under Secretary (Monetary Affairs), the Under Secretary (Tax and Economic Affairs), the General Counsel, the Assistant Secretary (International Affairs), the Treasurer of the United States, the Fiscal Assistant Secretary, the Assistant Secretary (Administration), the Assistant Secretary (Legislative Affairs), the Assistant Secretary (Enforcement and Operations), the two Executive Assistants to the Secretary, the Executive Assistant to the Deputy Secretary, the Executive Secretary, the Special Assistant to the Secretary (National Security) and the Deputy (Security Affairs and Crisis Management) to the Assistant Secretary (Enforcement and Operations). The authority inheres in the office and may be exercised by a person acting in that office. These officials, with the exception of the Assistant Secretary (Administration), are not authorized to delegate authority to classify information as Top Secret, but may delegate authority to classify information as Secret and Confidential.

(b) The authority to originally classify national security information as Secret or Confidential within the Department of the Treasury may be exercised by the the Assistant Secretary (Tax Policy); Commissioner, Internal Revenue Service; the Director, Bureau of Alcohol, Tobacco and Firearms; the Commissioner, U.S. Customs Service; the Director, Bureau of Engraving and Printing; and the Director, U.S. Secret Service. This authority is not redelegable.

(c) The authority to originally classify national security information as Confidential within the Department of the Treasury may be exercised by the Assistant Secretary (Domestic Finance); the Assistant Secretary (Economic Policy); the Assistant Secretary (Public Affairs); the Inspector General; the Comptroller of the Currency; the Commissioner, Bureau of Government Financial Operations; the Commissioner, Bureau of the Public Debt; and the Director, Bureau of the Mint. Officials authorized to classify information as Confidential cannot redelegate such authority.

§ 2.3 Listing classification authorities.

Delegations of original Top Secret, Secret and Confidential classification authority shall be in writing and shall be reported in writing to the Assistant Secretary (Administration). These delegations shall be limited to the minimum number absolutely required for efficient administration. Periodic reviews of such delegations shall be made to ensure that the officials so designated have demonstrated a continuing need to exercise such authority.

§ 2.4 Record requirements.

The Assistant Secretary (Administration) shall maintain a listing by name, position title and authorized classification level of the officials in the Office of the Secretary who are authorized under this regulation to originally classify information as Top Secret, Secret or Confidential. Officials within the Office of the Secretary with Top Secret classification authority shall report in writing on TD F 71-01.14 (Report of Authorized Classifiers) to the Assistant Secretary (Administration) the names, position titles and authorized classification levels of the officials designated by them in writing to have original Top Secret, Secret and Confidential classification authority. The head of each bureau shall maintain a similar listing of the officials in his/her bureau authorized to apply original Secret and Confidential classification and shall furnish a copy of TD F 71-01.14 to the Assistant Secretary (Administration). This listing shall be compiled as of October 1, 1983, and updated no less than annually.

§ 2.5 Classification categories.

(a) *Classification in Context of Related Information [1.3(b)]*. Certain information which would otherwise be unclassified may require classification when combined or associated with other unclassified or classified information. Classification on this basis shall be supported by a written explanation that, at a minimum, shall be maintained with the file or referenced on the record copy of the information.

(b) *Unofficial Publication or Disclosure [1.3.(d)]*. Following an inadvertent or unauthorized publication or disclosure of information identical or similar to information that has been classified in accordance with the Order or predecessor orders, the agency of primary interest shall determine the degree of damage to the national security, the need for continued classification, and, in coordination with the agency in which the disclosure occurred, what action must be taken to prevent similar occurrences.

§ 2.6 Duration of classification.

(a) *Information Not Marked for Declassification [1.4]*. Information classified under predecessor orders that is not subject to automatic declassification shall remain classified until reviewed for declassification.

(b) *Authority to Extend Automatic Declassification Determinations [1.4(b)]*. The authority to extend the classification of information subject to automatic declassification under predecessor orders is limited to those officials who have classification authority over the information and are designated in writing to have original classification authority at the level of the information to remain classified. Any decision to extend this classification on other than a document-by-document basis shall be reported to the Assistant Secretary (Administration) who shall, in turn, report this fact to the Director of the Information Security Oversight Office.

§ 2.7 Identification and markings [1.5 (a), (b) and (c)].

A uniform information security system requires that standard markings be applied to classified information. Except in extraordinary circumstances as provided in § 1.5(a) of the Order, or as

[1] Bracketed references are to related sections of Executive Order 12356.

indicated herein, the marking of paper documents created after the effective date of the Order shall not deviate from the following prescribed formats. These markings shall also be affixed to material other than paper documents, including film, tape, etc., or the originator shall provide holders or recipients of the information with written instructions for protecting the information.

(a) *Classification Level.* The markiings "Top Secret," "Secret," and "Confidential" are used to indicate: information that requires protection as classified information under the Order; the highest level of classification contained in a document; and the classification level of each page and, in abbreviated form, each portion of a document.

(1) *Overall Marketing.* The highest level of classification of information in a document shall be marked in such a way as to distinguish it clearly from the informational text. These markings shall appear at the top and bottom of the outside of the front cover (if any), on the title page (if any), on the first and last pages, and on the outside of the back cover (if any).

(2) *Page Marking.* Each interior page of a classified document shall be marked at the top and bottom either according to the highest classification of the content of the page, including the designation "UNCLASSIFIED" when it is applicable, or with the highest overall classification of the document.

(3) *Portion Marking.* The Secretary of the Treasury may waive the portion marking requirement for specified classes of documents or information only upon a written determination that:

(i) There will be minimal circulation of the specified documents or information and minimal potential usage of these documents or information as a source for derivative classification determinations; or

(ii) There is some other basis to conclude that the potential benefits of portion marking are clearly outweighed by the increased administrative burdens.

(b) Unless the portion marking requirement has been waived as authorized, each portion of a document, including subjects and titles, shall be marked by placing a parenthetical designation immediately preceding the text to which it applies. The symbols "(TS)" for Top Secret, "(S)" for Secret, "(C)" for Confidential, and "(U)" for Unclassified shall be used for this purpose. If the application of parenthetical designations is not practicable, the document shall contain a statement sufficient to identify the information that is classified and the level of such classification, as well as the information that is not classified. If all portions of a document are classified at the same level, this fact may be indicated by a statement to that effect. If a subject or title requires classification, an unclassified identifier may be applied to facilitate reference.

(c) *Classification Authority.* If the original classifier is other than the signer or approver of the document, the identity shall be shown as follows: "CLASSIFIED BY (identification of original classification authority)".

(d) *Bureau and Office of Origin.* If the identity of the originating bureau and office is not apparent on the face of a document, it shall be placed below the "CLASSIFIED BY" line.

(e) *Downgrading and Declassification Instructions.* Downgrading and, as applicable, declassification instructions shall be shown as follows:

(1) For information to be declassified automatically on a specific date:

Classified by _____
Office _____
Declassify on (date) _____

(2) For information to be declassified automatically upon occurrence of a specific event:

Classified by _____
Office _____
Declassify on (description of event) _____

_____

(3) For information not to be declassified automatically:

Classified by _____
Office _____
Declassify on Originating Agency's Determination Required or "OADR" _____

_____

(4) For information to be downgraded automatically on a specific date or upon occurrence of a specific event:

Classified by _____
Office _____
Downgrade to _____
on (date or description of event) _____

_____

(f) *Special Markings.*—(1) *Transmittal Documents [1.5(c)].* A transmittal document shall indicate on its face and on the last page, if any, the highest classification of any information transmitted by it. It shall also include the following or similar instruction:

(i) For an unclassified transmittal document:

Unclassified When Classified Enclosure(s) Removed

(ii) For a classified transmittal document:

Upon Removal of Attachment(s) This Document is (classification level of the transmittal document standing alone) ——

(2) *Restricted Data or Formerly Restricted Data [6.2(a)].* Restricted Data or Formerly Restricted Data information shall be marked in accordance with regulations issued under the Atomic Energy Act of 1954, as amended.

(3) *Intelligence Sources or Methods [1.5(c)].* Documents that contain information relating to intelligence sources or methods shall include the following marking unless otherwise proscribed by the Director of Central Intelligence:

"WARNING NOTICE—INTELLIGENCE SOURCES OR METHODS INVOLVED"

(4) *Foreign Government Information (FGI) [1.5(c)].* Documents that contain FGI shall include either the marking "FOREIGN GOVERNMENT INFORMATION," or a marking that otherwise indicates that the information is foreign government information. If the information is foreign government information that must be concealed, the marking shall not be used and the document shall be marked as if it were wholly of U.S. origin. However, such a marking must be supported by a written explanation that, at a minimum, shall be maintained with the file or referenced on the original record copy of the document or information.

(5) *National Security Information [4.1(c)].* Classified information furnished outside the Executive Branch shall show the following marking:

NATIONAL SECURITY INFORMATION

Unauthorized Disclosure Subject to

Administrative and Criminal Sanctions

(6) *Computer Output [1.5(c)].* Documents that are generated as computer output may be marked automatically by systems software. If automatic marking is not practicable, such documents must be marked manually.

(g) *Electrically Transmitted Information (messages) [1.5(c)].* Classified information that is transmitted electrically shall be marked as follows:

(1) The highest level of classification shall appear before the first line of text;

(2) A "CLASSIFIED BY" line is not required;

(3) The duration of classification shall appear as follows:

(i) For information to be declassified automatically on a specific date: "DECL: (date)"

(ii) For information to be declassified upon occurrence of a specific event: "DECL: (description of event)"

(iii) For information not to be automatically declassified which

requires the originating agency's determination (see also § 2.7(e)(3)): "DECL: OADR"

(iv) For information to be automatically downgraded: "DNG (abbreviation of classification level to which the information is to be downgraded and date or description of event on which downgrading is to occur)"

(4) Portion marking shall be as prescribed in § 2.7(a)(3);

(5) Special markings as prescribed in § 2.7(f) (2), (3) and (4) shall appear after the marking for the highest level of classification. These include:

(i) Restricted Data or Formerly Restricted Data: Electrically transmitted information containing Restricted Data or Formerly Restricted Data shall be marked in accordance with regulations issued under the Atomic Energy Act of 1954, as amended;

(ii) Information concerning intelligence sources or methods: "WNINTEL," unless proscribed by the Director of Central Intelligence;

(iii) *Foreign Government Information:* "FGI," or a marking that otherwise indicates that the information is foreign government information. If the information is foreign government information that must be concealed, the marking shall not be used and the document shall be marked as if it were wholly of U.S. origin. However, such a marking must be supported by a written explanation that, at a minimum, shall be maintained with the file or referenced on the original or record copy of the document or information.

(6) Paper copies of electrically transmitted messages shall be marked as provided in § 2.7(a) (1) and(2).

(h) *Changes in Classification Markings [4.1(b)].* When a change is made in the duration of classified information, all holders of record shall be promptly notified. If practicable, holders of record shall also be notified of a change in the level of classification. Holders shall alter the markings to conform to the change, citing the authority for it. If the remarking of large quantities of information is unduly burdensome, the holder may attach a change of classification notice to the storage unit in lieu of the marking action otherwise required. Items withdrawn from the collection for purposes other than transfer for storage shall be marked promptly in accordance with the change notice.

§ 2.8 Limitations on classification [1.6(c)].

Before reclassifying information as provided in § 1.6(c) of the Order, the authorized official shall consider the following factors, which shall be addressed in a report to the Assistant Secretary (Administration) who shall in turn forward a report to the Director of the Information Security Oversight Office:

(a) The elasped time following disclosure;

(b) The nature and extent of disclosure;

(c) The ability to bring the fact of reclassification to the attention of persons to whom the information was disclosed;

(d) The ability to prevent further disclosure; and

(e) The ability to retrieve the information voluntarily from persons not authorized access in its reclassified state.

Subpart B—Derivative Classification

§ 2.9 Use of derivative classification [2.1].

The application of derivative classification markings is a responsibility of those who incorporate, paraphrase, restate, or generate in new form information that is already classified, and of those who apply markings in accordance with instructions from an authorized original classifier or in accordance with an authorized classification guide. If a person who applies derivative classification markings believes that the paraphrasing, restating or summarizing of classified information has changed the level of or removed the basis for classification, that person must consult an appropriate official of the originating agency or office of origin who has the authority to upgrade, downgrade or declassify the information for a determination. A sample marking documents is set forth in § 2.11.

§ 2.10 Classification guides.

(a) *General [2.2(a)].* A classification guide is a reference manual which assists document drafters and document classifiers in determining what types or categories of material have already been classified. The classification guide shall, at a minimum:

(1) Identify or categorize the elements of information to be protected;

(2) State which classification level applies to each element or category of information; and

(3) Prescribe declassification instructions for each element or category of information in terms of (i) a period of time, (ii) the occurrence of an event, or (iii) a notation that the information shall not be declassified automatically without the approval of the originating agency.

(b) *Review and Record Requirements [2.2(a)].* (1) Each classification guide shall be kept current and shall be reviewed at least once every two years and updated as necessary. Each office within the Office of the Secretary and the respective offices of each Treasury bureau possessing original classification authority for national security information shall maintain a list of all classification guides in current use by them. A copy of each such classification guide in current use shall be furnished to the Assistant Secretary (Administration).

(2) Each office that prepares and maintains a classification guide shall also maintain a record, copy to the Assistant Secretary (Administration), of individuals authorized to apply derivative classification markings in accordance with a classification guide. This record shall be maintained on TD F 71-01.18 (Report of Authorized Derivative Classifiers).

(c) *Waivers [2.2(c)].* Any authorized official desiring a waiver of the requirement to issue a classification guide shall submit in writing to the Assistant Secretary (Administration) a request for approval of such a waiver. Any request for such a waiver shall contain, at a minimum, an evaluation of the following factors:

(1) The ability to segregate and describe the elements of information;

(2) The practicality of producing or disseminating the guide because of the nature of the information:

(3) The anitcipated usage of the guide as a basis for derivative classification; and

(4) The availability of alternative sources for derivatively classifying the information in a uniform manner.

§ 2.11 Derivative identification and markings [1.5(c) and 2.1(b)].

Documents classified derivatively on the basis of source documents or classification guides shall bear all markings prescribed in § 2.7(a) through (f), as are applicable. Information for these markings shall be taken from the source document or instructions in the appropriate classification guide.

(a) *Classification Authority.* The authority for classification shall be shown as follows:

Derivatively Class by _____
Office _____
Derived from _____
Declassify on _____

If a document is classified on the basis of more than one source document or classification guide, the authority for classification shall be shown on the "DERIVED FROM" line as follows:

"CLASSIFIED BY MULTIPLE SOURCES"

In these cases, the derivative classifier shall maintain the identification of each source with the file or record copy of the derivatively classified document. A document derivatively classified on the basis of a source document that is marked "CLASSIFIED BY MULTIPLE SOURCES" shall cite the source document on its "DERIVED FROM" line rather than the term "MULTIPLE SOURCES."

(b) *Downgrading and Declassification Instructions.* Dates or events for automatic downgrading or declassification, or the notation "ORIGINATING AGENCY's DETERMINATION REQUIRED" to indicate that the document is not to be downgraded or declassified automatically, shall be carried forward from the source document, or as directed by a classification guide, and shown on a "DOWNGRADE TO" or "DECLASSIFY ON" line as follows:

"DOWNGRADE TO _____ ON (date; description of event; or 'ORIGINATING AGENCY'S DETERMINATION REQUIRED' (OADR))" "DECLASSIFY ON: *(date; description of* _____ event; or 'ORIGINATING AGENCY'S DETERMINATION REQUIRED' (OADR))"

Subpart C—Downgrading and Declassification

§ 2.12 Listing of downgrading and declassification authorities [3.1(b)].

Downgrading and declassification authority may be exercised by the official authorizing the original classification, if that official is still serving in the same position; a successor in that capacity; a supervisory official of either; or officials delegated such authority in writing by the Secretary or the Assistant Secretary (Administration). A listing of officials delegated such authority in writing shall be maintained on TD F 71-01.11 (Report of Authorized Downgrading and Declassification Authorities). Current listings of these officials shall be maintained by Treasury bureaus and offices within the Office of the Secretary. Copies of these listings shall be provided to the Assistant Secretary (Administration). If possible, these listings shall be unclassified.

§ 2.13 Declassification policy [3.1].

In making determinations under § 3.1(a) of the Order, officials shall respect the intent of the Order to protect foreign government information and confidential foreign sources.

§ 2.14 Downgrading and declassification markings.

Whenever a change is made in the original classification or in the dates of downgrading or declassification of any classified information, it shall be promptly and conspicuously marked to indicate the change, the authority for the action, the date of the action, and the identity of the person taking the action. Earlier classification markings shall be cancelled when practicable.

§ 2.15 Systematic review for declassification [3.3].

(a) *Permanent Records.* Systematic review is applicable only to those classified records and presidential papers or records that the Archivist of the United States, acting under the Federal Records Act, has determined to be of sufficient historical or other value to warrant permanent retention.

(b) *Non-Permanent Classified Records.* Non-permanent classified records shall be disposed of in accordance with schedules approved by the Administrator of General Services under the Records Disposal Act. These schedules shall provide for the continued retention of records subject to an ongoing mandatory declassification review request.

(c) *Systematic Declassification Review Guidelines [3.3(a)].* The Department, by February 1, 1983, shall:

(1) Issue guidelines for systematic declassification review, in consultation with the Archivist and the Director of the Information Security Oversight Office, to assist the Archivist in the conduct of systematic reviews;

(2) Designate experienced personnel to assist the Archivist in the systematic review process;

(3) Review and update systematic review guidelines at least every five years unless earlier review is requested by the Archivist.

(d) *Foreign Government Systematic Declassification Review Guidelines [3.3(a)].* By February 1, 1983, the Director of the Information Security Oversight Office shall issue, in consultation with the Archivist, the Department and other agencies having declassification authority over the information, guidelines for the systematic declassification review of foreign government information. These guidelines shall be reviewed and updated every five years unless earlier review is requested by the Archivist.

(e) *Special Procedures.* The Department shall be bound by the special procedures for systematic review of classified cryptologic records and classified records pertaining to intelligence activities (including special activities), or intelligence sources or methods issued by the Secretary of Defense and the Director of Central Intelligence, respectively.

§ 2.16 Procedures for mandatory declassification review [3.4].

(a) Except as provided by § 3.4(b) of the Order, all information classified by the Department under the Order or predecessor orders shall be subject to declassification review by the Department, if:

(1) The request is made by a United States citizen or permanent resident alien, a Federal agency, or a state or local government;

(2) The request describes the document or material containing the information with sufficient specificity to enable the Department to locate it with a reasonable amount of effort; and

(3) The requester provides substantial proof as to their U.S. citizenship or status as a permanent resident alien, e.g., a copy of a birth certificate, a certificate of naturalization, official passport or some other means of identity which would sufficiently describe the requester's status.

(b) *Processing.*—(1) *Initial Requests for Classified Records Originated by the Department.* Requests for mandatory declassification review shall be directed to the Office of Physical Security, Office of Administrative Programs. Upon each request for declassification, pursuant to § 3.4 of the Order, the following procedures shall apply:

(i) The Office of Physical Security, Office of Administrative Programs, shall acknowledge in writing receipt of the request.

(ii) A valid mandatory declassification review request need not identify the requested information by date or title of the responsive records, but must be of sufficient particularity to allow Treasury personnel to locate the records containing the information sought with a reasonable amount of effort. Whenever a request does not reasonably describe the information sought, the requester shall be notified that unless additional information is provided or the scope of the request is narrowed, no further action will be undertaken.

(iii) The Office of Physical Security, Office of Administrative Programs, shall determine the appropriate office to take action on the request and shall forward the request to that office.

(iv) Department responses to mandatory declassification review requests shall be governed by the amount of search and review time required to process the request. In responding to mandatory declassification review requests, the appropriate offical shall make a prompt declassification determination. The Office of Physical Security, Office of Administrative Programs, shall notify

the requester if additional time is needed to process the request. The Department shall make a final determination within one year from the date of receipt except in unusual circumstances. When information cannot be declassified in its entirety, reasonable efforts, consistent with other applicable laws, will be made to release those declassified portions of the requested information which constitute a coherent segment. Upon the denial or partial denial of an initial request, the Department shall also notify the requester of the right of an administrative appeal which must be filed with the Assistant Secretary (Administration) within 60 days of receipt of the denial.

(v) When the Department receives a mandatory declassification review request for records in its possession that were originated by another agency, the Office of Physical Security, Office of Administrative Programs, shall forward the request to that agency. The Office of Physical Security, Office of Administrative Programs, shall include a copy of the records requested together with the Department's recommendations for action. Upon receipt, the originating agency shall process the request in accordance with § 2001.32(a)(2)(i) of the Directive. Upon request, the originating agency shall communicate its declassification determination to Treasury.

(vi) When another agency forwards to the Department a request for information in that agency's custody that has been classified by Treasury, the Office of Physical Security, Office of Administrative Programs, shall:

(A) Advise the other agency as to whether they can notify the requester of the referral:

(B) Review the classified information in coordination with other agencies that have a direct interest in the subject matter; and

(C) Respond to the requester in accordance with the procedures in § 2.16(b)(1)(iv). If requested, Treasury's determination shall be communicated to the referring agency.

(vii) Appeals of denials of a request for declassification shall be referred to the Assistant Secretary (Administration) who shall normally make a determination within 30 working days following the receipt of an appeal. If additional time is required to make a determination, the Assistant Secretary (Administration) shall notify the requester of the additional time needed and provide the requester with the reason for the extension. The Assistant Secretary (Administration) shall notify the requester in writing of the final determination and of the reasons for any denial.

(viii) Except as provided in this paragraph, the Department shall process mandatory declassification review requests for classified records containing foreign government information in accordance with § 2.16(a). The agency that initially received or classified the foreign government information shall be responsible for making a declassification determination after consultation with concerned agencies. If upon receipt of the request, the Department determines that Treasury is not the agency that received or classified the foreign government information, it shall refer the request to the appropriate agency for action. Consultation with the foreign originator through appropriate channels may be necessary prior to final action on the request.

(ix) Mandatory declassification review requests for cryptologic information and information concerning intelligence activities (including special activities) or intelligence sources or methods shall be processed solely in accordance with special procedures issued by the Secretary of Defense and the Director of Central Intelligence, respectively.

(x) The fees to be charged for mandatory declassification review requests shall be for search, review and duplication. The fee charges for services of Treasury personnel involved in locating and reviewing records shall be at the rate of a GS–10, Step 1, for each hour or fraction thereof, except that no charge shall be imposed for search and/or review consuming less than one hour.

(A) Photocopies per page up to 8½" by 14" shall be $0.10 except that no charge will be imposed for reproducing 10 pages or less when search and/or review time requires less than one hour.

(B) When it is estimated that the costs associated with the mandatory declassification review request will exceed $100.00, the requester will be notified and requested to agree, in writing, to pay the actual charges. In the event the requester does not agree to pay the actual charges, the requester shall advise how to proceed with the mandatory declassification review request. Failure of a requester to pay charges after billing will result in future requests not being honored.

(C) A requester's initial request shall be accompanied by a statement that the requester is agreeable to paying fees for search, review and copying.

(D) Payment of fees shall be made by check or money order payable to the Treasurer of the United States.

§ 2.17 Assistance to the Department of State [3.3(b)].

The Secretary of the Treasury and other agency heads should assist the Department of State in its preparation of the *Foreign Relations of the United States* (FRUS) series by facilitating access to appropriate classified material in their custody and by expediting declassification review of documents proposed for inclusion in the FRUS.

§ 2.18 FOIA and Privacy Act Requests [3.4].

The Department of the Treasury shall process requests for declassification that are submitted under the provisions of the Freedom of Information Act, as amended, or the Privacy Act of 1974, in accordance with the provisions of those Acts.

Subpart D—Safeguarding

§ 2.19 General [4.1].

Information classified pursuant to this Order or predecessor orders shall be afforded a level of protection against unauthorized disclosure commensurate with its level of classification.

§ 2.20 General restrictions on access [4.1].

(a) *Determination of Need-To-Know.* Classified information shall be made available to a person only when the possessor of the classified information establishes in each instance, except as provided in § 4.3 of the Order, that access is essential to the accomplishment of official Government duties or contractual obligations.

(b) *Determination of Trustworthiness.* A person is eligible for access to classified information only after a showing of trustworthiness as determined by the Secretary of the Treasury based upon appropriate investigations in accordance with applicable standards and criteria.

§ 2.21 Access by Historical Researchers and Former Presidential Appointees [4.3].

(a) The requirement for access to classified information may be granted only as is essential to the accomplishment of authorized and lawful Government purposes and may be waived for persons who:

(1) Are engaged in historical research projects, or

(2) Previously have occupied policy-making positions to which they were appointed by the President.

(b) Access to classified information may be granted to historical researchers and to former Presidential appointees upon a determination of trustworthiness; a written determination that such access

is consistent with the interests of national security; the requestor's written agreement to safeguard classified information; and the requestor's written consent to have his notes and manuscripts reviewed in order to ensure that no classified information is contained therein. By the terms of § 4.3(b)(3) of the Order, former Presidential appointees not engaged in historical research may only be granted access to classified documents which they "originated, reviewed, signed or received while serving as a Presidential appointee."

(c) If the access requested by historical researchers and former Presidential appointees requires the rendering of services for which fair and equitable fees may be charged pursuant to Title 5 of the Independent Offices Appropriations Act, 31 U.S.C. 483a, the requestor shall be so notified and the fees may be imposed.

§ 2.22 Dissemination [4.1(d)].

Except as otherwise provided by Section 102 of the National Security Act of 1947, 61 Stat. 495, 50 U.S.C. 403 (1970 and Suppl V 1975), classified information originating in another agency may not be disseminated outside the Department without the consent of the originating agency.

§ 2.23 Standards for Security Equipment [4.1(b) and 5.1(b)].

The Administrator of General Services shall, in coordination with agencies originating classified information, establish and publish uniform standards, specifications, and supply schedules for security equipment designed to provide secure storage for and to destroy classified information. Any agency may establish more stringent standards for its own use. Whenever new security equipment is procured, it shall be in conformance with the standards and specifications referred to above and shall, to the maximum extent practicable, be of the type available through the Federal Supply System.

§ 2.24 Accountability procedures [4.1(b)].

(a) *Top Secret Control Officers.* Each Treasury bureau and the Office of the Secretary shall designate a primary and alternate Top Secret Control Officer. Top Secret Control Officers so designated shall:

(1) Maintain current accountability records of Top Secret information received within their bureau or office.

(2) Ensure that Top Secret information is properly stored and that Top Secret information under their control is personally destroyed, when required.

(3) Ensure that reproduction prohibitions of Top Secret information are strictly adhered to.

(4) Conduct annual physical inventories of such information. An inventory shall be conducted in the presence of an individual with an appropriate security clearance. The inventory shall be completed annually and signed by the Top Secret Control Officer and the witnessing individual.

(5) Ensure that Top Secret documents are downgraded, declassified, retired or destroyed as required by regulations or markings.

(6) Attach a TD F 71-01.7 (Top Secret Document Record) to the first page or cover of each copy of Top Secret information. The Top Secret Document Record shall be completed by the Top Secret Control Officer which shall serve as a permanent record.

(7) Ensure that all persons having access to Top Secret information sign the Top Secret Document Record. This also includes persons to whom oral disclosure was made.

(8) Maintain receipts concerning the transfer and destruction of Top Secret information. Record such actions on the Top Secret Document Record which shall be retained for a minimum of three years.

(9) As received, number in sequence each Top Secret document in a calendar year series (i.e. 82-001). This number shall be posted on the document and on all forms required for control of Top Secret information.

(10) Attach and properly execute TD F 71-01.5 (Classified Document Record of Transmittal) when a Top Secret document is transmitted internally or externally.

(11) Verify, prior to releasing Top Secret information, that the recipient is cleared for access to such information.

(12) Report in writing all Top Secret documents unacccounted for to the Assistant Secretary (Administration) who shall take appropriate action as promulgated by this regulation.

(13) Assure that no individual within the bureau or office transmits Top Secret information to another individual or office without the knowledge and consent of the Top Secret Control Officer.

(14) Ensure that Top Secret Document cover sheets (TD F 71-01.1) are affixed to such information while in use.

(15) Notify bureau of office employees of the designated control point for all incoming and outgoing Top Secret information.

(b) *Top Secret Control Officer Listings.* In order for the Office of Physical Security, Office of Administrative Programs, to maintain a current listing of Top Secret Control Officers within the Department, each Treasury bureau and the Office of the Secretary shall submit in writing to the Office of Physical Security, Office of Administrative Programs, the identities of the office(s) and names of the officials designated as their primary and alternate Top Secret Control Officers. Any changes in these designations shall be reported to the Office of Physical Security, Office of Administrative Programs, within thirty days.

(c) *Top Secret Document Record.* A TD F 71-01.7 shall be attached to the first page or cover of the original and each copy of Top Secret information. The Top Secret Document Record, which shall be completed by the Top Secret Control Officer, shall identify the Top Secret information attached, and shall serve as a permanent record of the information. All persons, including stenographic and clerical personnel, having access to the information attached to the Top Secret Document Record must list their name and date the TD F 71-01.7 prior to accepting responsibility for its custody. The TD F 71-01.7 shall indicate those individuals to whom only oral disclosure is made. The Top Secret Document Record shall remain attached to the Top Secret information until it is either transferred to another U.S. Government agency, downgraded, declassified or destroyed. Whenever any one of these actions is taken, the Top Secret Control Officer shall record the action on the Top Secret Document Record and retain it for a minimum of three years after which time it may be destroyed.

(d) *Classified Document Record of Transmittal.* TD F 71-01.5 shall be the exclusive classified document accountability record for use within the Department of the Treasury. No other logs or records shall be required except for the use of TD F 71-01.7 for Top Secret information. TD F 71-01.5 shall be used for single or multiple document receipting and for internal and external routing. The inclusion of classified information on TD F 71-01.5 should be avoided. In the event the subject title is classified, a recognizable short title shall be used, e.g., first letter of each word in the subject title. Several items may be transmitted to the same addressee with one TD F 71-01.5. The TD F 71-01.5 may be destroyed three years after the date of the final disposition of the document.

(1) *Top Secret Information.* Top Secret information shall be subject to a continuous receipt system regardless of how brief the period of custody. TD F 71-01.5 shall be used for this purpose. Top Secret accountability records shall

be maintained by Top Secret Control Officers separately from the accountability records of other classified information.

(2) *Secret Information.* Receipt on TD F 71-01.5 shall be required for transmission of Secret information between bureaus, offices and separate agencies. Responsible office heads shall determine administrative procedures required for the internal control within their respective offices. The volume of classified information handled and personnel resources available must be considered in determining the level of adequate security measures while at the same time maintaining efficiency.

(3) *Confidential Information.* Receipts for Confidential information shall not be required unless the originator indicates that receipting is necessary.

§ 2.25 Storage [4.1(b)].

Classified information shall be stored only in facilities or under conditions designed to prevent unauthorized persons from gaining access to it.

(a) *Minimum Requirements for Physical Barriers.*—(1) *Top Secret.* Top Secret information shall be stored in a GSA-approved security container with an approved, built-in, three-position, dial-type changeable combination lock or in other types of storage facilities that meet the standards for Top Secret established under the provisions of § 2.23. In addition, the designated security officer in each Treasury bureau or the Office of the Secretary shall prescribe those supplementary controls deemed necessary to restrict unauthorized access to areas in which such information is stored. Any vault used for the storage of sensitive compartmented information shall be configured to the specifications of the Director of Central Intelligence.

(2) *Secret and Confidential.* Secret and Confidential information shall be stored in a manner and under the conditions prescribed for Top Secret information, or in a container, vault, or alarmed area that meets the standards for Secret or Confidential information established under the provisions of § 2.23. Secret and Confidential information may also be stored in a safe-type filing cabinet having a built-in, three-position, dial-type changeable combination lock, or a steel filing cabinet equipped with a steel lock bar secured by a GSA-approved three-position changeable combination padlock. The designated security officer in each Treasury bureau or the Office of the Secretary shall prescribe those supplementary controls deemed necessary to restrict unauthorized access to areas in which such information is stored. Access to bulky Secret and Confidential material in weapons storage areas, strong rooms, closed areas or similar facilities shall be controlled in accordance with requirements established by the Department. At a minimum, such requirements shall prescribe the use of key-operated, high-security padlocks approved by the General Services Administration.

(b) *Combinations.*—(1) *Equipment in Service.* Combinations to dial-type locks shall be changed only by persons having an appropriate security clearance, and shall be changed whenever such equipment is placed in use; whenever a person knowing the combination no longer requires access to it; whenever a combination has been subjected to possible compromise; whenever the equipment is taken out of service; or at least once every year. Knowledge of combinations shall be limited to the minimum number of persons necessary for operating purposes. Records of combinations shall be classified no lower than the highest level of classified information that is protected by the lock.

(2) *Equipment Out of Service.* When security equipment is taken out of service, it shall be inspected to ensure that no classified information remains, and any built-in combination lock shall be reset to the standard combination 50-25-50. Combination padlocks shall be reset to the standard combination 10-20-30 or the designated security officer in each Treasury bureau or the Office of the Secretary shall prescribe such supplementary controls deemed necessary to fulfill their individual needs.

(3) *Safe or Cabinet Security Record.* Each piece of equipment used for the storage of classified information will have attached conspicuously to the outside a General Services Administration Optional Form 62 (Safe or Cabinet Security Record) on which an authorized person will record the date and time each day that they initially unlock and finally lock the security equipment, followed by their initials.

On each normal workday regardless of whether the security equipment was opened on that particular day, the security equipment shall be checked by authorized personnel to assure that no surreptitious attempt has been made to penetrate the equipment and the "Checked By" column of the Optional Form 62 shall be annotated to reflect the date and time of the action followed by that person's initials. Security equipment used for the storage of classified information that has been opened on a particular day shall not be left unattended at the end of that day until it has been locked by an authorized person and checked by a second person. In addition, reversible "Open-Closed" signs, available through normal supply channels, shall be used on such equipment and the tops of such equipment shall be kept free of all extraneous matter.

(4) *Safe Combination Records.* Combinations to equipment containing classified information shall be recorded on Treasury Form No. 4032 (Security Container Information). Such forms shall be completed in their entirety. Part 1 of the Form shall be posted on the interior of the top or locking drawer of the safekeeping equipment concerned. The names, addresses and home telephone numbers of personnel responsible for the combination and the classified information stored therein must be posted on Part 1 of the Form. Part II shall be properly completed, inserted in the envelope (Part III) provided and forwarded to the designated central repository for safe combinations. Parts II and III shall show the appropriate classification marking.

(c) *Keys.* The designated security officer in each Treasury bureau and the Office of the Secretary shall establish administrative procedures for the control and accountability of keys and locks whenever key-operated, high-security padlocks are utilized. The level of protection provided such keys shall be equivalent to that afforded the classified information being protected by the padlock.

(d) *Classified Document Cover Sheets.* In order to alert personnel to the fact that a document or folder is classified and to protect it from unauthorized scrutiny, classified document cover sheets, available through normal supply channels, will be used to cover classified documents when in use. Classified document cover sheets will be removed before classified information is filed to conserve filing space and also prior to transmission except when the transmission is made internally within a headquarters by courier, messenger or by personal contact.

§ 2.26 Transmittal [4.1(b)].

(a) *Preparation and Receipting.* Classified information to be transmitted outside of a Treasury facility shall be enclosed in opaque inner and outer covers. The inner cover shall be a sealed wrapper or envelope plainly marked with the assigned classification and addresses of both sender and addressee. The outer cover shall be sealed and addressed with no identification of the classification of its contents. A receipt

shall be attached to or enclosed in the inner cover, except that Confidential information shall require a receipt only if the sender deems it necessary. The receipt shall identify the sender, addressee, and the document, but shall contain no classified information. It shall be immediately signed by the recipient and returned to the sender. Within a Treasury facility, such information may be transmitted between offices by direct contact of the officials concerned in a single sealed opaque envelope with no security classification category being shown on the outside of the envelope. Classified information shall never be delivered to unoccupied rooms or offices.

(b) *Transmittal of Top Secret.* The transmittal of Top Secret information outside of a facility shall be by specifically designated personnel, by State Department diplomatic pouch, by a messenger-courier system authorized for the purpose, or over authorized secure communications circuits.

(c) *Transmittal of Secret.* The transmittal of Secret information shall be effected in the following manner:

(1) *The 50 States, District of Columbia, and Puerto Rico.* Secret information may be transmitted within and between the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico by one of the means authorized for Top Secret information, by the U.S. Postal Service registered mail, or by protective services provided by U.S. air or surface commercial carriers under such conditions as may be prescribed by the head of the agency concerned.

(2) *Other Areas.* Secret information may be transmitted from, to, or within areas other than those specified in § 2.25(c)(1) by one of the means established for Top Secret Information, or by U.S. registered mail through Military Postal Service facilities provided that the information does not at any time pass out of U.S. citizen control and does not pass through a foreign postal system. Transmittal outside such areas may also be accomplished under escort of appropriately cleared personnel aboard U.S. Government owned and U.S. Government contract vehicles or aircraft, ships the United States Navy, civil service manned U.S. Naval ships, and ships of U.S. Registry. Operators of vehicles, captains or masters of vessels, and pilots of aircraft who are U.S. citizens and who are appropriately cleared may be designated as escorts.

(d) *Transmittal of Confidential.* Confidential information shall be transmitted within and between the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and U.S. territories or possessions by one of the means established for higher classifications, or by the U.S. Postal Service certified or registered mail. Outside these areas, Confidential information shall be transmitted only as is authorized for higher classifications.

(e) *Hand Carrying of Classified Information in Travel Status.*—(1) *General Provisions.* Personnel in travel status shall physically transport classified information across international boundaries only when essential. Whenever possible, and when time permits, the most desirable way to transmit classified information to the location being visited would be by other authorized means. The physical transportation of classified information on non-U.S. flag aircraft should be avoided if possible. See TD 71-10.A entitled "Screening of Airline Passengers Carrying U.S. Classified Information or Material".

(2) *Specific Safeguards.* If it is determined that the transportation of classified information by an individual in travel status is in the best interest of the U.S. Government, the following specific safeguards shall be provided for:

(i) Classified information shall be in the physical possession of the individual and shall have adequate safeguards at all times if proper storage at a U.S. Government facility is not available. Under no circumstances shall classified information be stored in a hotel safe or room, locked in automobiles, private residences, train compartments, or any vehicular detachable storage compartments.

(ii) An inventory of all Top Secret classified information, including teletype messages, shall be made prior to departure and a copy of same shall be retained by the traveller's office until the traveller's return at which time all Top Secret classified information shall be accounted for. These same procedures are recommended for information classified Secret.

(iii) Classified information shall not be displayed or used in any manner in public conveyances or rooms.

(iv) In order to avoid unnecessary delays in the screening process prior to boarding commercial air carriers, it is advisable that the individual shall have in his/her possession a written Department of the Treasury authorization to transport classified information. This courier authorization, along with official travel orders, shall in most instances, permit the individual to exempt the classified information from inspection. If difficulty is encountered, the individual should tactfully refuse to exhibit or disclose the classified information to inspection and should insist on the assistance of the local U.S. diplomatic representative at the port of entry or departure.

(v) Upon completion of the visit, the individual shall have the information returned to his/her office by approved means. All Top Secret classified information, including teletype messages, taken for the purpose of the visit shall be accounted for. It is recommended that Secret information also be accounted for. If any Top Secret or Secret classified items are left with the office being visited for its retention and use, the individual shall obtain a receipt.

§ 2.27 Telecommunications transmissions.

Classified information shall not be communicated by telecommunications transmission, except as may be authorized by this regulation with respect to the transmission of classified information over authorized secure communications circuits or systems.

§ 2.28 Special access programs [1.2(a) and 4.2(a)].

The Department may create or continue a special access program if:

(a) Normal management and safeguarding procedures do not limit access sufficiently; and

(b) The number of persons with access is limited to the minimum necessary to meet the objective of providing extra protection for the information.

§ 2.29 Reproduction controls [4.1(b)].

(a) Top Secret documents, except for the controlled initial distribution of information processed or received electrically, shall not be reproduced without the consent of the originator.

(b) Unless restricted by the originating agency, Secret and Confidential documents may be reproduced to the extent required by operational needs.

(c) Reproduced copies of classified documents shall be subject to the same accountability and controls as the original documents.

(d) Paragraphs (a) and (b) of this section shall not restrict the reproduction of documents to facilitate review for declassification.

§ 2.30 Loss or possible compromise [4.1(b)].

(a) *Report of Loss or Compromise.* Any Treasury employee who has knowledge of the loss or possible compromise of classified information shall immediately report the circumstances to their designated security officer who shall take

appropriate action. In turn, the Office of Physical Security, Office of Administrative Programs, shall be notified by the affected bureau of such reported loss or possible compromise. The Office of Physical Security shall also notify the originating department and any other interested department.

(b) *Inquiry.* The Office of Physical Security, Office of Administrative Programs, shall notify the Assistant Secretary (Administration) who shall then direct an immediate inquiry to be conducted for the purpose of taking corrective measures and assessing damages. Based on the results of the initial inquiry, it may be deemed appropriate to notify the Inspector General who shall determine whether the Office of the Inspector General or a Treasury bureau will conduct any additional investigation. Upon completion of the investigation by the Inspector General, the Inspector General shall recommend to the Assistant Secretary (Administration) and concurrently the Office of Physical Security, Office of Administrative Programs, the appropriate administrative, disciplinary, or legal action to be taken.

§ 2.31 Responsibilities of holders [4.1(b)].

Any person having access to and possession of classified information is responsible for protecting it from persons not authorized access. This includes securing it in approved equipment or facilities whenever it is not under the direct supervision of authorized persons and meeting accountability requirements prescribed by the Department.

§ 2.32 Inspections [4.1(b)].

Individuals charged with the custody of classified information shall conduct the necessary inspections within their areas to ensure adherence to procedural safeguards prescribed to protect classified information. Security officers shall ensure that periodic inspections are made to determine whether procedural safeguards prescribed by this regulation are in effect at all times.

§ 2.33 Security violations.

General. Any individual, at any level of employment, determined to have been responsible for the unauthorized release or disclosure or potential release or disclosure of classified national security information, whether it be knowingly, willfully or through negligence, shall be notified on TD F 71-21.1 (Record of Security Violation) that his/her action is in violation of this regulation, the Order, the Directive, and Executive Order No. 10450, as amended. TD 71-21.A entitled "Administration of Security Violations" sets forth provisions concerning security violations which shall apply to each Treasury employee and all persons under contract or subcontract to the Department of the Treasury authorized access to classified national security information.

(a) Repeated abuse of the classification process, either by unnecessary or over-classification, or repeated failure, neglect or disregard of established requirements for safeguarding classified information by any employee shall be grounds for appropriate adverse or disciplinary action. Such actions may include, but are not limited to, a letter or warning, a letter of reprimand, suspension without pay, or dismissal, as appropriate in the particular case, under applicable personnel rules, regulations and procedures. Where a violation of criminal statutes may be involved, any such case shall be promptly referred to the Department of Justice.

(b) After an affirmative adjudication of a security violation, and as the occasion demands, reports of accountable security violations shall be placed in the employee's personnel security file, and as appropriate, in the employee's official personnel folder. The security official of the bureau or office concerned shall recommend to the respective management official or bureau head that disciplinary action be taken when such action is indicated.

§ 2.34 Disposition and destruction [4.1(b)].

Classified information no longer needed in current working files or for reference or record purposes shall be processed for appropriate disposition in accordance with the provisions of Chapters 21 and 33 of Title 44, United States Code, which govern disposition of Federal records. Classified information approved for destruction shall be destroyed by burning, mulching, or shredding in the presence of designated or authorized individuals. The method of destruction must preclude recognition or reconstruction of the classified information.

(a) *Approval of Use of Mulching and Shredding Equipment.* Prior to obtaining mulching or shredding equipment, the Office of Physical Security, Office of Administrative Programs, shall approve the use of such equipment.

(b) *Destruction by Burning.* Any classified information to be destroyed by burning shall be torn and placed in containers designated as burnbags and shall be clearly and distinctly labeled "Burn." Burnbags awaiting destruction shall be protected by security safeguards commensurate with the classification or control designation of the information involved.

(c) *Records of Destruction.* Appropriate accountability records shall be maintained on TD F 71-01.17 (Classified Document Certificate of Destruction) to reflect the destruction of all Top Secret information. The TD F 71-01.17 shall also be executed for the destruction of information classified Secret or Confidential as deemed necessary by the originator or as required by special regulations.

(d) *Destruction of Nonrecord Classified Information.* Nonrecord classified information such as extra copies and duplicates, including shorthand notes, preliminary drafts, used carbon paper and other material of similar temporary nature, shall also be destroyed by burning, mulching, or shredding as soon as it has served its purpose, but no records of such destruction need be maintained

Subpart E—Implementation and Review

§ 2.35 Departmental administration.

(a) The Assistant Secretary (Administration) shall:

(1) Enforce the Order, the Directive and this regulation, and establish, coordinate and maintain active training, orientation and inspection programs for employees concerned with classified information.

(2) Review suggestions and complaints regarding the administration of this regulation.

(b) The Office of Physical Security, Office of Administrative Programs, shall:

(1) Review all bureau implementing regulations prior to publication and shall require any regulation to be changed, if it is not consistent with the Order, the Directive or this regulation.

(2) Have the authority to conduct on-site reviews of bureau physical security programs and the information security programs as they pertain to each Treasury bureau and to require such reports, information and assistance as may be necessary.

§ 2.36 Bureau administration.

Each Treasury bureau and the Office of the Secretary shall designate a security officer or an official to direct, coordinate and administer its information security programs and physical security programs which shall include active oversight to ensure effective implementation of the Order, the Directive, this regulation and any bureau implementing regulation.

§ 2.37 Emergency planning [4.1(b)].

Each Treasury bureau and the Office of the Secretary shall develop plans for the protection, removal, or destruction of classified material in case of fire, natural disaster, civil disturbance, or enemy action. These plans shall include the disposition of classified information located in foreign countries.

§ 2.38 Emergency authority [4.1(b)].

The Secretary of the Treasury and other officials delegated original classification authority by the President may prescribe by regulation special provisions for the dissemination, transmittal, destruction, and safeguarding of national security information during combat or other emergency situations which pose an imminent threat to national security information.

§ 2.39 Security education [5.3(a)].

Each Treasury bureau that creates or handles national security information, including the Office of the Secretary, is required to establish a security education program. The program shall be sufficient to familiarize all necessary personnel with the provisions of the Order, the Directive, this regulation and any other implementing directives and regulations to impress upon them their individual security responsibilities. The program shall also provide for initial, refresher, and termination briefings.

(a) *Briefing of Employees.* All new employees concerned with classified information shall be afforded a security briefing regarding the Order, the Directive and this regulation. Employees concerned with sensitive compartmented information shall be required to read and sign a security agreement. All new employees afforded a security briefing shall be provided with copies of applicable laws and pertinent security regulations setting forth the procedures for the protection and disclosure of classified information. All employees given a security briefing shall be required to sign a TD F 71-01.16 (Physical Security Orientation Acknowledgment).

Supbart F—General Provisions

§ 2.40 Definitions [6.1].

(a) *Original Classification Authority.* The authority vested in an Executive Branch official to make an initial determination that information requires protection against unauthorized disclosure in the interest of national security.

(b) *Originating Agency.* The agency responsible for the initial determination that particular information is classified.

(c) *Multiple Sources.* The term used to indicate that a document is derivatively classified when it contains classified information derived from other than one source.

(d) *Portion.* A segment of a document for purposes of expressing a unified theme; ordinarily a paragraph.

(e) *Special Access Program.* Any program imposing "need-to-know" or access controls beyond those normally provided for access to Confidential, Secret, or Top Secret information. Such a program may include, but is not limited to, special clearance, adjudication, or investigative requirements, special designations of officials authorized to determine "need-to-know," or special lists of persons determined to have a "need-to-know".

(f) *Intelligence Activity.* An activity that an agency within the Intelligence Community is authorized to conduct pursuant to Executive Order No. 12333.

(g) *Special Activity.* An activity conducted in support of national foreign policy objectives abroad which is planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activity, but which is not intended to influence United States political processes, public opinion, policies or media and does not include diplomatic activities or the collection and production of intelligence or related support functions.

(h) *Unauthorized Disclosure.* A communication or physical transfer of classified information to an unauthorized recipient.

(i) *Derivative Classification.* A determination that information is, in substance, the same as information that is currently classified and a designation of the level of classification.

(j) *Information.* Any information or material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government.

(k) *National Security Information.* Information that has been determined pursuant to the Order or any predecessor order to require protection against unauthorized disclosure and that is so designated.

(l) *Foreign Government Information.* (1) Information provided by a foreign government or governments, an international organization of governments, or any elements thereof with the expectation, expressed or implied, that the information, the source of the information, or both, are to be held in confidence; or

(2) Information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence.

(m) *National Security.* The national defense or foreign relations of the United States.

(n) *Confidential Source.* Any individual or organization that has provided, or that may reasonably be expected to provide, information to the United States on matters pertaining to the national security with the expectation, expressed or implied, that the information or relationship, or both be held in confidence.

(o) *Original Classification.* An initial determination that information requires, in the interest of national security, protection against unauthorized disclosure, together with a classification designation signifying the level of protection required.

Donald T. Regan,

Secretary of the Treasury.

[FR Doc. 82-35489 Filed 12-30-82; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 21227-261]

Pacific Coast Groundfish Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of deferred effective date and request for comment.

SUMMARY: Final regulations implementing the Pacific Coast Groundfish Fishery Management Plan delayed until Janaury 1, 1983, the effectiveness of certain provisions dealing with vessel identification and gear specifications. The intended effect of this notice is to further defer the regulation that imposes specific marking requirements for each mile of trap or longline groundlines while the Secretary reconsiders this provision.

DATES: The effective date of groundline marking provisions contained in the second sentence of § 663.26(d)(4) and the second sentence of § 663.26(f)(2) is deferred. Comments on this provision must be received by February 2, 1983.

ADDRESSES: Send comments to H. A. Larkins, Director, Northwest Region,

National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, Washington 98115.

FOR FURTHER INFORMATION CONTACT: H. A. Larkins, 206-527-6150.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) was approved by the Assistant Administrator for Fisheries, NOAA, on January 4, 1982, and its final implementing regulations at 50 CFR Parts 611 and 663 (47 FR 43964) were published on October 5, 1982. Several provisions in the FMP were new or more restrictive than previous requirements and were thought to impose an economic burden on domestic fishermen if imposed immediately. Consequently, these provisions were deferred for three months to allow a grace period for compliance by fishermen.

The Pacific Fishery Management Council (Council) recommended at its November 17-18, 1982 meeting, and the Assistant Administrator concurs, that the previously deferred provisions should become effective at 0001 PST, January 1, 1983, except for the one-mile marking of longline and trap groundlines, which should be deferred indefinitely. The primary reason for delaying the effectiveness of this groundline regulation is to give the Council and the Secretary time to determine whether the groundline marking of each mile of trap and longline gear is unsafe, ineffective, impractical, and unenforceable, as public testimony has indicated. The exact wording of this deferred provision is—

Section 663.26(d)(4) for traps—"Traps laid on a groundline must also be marked at the surface every one mile of groundline with a pole and flag, and either a light or a radar reflector."; and

Section 663.26(f)(2) for longline gear—"Every one mile of groundline must also be marked at the surface with a pole and flag, and either a light or a radar reflector."

Comments on the need for this provision may be sent to the Regional Director at the above address.

(16 U.S.C. 1801 *et seq.*)

Dated: December 28, 1982.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 82-35550 Filed 12-28-82; 1:47 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 48, No. 1
Monday, January 3, 1983

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

Onions Grown in South Texas; Proposed Amendment to Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the continuing regulation § 959.322 to extend from May 10 to June 1 each year the ending date for grade and size requirements and the Sunday shipping prohibition. The regulation requires shipments of onions to fresh market to be inspected and meet minimum grade, size, pack and container requirements. The regulation promotes orderly marketing of such onions and keeps the less desirable quality and sizes from being shipped to consumers.

DATE: Comments due February 2, 1983.

ADDRESSES: Comments should be sent to: Hearing Clerk, Room 1077-S, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written comments shall be submitted, and they will be made available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter, Chief, Vegetable Branch, F&V, AMS, USDA, Washington, D.C 20250 (202) 447-2615. Copies of the marketing policy are available from him.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Information collection requirements contained in this regulation (7 CFR Part 959) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB #0581-0074.

The proposed rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "nonmajor" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it would not significantly affect costs for the directly regulated handlers.

Marketing Agreement No. 143 and Order No. 959, both as amended, regulate the handling of onions grown in designated counties in South Texas. It is effective under the agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The South Texas Onion Committee, established under the order, is responsible for its local administration.

Because requirements under this program have changed infrequently, in October 1981 the committee recommended, and the Secretary approved, a regulation which would continue in effect from marketing season to marketing season indefinitely unless modified, suspended or terminated by the Secretary upon recommendation submitted by the committee or other information available to the Secretary.

At its public organizational meeting in McAllen, Texas, on October 28, 1982, the committee recommended that the regulation continue in effect again this season with one change.

The committee recommended that the grade and size requirements and the Sunday shipping prohibitions be extended through June 1 of each year. These requirements currently are in effect March 1 through May 10 of each year. However, committee members representing the Laredo and the Winter Garden districts, the two districts most directly affected by the proposed change, believe it would improve the overall quality of onions marketed during this period. This should contribute to more orderly marketing of the South Texas onion crop.

Although the regulation proposed to be amended is effective for an indefinite period, the committee will continue to meet prior to or during each season to consider recommendations for modification, suspension, or termination of the regulation. Prior to making any such recommendations, the committee will submit to the Secretary a marketing policy for the season including an analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and interested persons may express their views at these meetings or may file comments with the Fruit and Vegetable Division before December 1 each year. The Department will evaluate committee recommendations and information submitted by the committee, and other available information, and determine whether modification, suspension or termination of the regulations on shipments of South Texas onions would tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 959

Marketing agreements and orders, Onions, Texas.

PART 959—ONIONS GROWN IN SOUTH TEXAS

It is proposed that the introductory text of § 959.322 *Handling regulations* (47 FR 8551, March 1, 1982) be revised as follows:

§ 959.322 Handling regulation.

During the period beginning March 10 and ending on June 15 each season no handler may package or load onions on Sunday or handle any onions except red varieties, unless they comply with paragraphs (a) through (d) or (e) or (f) of this section. However, the requirements of paragraphs (a) and (b) and the Sunday prohibition shall terminate at 11:59 p.m. on June 1 of each season.

* * * * *

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

Dated: December 27, 1982.

D. S. Kuryloski,

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

[FR Doc. 82-35590 Filed 12-30-82; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1126

[Docket No. AO-231-A49]

Milk in Texas Marketing Area; Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider proposals by Associated Milk

Producers, Inc., to amend the Texas milk order. The proposed amendments would reduce the current price for producer milk used to produce butter, nonfat dry milk and cheddar cheese by 40 cents per hundredweight during the months of March-June and December of each year. AMPI has requested that the proposals be adopted on an expedited basis so that amendments can be made effective for the spring months of 1983. The cooperative claims that the proposed action is needed to reflect the cost of maintaining and operating manufacturing facilities that serve a marketwide balancing function.

DATE: The hearing will convene January 18, 1983.

ADDRESS: The hearing will be held at the Sheraton Grand Hotel, Dallas-Ft. Worth Airport, Highway 114 and Esters Boulevard, Dallas, Texas 75261, beginning at 9:30 a.m., local time.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-4824.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Sheraton Grand Hotel, Dallas-Ft. Worth Airport, Highway 114 and Esters Boulevard, Dallas, Texas 75261, beginning at 9:30 a.m., local time, on January 18, 1983, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Texas marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR Part 900.12(d)) with respect to Proposals 1 through 3.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96-354). This act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of the proposals for the purpose of tailoring their applicability to small businesses.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

PART 1126—[AMENDED]

Proposed by Associated Milk Producers, Inc.

Proposal No. 1

Amend § 1126.40 by adding a new paragraph (d) as follows:

§ 1126.40 Classes of utilization.

* * * * *

(d) Class III(A) milk shall be all producer milk used to produce nonfat dry milk powder, cheddar cheese and butter during the months of March, April, May, June and December.

Proposal No. 2

Amend § 1126.50 by adding a new paragraph (d) as follows:

§ 1126.50 Class prices.

* * * * *

(d) The Class III(A) price for the months of March, April, May, June and December shall be the basic formula price less 40 cents per hundredweight.

Proposal No. 3

Make conforming changes in the allocation, the classification of transfers and diversions, and computation of a handler's pool obligation sections of the order and other such necessary conforming changes to accommodate the Class III(A) classification and pricing provisions specified in proposals 1 and 2.

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 4

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the market administrator, 11117 Shady Trail, P.O. Box 29529, Dallas, Texas 75229, or from the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250 or may be there inspected.

From the time a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Diivision, Agricultural Marketing Service (Washington Office only)
Office of the Market Administrator, Texas Marketing Area

Procedural matters are not subject to the above prohibition and may be dicussed at any time.

List of Subjects in 7 CFR Part 1126

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on December 27, 1982.

Vern F. Highley,

Administrator, Agricultural Marketing Service.

[FR Doc. 82-35524 Filed 12-30-82; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 82-ASW-84]

Proposed Alteration of Transition Area; De Ridder, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes to alter the transition area at De Ridder, LA. The intended effect of the proposed action is to provide adequate controlled airspace for aircraft executing a new instrument approach procedure to the Beauregard Parish Airport. This action is necessary

since the relocation of the nondirectional radio beacon (NDB) and the installation of an instrument landing system (ILS).

DATE: Comments must be received on or before February 3, 1983.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8 a.m. and 4:30 p.m. The FAA Rules Docket is located in the Office of the Regional Counsel, Southwest Region. Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, TX 76101; telephone: (817) 624–4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

Federal Aviation Regulation Part 71, Subpart G 71.181 as republished in Advisory Circular AC 70–3 dated January 29, 1982, contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting instrument flight rules (IFR) activity. Alteration of the transition area at De Ridder, LA, will necessitate an amendment to this subpart. This amendment will be required at De Ridder, LA, since there is a proposed change in IFR procedures to the Beauregard Parish Airport.

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. (Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals.) Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 82-ASW-84." The postcard will be date/time stamped and returned to the commenter. All communications received bvefore the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, or by calling (817) 624–4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the office listed above.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

De Ridder, LA, Revised

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Beauregard Parish Airport (latitude 30°50'00"N., longitude 93°20'30"W.)

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.61(c))

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

Issued in Fort Worth, TX, on December 21, 1982.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 82-35495 Filed 12-30-82; 8:45 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Part 291

[Economic Reg. Docket 41148; EDR-451]

Domestic Cargo Transportation

Dated: December 16, 1982.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB proposes to exempt all-cargo air carriers and the Department of Defense from provisions of the Airline Deregulation Act so that they can enter into long-term contracts for domestic cargo transportation. This rulemaking is at the CAB's initiative.

The Board's decision is based on the fact that since the fitness criteria for awarding cargo rights under sections 401 and 418 are identical, requiring section 418 carriers to obtain section 401 certificates to compete for DOD domestic cargo is unjustified and unnecessary. The Board tentatively finds that it is in the public interest to permit all certified carriers to compete for DOD contracts.

DATES: Comments by February 28, 1983; reply comments by March 15, 1983. Comments and other relevant information received after this date will be considered by the Board only to the extent practicable. Requests to be put on the Service List by January 12, 1983. The Docket Section prepares the Service List and sends it to each person listed, who then serves comments to others on the list.

ADDRESS: Twenty copies of comments should be sent to Docket 41148, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

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

SUPPLEMENTARY INFORMATION: Air carriers engaged in domestic cargo transportation may be certificated under section 401 or 418 of the Act, and are subject to the regulations in 14 CFR Part 291. Section 401(o) of the Act provides that only carriers certificated under section 401 can enter into contracts of

more than 30 days' duration with the Department of Defense (DOD). Carriers holding only section 418 certificates are thus prevented from entering into long-term contracts with DOD.

On several occasions in recent years, section 418 carriers have sought exemption from section 401(o) of the Act to enable them to bid upon and enter into long-term contracts with DOD. Most recently, Interstate Airlines, Inc. and International Air Service Company, Ltd. d.b.a. IASCO sought exemptions to enable their participation in the bidding process for LOGAIR, a DOD charter program. Interstate based its application for exemption on the contention that the Board granted a similar exemption to Michigan Peninsular Airways in Order 80-7-198, July 30, 1980, that an expanded competitive process offered economic advantages for DOD, and that section 401(o) discriminated against section 418 carriers.

By Order 82-9-5, September 2, 1982, Interstate was granted a temporary exemption from the provisions of section 401(o) of the Act to the extent necessary to permit it to operate domestic cargo charters for the Department of Defense under contracts of more than 30 days' duration. IASCO ws granted an exemption in Order 82-9-27. The Board affirmed the staff's findings and actions on these orders in Order 82-1-16, October 7, 1982.

As the fitness criteria for awarding cargo rights under sections 401 and 418 are identical, we find that requiring section 418 carriers to obtain section 401 certificates to enable them to compete for DOD domestic cargo business is unjustified and unnecessary. Section 401(o) was added to the Act in 1976, when the only vehicle for obtaining a certificate was section 401. Section 418 was added in 1977. It is clear that Congress did not intended to prohibit the participation of 418 certificated carriers in DOD business, given the directive to expedite consideration of 401 applications to provide such service. The Board tentatively finds that it is consistent with the public interest to permit all certificated carriers to compete for DOD contracts to the extent consistent with the scope of their operating authority. See section 102(a) (3), (4), (5), (9) and (10); and section 102(b) (1) and (2).

By this notice the Board proposes to amend 14 CFR Part 291, Domestic Cargo Transportation, to include exemptions from section 401(o) of the Act for DOD and section 418 carriers. This action would make clear that any certificated air carrier engaged in domestic cargo transportation may submit bids and enter into long-term contracts for the carriage of interstate cargo with the Department of Defense under section 401(o) of the Act.

Initial Regulatory Flexibility Act Analysis

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96-354, the Board certifies that this rule may, if adopted or proposed, have a substantial economic impact on a substantial number of small entities. The objective and legal rationale for this rule is discussed above. Some carriers currently under long-term contracts with the Department of Defense could lose business in the expanded competitive situation for such contracts, as described above. On the other hand, a class of carriers, many of whom are small businesses, would be newly permitted to compete for DOD business.

List of Subjects in 14 CFR Part 291

Air carriers, Antitrust, Freight, Insurance, Reporting Requirements.

PART 291—[AMENDED]

Accordingly, the Civil Aeronautics Board proposes to amend 14 CFR Part 291, *Domestic Cargo Transportation* as follows:

1. In § 291.31, Exemptions from the Act for direct air carriers, a new paragraph (c) would be added to read:

§ 291.31 Exemptions from the Act for direct air carriers.

* * * * *

(c) Each direct air carrier providing domestic cargo transportation under section 418 of the Act is exempted from the provisions of section 401(o)(1) of the Act to the extent necessary to permit it to compete for and operate domestic cargo charters for the Department of Defense under contracts of more than 30 days' duration.

2. In § 291.32, *Exemptions from the Act for persons other than direct air carriers,* a new paragraph (c) would be added to read as follows:

§ 291.32 Exemptions from the Act for persons other than direct air carriers.

* * * * *

(c) The Department of Defense is exempted from section 401(o) of the Act to the extent necessary to permit it to negotiate and enter into contracts of more than 30 days' duration with any section 418 carrier for operation of domestic cargo charters.

(Secs. 102, 204, 401, 407, 408, 416, and 418, Pub. L. 85-726, as amended, 72 Stat. 740, 743, 754, 766, 767, 771; 91 Stat. 1284; 49 U.S.C. 1302, 1324, 1371, 1377, 1378, 1386, and 1388)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-35501 Filed 12-30-82; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 325

[Docket No. 21215-252]

Export Trade Certificates of Review; Correction

AGENCY: International Trade Administration, Commerce.

ACTION: Proposed rule; Correction.

SUMMARY: This document corrects a proposed rule on Export Trade Certificates of Review that appeared at page 56972 in the **Federal Register** of Tuesday, December 21, 1982, (47 FR 56972). This action is necessary to correct typographical errors, errors in citations and cross references, and omissions in the original document.

DATE: Comment due date: Comments on the proposed rule must be submitted on or before January 20, 1983.

ADDRESS: Interested persons are invited to submit comments regarding the proposed rule with 5 copies to the Office of the Assistant General Counsel for Export Trading Companies, Department of Commerce, Room 4877, Washington, D.C. 20230. Communications should refer to the proposed rule by its title.

FOR FURTHER INFORMATION CONTACT: Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Department of Commerce, Washington, D.C. 20230; (202) 377-0937. This is not a toll free number.

The following corrections are made in FR DOC 82-34684 appearing on Page 56972 in the issue of December 21, 1982:

1. On page 56972, column one, the fifth paragraph following the document headings is corrected to read: "**ADDRESS:** Interested persons are invited to submit comments regarding this rule with 5 copies to the Office of the Assistant General Counsel for Export Trading Companies, Department of Commerce, Room 4877, Washington, D.C. 20230".

2. On page 56972, column two, second paragraph, "Any person may apply for a Certificate or Review", is corrected to read "Any person may apply for a Certificate of Review".

3. On page 56972, at the top of column three, § 329.3(b)(9)(B)" is corrected to read "§ 325.3(b)(9)(ii)".

4. On page 56973, column two, the first sentence of the third paragraph is corrected to read "The proposed rule is exempt from the Regulatory Flexibility Analysis requirements of section 553 of Title V, United States Code, or any other law, to publish general notice of proposed rulemaking for interpretative rules, general statements of policy, and rules of procedure or practice."

§ 325.1 [Corrected]

5. On page 56973, column three, in the first sentence of § 325.1, "Export Trading Certificate of Review" is corrected to read: "Export Trade Certificates of Review".

§ 325.2 [Corrected]

6. On page 56974, column one, in the second line of § 325.2(k), "Parnership" is corrected to read "Partnership".

7. On page 56974, column one, in the next to the last line of § 325.2(1), "Arrangement" is corrected to read "arrangement".

8. On page 56974, column one, the second line of § 325.2(o), "States of the United States the District" is corrected to read "States of the United States, the District".

§ 325.3 [Corrected]

9. On page 56974, column two, in the first line of § 325.3(b)(8)(i), "refleting" is corrected to read "reflecting".

10. On page 56975, column one, in the first line of § 325.3(b)(16), "porposed" is corrected to read "proposed".

11. On page 56975, column one, in the third sentence of § 325.3(d), "Deemded" is corrected to read "Deemed".

§ 325.4 [Corrected]

12. On page 56975, column three, in the second sentence of § 325.4(e), "to resubmit an application prior to the twelve month period" is corrected to read "to resubmit an application prior to the expiration of the twelve month period".

§ 325.6 [Corrected]

13. On page 56976, column one, in the third sentence of § 325.6, "certficate" is corrected to read "certificate".

§ 325.8 [Corrected]

14. On page 56976, column two, in § 325.8(b)(2), "the Secretary, and the Attorney General" is corrected to read "the Secretary and the Attorney General".

Dated: December 28, 1982.

Irving P. Margulies,

Deputy General Counsel.

[FR Doc. 82-35536 Filed 12-30-82; 8:45 am]

BILLING CODE 3510-25-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. No. 9146]

Xidex Corp.; Proposed Consent Agreement With Analysis To Aid Public Comment

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 a Mountain View, Calif. manufacturer of diazo and vesicular duplicate microfilm, among other things, to timely divest to a Commission-approved buyer, the vesicular duplicate microfilm technology and know-how it acquired from Kalvar Corp. or Anacomp, Inc. Under the divestiture, Xidex would have to make available to the purchaser its customer lists; a royalty-free license for its diazo duplicate microfilm technology and know-how; and 12 months of technological training with periodic consultations thereafter. Xidex would also be required to license its proprietarily developed vesicular microfilm technology to all interested parties; train them in the use of such technology for a period of 1 year; and make available to them and the acquirer of the Kalvar technology, 10,000,000 square feet of its vesicular duplicate microfilm for private label sales. Additionally, Xidex would have to sell such parties a major ingredient necessary to the manufacture of its vesicular microfilm, which is not commercially available.

DATE: Comments must be received on or before February 28, 1983.

ADDRESS: Comments should be directed to: FTC/S, Office of the Secretary, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/CS-2, George S. Cary, Washington, D.C. 20580; (202) 254-8577.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commisison 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

Microfilm.

Agreement Containing Consent Order

The agreement herein, by and between Xidex Corporation, hereinafter sometimes referred to as Respondent, a corporation, by its duly authorized officer, and its attorneys, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith, the parties hereby agree that:

1. Respondent Xidex Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal place of business at 2141 Landings Drive, Mountain View, California 94043.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violations of Section 7 of the Clayton Act, as amended (15 U.S.C. 18) and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and has filed an answer to said complaint denying said charges.

3. Respondent admits all of the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

a. Any further precedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a 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 will be placed on the public record for a period of sixty (60) days and information in respect therto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in the complaint issued by the Commission.

7. 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 § 3.25(f) of the Commission's Rules, the Commission may without further notice to Respondent, (1) issue its decision containing the following Order in disposition of the proceeding, and (2) make information public in respect thereto. When so entered the 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 U.S. Postal Service of the decision containing the agreed-to Order to Respondent's address as stated in this agreement shall constitute 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 in the agreement may be used to vary or to contradict the terms of the Order.

8. Respondent has read the complaint and the Order contemplated thereby. 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. Respondent 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

I

It is ordered that Xidex Corporation, its successors and assigns, and it officers, directors, agents, representatives and employees shall, upon written application made within seven (7) years after the effective date of this Order, grant to any and all sole proprietorships, partnerships, corporations or other business entities, which state in their application a "bona fide" intention to engage in (a) the production of vesicular duplicate microfilm within the United States for sale within the United States or export sale from the United States, or (b) the production of vesicular duplicate microfilm outside the United States for sale including export sales to the United States, a non-exclusive license to produce and sell vesicular duplicate microfilm in the form of the non-exclusive license agreement set forth in Appendix A.

Provided, however, that if respondent disputes the "bona fide" nature of an applicant's stated intention to engage under the requested license in the production or sale of vesicular duplicate microfilm within the United States, Xidex shall, within thirty (30) days from the date that the written application was received by Xidex, submit to the Federal Trade Commisssion a written statement setting forth its reasons for disputing the bona fide nature of the applicant's stated intention. The Commission may, at its election, request further information and itself determine the issued of whether such stated intention is "bona fide."

It is further ordered that within twelve (12) months after the effective date of this Order Xidex shall divest absolutely to an acquirer (hereinafter the "acquirer") approved in advance by the Federal Trade Commission, all books and records, patents, patent applications, trade secrets, technology and knowledge acquired from Kalvar Corporation or Anacomp, Inc., together with any improvements thereto (hereinafter the "Kalvar Technology"). This paragraph shall not be construed to prevent the acquirer, at its option, from also entering into a license agreement pursuant to Paragraph I of this Order.

Xidex shall also grant to the acquirer, on a royalty fee basis, a non-exclusive license to produce and sell diazo duplicate microfilm in the form of the non-exclusive license agreement set forth in Appendix B.

III

It is further ordered that, as soon as practicable, but no later than thirty (30) days after the divestiture required by Paragraph II of this Order, Xidex will commence teaching a reasonable number of persons designated by the acquirer how to practice the Kalvar Technology. At that time, Xidex will deliver to the acquirer all of its manuals, drawings, blueprints, specifications and other tangible documents or documentation pertaining to the Kalvar Technology. Training sessions shall be conducted at the acquirer's plant or at such other places as are mutually satisfactory to Xidex and the acquirer and shall continue for a period of time sufficient to satisfy the management of the acquirer that its personnel are well enough trained in the Kalvar Technology to produce vesicular duplicate microfilm similar to that which Xidex was able to produce using the Kalvar Technology, provided, however, that Xidex shall not be required to continue this training program for a period of more than one year. The acquirer will pay Xidex its expenses incurred in conducting such training sections, including salaries of its employees and travel and lodging costs. Upon reasonable notice to Xidex, the acquirer may also designate a reasonable number of persons to take up to two (2) tours of Xidex' Sunnyvale facility during the one year training period to observe the commercial production of vesicular duplicate microfilm. Xidex shall make available during the tours knowledgeable employees to respond to questions regarding the manufacture of vesicular duplicate microfilm.

IV

It is further ordered that at six (6) month intervals, commencing twelve (12) months after the divestiture required by paragraph II of this Order and continuing thereafter for two (2) years, at the acquirer's request Xidex will have a reasonable number of persons familiar with the Kalvar Technology meet with the acquirer to discuss any problems which may have developed pertaining solely to the acquirer's use of the Kalvar Technology. The acquirer will pay Xidex its expenses incurred in attending such meetings, including salaries of its employees, and travel and lodging costs.

V

It is further ordered that at the time of divestiture Xidex shall provide to the person or entity acquiring the technology pursuant to paragraph II of this Order a current list of its customers for diazo duplicate microfilm and a current list of its customers for vesicular duplicate microfilm, ranked according to volume of purchases from Xidex.

VI

It is further ordered that Xidex shall not seek to enforce any agreement by Kalvar Corporation, Anacomp. Inc. or Scott Graphics, Inc., their successors and assigns, that might limit the ability of those firms to compete in the production or sale of non-silver duplicate microfilm or limit the ability of those firms to purchase non-silver duplicate microfilm from any available source. Xidex shall not enforce those portions of any secrecy agreements with respect to duplicate microfilm that might have been entered into by former Kalvar Corporation, Anacomp, Inc., or Scott Graphics, Inc. employees that would prevent or limit their employment in any capacity by the acquirer.

VII

It is further ordered that, for a period of ten (10) years from the date this Order becomes final, Xidex, its subsidiaries, affiliates, divisions, successors and assigns shall not, without the prior approval of the Federal Trade Commission, directly or indirectly acquire any stock, share capital or equity interest, except an interest of not more than 10% purchased for investment purposes only, in any concern engaged in, or the assets of any concern used in the manufacture of diazo or vesicular duplicate microfilm; provided, however, nothing in this Order shall prohibit Xidex from (1) becoming a licensee of any patents or technology from such concerns, or (2) making purchases or sales in the ordinary course of business.

VIII

It is further ordered that within sixty (60) days after the effective date of this Order, and every sixty (60) days thereafter until the divestiture required by paragraph II is effected, Xidex shall submit to the Federal Trade Commission a written report setting forth the manner and form in which it has complied with paragraph II of this Order.

Within sixty (60) days of the effective date of this Order, and annually thereafter for a period of seven (7) years, Xidex shall submit to the Federal Trade Commission a written report setting forth the manner and form in which it has complied with paragraph I of this Order.

All such compliance reports shall include a summary of all discussions and negotiations with any persons who are potential acquirers of the technology to be divested or licensees of the technology to be licensed, the identity of all such persons, copies of all communications to and from such persons and reports and recommendations concerning divestiture or licensing.

IX

It is further ordered that, commencing on the effective date of this Order, Xidex shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in its corporate structure which may affect compliance obligations arising from this Order.

Appendix A—Non-Exclusive License Agreement

This agreement is made this —— day of ———, 198—, between Xidex Corporation ("Xidex"), a California corporation, and ———, a ——— corporation, and provides for the grant by Xidex to ——— of a non-exclusive license to practice certain technology now owned and possessed by Xidex, relating to the

manufacture of vesicular duplicate microfilm, for the consideration and upon the conditions hereinafter set forth.

1. *Grant of License.* Xidex hereby grants to ———— a non-exclusive license, without the right to sublicense, to make, have made, use, sell and practice all of the inventions covered by United States patents and patent applications owned or controlled by Xidex, which patents and patent applications relate to vesicular duplicate microfilm or its components and the manufacturing and processing thereof, and are all of the patents and patent applications or extensions thereof which Xidex or any of its subsidiaries own relating to such subject matter (except patents or patent applications acquired from Kalvar Corporation) and any patents or patent applications relating to the manufacture of vesicular duplicate microfilm which Xidex may file or obtain after the date of and during the term of this Agreement. In addition thereto, Xidex hereby grants to ———— a non-exclusive license, without the right to sublicense, to employ in the manufacture of vesicular duplicate microfilm all of the knowledge and technology now possessed or hereafter developed by Xidex which relates to the manufacture of vesicular duplicate microfilm, including, without limitation, its know-how, inventions (whether or not patented or patentable), process knowledge, manufacturing practices (as applied to mix preparation, coating process and quality control), resin formulae and resin technology, regardless of how such knowledge or technology was obtained. All of the matter licensed under this Agreement is hereinafter referred to as the "Technology" and the license herein granted is hereinafter referred to as the "License."

2. *Training.* As soon as is practicable, but not more than sixty (60) days after the execution of this Agreement, Xidex will commence teaching a reasonable number of persons designated by ———— how to practice the Technology. At that time, Xidex will deliver to ———— copies of all of its manuals, drawings, blueprints, specifications, formula books, quality control specifications and other tangible documents or documentation pertaining to the Technology (the "Technology Documents"). Training sessions shall be conducted at the plant of ———— or at such other places as are mutually satisfactory to Xidex and ———— and shall continue for a period of time sufficient to satisfy the management of ———— that its personnel are well enough trained in the Technology to produce vesicular duplicate microfilm similar to that which Xidex is able to produce; provided, however, that Xidex shall not be required to continue this training program for a period of more than twelve months. ———— will pay Xidex its expenses incurred in conducting such training sessions, including salaries of its employees and travel and lodging costs. Upon reasonable notice to Xidex, ———— may also designate a reasonable number of persons to take up to two (2) tours of Xidex' Sunnyvale facility during the one year training period to observe the commercial production of vesicular duplicate microfilm. Xidex shall make available during such tours knowledgeable employees to respond to questions regarding the Technology.

3. *Royalties, Records and Reports.* a. For the License, ———— will pay Xidex during the term of this Agreement, in the manner hereinafter provided, royalties equal to the following listed percentages of the net sales of vesicular duplicate microfilm manufactured by or for ———— with the use of all or any part of the Technology; provided, however that after December 31, 1988, ———— can use all of the matter which is the subject of the License, without paying any royalty.

[Percent of net sales]

Year of license	Royalty
1	3
2	3
3	2
4	2
5	2
6	2
7	2

b. As used herein, the phrase "net sales" shall mean the amounts which ———— bills for sales of epoxy-based vesicular duplicate microfilm manufactured by ———— with the use of all or any part of the Technology, less the following deductions, if applicable:

(1) Discounts allowed and taken;

(2) Transportation costs separately billed or prepaid;

(3) Special packaging costs;

(4) Sales and use taxes imposed with respect to such sales; and

(5) Amounts refunded or credited to customers who return any such vesicular duplicate microfilm.

No allowance or deduction shall be made for commissions.

c. ———— shall keep books of account containing such information as may be necessary to determine the amounts payable to Xidex as royalties. Said books of account shall be kept at ———— place of business, ————, and said books, and any supporting data, shall be open for inspection at all reasonable times by Xidex' independent certified public accountants who must agree, prior to examining same, that they will only report to Xidex whether the amounts represented by ———— to be payable to Xidex under the License are accurate.

d. Within 90 days after the close of each of its fiscal years, ———— shall deliver to Xidex a true and complete report giving such particulars of the business conducted by ———— pursuant to the License as are pertinent to an account for royalty purposes under the License. In addition, ———— shall deliver to Xidex a best estimate of these same particulars every 90 days in sufficient time to be incorporated into the Xidex Quarterly Report.

e. All royalties due pursuant to the License shall be paid at the time of the submission of the annual report required by paragraph d. above

f. Xidex covenants that if it shall have reason to believe, after inquiry, that any person, firm or corporation is infringing upon any of the patents which are the subject of the License, and which patent is actively being used by ———— at that time, it will institute and pursue such legal steps as required to determine the validity of such patent. If the patent is found to be invalid by an appropriate court of law, no further royalties shall be due on materials utilizing that patent only.

g. If Xidex should grant a License for the use of all or any part of the Technology to another at a more favorable royalty rate than that charged herein, Xidex will afford ———— the benefit of such more favorable rate from and after the date it is established.

4. *Technology Review.* At six-month intervals, commencing twelve months after the execution of this Agreement and continuing thereafter for three (3) years, ———— and Xidex will each have a reasonable numer of persons familiar with the subject matter of the License meet to review and update each other as to any problems which may have developed as a result of the License and as to new developments involving the Technology and the manufacture of vesicular duplicate microfilm. At such meetings, any Technology Documents not previously delivered shall be delivered to ————. The first such meeting shall be held at a place designated by Xidex, the second at a place designated by ———— and thereafter at places designated alternatively by Xidex and ————. In addition, at such meeting or prior thereto, each party hereto will notify the other of any new developments which it has made in the Technology and of its new research projects related to the Technology if, prior to the next such meeting, it proposes to announce such development of project to the public or to any person, firm or corporation other than its own patent counsel.

5. *Confidentiality—Assignability.* a. Any technical matters known to Xidex, transmitted in writing or orally transmitted to ———— and identified as confidential which are:

(1) Not publicly known,

(2) Not already possessed by ———— or

(3) Not disclosed to ———— by an unrelated third party, other than information which, of necessity, must be passed on to production workers to be used in the manufacturing process,

will be treated as confidential information. ———— will use its best efforts to prevent such confidential information from being made known to others.

b. Any technical matters known to ———— transmitted in writing or orally transmitted Xidex and identified as confidential which are

(1) Not publicly known,

(2) Not already possessed by Xidex, or

(3) Not disclosed to Xidex by an unrelated third party, other than information which, of necessity, must be passed on to production workers to be used in the manufacturing process,

will be treated as confidential information. Xidex will use its best efforts to prevent such confidential information from being made known to others.

c. Neither of the parties which receives confidential information from the other will assign or license the right to use such information.

6. *Sales of Vesicular Duplicate Microfilm to* Xidex hereby agrees that during the first year of the License it will, at the option of ——————, sell up to 10,000,000 square feet of vesicular duplicate microfilm of the type(s) specified in the purchase orders in mill rolls at a price of $.09 per square foot for 5-mil film (the prices to be charged for vesicular duplicate microfilm on a base other than 5-mil to be adjusted to reflect the difference between the price paid by Xidex for that base and the price paid by Xidex for 5-mil base) during the calendar year 1982. The prices shall also be adjusted annually to reflect changes in Xidex' costs of manufacturing vesicular duplicate microfilm. Xidex shall not be required to sell —————— more than 10,000,000 square feet of such film. Xidex will deliver one-third of each order within thirty (30) days after receipt thereof, one-third within sixty (60) days after receipt thereof, and the balance within ninety (90) days after receipt thereof. The material delivered pursuant to the provisions of this paragraph shall be first quality by Xidex standards. Xidex shall be paid the net amount due within thirty (30) days of delivery of such film.

7. *Sale of Resin Solutions to* Xidex will, during the term of this Agreement, sell —————— such epoxy resin solutions as —————— may need in order to employ the Technology insofar as epoxy resin capacity is available. (If in any year the total resin demands of Xidex and its licensees are in excess of Xidex capacity, Xidex will not be obligated to provide to —————— during that year more resin than is required to produce 10,000,000 square feet of vesicular duplicate microfilm.) As of the date of this Agreement, the price for such epoxy resin solutions shall be $5.00 per kilogram of 20 percent by weight solution, if in any one year, —————— purchases less resin than is required to produce 10,000,000 square feet of vesicular duplicate microfilm. Otherwise, the price of such epoxy resin solutions shall be $6.00 per kilogram of 20 percent by weight solution. The price of this solution may be adjusted no more than once per calendar quarter to reflect changes in prices to Xidex of necessary raw materials. It is understood that Xidex's gross margin percentage for such sales will not be increased during the life of this Agreement.

8. *Sales to Which Royalties Do Not Apply.* a. Xidex shall not be entitled to any royalties based on sales of vesicular duplicate microfilm based wholly or in part upon poly-alpha-chloro-acrylonitrile technology, as covered by patents owned or licensed by Norman Notley, 3M, Eastman Kodak or other persons or corporations, or upon saran or resin blend technology as covered by patents previously owned or licensed by Kalvar Corporation or by Xidex as a result of any transaction with Kalvar Corporation, or upon any technology independently developed or licensed by —————— which is not based on an epoxy technology.

b. —————— will not be required to pay any royalty to Xidex for manufacturing vesicular duplicate microfilm for other parties who request to do such work and agree to indemnify —————— against actual or alleged patent infringements, including infringement of Xidex patents, resulting from such work. —————— will not accept any order for the manufacture of vesicular duplicate microfilm under this provision which would cause it to employ the Technology.

c. —————— will not be required to pay any royalty to Xidex for vesicular duplicate microfilm purchased and resold pursuant to paragraph 6 of this Agreement.

9. *Termination of Agreement.* This Agreement shall terminate at the end of seven (7) years after its date.

10. *Arbitration.* Any controversy whatsoever relating to this Agreement shall be settled by arbitration in Mountain View, California, under the rules of the American Arbitration Association and shall be binding on the parties except for errors apparent on its face unless it appears to have been procured by corruption or other undue means, or that there was partiality or misbehavior by the arbitrators or any of them.

11. *Governing Law.* This Agreement shall be construed under the laws of the State of California.

Witness the following signatures and seals:

Xidex Corporation.

——— ———.

Attest:

——— ———.

Attest:

——— ———.

Appendix B—Non-exclusive License Agreement

This agreement is made this —— day of ———, 198—, between Xidex Corporation ("Xidex"), a California corporation, and ——————, a corporation, and provides for the grant by Xidex to —————— of a non-exclusive license to practice certain technology now owned and possessed by Xidex, relating to the manufacture of diazo duplicate microfilm in accordance with the provisions of the Order of the Federal Trade Commission dated ——————.

1. *Grant of License.* Xidex hereby grants to —————— a non-exclusive license, without the right to sublicense, to employ in the manufacture of diazo duplicate microfilm all of the knowledge and technology now possessed by Xidex which relates to the manufacture of diazo duplicate microfilm, including, without limitation, its know-how, inventions (whether or not patented or patentable), process knowleged, manufacturing practices (as applied to mix preparation, coating process and quality control), resin formulae and resin technology, regardless of how such knowledge or technology was obtained. All of the matter licensed under this Agreement is hereinafter referred to as the "Technology" and the license herein granted is hereinafter referred to as the "License."

2. *Training.* As soon as is practicable, but not more than sixty (60) days, after the execution of this Agreement, Xidex will commence teaching a reasonable number of persons designated by —————— how to practice the Technology. At that time, Xidex will deliver to —————— copies of all of its manuals, drawings, blueprints, specifications, formula books, quality control specifications and other tangible documents or documentation pertaining to the Technology (the "Technology Documents"). Training sessions shall be conducted at the plant of —————— or at such other places as are mutually satisfactory to Xidex and —————— and shall continue for a period of time sufficient to satisfy the management of —————— that its personnel are well enough trained in the Technology to produce diazo duplicate microfilm similar to that which Xidex is now able to produce; provided, however, that Xidex shall not be required to continue this training program for a period of more than twelve months. —————— will pay Xidex its expenses incurred in conducting such training sessions including salaries of its employees and travel and lodging costs. Upon reasonable notice to Xidex, —————— may also designate a reasonable number of persons to take up to two (2) tours of Xidex's Sunnyvale facility during the one year training period to observe the commercial production of diazo duplicate microfilm. Xidex shall make available during such tours knowledgeable employees to respond to questions regarding the Technology.

3. *Technology Review.* At six-month intervals, commencing twelve months after the execution of this Agreement and continuing thereafter for three (3) years, —————— and Xidex will each have a reasonable number of persons familiar with the subject matter of the License meet to review and update each other as to any problems which may have developed as a result of the License and as to new developments involving the Technology and the manufacture of diazo duplicate microfilm. At such meetings, any Technology Documents not previously delivered shall be delivered to ——————. The first such meeting shall be held at a place designated by Xidex; the second at a place designated by —————— and thereafter at places designated alternatively by Xidex and ——————. In addition, at such meeting or prior thereto each party hereto will notify the other of any new developments which it has made in the Technology and its new research projects related to the Technology if prior to the next such meeting, it proposes to announce such development or project to the public or to any other person, firm or corporation other than its own patent counsel.

4. *Confidentiality—Assignability.* a. Any technical matters known to Xidex, transmitted in writing or orally transmitted to —————— and identified as confidential which are

(1) Not publicly known,

(2) Not already possessed by ——————, or

(3) Not disclosed to ———— by an unrelated third party, other than information which, of necessity, must be passed on to production workers to be used in the manufacturing process,

will be treated as confidential information. ———— will use its best efforts to prevent such confidential information from being made known to others.

b. Any technical matters known to ————, transmitted in writing or orally transmitted to Xidex and identified as confidential which are

(1) Not publicly known,

(2) Not already possessed by Xidex, or

(3) Not disclosed to Xidex by an unrelated third party, other than information which, of necessity, must be passed on to production workers to be used in the manufacturing process, will be treated as confidential information. Xidex will use its best efforts to prevent such confidential information from being made known to others.

c. Neither of the parties which receives confidential information from the other will assign or license the right to use such information.

5. *Sales of Diazo Duplicate Microfilm to* Xidex hereby agrees that during the first year of the License it will, at the option of ————, sell up to 10,000,000 square feet of diazo duplicate microfilm of the type(s) specified in the purchase orders in mill rolls at a price of $.08 per square foot for 5-mil film, (the prices to be charged for diazo duplicate microfilm on a base other than 5-mil to be adjusted to reflect the difference between the price paid by Xidex for that base and the price paid by Xidex for 5-mil base) during the calendar year 1982. The prices shall also be adjusted annually to reflect changes in Xidex' costs of manufacturing diazo duplicate microfilm. Xidex shall not be required to sell ———— more than 10,000,000 square feet of such film. Xidex will deliver one-third of each order within thirty (30) days after receipt thereof, one-third within sixty (60) days after receipt thereof, and the balance within ninety (90) days after receipt thereof. The material delivered pursuant to the provisions of this paragraph shall be first quality by Xidex standards. Xidex shall be paid the net amount due within thirty (30) days of delivery of such film.

6. *Arbitration.* Any controversy whatsoever relating to this Agreement shall be settled by arbitration in Mountain View, California, under the rules of the American Arbitration Association and shall be binding on the parties except for errors apparent on its face unless it appears to have been procured by corruption or other undue means, or that there was partiality or misbehavior by the arbitrators or any of them.

7. *Governing Law.* This Agreement shall be construed under the laws of the State of California. Witness the following signatures and seals:

Xidex Corporation.

———— ————.

Attest:

———— ————.

Attest:

———— ————.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Xidex Corporation.

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.

In September 1980 the Commission issued a compliant against Xidex Corporation which alleged that Xidex's acquisition of certain assets of Scott Graphics, Inc., a subsidiary of Scott Paper Company, and its acquisition of certain assets of the Kalvar Corporation violated Section 7 of the Clayton Act and Section 5 of the FTC Act. The Scott Graphics acquisition took place in June of 1976 and the Kalvar acquisition in March of 1979. Specifically, the complaint alleged that through these two acquisitions Xidex, a manufacturer of both diazo and vesicular duplicate microfilm, substantially lessened competition in the markets for those two products and in the overall market for nonsilver duplicate microfilm, which the complaint alleged consists of the diazo duplicate microfilm and the vesicular duplicate microfilm submarkets.

Prior to the acquisition of its duplicate microfilm business, Scott Graphics was a manufacturer of diazo duplicate microfilm in competition with Xidex. Similarly, prior to its acquisition Kalvar was a manufacturer of vesicular duplicate microfilm in competition with Xidex. Thus, by means of these acquisitions, Xidex was alleged to have eliminated two of its direct competitiors in the manufacture of duplicate microfilm and to have greatly increased the level of concentration in the three product markets alleged. In addition, through its acquisition of Kalvar technology, Xidex was alleged to have attained a near monopoly in vesicular microfilm technology and to have made it significantly more difficult for new companies to enter this high technology market.

Following administrative hearings, but prior to the issuance of an initial decision by the administrative law judge, Xidex and the Commission's trial staff entered into a consent agreement that would settle the Commission's charges against Xidex. This matter has been withdrawn from adjudication so that the Commission itself may consider whether to accept the proposed consent order agreed to by Xidex.

The primary objective of the proposed order is to restore competition through the return of viable competitors to the overall duplicate microfilm market from which Scott and Kalvar have been removed. The manufacture of duplicate microfilm is a technically complex process that requires expertise in polymer chemistry, photographic science and precision film coating techniques. The Commission has reason to believe that considerable time would be required before potential competitors could master diplicate microfilm manufacturing know-how, that the time required to establish a competitive research and development department is significant and that the development of new products does not generally begin until production processes of existing products are mastered.

The Commission also has reason to believe that Xidex closed the Kalvar plant shortly after acquiring it, and ceased development efforts on the technology acquired from Kalvar so that Xidex' own technology is currently the only up-to-date technology that Xidex possesses, and so that manufacturers of microfilm duplicating equipment no longer attempt to keep their products compatible with the Kalvar microfilm technology. In addition, the underlying technology needed to produce vesicular duplicate microfilm is protected by patents, most of which were previously held by Kalvar and Xidex but which now are owned by Xidex alone.

Therefore, the objective of the proposed order is to make both patented and unpatented duplicate microfilm technology, and the know-how needed to use such technology, available to all comers at a low royalty rate. Because the lack of duplicate microfilm technology and know-how may be the most significant barrier faced by companies seeking to enter into the manufacture of duplicate microfilm, the licensing arrangement contained in the proposed order is intended to make it easier for such companies to enter the market. Moreover, the Commission has reason to believe that the proposed order's licensure provisions are deemed necessary by industry participants to accomplish this objective.

Paragraph 1 of the proposed order requires Xidex to license to any and all interested parties its proprietarily developed vesicular microfilm technology and the manufacturing know-how needed to use it. An actual license was agreed to by Xidex and is attached as Appendix A to the proposed order. This license covers both patented and unpatented epoxy vesicular technology and know-how, as well as improvements made thereto for seven years after execution of the license. (Appendix A, Paragraph 1) The royalty rate is set at 3 percent of net sales for the first two years of the license, and at 2 percent for the remaining years. (Appendix A, Paragraph 3) After December 1989 no royalties will be due, however, regardless of when the license was entered into.

The license agreement requires Xidex to train each licensee in the use of its technology for up to twelve months from the date of the license. (Appendix A, Paragraph 2) The cost to Xidex for the training is to be paid by the licensee. In addition, for a period of three years after the year of training, Xidex has agreed to meet with each licensee periodically to discuss problems or improvements in the licensed technology.

(Appendix A, Paragraph 4) Xidex is also required under the license to make available to each licensee at a set price 10,000,000 square feet of its vesicular duplicate microfilm for private label sales as needed. (Appendix A, Paragraph 6) This provision is intended to enable each licensee to get a marketing effort underway while it moves into its own vesicular microfilm production. Xidex also agrees to provide at a given price the major ingredient necessary to the manufacture of its vesicular microfilm, an ingredient that is not currently commercially available. (Appendix A, Paragraph 7)

Paragraph II of the proposed order requires Xidex to divest the vesicular duplicate microfilm technology and know-how it received from Kalvar Corporation. The acquirer must be approved by the Federal Trade Commission. This divestiture of the Kalvar technology will be absolute, meaning that no other company—including Xidex—will have the right to manufacture vesicular microfilm using the patented Kalvar process without the permission of the acquirer. Also under paragraph II, Xidex is required to make available by royalty-free license its diazo duplicate microfilm technology and know-how to the acquirer of the Kalvar vesicular technology. The license for diazo duplicate microfilm is attached as Appendix B to the proposed order. Appendix B employs the same mechanisms for transferring diazo technology and know-how as does Appendix A for vesicular technology and know-how. Thus, paragraphs III and IV of the proposed order, read together with the diazo license in Appendix B, provide that the acquirer-licensee is entitled to twelve months of training in the Kalvar vesicular and in the Xidex diazo technologies as well as periodic consultations thereafter. Under the diazo license Xidex must also make available at a set price 10,000,000 square feet of its diazo duplicate microfilm for private label sales to the acquirer/licensee. (Appendix B, Paragraph 5)

Xidex is required under paragraph V of the proposed order to provide to the purchaser of the Kalvar technology current lists of its diazo and vesicular duplicate microfilm customers, ranked by their volume of purchases.

Under paragraph VI of the proposed order, Xidex has agreed not to enforce certain secrecy agreements and agreements-not-to-compete which it obtained as part of the Scott Graphics and Kalvar transactions.

Paragraph VII of the proposed order bans Xidex from acquiring more than a 10 percent interest in any firm that manufactures non-silver duplicate microfilm without prior Commission approval. This ban lasts ten years from the date the order becomes final.

Finally, paragraphs VIII and IX of the proposed order require Xidex to submit periodic reports to the Commission on its compliance with the order, and to notify the Commission of any changes in its corporate structure that would affect its obligations under the order.

The broad purpose of the proposed order is to encourage and facilitate new entry into the diazo and vesicular duplicate microfilm marketplace. It is hoped that this new entry will result in a more competitive market structure in less time than would be required to achieve such relief through continued litigation and eventual divestiture of the assets alleged to have been acquired unlawfully.

The Commission does not intend, by provisionally accepting this agreement, to establish a general principle that compulsory licensing is an appropriate remedy in every merger case, or even in every merger case where technological innovations are important to the industry. On the other hand, the Commission has reason to believe that complusory licensing is appropriate here, in view of the circumstances described above, including the market share of Xidex, its elimination of Kalvar as a technological rival, and the impracticability of obtaining an effective divestiture remedy.

Interested persons are invited to comment on any aspect(s) of the proposed order, including likely competitive or other effects. In particular, the Commission invites comments on whether the proposed consent order is likely to reduce incentives of firms in this and other industries to invest in research and development.

In connection with this general issue, the Commission solicits comments on the following:

(1) Whether the licensing requirements contained in the proposed order are of appropriate duration.

(2) Whether the Commission's acceptance of a proposed consent order requiring Xidex to license internally-developed (as distinguished from acquired) technology is appropriate.

(3) Whether the Commission's acceptance of a proposed consent order requiring Xidex to license future technology developed by Xidex during the term of its licensing obligation is appropriate.

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.

Carol M. Thomas,

Secretary.

[FR Doc. 82-34924 Filed 12-30-82; 8:45 am]

BILLING CODE 6750-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1145

Proposed Rule To Regulate Under the Consumer Product Safety Act (CPSA) a Risk of Injury That May Be Presented by Certain Squeeze Toys

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is investigating the possibility that certain squeeze toys made from compressible material may present a potential choking and/or suffocation hazard if they become lodged in the throat. The Commission proposes, should regulatory action become necessary regarding the possible risk of choking and/or suffocation injury from lodging in the throat which may be associated with such products, to use the procedures of the Consumer Product Safety Act rather than those of the Federal Hazardous Substances Act. The Commission preliminarily determines that this transfer is in the public interest because, in the event the Commission finds that a risk of choking and/or suffocation injury is associated with those products if they lodge in the throat, public notification and remedial action can be accomplished more expeditiously under the CPSA than under the FHSA.

The risk of injury which the Commission proposes to transfer to the Consumer Product Safety Act does not include the risk of choking, aspiration, or ingestion of the entire toy or small parts which may become detached from, or broken off any such toy. That risk of injury remains subject to regulations issued under the Federal Hazardous Substances Act.

DATE: Comments concerning this proposal must be received in the Office of the Secretary by February 2, 1983.

ADDRESS: Comments should be sent to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, (301) 492-6800.

FOR FURTHER INFORMATION CONTACT: Lynn Lichtenstein, Trial Attorney, Division of Administrative Litigation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6626.

SUPPLEMENTARY INFORMATION: By this notice, the Commission proposes to regulate under the Consumer Product Safety Act (CPSA, 15 U.S.C. 2051 *et seq.*) rather than under the Federal Hazardous Substances Act (15 U.S.C. 1261 *et seq.*) a possible risk of choking and/or suffocation injury from lodging in the throat that may be associated with certain squeeze toys which are described in detail below.

The risk of injury which the Commission proposes to transfer to the CPSA does not include any risk of choking, aspiration, or ingestion of the entire toy or small parts which may become detached from, or break off any such toy. That risk of injury remains subject to regulations issued under the FHSA and published at 16 CFR 1500.18(a)(9) and Part 1501.

Section 30(d) of the CPSA (15 U.S.C. 2079(d)) governs this proposed rule. That section provides that a risk of injury which is associated with a consumer product and which could be eliminated

or reduced to a sufficient extent by action under the Federal Hazardous Substances Act may be regulated under the CPSA only if the Commission by rule finds that it is in the public interest to regulate such risk of injury under this Act.

The Commission has examined the applicable statutes and has considered the facts regarding the possible risk of choking and/or suffocation injury from lodging in the throat that may be presented by certain squeeze toys made of compressible materials. The Commission has preliminarily determined that it is in the public interest to regulate under the CPSA rather than the FHSA the possible risk of choking and/or suffocation injury (other than a risk of choking, aspiration, or ingestion of the entire toy or small parts of any such toy), which may be associated with the toys which are the subject of this notice if they become lodged in the throat.

SUPPLEMENTARY INFORMATION:

A. Background

In December of 1981 and January of 1982, the Commission staff received information concerning the deaths by choking and suffocation of two infants which resulted after the handles of squeeze toys had lodged in the children's throats. The toys involved in these deaths were made from compressible materials, and had handles with a smooth, cylindrical configuration and a flared or bulbous end. The Commission also as reports of two other suffocation deaths in 1975 and 1976, and a consumer complaint of a nonfatal choking incident, all of which involved squeeze toys with similar characteristics.

Information available to the Commission staff suggests that the handles of these toys appeal to infants as objects for sucking because of their smooth, cylindrical shape. That information also indicates that when an infant sucks on the handle of such a toy, it can move toward the back of the mouth and into the upper part of the throat. Once in the throat, it can prevent passage of air to the lungs.

The two fatalities reported in 1981 and 1982 were both associated with toys imported by the same firm. After receiving information about these two deaths, the Commission staff negotiated with the importer of the toys involved in these incidents to obtain a satisfactory plan for notification to the public of the hazard presented by these toys, and for recall of all toys in the same line of products as the toys associated with the two infant deaths. That notification and recall program is now in progress.

At the same time, the Commission's field staff began inspections of manufacturers, importers, and retailers of toys to determine if other squeeze toys are being marketed with physical characteristics similar to the products involved in the incidents described above.

During this investigation, the staff discovered that other firms were importing and distributing several different models of squeeze toys made from compressible materials, some of which were similar in size and configuration to the toys involved in the indicents discussed above.

B. Regulation Under FHSA

At this time, the toys described above are subject to regulation by the Consumer Product Safety Commission under provisions of the Federal Hazardous Substances Act (FHSA, 15 U.S.C. 1261 *et seq.*) as toys or articles intended for use by children. In accordance with provisions of section 3(e) through (i) of the FHSA (15 U.S.C. 1262(e), (f), (g), (h), (i)), the Commission could begin a proceeding for the issuance of a rule to declare that these toys present a mechanical hazard. If issued on a final basis, such a rule would have the effect of classifying the toys as "banned hazardous substances" as that term is used in section 2(q)(1)(A) of the FHSA (15 U.S.C. 1261(q)(1)(A)), and would prohibit the importation of the toys into the United States, as well as the distribution or sale of the toys in this country. If a toy or children's article presents an "imminent hazard," provisions of section 3(e)(2) of the FHSA (15 U.S.C. 1262(e)(2)) authorize the Commission to issue an immediate order declaring the product to be a banned hazardous substance pending completion of a proceeding to issue a banning rule.

A final rule issued under provisions of section 3(e)through (i) of the FHSA would also make the toys in question subject to provisions of section 15 of the FHSA (15 U.S.C. 1274). That section authorizes the Commission to determine, after affording all interested persons opportunity for a hearing, that notification to the public of the hazard presented by a product which is a "banned hazardous substance" is necessary in order to adequately protect the public. That section also authorizes the Commission, after affording all interested persons opportunity for a hearing, (which could be combined with a hearing regarding the need for public notification), to require the manufacturer, distributor or dealer of a product which is a banned hazardous substance to elect to repair or replace the product, or to refund the purchase price of the product.

However, the provisions of section 15 of the FHSA concerning public notification and corrective action would be applicable to the toys which are the subject of this notice only if the Commission had first issued a rule under provisions of sections 3 (e) through (i) of the FHSA to announce the Commission's determination that the products present a mechanical hazard. A proceeding to issue such a rule is complex and time-consuming.

Such a proceeding is initiated by publication of an advance notice of proposed rulemaking in the **Federal Register** to invite comments from all interested persons about the risk of injury associated with the product which is the subject of the proceeding and possible means of addressing that risk of injury including voluntary standards now in existence or which might be developed. If, after consideration of all information received in response to the advance notice of proposed rulemaking the Commission decides to continue the proceeding, publication of a second notice in the **Federal Register** is required to propose the rule and invite written comments on the proposal. The Commission must then analyze all comments received in response to the proposal and publish a third notice in the **Federal Register** to issue the rule on a final basis.

C. Regulation Under CPSA

The CPSA has provisions for requiring public notification of substantial hazards which may be presented by the toys and for ordering corrective action to be taken with regard to those products without the necessity of first completing a rulemaking proceeding.

Additionally, the CPSA has provisions which authorize the Commission in certain cases to obtain a court order for public notification of the hazard presented by a product and for repair, or replacement of the product, or refund of the purchase price of the product without any necessity of first completing a rulemaking proceeding. The FHSA has no corresponding provisions.

Section 15 of the CPSA (15 U.S.C. 2064) confers upon the Commission the authority to order public notification of the hazard presented by a product if the Commission determines, after affording all interested persons opportunity for a hearing, that the product presents a "substantial product hazard," and that notification is required in order to adequately protect the public from that

substantial product hazard. Additionally, section 15 of the CPSA authorizes the Commission to order any manufacturer, importer, distributor, or retailer of a product to elect to repair or replace the product, or to refund the purchase price of the product, if the Commission determines, after affording all interested persons opportunity for a hearing, that the product presents a "substantial product hazard," and that issuance of such an order is in the public interest.

If the toys described in this notice were subject to regulation under the CPSA, no requirement for rulemaking would exist in order to invoke the provisions of section 15 of that act.

Additionally, provisions of section 12 of the CPSA (15 U.S.C. 2061) authorize the Commission to file an action in a United States district court against a manufacturer, importer, distributor, or retailer of a consumer product which presents an imminent and unreasonable risk of death or severe personal injury. The court has the authority to order the recall of the product, its repair or replacement, or refund of the purchase price. The court also has authority to order a firm to undertake extensive notification efforts to advise purchasers and the general public of the nature of the risk and of the firm's obligation for remedial action. The Commission may file an action under section 12 of the CPSA without any requirement for having first undertaken a rulemaking proceeding. As noted above, no corresponding provisions exist in the FHSA.

Because notification to the public of any hazard which may be presented by the toys described in this notice and remedial action with regard to those toys could be accomplished more expeditiously under the CPSA than under the FHSA, the Commission has preliminarily determined that it would be in the public interest to regulate under the CPSA rather than the FHSA any risk of choking and/or suffocation injury which may be associated with those toys if they become lodged in the throat.

As noted above, the FHSA has provisions for issuance of an immediate order to declare a toy or children's article to be a banned hazardous substance if it presents an "imminent hazard." However, some products may present a "substantial product hazard" warranting issuance of an order for public notification and corrective action, without amounting to an "imminent hazard" as that term is used in section 3(e)(2) of the FHSA.

In making the preliminary determination set forth above, the Commission has decided that notwithstanding provisions of section 3(e)(2) of the FHSA, use of the procedures of the CPSA may lead to more expeditious notification and corrective action than might be obtained by following the procedures of the FHSA.

If the Commission issues the rule proposed below on a final basis, and thereafter determines that a standard or regulation may be needed to address any risk of choking and/or suffocation injury which these toys may present if they become lodged in the throat, the CPSA would also authorize the Commission to issue a standard or banning rule. Procedures for issuance of a standard are set forth in sections 7 and 9 of the CPSA (15 U.S.C. 2056, 2058); procedures for issuance of a banning rule are in sections 8 and 9 of the CPSA (15 U.S.C. 2057, 2058).

D. Impact on Small Businesses

Section 603 of the Regulatory Flexibility Act (RFA, 5 U.S.C. 603) requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis of the impact of any proposed rule on small entities, including small businesses. Section 605(b) of the RFA provides that an agency is not required to prepare a regulatory flexibility analysis if the agency certifies that the rule, if issued on a final basis, will not have a significant economic impact on a substantial number of small entities.

The regulation proposed below, if issued on a final basis, will not by itself impose any legal or other obligation on any person or firm. The rule would simply express the Commission's determination that any action taken to eliminate or reduce the risk of injury with which it is concerned will be taken following the procedures set forth in the CPSA rather than the FHSA.

If the Commission issues a final rule based on the proposal published below, and then determines that it should act to eliminate or reduce the risk of injury which is the subject of the rule, the Commission will be required to initiate and follow through to completion appropriate judicial or administrative proceedings under one or more sections of the CPSA before it can impose any obligation on any person or firm.

Since a final rule based on the proposal imposes no obligation on any person or firm, the Commission hereby certifies that it will not have a significant economic impact on a substantial number of small businesses.

E. Environmental Considerations

The regulation proposed below falls within the categories of Commission actions described in 16 CFR 1021.5(c) that have little or no potential for affecting the human environment. For this reason, neither an environmental assessment nor an environmental impact statement is required.

F. Conclusion and Proposal

After consideration of the information set forth above, and provisions of the FHSA and the CPSA, the Commission hereby proposes to regulate under the CPSA rather than the FHSA the possible risk of choking and/or suffocation injury which may be associated with the products described if they become lodged in the throat.

As stated above, the risk of injury which the Commission proposes to transfer does not include any risk of choking, aspiration, or ingestion of the entire toy or small parts which may become detached from, or break off any such toy. That risk of injury remains subject to FHSA regulations published at 16 CFR 1500.18(a)(9) and Part 1501.

Additionally, any risk of injury which may be associated with these toys, other than that of choking or suffocation from lodging in the throat, will remain subject to regulation under provisions of the FHSA if the rule proposed below is issued on a final basis. Until issuance of any final regulation under section 30(d) of the CPSA, the Commission has authority to regulate under the FHSA any risk of choking and/or suffocation injury which these toys may present if they become lodged in the throat.

List of Subjects in 16 CFR Part 1145

Administrative practice and procedure, Consumer protection, Infants and children, Toys.

PART 1145—REGULATION OF PRODUCTS SUBJECT TO OTHER ACTS UNDER THE CONSUMER PRODUCT SAFETY ACT

Therefore, under provisions of the Consumer Product Safety Act (section 30(d), Pub. L. 92573, 86 Stat. 1231, as amended Pub. L. 94284, 90 Stat. 3472, Pub. L. 9735, 95 Stat. 703; 15 U.S.C. 2079(d)), the Commission proposes to amend the Code of Federal Regulations, Title 16, Chapter II, Subchapter B, Part 1145, by adding a new § 1145.10, as follows:

§ 1145.10 Certain squeeze toys; risk of choking and/or suffocation injury from lodging in the throat.

(a) The Commission finds that it is in the public interest to regulate under the

Consumer Product Safety Act, rather than under the Federal Hazardous Substances Act, the possible risk of choking and/or suffocation injury from lodging in the throat that may be associated with squeeze toys made of compressible material, other than the risk of choking, aspiration, or ingestion of the entire toy or small parts which may become detached from or break off any such toy, which is the subject of regulations published at 16 CFR 1500.18(a)(9) and Part 1501.

(b) Therefore, if the Commission finds regulation to be necessary, the possible risk of choking and/or suffocation injury from lodging in the throat which may be associated with the toys described in § 1145.10(a), above, shall be regulated only under one or more provisions of the Consumer Product Safety Act. Any risk of injury which may be associated with those toys other than the possible risk described in § 1145.10(a), above, shall remain subject to regulation only under one or more provisions of the Federal Hazardous Substances Act.

Interested persons are invited to submit written comments by February 2, 1983. Comments may be accompanied by written data, views, and arguments and should be addressed by the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

Received comments may be seen in the Office of the Secretary, eighth floor, 1111 18th Street, NW., Washington, D.C. between 8:30 a.m. and 5:00 p.m., Monday through Friday. (Sec. 30(d), Pub. L. 92573, 86 Stat. 1231, as amended Pub. L. 94-284, 90 Stat. 3472, Pub. L. 97-35, 95 Stat. 703; 15 U.S.C. 2079(d)).

Dated: December 23, 1982.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 82-35325 Filed 12-36-82; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM83-1-000]

Rules of Practice and Procedure; Reconsideration of Initial Decisions; Extension of Time for Comments

December 23, 1982.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking, extension of comment period.

SUMMARY: On November 19, 1982, the Commission issued a Notice of Proposed Rulemaking involving its Rules of Practice and Procedure and the filing of motions for reconsideration of initial decisions (47 FR 53034, November 24, 1982). The comment period is being extended at the request of the Edison Electric Institute.

DATE: Comments must be submitted on or before January 26, 1983.

ADDRESS: Submit comments to: Office of the Secretary, Federal Energy Regulatory, Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary, (202) 357-8400.

SUPPLEMENTARY INFORMATION: On December 21, 1982, Edison Electric Institute (EEI) filed a motion for an extension of time to file comments in response to the Commission's Notice of Proposed Rulemaking issued November 19, 1982, in the above-docketed proceeding. The motion states that EEI requires additional time in order to formulate its position and coordinate its comments with member companies. The motion further states that additional time is needed because of the intervening holidays.

Upon consideration, notice is hereby given that an extension of time for the filing of comments is granted to and including January 26, 1983.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-35479 Filed 12-30-82; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 134, 148, 162, 171, and 172

Penalties and Penalties Procedures; Extension of Comment Period

AGENCY: Customs Service, Treasury.

ACTION: Notice of extension of time for comments.

SUMMARY: This notice extends the period of time within which interested members of the public may submit comments with respect to a notice of proposed rulemaking with respect to penalties and penalties procedures. A document inviting the public to comment was published in the **Federal Register** on November 3, 1982 (47 FR 49853). That document proposed to: (a) Add revised penalty guidelines relating to 19 U.S.C. 1592 as an appendix to Part 171, Customs Regulations (19 CFR Part 171); (b) clarify the requirements and criteria applicable to prior disclosures of violations of 19 U.S.C. 1592; (c) place a limitation on the number of supplemental petitions requesting relief from fines, penalties, and forfeitures, and from liquidated damages claims; and (d) make certain other minor, technical changes to the Customs Regulations.

Customs has received a request to extend the period of time for the submission of comments, and it believes that an extension is warranted. Accordingly, this notice extends the period of time for comment until February 18, 1983.

DATE: Comments must be received on or before February 18, 1983.

ADDRESS: Written comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harold Loring, Commercial Fraud and Negligence Penalties Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-8317).

Dated: December 29, 1982.

John P. Simpson,

Director, Office of Regulations & Rulings.

[FR Doc. 82-35594 Filed 12-30-82; 9:23 am]

BILLING CODE 4820-02-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 76

[CT Docket No. 82-434]

Elimination of the Prohibition on Common Ownership of Cable Television Systems and National Television Networks; Release of Staff Report

December 23, 1982.

AGENCY: Federal Communication Commission.

ACTION: Proposed rule; Release of staff report.

SUMMARY: A staff report, *Measurement of Concentration in Home Video Markets*, has been released by the Commission and submitted into CT Docket No. 82-434, concerning Elimination of the Prohibition on Common Ownership of Cable TV Systems and National TV Networks. In a separate action, the Commission has

extended the deadline in this proceeding so interested parties may comment on this report. This action was taken in response to suggestions by some Commissioners that the Office of Plans and Policy analyze the Measurement of Concentration issues.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jonathan Levy, Office of Plans and Policy, (202) 653-5940.

SUPPLEMENTARY INFORMATION: The FCC's Office of Plans and Policy has released a staff report entitled *Measurement of Concentration in Home Video Markets,*[1] by Jonathan D. Levy and Florence O. Setzer. The report was submitted into CT Docket No. 82-434.

The Commission adopted a *Notice of Proposed Rulemaking* in this docket on July 15, 1982, proposing elimination of the broadcast network-cable system crossownership prohibition. 47 Fed. Reg. 39.212 (1982). In the *Notice,* the Commission requested comment on what the appropriate market(s) are for analyzing this and perhaps other ownership rules. Comments were also requested on appropriate measures of concentration in the relevant markets. In response to a suggestion from some Commissioners that OPP analyze these issues, the staff report was prepared.

This staff report is being submitted into CT Docket 82-434 so that interested parties can comment on the analysis presented therein. In order to allow a full opportunity for comments, the Mass Media Bureau today has issued an order extending to February 7, 1983 the deadline for reply comments in this proceeding. (The order extending the deadline for comment is published in the Proposed Rules section of the Thursday, December 30, 1982, issue of the **Federal Register,** FR Doc. 82-35300).

The staff report concludes that for Commission ownership rules, the relevant market is a local program delivery market. It identifies a separate program acquisition market, which may be local, regional, or national, but this market is not the report's primary subject.

To delineate a market properly, the product as well as geographic dimensions must be specified. Although the staff report argues for an expansive definition, including video discs and cassettes as well as the audio and print media, it makes sample calculations based on four "core" media in a video delivery market-broadcast television, STV, MDS, and cable.

[1] The staff report is filed as a part of the original document.

The staff report suggests the Commsssion's ownership policy goals—economic competition and diversity—are best viewed as processes to be encouraged rather than results to be mandated. If consumers have available a reasonably wide range of suppliers of goods, services, and ideas from which to choose, ownership regulation is unnecessary. It is also unwise in view of its costs in terms of efficient organizational arrangements prevented.

This analysis leads to the conclusion that, while local ownership rules may be needed to keep local markets reasonably competitive, no rigid national ownership rules are appropriate. When local markets are reasonably competitive, the Commission's goals are realized within them. When local markets are not competitive, the Commission should examine the effect of mergers on concentration. Sample calculations in the report, based on the worst case assumption that no local markets are competitive, suggest that national concentration is quite low. The staff report recommends that if the Commission chooses to employ a concentration index, it should be used only as a monitoring tool that might trigger detailed analysis of some mergers or acquisitions.

The study is available for inspection in the FCC's Public Reference Room 239 and in the Office of Public Affairs, Room 207, 1919 M St., N.W., Washington, D.C. and at the office of the **Federal Register.** Copies may be purchased from the FCC's duplicating contractor, Downtown Copy Center, 1114 21st St., N.W., Washington, D.C. 20037, (101) 452-1422.

For more information contact Jonathan Levy at (202) 653-5940.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 82-35299 Filed 12-30-82; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. MC-125]

Fare Flexibility for Bus Industry

AGENCY: Interstate Commerce Commission.

ACTION: Discontinuance of proposed rulemaking proceeding.

SUMMARY: The Commission instituted this proceeding for the purpose of allowing bus companies: (1) To raise and lower, within a fixed zone, the passenger fares that they charge; and (2) to negotiate charges with organizers of charter parties for individual charter bus trips. The Bus Regulatory Reform Act of 1982 (Bus Act) supersedes the two essential goals for which this proceeding was instituted. First, section 11 of the Bus Act mandates a zone of rate freedom to regular route motor carriers of passengers. Second, section 12 provides that the Commission may not investigate, suspend, revise or revoke any rate proposed by a motor common carrier of passengers applicable to special or charter transportation, except under limited circumstances.

FOR FURTHER INFORMATION CONTACT: Jane Morris, (202) 275-1757.

SUPPLEMENTARY INFORMATION: The Commission instituted Ex Parte No. MC-125 proposing to allow bus companies: (1) To raise and lower, within a fixed zone, the fares that they charge; and (2) to negotiate charges with organizers of charter parties for individual charter bus trips. The final version of the proposed rulemaking was set forth in a decision served July 3, 1979, and published at 44 FR 39555, July 6, 1979.

Section 11 of the Bus Regulatory Reform Act of 1982 (Bus Act) added new subsections 49 U.S.C. 10708 (d) (4) and (5) and (e), which provide (except for charter or special transportation) for a zone of rate freedom (ZORF) designed to encourage individual ratemaking, meet inflationary cost increases without undue regulatory delay and allow carriers to adapt to changing conditions in individual markets. Regulations implementing the ZORF are now in place.[1]

Under the ZORF passenger carriers may raise or lower their rates or fares with substantially reduced risk of investigation or suspension within certain specified percentages that expand over a 3-year period. During those 3 years, rates or fares filed within the ZORF may not be suspended except on the grounds they are predatory or discriminatory. The result is that proposed bus rates or fares may not be protested on the grounds that they are unreasonable, or, in other words, too high or too low. After 3 years, the Commission may not suspend or investigate any proposed rate on the basis of its being unreasonable, except on ratemaking actions where antitrust immunity is retained.[2]

[1] See Final Rules in No. 38900, *Identification of Rates Filed Under Zone of Rate Freedom by Motor Carriers of Passengers* (not printed), served November 30, 1982, and published at 47 FR 54083, December 1, 1982.

[2] Complaints, however, are permitted. See Ex Parte No. MC-162, *Procedures for Complaints*

Under section 12 of the Bus Act, 49 U.S.C. 10708(g), the Commission may not investigate, suspend, revise or revoke any rate proposed by a motor common carrier of passengers applicable to special or charter transportation, except where such rates constitute predatory practices. The new law allows firms providing charter service and special operations wide freedom in negotiating charges.

The result of these provisions of the Bus Act is that carriers have substantial regular route fare flexibility and are free to negotiate and file non-predatory charter and special transportation charges. Consequently, we find that there is nothing of substance to be accomplished in this proceeding.

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

It Is Ordered

This proceeding is discontinued.

Decided: December 23, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

James H. Bayne,

Acting Secretary.

[FR Doc. 82-35525 Filed 12-30-82; 8:45 am]

BILLING CODE 7035-01-M

Against Bus Carrier Rates and Fares (not printed), served November 19, 1982, and published at 47 FR 53282, November 24, 1982.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Marine Fisheries Service

50 CFR Parts 17 and 227

Review of Special Rules on Sea Turtles

AGENCIES: Fish and Wildlife Service, Interior and National Marine Fisheries Service, Commerce.

ACTION: Notice of intent.

SUMMARY: The Services have been requested to review the current ban on commercial U.S. trade for certain sea turtle species. An upcoming meeting of the Parties to the Convention on International Trade in Endangered Species (CITES) will consider whether certain populations of sea turtle should be traded for commercial purposes. In light of these activities, the Services hereby announce their intent to review Special Rule 50 CFR 17.42(b) and 50 CFR 227 Subpart D on sea turtle species listed as threatened under the Endangered Species Act, with particular attention on whether or not to allow U.S. trade in certain sea turtle products according to CITES. Written comments are invited.

DATE: Comments on this notice must be received by February 2, 1983.

ADDRESS: Please address correspondence to the U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, P.O. Box 3654, Arlington, Va. 22203. Information on this notice is available for review during the hours of 7:45 a.m. to 4:15 p.m. Monday through Friday except holidays in Room 601, 1000 N. Glebe Road, Arlington, Va.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Batky, Staff Biologist, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, P.O. Box 3654, Arlington, Va. 22203; (703/235-1903), or Mr. Charles Karnella, National Marine Fisheries Service, Office of Marine Mammals and Endangered Species, U.S. Department of Commerce, Washington, D.C. 20235; (202/634-7471).

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service and the National Marine Fisheries Service share jurisdictional responsibility for sea turtles listed under the Endangered Species Act (ESA). The loggerhead (*Caretta caretta*) and certain populations of green (*Chelonia mydas*) and olive ridley (*Lepidochelys olivacea*) sea turtles are listed as Threatened species under the ESA. The Services adopted Special Rules, 50 CFR 17.42(b) and 50 CFR 227 Subpart D (43 FR 32800), for the conservation of these species. These rules allow the Services to issue permits to take, import and export such species for scientific research, zoological exhibition or educational purposes and to enhance the propagation or survival of these species. The rules prohibit trade in these species for commercial purposes. The Services considered whether to allow an exception to these restrictions on commercial trade for mariculture during the rulemaking, but did not allow an exception in the final rules.

These species are also listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). As a general rule, Appendix I species cannot be imported or exported for commercial purposes.

The Services have decided to review their rules on Threatened sea turtles for the following reasons:

(1) Suriname and Reunion have submitted proposals to ranch (rear in a controlled environment specimens taken from the wild) green sea turtles for consideration at the fourth regular meeting of the Conference of the Parties to CITES to be held in Botswana during April 1983 (47 FR 34043). If the Parties deem these populations to be no longer endangered and to benefit by ranching with the intention of trade, these populations could be transferred to Appendix II.

Species included in Appendix II may be traded internationally for commercial purposes provided that the Management Authority of the country of export issues an export permit. An export permit can be issued when the Scientific Authority of the country of export advises, among other things, that such export will not be detrimental to the survival of that species and the Management Authority of the country of export is satisfied that the specimen was not obtained in contravention of the laws of that country.

(2) Appendix I animal specimens which are "bred in captivity" for commercial purposes are deemed to be included in Appendix II according to Article VII.4 of CITES. This provision of Article VII was the subject of a resolution by the Parties to CITES in 1979. Questions have been raised by the government of the Cayman Islands and the United Kingdom Management Authority about the application of this resolution to certain Appendix I species, such as those with long generation periods. It has been proposed that this issue be discussed by the CITES Technical Experts Committee and that it be addressed at the Conference of the Parties in Botswana. Green sea turtles are among the species that could be affected by a resolution on this matter.

(3) On January 22, 1982, the Pacific Legal Foundation and the Association for Rational Environmental Alternatives filed a petition for rulemaking with the Services (47 FR 13917). The petitioners proposed implementation of a mariculture exemption from the trade prohibition for green sea turtle products by means of a permit provision in the regulations or a special rule.

(4) The Cayman Turtle Farm, Ltd. (CTF) has requested the Services to allow items from farm-produced turtles to accompany tourists back to the U.S., to allow farm products to be transshipped through the U.S. and to allow farm products to be imported into the U.S. for commercial purposes. During direct discussions between officials of the Cayman Islands and U.S. Government officials, and at hearings before the Subcommittee on Fisheries and Wildlife Conservation and the Environment of the Committee on

Merchant Marine and Fisheries of the House of Representatives, the Cayman Islands Government gave assurances that it would prevent any further addition of wild sea turtles or eggs to CTF, and would impose a numbering and documentation system on traded items.

The purposes of this notice are to announce the Services' intent to reconsider allowing commercial import of maricultured sea turtle products into the United States and to invite comments on the topic. Also, the Services are requesting information on environmental and economic impacts and effects on small entities (including small businesses, small organizations and small governmental jurisdictions) that would result from any changes to the Special Rule, and information on possible alternative actions. This information will aid the Services in complying with the requirements of the National Environmental Policy Act, Executive Order 12291 on Federal Regulation, and the Regulatory Flexibility Act, and in preparing any required analyses of effect.

List of Subjects

50 CFR Part 17

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

50 CFR Part 227

Endangered and threatened wildlife, Fisheries.

Dated: December 14, 1982.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

Dated: December 22, 1982.

William G. Gordon,

Assistant Administrator for Fisheries.

[FR Doc. 82-33180 Filed 12-30-82; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 48, No. 1
Monday, January 3, 1983

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Renewals of Designation of Lima Grain Inspection Service (OH) and Virginia Department of Agriculture and Consumer Services (VA)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the renewals of designation of the Lima Grain Inspection Service (Lima) and Virginia Department of Agriculture and Consumer Services (Virginia) as official agencies responsible for providing, respectively, inspection services and inspection and weighing services, under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act).

EFFECTIVE DATE: February 1, 1983.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2405 Auditors Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512-1; therefore the Executive Order and Secretary's Memorandum do not apply to this action.

The July 30, 1982, issue of the **Federal Register** (47 FR 32972) contained a notice from the Federal Grain Inspection Service (FGIS) announcing that Lima and Virginia's designations would terminate on January 31, 1983, and requesting applications for designation as the agency to provide official services within each specified assigned area. Applications were to be postmarked by August 30, 1982.

FGIS announced the names of the applicants for designation for each agency and requested comments on same in the October 1, 1982, issue of the **Federal Register** (47 FR 43537). Comments were to be postmarked by November 15, 1982. No comments were received regarding the renewals of designation of Lima and Virginia (the only applicants for each respective designation) as official agencies.

After considering all available information in relation to the criteria for designation in Section 7(f)(1)(A) of the Act, and in accordance with Section 7(f)(1)(B), it has been determined that Lima and Virginia are able to provide official services in the geographic area for which their designations are being renewed. Each assigned area is the entire geographic area, as described in the July 30 issue of the **Federal Register.**

Effective February 1, 1983, and terminating January 31, 1986, the responsibility for providing official inspection services for Lima and official inspection, official weighing, and supervision of weighing services for Virginia in each geographic area, as specified above, will be assigned to Lima and Virginia, respectively.

A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection and where the agency and one or more of its licensed inspectors is located. In addition to the specified service points within the assigned geographic area, the agencies will provide official services not requiring a licensed inspector to all locations within their geographic area.

Interested persons may contact the Regulatory Branch, specified in the address section of this notice, to obtain a list of the specified service points. Interested persons may also obtain a list of the specified service points by contacting the agencies at the following addresses:

Lima Grain Inspection Service, 2242 Arcadia Avenue, Lima, OH 45805.

Virginia Department of Agriculture and Consumer Services, 1110 Bank Street, Washington Building, Richmond, VA 23219.

(Sec. 8, Sec. 9, Pub. L. 94-582, 90 Stat. 2873, 2875 (7 U.S.C. 79, 79a))

Dated: December 20, 1982.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 82-34945 Filed 12-30-82; 8:45 am]
BILLING CODE 3410-EW-M

Request for Comments on Applicants for Designation in the Areas Currently Assigned to Grain Inspection Services, Inc. (MI), and Detroit Grain Inspection Service, Inc. (MI)

AGENCY: Federal Grain Inspection Service.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for designation as the official agency in the areas currently assigned to Grain Inspection Services. Inc., and Detroit Grain Inspection Service, Inc. The designations terminate April 30, 1983.

DATE: Comments to be postmarked on or before February 17, 1983.

ADDRESS: Comments must be submitted in writing, in duplicate, to Lewis Lebakken, Jr., Regulations and Directives Management Staff, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 1642, South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382-0231.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512-1; therefore the Executive order and Secretary's Memorandum do not apply to this action.

The November 1, 1982, issue of the **Federal Register** (47 FR 49432) contained a notice from the Federal Grain Inspection Service requesting applications for designation to perform official services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act), in the areas currently assigned to the official agencies. Applications were to be postmarked by December 1, 1982.

Grain Inspection Services, Inc., the only applicant, requested designation for all of the geographic area currently assigned to that agency. Detroit Grain Inspection Service, Inc., the only applicant, requested designation for all of the geographic area currently assigned to that agency. Battle Creek and Detroit each applied for a renewal of designation for a 3-year period.

In accordance with § 800.206(b)(2) of the regulations under the Act, this notice provides interested persons the opportunity to present their views and comments concerning the applicants for designation. All comments must be submitted to the Regulations and Directives Management Staff, specified in the address section of this notice, and postmarked not later than February 17, 1983.

Consideration will be given to comments filed and to other information available before a final decision is made with respect to this matter. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: December 20, 1982.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 82-34946 Filed 12-30-82; 8:45 am]

BILLING CODE 3410-EW-M

Request for Applicants for Designation To Perform Official Services in the Geographic Area Currently Assigned to D. L. Boltenhouse Grain Inspection (OH)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as amended (Act), designations of official agencies shall terminate not later than triennially and may be renewed in accordance with the criteria and procedures provided in the Act. This notice announces that the designation of one agency will terminate, in accordance with the act, and requests applications from parties, including the agency currently designated, who are interested in being designated as an official agency to conduct official services in the geographic area currently assigned to the specified agency. The official agency is D. L. Boltenhouse Grain Inspections.

DATE: Applications to be postmarked on or before February 2, 1983.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2405 Auditors Building, Washington, DC 20250. All applications submitted pursuant to this notice will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512-1; therefore the Executive order and Secretary's Memorandum do not apply to this action.

Section 7(f)(1) of the Act (7 U.S.C. 71 *et seq.*, at 79(f)(1)), specifies that the Administrator of the Federal Grain Inspection Service (FGIS) is authorized, upon application by any qualified agency or person, to designate such agency or person to perform official inspection services after a determination is made that the applicant is better able than any other applicant to provide official inspection services in an assigned geographic area.

D. L. Boltenhouse Grain Inspection (Boltenhouse), P.O. Box 96, Bellevue, Ohio 44811, was designated as an official agency under the Act for the performance of official inspection functions on September 25, 1978.

The agency's designation will terminate on June 30, 1983. This date reflects administrative extensions of official agency designations as dicussed in the July 16, 1979, issue of the **Federal Register** (44 FR 41275). Section 7(g)(1) of the Act states generally that designations of official agencies shall terminate no later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Boltenhouse in Ohio and Michigan, pursuant to Section 7(f)(2) of the Act, and which is the geographic area that may be assigned to the applicant selected for designation is the following:

In Ohio, the area shall be:

Bounded: on the North by the northern Lucas County line east to Lake Erie; the Lake Erie shoreline east to the Ohio-Pennsylvania State line;

Bounded: on the East by the Ohio-Pennsylvania State line south to State Route 154;

Bounded: on the South by State Route 154 west to Lisbon, Ohio; U.S. Route 30 west to Bucyrus, Ohio; and

Bounded: on the West by State Route 19 north to Seneca County; the southern Seneca County line west to State Route 53; State Route 53 north to Sandusky County; the southern Sandusky County line west to State Route 590; State Route 590 north to Ottawa County; the southern and western Ottawa and Lucas County lines.

In Michigan the area shall include those sections of Jackson, Lenawee, and Monroe Counties which are east of State Route 127 and south of State Route 50.

An exception to the described geographic area is the following location situated inside Boltenhouse's area which has been and will continue to be serviced by Grain Inspection Services, Inc.: Crop Aid, Hudson, Lenawee County, Michigan.

Additional exceptions to the described geographic area are the following export port locations situated inside Boltenhouse's area which have been and will continue to be serviced by FGIS: The Andersons, Toledo and Maumee, Ohio; Cargill, Inc., Toledo and Maumee, Ohio; and Mid-States Terminals, Inc., Toledo, Ohio.

Interested parties, including Boltenhouse, are hereby given opportunity to apply for designation as the official agency to perform the official services in each geographic area, as specified above, under the provisions of Section 7(f) of the Act and § 800.196(b) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning July 1, 1983, and terminating June 30, 1986. Parties wishing to apply for this designation should contact the Regulatory Branch, Compliance Division, at the address listed above for appropriate forms and information. Applications must be postmarked not later than February 3, 1983, to be eligible for consideration.

In making a determination as to which applicant will be designated to provide official services in the geographic area, consideration will be given to applications submitted and other available information.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: December 20, 1982.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 82-34947 Filed 12-30-82; 8:45 am]

BILLING CODE 3410-EW-M

Office of the Secretary

Section 22 Imports Fees; Determination of Quarterly Import Fees on Sugar

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: Headnote 4(c) of Part 3 of the Appendix to the Tariff schedules of the United States (TSUS) requires the Secretary of Agriculture to determine on a quarterly basis the amount of the fees which shall be imposed on imports of raw and refined sugar (TSUS items 956.05, 956.15, and 957.15) under the authority of Section 22 of the Agricultural Adjustment Act of 1933, as amended. This notice announces those determinations for the first calendar quarter of 1983.

EFFECTIVE DATE: January 1, 1983.

FOR FURTHER INFORMATION CONTACT: William F. Doering, Foreign Agricultural Service, Department of Agriculture, Washington, D.C. 20250 (202-447-6723).

SUPPLEMENTARY INFORMATION: By Presidential Proclamation No. 4940, dated May 5, 1982, Headnote 4 of Part 3 of the TSUS was amended to provide that quarterly adjusted fees shall be imposed on imports of raw and refined sugar (TSUS items 956.05, 956.15, and 957.15). Paragraph (c)(ii) of Headnote 4 provides that the quarterly adjusted fee for item 956.15 shall be the amount by which the average of the adjusted daily spot (domestic) price quotations for raw sugar for the 20 consecutive market days immediately preceding the 20th day of the month preceding the calendar quarter during which the fee shall be applicable (as reported by the New York Coffee, Sugar, and Cocoa Exchange), expressed in United States cents per pound, in bulk, is less than the market stablization price. The market stablization price for the first calendar quarter of 1983 is 20.73 cents per pound. However, whenever the average of the daily spot price quotations for 10 consecutive market days within any calendar quarter: (1) Exceeds the market stabilization price by more than one cent, the fee then in effect shall be decreased by one cent; or (2) is less than the market stabilization price by more than one cent, the fee then in effect shall be increased by one cent. Paragraph (c)(i) of Headnote 4 further provides that the quarterly adjusted fee for items 956.05 and 957.15 shall be the amount of the fee for item 956.15 plus one cent.

The average of the adjusted daily spot (domestic) price quotations for raw sugar for the applicable period prior to the first calendar quarter of 1983 has been calculated to be 20.8275 cents per pound. This results in a fee of 0.00 cent per pound for item 956.15, since the adjusted average spot price is greater than 20.73 cents. Accordingly, the fee for items 956.05 and 957.15 for the first calendar quarter of 1983 is 1.00 cent per pound.

Headnote 4(c) requires the Secretary of Agriculture to determine and announce the amount of the quarterly fees no later than the 25th day of the month preceding the calendar quarter during which the fees shall be applicable. The Secretary is also required to certify the amounts of such fees to the Secretary of the Treasury and file notice thereof with the **Federal Register** prior to the beginning of the calendar quarter during which the fees shall be applicable. This notice is therefore being issued in order to comply with the requirements of Headnote 4(c).

Notice

Notice is hereby given that, in accordance with the requirements of Headnote 4(c) of Part 3 of the Appendix to the Tariff Schedules of the United States, it is determined that the quarterly adjusted fees for raw and refined sugar (TSUS items 956.05, 956.15, and 957.15) for the first calendar quarter of 1983 shall be as follows:

Item	Fee
956.05	1.00 cent per lb.
956.15	0.00 cent per lb.
957.15	1.00 cent per lb.

The amounts of such fees have been certified to the Secretary of the Treasury in accordance with paragraph (c)(iv) of Headnote 4.

Signed at Washington, D.C. on December 28, 1982.

Richard E. Lyng,

Acting Secretary of Agriculture.

[FR Doc. 82-35533 Filed 12-28-82; 5:11 pm]

BILLING CODE 3410-10-M

Rural Electrification Administration

Caney Valley Electric Cooperative Association, Inc., Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500) and REA Bulletin 20-21:320-21, Environmental Policies and Procedures, has made a Finding of No Significant Impact (FONSI) with respect to a request for financing assistance from Caney Valley Electric Cooperative Association, Inc., (Caney Valley) of Cedar Vale, Kansas, for the construction of 26 km (16 mi) of 69 kV transmission line and related facilities in Chautauqua and Montgomery Counties, Kansas.

FOR FURTHER INFORMATION CONTACT: REA's FONSI and Environmental Assessment (EA) and Caney Valley's Borrower's Environmental Report (BER) may be reviewed at or obtained from Mr. William E. Davis, Director, Western Area-Electric, Room 3304, South Agriculture Building, Washington, D.C. 20250, telephone (202) 382-8848, or Mr. Robert L. Brown, Manager, Caney Valley Electric Cooperative Association, Inc., Cedar Vale, Kansas 67024, telephone (316) 758-2262, during regular business hours.

SUPPLEMENTARY INFORMATION: REA has reviewed the BER submitted by Caney Valley and has determined that it represents an accurate assessment of the environmental impacts of the proposed project. Based on the BER and other support documents, REA prepared an EA and FONSI concerning the proposed construction. It is REA's view that the proposed financing assistance will not be a major Federal action significantly affecting the quality of the human environment.

The BER and EA adequately consider potential impacts of the project on resources including prime farmland, floodplains, wetlands, threatened and endangered species, and cultural resources.

REA considered alternatives including: No action, energy management and conservation, underground construction, upgrade of the present system, alternative routes, and power sources. After reviewing these alternatives, REA has determined that the proposed project is an acceptable alternative because it meets Caney Valley's needs with minimal adverse environmental impacts.

In accordance with REA's Bulletin 20-21:320-21, dated January 21, 1980, Caney Valley advertised the availability of the BER in the local newspapers. Comments were solicited and the public was given 30 days to reply. No comments were received.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: December 22, 1982.

Harold V. Hunter,

Administrator.

[FR Doc. 82-35435 Filed 12-30-82; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Smithfield Farm Irrigation RC&D Measure Plan, Utah; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Smithfield Farm Irrigation RC&D Measures, Cache County, Utah.

FOR FURTHER INFORMATION CONTACT: George D. McMillan, State Conservationist, Soil Conservation Service, P.O. Box 11350, Salt Lake City, Utah 84147, telephone 801/524-5050.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the projects will not cause significant local, regional or national impacts on the environment. As a result of these findings, George D. McMillan, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The measures concern plans for installation of a high pressure, gravity head sprinkler irrigation system.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting George D. McMillan. The FONSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

George D. McMilan,

State Conservationist.

December 7, 1982.

[FR Doc. 82-35408 Filed 12-30-82; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

Air South, Inc.; Fitness Determination

AGENCY: Civil Aeronautics Board

ACTION: Notice of Commenter Air Carrier Fitness Determination—Order 82-12-120, order to show cause.

SUMMARY: The Board is proposing to find that Air South, Inc. is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service will conform to applicable safety standards. The complete text of this order is available, as noted below.

DATES: Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed below no later than January 13, 1983, together with a summary of the testimony, statistical data, and other material relied upon to support the allegations.

ADDRESS: Responses or additional data should be filed with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and with all persons listed in Attachment A to Order 82-12-120.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Brennan, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20248, (202) 673-5333.

SUPPLEMENTARY INFORMATION: The complete text of Order 82-12-120 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 82-12-120 to that address.

By the Civil Aeronautics Board: December 27, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-35571 Filed 12-30-82; 8:45 am]

BILLING CODE 6320-01-M

Central Caraibes Air, S.A.; Order To Show Cause

AGENCY: Civil Aeronautics Board

ACTION: Notice of Order to Show Cause; Order 82-12-121.

SUMMARY: The Board proposes to dismiss the following application:

Applicant: Central Caraibes Air, S.A.

Application Date: July 1, 1981; Docket: 39771.

Authority Sought: Scheduled foreign air transportation of persons, property, and mail between Port-au-Prince, Haiti and the coterminal points Miami, Florida and New York, New York, using aircraft wet-leased from Condor Flugdienst GmbH.

Basis for Decision: The wet-lease agreement between Central Caraibes Air and Condor has terminated, Central Caraibes has not found a replacement lessor for Condor and has not prosecuted its application.

Objections: All interested persons having objections to the Board's tentative findings and conclusions that this application should be dismissed, as described in the order cited above, shall, NO LATER THAN January 19, 1983, file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, Air Florida, Inc., Rich International Airways, Inc., the Department of Transportation, the Department of State, and the Ambassador of Haiti in Washington, D.C. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will make final the Board's tentative findings and conclusions and dismiss the application.

Addresses for objections:

Docket 39771, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428

Robert P. Silverberg, Esq., General Counsel and Corporate Secretary, Air

Florida, Inc., 1050 Thomas Jefferson St., NW, Suite 600, Washington, D.C. 20007

Lawrence D. Wasko, Seamon, Wasko & Ozment, Counsel for Central Caraibes Air, S.A., 1211 Connecticut Ave., NW, Suite 300, Washington, D.C. 20036

Rich International Airways, Inc., c/o Gary B. Garofalo, Boros & Garofalo, P.C., 1120 Connecticut Ave., NW, Suite 460, Washington, D.C. 20036

To get a copy of the complete order, request it from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: Allan Lewis, Regulatory Affairs Division of the Bureau of International Aviation, Civil Aeronautics Board; (202) 673–5134.

By the Civil Aeronautics Board: December 27, 1982

Phyllis T. Kaylor,
Secretary

[FR Doc. 82-35572 Filed 12-30-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket 41127]

Sea and Sun Airlines, Inc.; Enforcement Proceeding; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge John N. Vittose. Future communications should be addressed to him.

Dated at Washington, D.C., December 22, 1982.

Elias C. Rodriguez,
Chief Administrative Law Judge.

[FR Doc. 82-35568 Filed 12-30-82; 8:45 am]

BILLING CODE 6320-01-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations

(See, 14 CFR 302.1701 et. seq.)

Week Ended December 23, 1982. Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the Board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
December 22, 1982	41166	Orion Lift Services, Inc. d/b/a Orion Air, c/o Stephen L. Gelband Hewes, Morella, Gelband & Lamberton, 1010 Wisconsin Avenue, N.W. Suite 640, Washington, D.C. 20007. Application of Orion Lift Services, Inc. d/b/a Orion Air pursuant to Section 401(d)(3) of the Act and Subpart Q of the Board's Procedural Regulations requests expeditious issuance to it of a certificate to provide world-wide charter air transportation in the following geographic areas: Between any point in any state of the United States or the District of Columbia, or any United States territory or possession and (a) Points in Canada, (b) Points in Mexico, (c) Points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Trinidad, Aruba, the Leeward and Windward Islands, and any other foreign place located in the Gulf of Mexico or the Caribbean Sea; (d) Points in Central and South America; (e) Points in Australasia, Indonesia, and Asia as far west as longitude 70 degrees east via a transpacific routing; and (f) Points in Greenland, Iceland, the Azores, Europe, Africa, and Asia as far east as (and including) India. Conforming Applications, Motions to Modify Scope, and Answers may be filed by January 19, 1983.
Do	41169	Air Florida, Inc., c/o Robert P. Silverberg, 1950 Thomas Jefferson Street, N.W., Suite 600, Washington, D.C. 20007. Application of Air Florida, Inc. pursuant to Section 401 of the Act and Subpart Q of the Bord's Procedural Regulations requests an amendment of its certificate of public convenience and necessity for Route 197-F authorizing it to engage in air transportation with respect to persons, property and mail on a new segment as follows: Between the terminal point Miami, Florida, the intermediate point London, England and the coterminal point Frankfurt, FRG. Conforming Applications, Motions to Modify Scope, and Answers may be filed by January 19, 1983.
Dec. 23, 1982	41171	Aeronaves De Puerto Rico, Inc., c/o George T. Volsky, 1333 H Street, N.W., Suite 600, Washington, D.C. 20005. Application of Aeronaves De Puerto Rico, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations applies for authority to engage in scheduled air transportation of passengers, property and mail between New York, N.Y. (JFK and Newark) or Puerto Rico (San Juan/Borinquen) and Santo Domingo/Puerto Plata, Dominican Republic. Conforming Applications, Motions to Modify Scope, and Answers may be filed by January 19, 1983.
Dec. 22, 1982	41025	Minerve, Compagnie Francaise de Transports Aeriens, S. A., c/o Andrew T. A. Macdonald, Wilmer, Cutler & Pickering, 1666 K Street, N.W., Washington, D.C. 20006. Supplement to and Completion of the Application of Minerve filed pursuant to Order 82-10-68. Answers may be filed by January 19, 1983.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 82-35569 Filed 12-30-82; 8:45 am]

BILLING CODE 6320-01-M

Vacation Air, Inc.; Applications for Certificate Authority Under Subpart Q

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order instituting the Vacation Air, Inc. Fitness Investigation, 82-12-112 Docket 41165.

SUMMARY: The Board is instituting an investigation to determine the fitness of Vacation Air, Inc. to engage in the interstate, overseas, and foreign charter air transportation of persons, property, and mail, except for charters in Alaska and all-cargo charters in Hawaii.

DATES: Persons wishing to intervene in the *Vacation Air, Inc. Fitness Investigation* shall file their petitions in Docket 41165 by January 19, 1983.

ADDRESSES: Petitions to intervene should be filed in Docket 41165 and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Joseph W. Bolognesi, Bureau of Domestic Aviation, Civil Aeronautics

Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428 (202) 673-5333.

SUPPLEMENTARY INFORMATION: The complete text of Order 82-12-112 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 82-12-112 to that address.

By the Civil Aeronautics Board: December 22, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-35570 Filed 12-30-82; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Articles of Quota Cheese; Annual Listing of Foreign Government Subsidies

AGENCY: International Trade Administration, Commerce.

ACTION: Publication of annual list of foreign government subsidies on articles of quota cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: January 1, 1983.

FOR FURTHER INFORMATION CONTACT: Susan E. Silver or Thomas K. Hodge, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, (202) 377-2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 (19 U.S.C. 1202 note) (the "TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Department of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 note).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

December 23, 1982.

APPENDIX—QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Gross[1] subsidy (cents per pound)	Net[2] subsidy (cents per pound)
Belgium	European Community (EC) Restitution Payments.	7.9	7.9
Canada	Export Assistance on Swiss Cheese.	16.3	16.3
	Export Assistance on Cheddar Cheese.	38.3	38.3
	Export Assistance on Mozzarella NSPF Cheese.	34.6	34.6
	Export Assistance on all other NSPF Cheeses.	16.3	16.3
Denmark	EC Restitution Payments.	4.6	4.6
Finland	Export Subsidy	107.0	107.0
	Indirect Subsidies	20.5	20.5
		127.5	127.5
France	EC Restitution Payments.	6.3	6.3
Ireland	EC Restitution Payments.	4.0	4.0
Italy	EC Restitution Payments.	14.0	14.0
Luxembourg	EC Restitution Payments.	7.9	7.9
Netherlands	EC Restitution Payments.	4.3	4.3
Norway	Indirect (Milk) Subsidy	19.7	19.7
	Consumer Subsidy	43.9	43.9
		63.6	63.6
Portugal	Direct Subsidy on All Sales of Gouda Cheese.	16.2	16.2
Switzerland	Deficiency Payments	75.4	75.4
U.K.	EC Restitution Payments.	3.2	3.2
W. Germany	EC Restitution Payments.	5.2	5.2

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 82-35379 Filed 12-30-82; 8:45 am]

BILLING CODE 3510-25-M

[A-201-034]

Elemental Sulphur From Mexico; Preliminary Results of Administrative Review and Modification of Revocation in Part of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review and Modification of Revocation in Part of Antidumping Finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on elemental sulphur from Mexico. The review covers the one known exporter of this mechandise to the United States currently covered by the finding and the period June 1, 1980 through May 31, 1982.

As a result of the review, because the firm was non-responsive, the Department has preliminarily determined to assess dumping duties on the firm's sales during the period of review using the best information available.

The Department also intends to amend the wording of the exclusion for another firm so that elemental sulphur that is produced and/or sold by that firm is excluded from the finding. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 3, 1983.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or Susan Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 1981, the Department of Commerce ("the Department") published in the *Federal Register* (46 FR 35539-40) the final results of its last administrative review of the antidumping finding on elemental sulphur from Mexico (37 FR 12727, June 28, 1972) and announced its intent to conduct the next administrative review by the end of June 1982. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of elemental sulphur. Basically there are two types of sulphur, "bright" and "dark" sulphur. Chemically

these two types are almost equal, the dark sulphur being discolored by certain hydrocarbon impurities. The greatest single use of sulphur is in the manufacture of sulphuric acid. In elemental form or as sulphuric acid it enters into the production or processing of hundreds of products. Among the most important are fertilizers, chemicals, titanium and other pigments, pulp and paper, rayon, film, iron and steel, dyestuffs, vulcanized and synthetic rubber, insecticides, fungicides, fuels and explosives. Elemental sulphur is currently classifiable under item 415.4500 of the Tariff Schedules of the United States Annotated.

The review covers the one known exporter of elemental sulphur from Mexico to the United States currently covered by the finding, Agro Centro, S.A., and the period June 1, 1980 through May 31, 1982. Agro Centro did not respond to the Department's questionnaire. For this non-responsive exporter the Department will use the best information available for assessment and estimated duty cash deposit purposes. The best information available is the most recent rate for the firm.

On January 5, 1978, the Treasury Department published a "Modification of Dumping Finding" (43 FR 954–5) covering sulphur produced *and* sold by Azufrera Pan-Americana, S.A. ("APSA"). We intend to amend the wording of the modification for APSA to read "* * *except the produced and/or sold by Azufrera Pan-Americana, S.A.".

Preliminary Results of the Review

As a result of our review, we preliminarily determine that a margin of 33% exists for sales by Agro Centro for the period June 1, 1980 through May 31, 1982.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication.

The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the U.S. Customs Service shall assess, dumping duties on all appropriate entries made with purchase dates during the period of review. The Department will issue assessment instructions directly to the Customs Service.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties of 33 percent shall be required on all shipments of Mexican sulphur from Agro Centro entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

December 23, 1982.

[FR Doc. 82-35543 Filed 12-30-82; 8:45am]

BILLING CODE 3510-25-M

[A-588-024]

Tempered Sheet Glass From Japan; Preliminary Results of Administrative Review of Antidumping Finding and Tentative Determination To Revoke

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Finding and Tentative Determination to Revoke.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on tempered sheet glass from Japan. The review covers the one known exporter of this merchandise to the United States and the periods from September 13, 1975, the date of a previous Treasury Department tentative determination to revoke, through August 31, 1978, and September 1, 1980 through August 31, 1982.

As a result of the review, the department has tentatively determined to revoke the finding. All sales from September 13, 1975 through August 31, 1976 were made at not less than fair value and there have been no sales since then through August 31, 1982. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 3, 1983.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Susan Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On February 24, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 8307) the final results of its last administrative review and determination not to revoke at that time the antidumping finding on tempered sheet glass from Japan (36 FR 10913, September 25, 1971) and announced its intent to conduct the next administrative review by the end of September 1982. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review. The substantive provisions of the Antidumping Act of 1921 ("the 1921 Act") and the appropriate Customs Service regulations apply to all unliquidated entries made prior to January 1, 1980.

Scope of the Review

Imports covered by the review are shipments of tempered sheet glass in patio door sizes, currently classifiable under item 544.3100 of the Tariff Schedules of the United States Annotated (TSUSA).

The review covers the one known exporter of Japanese termpered sheet glass to the United States, Asahi Glass Company, Ltd. ("Asahi"), and the periods September 13, 1975 (the date of a prior Treasury Department tentative determination to revoke) through August 31, 1978, and September 1, 1980 through August 31, 1982. We covered the period from September 1, 1978 through August 31, 1980 in our last review.

United States Price

In calculating United States price the Department used purchase price, as defined in section 203 of the 1921 Act. Purchase price was based on the packed, delivered price to unrelated purchasers in the United States, with deductions where applicable, for Japanese inland freight, ocean freight, marine insurance, commissions to unrelated parties, U.S. duty, customs brokerage in Japan and the U.S., U.S. inland freight, and cash discounts. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used the price to purchasers in a third country (Australia), as defined in section 205 of the 1921 Act, since insufficient sales existed in the home market to form an adequate basis of comparison. Third-country prices were based on packed CIF prices and were

adjusted, where applicable, for Japanese inland freight, ocean freight, marine insurance, commissions to unrelated parties, Japanese brokerage fees, and differences in packing costs. Adjustments were also made for differences in the merchandise due to tinting of certain U.S. products, in accordance with § 153.11 of the Customs Regulations. We denied a claim for another difference in merchandise because it was not adequately quantified. Further, because Asahi presented no evidence supporting a claimed adjustment for a 3 percent selling commission for a trading house, we disallowed that claim. No other adjustments were claimed or allowed.

Preliminary Results of Review and Tentative Determination To Revoke

As a result of our comparison of United States price to foreign market value, we preliminarily determine that, for the period September 13, 1975 through August 31, 1976, all sales by Asahi were made at not less than fair value. There were no sales to the U.S. from September 1, 1976 through August 31, 1982.

As provided for in § 353.54(e) of the Commerce Regulations, Asahi has agreed in writing to an immediate suspension of liquidation and reinstatement of the finding if cicumstances develop which indicate that tempered sheet glass in patio door sizes thereafter imported into the United States is being sold by it at less than fair value.

Therefore, we tentatively determine to revoke the finding on tempered sheet glass from Japan. If this revocation is made final, it will apply to all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall instruct the Customs Service not to assess dumping duties on any entries made with purchase dates during the first period of review. The Department will issue appraisement instructions directly to the Customs Service.

This administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (a) (1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), (c)) and § 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

December 23, 1982.

[FR Doc. 82-35542 Filed 12-30-8:45 am]

BILLING CODE 3510-25-M

Certain Steel Products From Spain; Countervailing Duty Orders

AGENCY: International Trade Administration, Commerce.

ACTION: Countervailing Duty Orders; Certain Steel Products from Spain.

SUMMARY: In separate investigations, the U.S. Department of Commerce (the Department) and the U.S. International Trade Commission (ITC) have determined that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, and exporters in Spain of certain steel products and that these imports are materially unjuring a U.S. industry. Therefore, all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 30, 1982, the date of publication of our preliminary determinations, are liable for the possible assessment of countervailing duties. Further, a cash deposit of estimated countervailing duties must be posted on all such entries made on or after publication of these orders in the **Federal Register.**

EFFECTIVE DATE: January 3, 1983.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202) 377-3793.

SUPPLEMENTARY INFORMATION: On August 30, 1982, we published our preliminary determinatins that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Spain of certain steel products (47 FR 38161). On November 15, 1982, we published our final affirmative countervailing duty determinations on these imports (47 FR 38375). Critical circumstances were also found to exist for imports of one of the certain steel products, carbon steel structural shapes.

On December 21, 1982, the ITC notified us in accordance with section 705(b) of the Traiff Act of 1930, as amended (the Act) (19 U.S.C. 1671(b)), that it has determined that an industry in the United States is being materially injured by reason of imports of certain steel products from Spain. The ITC further determined that critical circumstances are not met since the material injury being caused a U.S. industry was not by reason of massive imports of the subject merchandise over a relatively short period. Therefore, all unliquidatd entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 30, 1982, the date of publication of our preliminary determinations, are liable for the possible assessment of counterviailing duties. With respect to carbon steel structural shapes entered, or withdrawn from warehouse, for consumption during the ninety day period prior to August 30, 1982, the suspension of liquidation for all entries, is revoked and any cash deposits or bonds which were deposited will be refunded or released.

I am directing the U.S. Customs Service to assess countervailing duties in accordance with sections 706(a)(1) and 751 of the Act and to require a cash deposit equal to the amount of the estimated net subsidy for all entries of certain steel products imported from Spain as defined in Appendix 1. These orders apply to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice. The amount to be deposited for each company is listed in Appendix 2 to this notice.

The products covered by these countervailing duty orders are:

- Carbon steel structural shapes,
- Hot-rolled cabon steel plate,
- Cold-rolled carbon steel sheet,
- Galvnized carbon steel sheet,
- Hot-rolled carbon steel bars,
- Cold-formed carbon steel bars.

These products are fully described in Appendix 1 to this notice.

I hereby make public these countervailing duty orders with respect to certain steel products from Spain pursuant to section 706 of the Act (19 U.S.C. 1671e) and section 355.36 of the Commerce Regulations (19 CFR 355.36). The Department intends to complete an administrative review of this order under section 751 of the Act.

Dated: December 28, 1982.

Judith H. Bello,

Acting Deputy Assistant Secretary for Import Administration.

Appendix 1—Description of Products

For purposes of these investigations;

1. *"carbon steel structural shapes"* covers hot-rolled forged, extruded, or drawn, or cold-formed or cold-finished carbon steel angles, shapes, or sections, not drilled, not punched, and not otherwise advanced, and not conforming completely to the specifications given in the headnotes to Schedule 6, Part 2 of the *Tariff Schedules of the United States Annotated (TSUSA),* for blooms, billets, slabs, sheet bars, bars, wire rods, plates, sheets, strip, wire, rails, joint bars, tie plates, or any tubular products set forth in the *TSUSA,* having a maximum cross-sectional dimension of 3 inches or more, as currently provided for in items 609.8005, 609.8015, 609.8035, 609.8041. or 609.8045 of the *TSUSA.* Such products are generally referred to as structural shapes;

3. *"hot-rolled carbon steel plate"* covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled; not cold-rolled; not in coils; not cut; not pressed, and not stamped to non-rectangular shape; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in items 607.6615, or 607.94, of the *Tariff Schedules of the United States Annotated ("TSUSA");* and hot- or cold-rolled carbon steel plate which has been coated or plated with zinc including any material which has been painted or otherwise covered after having been coated or plated with zinc, as currently provided for in items 608.0710 and 608.11 of the *TSUSA.* Semifinished products of solid rectangular cross section with a width at least four times the thickness in the as cast condition or processed only through primary mill hot rolling are not included;

3. *"cold-rolled carbon steel sheet"* covers the following cold-rolled carbon steel product, whether or not corrugated or crimped and whether or not pickled; not coated or plated with metal; over 12 inches in width and in coils or if not in coils under 0.1875 inch in thickness; as currently provided for in terms 607.8320 of 607.8344 of the *Tariff Schedules of the United States Annotated ("TSUSA"). Please note that the definition of cold-rolled carbon steel sheet includes some products classified as "plate" in the TSUSA (item 607.8320);*

4. *"galvanized carbon steel sheet"* covers hot- or cold-rolled carbon steel sheet which has been coated or plated with zinc including any material which has been painted, or otherwise covered, after having been coated or plated with zinc, as currently provided for in items 608.0710, 608.0730. 608.11 or 608.13 of the *Tariff Schedules of the United States Annotated ("TSUSA"). Note that the definition of galvanized carbon steel sheet includes some products classified as "plate" in the TSUSA (items 608.0710 and 608.11);*

5. *"hot-rolled carbon steel bars"* covers hot-rolled carbon steel products of solid section which have cross sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons, or octagons, not cold-formed and not coated or plated with metal, in items 606.8310, 606.8330, or 606.8350 of the *Tariff Schedules of the United States Annotated;*

6. *"cold-formed carbon steel bars"* covers cold-formed carbon steel products of solid section which have cross sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons, or octagons [1] as currently provided for in items 606.8805 or 606.8815 of the *Tariff Schedules of the United States Annotated;*

Appendix 2

Manufacturer/producer/exporter	Ad valorem rate (percent)
Empresa Nacional Siderurgica, S.A.:	
Carbon steel structural shapes	10.12
Hot-rolled carbon steel plate	10.12
Cold-rolled carbon steel sheet	10.12
Galvanized carbon steel sheet	10.12
Altos Hornos Del Mediterraneo, S.A.: Cold-rolled carbon steel sheet	38.25
Altos Hornos De Vizcaya, S.A.: Galvanized carbon steel sheet	4.54
Jose Maria Aristrain, S.A.: Carbon steel structural shapes	1.64
Industrias Del Besos, S.A.: Hot-rolled carbon steel bars	1.59
Pedro Orbegozo Y Cia, S.A.:	
Hot-rolled carbon steel bars	0
Cold-formed carbon steel bars	0
Tuyper, S.A.: Cold-formed carbon steel bars	1.56
Forjas Alavesas:	
Hot-rolled carbon steel bars	1.74
Cold-formed carbon steel bars	1.74
S.A. Echevarria:	
Hot-rolled carbon steel bars	15.08
Cold-formed carbon steel bars	15.08
All other manufacturers, producers, exporters of the product under investigation, as follows:n	
Carbon steel structural shapes	10.12
Hot-rolled carbon steel sheet	10.12
Cold-rolled carbon steel sheet	38.25
Galvanized carbon steel sheet	10.12
Cold-formed carbon steel bars	15.08
Hot-rolled carbon steel bars	15.08

[FR Doc. 82-35593 Filed 12-30-82; 8:45 am]

BILLING CODE 3510-25-M

Stainless Steel Wire Rod From Spain; Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Countervailing Duty Order; Stainless Steel Wire Rod From Spain.

SUMMARY: In separate investigations, the U.S. Department of Commerce (the Department) and the U.S. International Trade Commission (ITC) have determined that certain benefits which constitute subsides within the meaning of the countervailing duty law are being provided to manufacturers, producers, and exporters in Spain of stainless steel wire rod and that these imports are materially injuring a U.S. industry. Therefore, all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 31, 1982, the date of publication of our preliminary determination, are liable for the possible assessment of countervailing duties. Further, a cash deposit of estimated countervailing duties must be posted on all such entries made on or after publication of this order in the **Federal Register.**

EFFECTIVE DATE: January 3, 1983.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202) 377-3793.

SUPPLEMENTARY INFORMATION: On August 23, 1982, we issued our preliminary determinations that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Spain of certain stainless steel products (47 FR 38161), which included hot-rolled stainless steel bars, cold-formed stainless steel bars and stainless steel wire rod. On November 15, 1982 (47 FR 51453), we issued our final affirmative countervailing duty determinations on all these imports.

On December 22, 1982, the ITC notified us in accordance with section 705(b) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671d(b)), that it had determined that an industry in the United States is being materially injured by reason of imports of stainless steel wire rod from Spain. The ITC further determined that no industry in the United States is being materially injured or is threatened with material injury by reason of imports of hot-rolled stainless steel bars or cold-formed stainless steel bars from Spain.

Therefore, all unliquidated entries of stainless steel wire rod entered, or withdrawn from a warehouse, for consumption on or after August 31, 1982, the date of publication of our preliminary determination, are liable for the possible assessment of contervailing duties. The suspension of liquidation for all entries of hot-rolled stainless steel bars and cold-formed stainless steel bars is revoked and any cash deposits or bonds which were deposited with respect to these products will be refunded or released.

I am directing the U.S. Customs Service to assess countervailing duties in accordance with sections 706(a)(1) and 751 of the Act and to require a cash deposit equal to the amount of the estimated net subsidy set forth in Appendix 1 for all entries of stainless steel wire rod, as herein defined,

[1] Initiation notice amended by deleting after octagons "and not coated or plated with metal."

imported from Spain. This order applies to all entries of the subject merchandise entererd, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.** The amount to be deposited for each such company is listed in Appendix 1 to this notice.

The stainless steel wire rod covered by this countervailing duty order includes a coiled, semi-finished, hot-rolled stainless steel product of solid cross section, approximately round in cross section, not under 0.20 inches nor over 0.74 inches in diameter, not tempered, not treated, and not partly manufactured as currently provided for in item 607.26 of the *Tariff Schedules of the United States Annotated (TSUSA),* or if tempered, treated, or partly manufactured as provided for in item 607.43 of the TSUSA.

I hereby make public this countervailing duty order with respect to stainless steel wire rod from Spain pursuant to section 706 of the Act (19 U.S.C. 1671e) and section 355.36 of the Commerce Regulations (19 CFR 355.36). The Department intends to complete an administrative review of this order under section 751 of the Act.

Dated: December 28, 1982.

Judith H. Bello,

Acting Deputy Assistant Secretary for Import Administration.

Appendix 1

Manufacturer/producer/exporter and ad valorem rate [In percent]	
Roldan	3.19
Olarra	0.00
Forjas Alavesas	2.09
S.A. Echevarria	15.43
All other manufacturers/producers/exporters	15.43

[FR Doc. 82-35594 Filed 12-30-82; 8:45 am]

BILLING CODE 3510-25-M

Preliminary Affirmative Countervailing Duty Determination; Tool Steel From Brazil

AGENCY: International Trade Administration, Commerce

ACTION: Preliminary Affirmative Countervailing Duty Determination.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Brazil of tool steel. The estimated net subsidy is 17.766 percent *ad valorem.* Therefore, we are directing the U.S. Customs Service to suspend liquidation of all entries of tool steel from Brazil which are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or bond on this product in the amount equal to the estimated net subsidy.

It this investigation proceeds normally, we will make our final determination by March 14, 1983.

EFFECTIVE DATE: January 3, 1983.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 377-3003.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine there is reason to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Brazil of tool steel. For purposes of this investigation, the following programs are preliminarily found to confer subsidies:

- IPI export credit premium
- Preferential working capital financing for exports
- Income tax exemption for export earnings
- Long-term loans
- IPI rebates for capital investment
- Industrial Development Council (CDI) program
- Accelerated depreciation for capital goods manufactured in Brazil

We estimate the net subsidy to be 17.766 percent *ad valorem.*

Case History

On July 30, 1982, we received a petition from Al Tech Specialty Steel Corporation, Braeburn Alloy Steel Division, Continental Copper & Steel Industries, Inc., Carpenter Technology Corporation, Columbia Tool Steel Company, Crucible Specialty Metals Division, Colt Industries, Inc., Cyclops Corporation, Guterl Special Steel Corporation, Jessop Steel Company, Latrobe Steel Company, on behalf of the U.S. industry producing tool steel and the United Steelworkers of America, AFL/CIO. The petition alleged that certain benefits which constitute subsidies within the meaning of section 701 of the Act are being provided, directly or indirectly, to the manufacturers, producers, or exporters in Brazil of tool steel.

We found the petition to contain sufficient grounds upon which to initiate a countervailing duty investigation, and on August 18, 1982, we initiated a countervailing duty investigation (47 FR 36874). We stated that we expected to issue a preliminary determination by October 25, 1982. We subsequently determined that the investigation is "extraordinarily complicated," as defined in section 703(c) of the Act, and postponed our preliminary determination for 65 days until December 27, 1982 (47 FR 49436).

Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the U.S. International Trade Commission (ITC) of our initiation. On September 13, 1982, the ITC preliminarily determined that there is a reasonable indication that these imports are materially injuring, or threatening to materially injure, a U.S. industry (47 FR 41881).

We presented a questionnaire concerning the allegations to the government of Brazil in Washington, D.C. On November 15, 1982, we received the response to that questionnaire.

Scope of Investigation

The product covered by this investigation is tool steel which includes hot-finished tool steel, cold-finished tool steel, high speed tool steel, chipper knife steel and band saw steel bars and rods as currently provided for in items 606.9300, 606.9400, 606.9505, 606.9510, 606.9520, 606.9525, 606.9535, 606.9540, 607.2800, 607.3405, 607.3420, 607.4600, 607.5405 and 607.5420 of the *Tariff Schedules of the United States Annotated.*

There are four known producers and exporters in Brazil of tool steel to the United States. We have received information from the government of Brazil regarding three of these companies, Acos Finos Piratini S/A (PIRATINI), Acos Villares S/A (VILLARES), and Eletrometal Acos Finos S/A (ELETROMETAL) which represented over 85 percent of exports of this product to the United States during calendar year 1981.

The period for which we are measuring subsidization is that fiscal year for each company which most closely corresponds to calendar year 1981. That period is calendar year 1981 for PIRATINI, February 1, 1981 to January 31, 1982 for VILLARES and October 1, 1981 to September 30, 1982 for ELETROMETAL. We have referred to these periods as fiscal year 1981 in this notice.

Analysis of Programs

In its response, the government of Brazil provided data for the applicable periods. Based upon our analysis to date of the petition and the response to our questionnaire, we preliminarily determine the following.

I. Programs Preliminarily Determined To Confer Subsidies

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters in Brazil of tool steel under the following programs.

A. Industrialized Products Tax (IPI) Export Credit Premium

The IPI export credit premium has been found to be a benefit in previous countervailing duty investigations involving Brazilian products. After having suspended this program in December 1979, the government of Brazil reinstated it on April 1, 1981.

Exporters of tool steel are eligible for the maximum IPI export credit premium. Up until March 30, 1982, 15 percent of the "adjusted" f.o.b. invoice price of the exported merchandise was reimbursed in cash to the exporter through the bank involved in the export transaction.

Subsequently, the government of Brazil reduced the benefit to 14 percent on March 31, 1982, 12.5 percent on June 30, 1982, and 11 percent on September 30, 1982.

In calculating the amount the exporter is to receive, several deductions may be made to the invoice price to obtain the "adjusted" f.o.b. value. These adjustmentsd include: any agent commissions, rebates or refunds resulting from quality deficiencies or damage during transit, contractual penalties, and the value of imported imputs. In order to receive the maximum export credit premium, the exported product must consist of a minimum of 75 percent value added in Brazil. If this minimum limit is not met, there is a specific calculation to reduce the f.o.b. invoice price when calculating the base upon which the IPI export credit premium is paid.

To determine the amount of benefit, we calculated the value of the IPI credits as of the date of shipment rather than the date of receipt and did not take into account the devaluation of the cruzeiro, in accordance with section 771(6)(B) of the Act. We then divided the value of the IPI credits by the value of exports and calculated a subsidy value of 13.186 percent. This rate is premised on an IPI export credit premium of 15 percent.

The government of Brazil has made three reductions in the level of the IPI credit during 1982, the most recent on September 30, 1982 to 11 percent. Accordingly, the government of Brazil asserts that a downward adjustment in the rate for this program is appropriate to reflect the current availability of the benefit. However, since the period for which we are measuring subsidization is the companies' 1981 fiscal year, when the benefit was based upon a nominal rate of 15 percent, we do not feel that it is appropriate to make this adjustment.

Therefore, we calculated an *ad valorem* export subsidy of 13.186 percent.

B. Preferential Working Capital Financing for Exports: Resolution 674

Under this program, companies are declared eligible to receive working capital loans by the Department of Foreign Commerce of the Banco Central do Brasil (CACEX). These loans may have a duration of up to one year. Firms in the steel industry can obtain this financing at preferential rates for up to 20 percent of the net f.o.b. value of the previous year's exports. The maximum dollar eligibility under this program is established by CACEX and is stated on the "Certificado de Habilitacao" issued to recipients. We preliminarily determine that such financing is an export subsidy.

The net export value is calculated by taking numerous deductions from the export value of the merchandise, including agent commissions, contractual penalties or refunds, exports denominated in cruzeiros, imported inputs over 20 percent of the export value, and a deduction for the company's trade deficit as a percentage of the value of its exports. In addition, any growth in the cruzeiro value of exports over the previous year will reduce the value of the benefit as a percentage of the current year's exports.

To determine the value of loans in existence under this program during 1981, we prorated any loans that straddled other years. For loans taken out in fiscal year 1980, only that portion extending into fiscal year 1981 was included in our calculation. Any fiscal year 1981 loans extending into fiscal year 1982 were similarly adjusted. We then divided the total value of these loans by the total value of exports of the three companies under investigation to calculate the amount of perferential financing they received.

As in previous Brazilian countervailing duty cases, we are using the rate established by the Banco do Brasil for discounting sales of accounts receivable as the commercial rate for the acquisition of short-term working capital. We have used this comparison because information provided by the government of Brazil indicates that, within the Brazilian financial system, working capital is normally raised through the sale of accounts receivable. Currently, the rate for discounting sales of accounts receivable is 59.6 percent plus a 6.9 percent tax on financial transactions (IOF). The subsidy is the difference between the interest rate available under Resolution 674 and the commercial rate.

The interest rate on loans under Resolution 674 is 40 percent, with interest payable semiannually and the principal fully payable on the due date of the loan. The effective rate of interest for these loans is 44 percent. These loans are also exempt from the IOF. Therefore, the differential between these two types of financing is 22.5 percent. When multiplying this differential by the amount of preferential financing received as a percent of exports, we calculated an *ad valorem* export subsidy of 2.367 percent.

C. Income Tax Exemption for Export Earnings

Exporters of tool steel are eligible to participate in this program, under which the percentage of their profit attributable to export revenue is exempt from income tax. To arrive at this percentage, export revenue is divided by total revenue. The amount of profit exempt from the income tax is then multiplied by the 35 percent corporate income tax rate to determine the amount of the benefit.

In a program of this kind, benefits cannot be determined with finality until the books are closed sometime in the following year. Therefore, we must look at fiscal year 1980 income tax returns to determine if any benefit was received in fiscal year 1981. VILLARES and ELETROMETAL received benefits under this program in 1981. By dividing the benefit received by the value of exports of the companies under investigation, we calculated an *ad valorem* export subsidy of 0.837 percent.

D. Long-Term Loans

Long-term financing in cruzeiros is available in Brazil only through Government-controlled financial institutions, such as the National Bank for Economic Development (BNDE) and FINAME, a program of BNDE for the purchase of capital equipment manufactured in Brazil. Generally, these loans are fully indexed to the inflation rate in Brazil and are made at fixed real interest rates. The index used for these loans is the ratio established for the Readjustable Bonds of the National

Treasury (ORTN). FINAME loans are granted through commercial banks rather than directly from BNDE loans.

VILLARES and ELETROMETAL received direct BNDE loans. As in previous steel countervailing investigations, we have determined that BNDE loans, when fully indexed, are not made at preferential rates, and we preliminarily determine that such BNDE loans are not countervailable.

However, some long-term cruzeiro loans have been granted that are not fully indexed. Under a program no longer in operation, BNDE granted one such loan to VILLARES that is adjusted at only 20 percent of the variation on ORTN. VILLARES still has an outstanding balance on this loan, and we preliminarily determine that this loan is countervailable. Recipients of such loans benefit both from reduced interest payments and from principal abatement over the life of the loan. We calculated the benefit to VILLARES for this loan as the difference between the amount actually paid in fiscal year 1981 and the amount which would have been paid had the loan been fully adjusted. However, since principal repayments have not yet begun for this VILLARES loan, the sole benefit stemmed from reduction in interest.

ELETROMETAL has also received a partially adjusted loan. The Department has not received specific information relating to the actual repayment of the loan received by ELETROMETAL, but we have been provided with information concerning the original terms of the loan. Like the VILLARES loan, repayment of principal was not scheduled to begin on the loan to ELETROMETAL until after the review period. Therefore, for purposes of the preliminary determination, we estimated the benefit to ELETROMETAL to be the entire amount of the interest due in the review period. We then divided the interest payments saved in fiscal year 1981 due to the favorable terms of the loans by total sales of all companies under investigation and calculated an *ad valorem* subsidy of 0.256 percent.

FINAME loans have been received by ELETROMETAL, PIRATINI, and VILLARES and are available to a wide variety of sectors in Brazil. The steel industry has received such loans in proportions similar to other large capital-intensive industries in Brazil. This appears to be warranted by the capital requirements of such industries. In addition, numerous other sectors also received loans from FINAME during this period. Based on the general availability of these fully-indexed loans, we preliminary determine that they do not confer a subsidy.

E. IPI Rebates for Capital Investment

Decree Law 1547 (April 1977) provides funding for the expansion of the Brazilian steel industry through a rebate of the IPI, the Brazilian federal excise tax. Under this tax system, a company determines its liability for the tax at the end of each month. The net tax owed is calculated as the difference between the total IPI the company paid on purchases and the total IPI it collected on domestic sales. Normally, within five months after the end of each month, a company must pay the amount of the net tax owed directly to the Brazilian government. This net IPI tax is the basis for calculating the rebate for investment. A Brazilian steel company may deposit 95 percent of the net IPI tax in a special account with the Banco do Brasil. The amounts deposited are to be applied to steel expansion projects, and when rebated to the firms constitute tax-free capital reserves which must eventually be converted into subscribed capital.

PIRATINI received grants under this program from 1977 to 1981, while ELETROMETAL and VILLARES continue to receive them. With the enactment of Decree Law 1843 (December 1980), PIRATINI must now pay the IPI tax to the government which in turn rebates 95 percent to SIDERBRAS, the government holding company to which PIRATINI belongs, to increase its capital.

We consider the amount rebated each year as an untied grant received in that year. As such, we have allocated the grants over 15 years, the estimated average life of capital assets in integrated steel mills (based on Internal Revenue Service studies of actual experience in integrated mills in the United States).

To calculate the benefit, we have taken the amount of the rebate received in each month, converted the cruzeiro value to an ORTN value by using the ORTN index rate in the month of receipt, added the monthly ORTN amounts to determine the amount of the grant in each year, and used as the discount rate for each year the interest rate of 4 percent on ORTN-indexed long-term government debt. The total benefit in ORTN for fiscal year 1981 was converted into cruzeiros using the average ORTN index rate for the year and then divided by the total value of sales for the 1981 fiscal year of each company. The *ad valorem* benefit of this subsidy is 0.855 percent.

F. Industrial Development Council (CDI) Program

This program allowed an exemption of 80 percent of the customs duties and 80 percent of the IPI tax on certain imported machinery for projects approved by the CDI. Decree Law 1726 repealed this program in 1979 and no new projects are eligible for thse benefits. However, companies with projects approved prior to repeal may still receive these benefits pending the completion of the project. The government of Brazil states that ELETROMETAL received such benefits during 1981. By dividing the benefit received by the total value of sales of the companies under investigation, we calculated the *ad valorem* benefit of this subsidy to be 0.168 percent.

G. Accelerated Depreciation for Capital Goods Manufactured in Brazil

This program allows companies that purchase Brazilian-made capital equipment as part of an approved CDI expansion project to depreciate this equipment at twice the rate normally permitted under tax laws. ELETROMETAL used the accelerated depreciation provisions of this program. The benefit of such a program is reduced taxable income and a subsequent reduction in tax liabilities. To calculate the benefit to ELETROMETAL, we determined the amount by which depreciation under this program exceeded normal depreciation, multiplied that amount by 35 percent, the corporate tax rate in Brazil, and then divided the result by the total value of sales for the 1981 fiscal year of each company. The *ad valorem* benefit of this subsidy is 0.097 percent.

II. Program Preliminarily Determined Not To Confer Subsidies

We preliminarily determine subsidies are not being provided to manufacturers, producers, or exporters in Brazil of tool steel under the following program.

A. Transportation Subsidies

The government of Brazil, in its response to our questionnaire, states that none of the exporters of tool steel receive preferential rates when using railroads and ports. We have no evidence that any programs exist which give preferential freight rates to steel exporters.

III. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that the following programs, listed in the notice of "Initiation of Countervailing Duty Investigation," were not used by the manufacturers, producers, or exporters in Brazil of tool steel.

A. The Commission for the Granting of Fiscal Benefits for Special Export Programs (BEFIEX)

BEFIEX grants several types of benefits to companies that are part of certain targeted industries and that sign contracts that include specific export commitments. These benefits include the following: a reduction of between 70 percent and 90 percent of the import duties and the IPI tax on the import of machinery, equipment, apparatus, instruments, accessories and tools necessary to meet the approved export commitment; an extension of the period for carrying tax losses forward from four to six years, provided no dividends are paid during that time; and amortization of pre-operational expenses of BEFIEX projects at the discretion of the company rather than the normal straight-line amortization over ten years. As a general rule, companies that sign BEFIEX contracts guaranteeing these and any other benefits must make an export commitment that over the life of the project it will generate export earnings of at least three time the value of imports for the project. The government of Brazil states that the steel industry in Brazil has been developed primarily to supply the domestic market. Since manufacturers of tool steel export only a small portion of their production, they are not in a position to make the required export commitments. The government also states that neither ELETROMETAL nor PIRATINI received benefits from this program in 1981, and that VILLARES has received some benefits under the BEFIEX program but not with respect to tool steel.

B. Export Financing Under Resolution 68

This program provides financing for the export of Brazilian goods for a minimum period of 181 days. Such financing is granted on a transaction-by-transaction basis and may cover up to 85 percent of f.o.b. invoice price for the merchandise (plus freight and insurance). To be eligible, the exporter must show that the foreign purchaser has prepaid 15 percent of the invoice price. The government of Brazil states that none of the exporters of tool steel used Resolution 68 to finance exports of this merchandise to the United States in 1981.

Verification. In accordance with section 776(a) of the Act, we will verify data used in making our final determination.

Suspension of Liquidation. In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of tool steel from Brazil which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond for each such entry of this merchandise in the amount of 17.766 percent *ad valorem.* This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential 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 written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will make its determination whether these imports are materially injuring, or threatening to materially injure, a U.S. industry before the latter of 120 days after the Department makes its preliminary affirmative determination or 45 days after the Department makes its final affirmative determinatiion.

Public Comment

In accordance with section 355.35 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on February 1, 1983, at the U.S. Department Commerce, Room 3080, 14th Street and Constitution Avenue, N.W. Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within ten days of this notice's publication.

Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least ten copies must be submitted to the Deputy Assistant Secretary by January 25, 1983. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355.34, within thirty days of this notice's publication, at the above address and in at least ten copies.

Dated: December 27, 1982.

Judith H. Bello,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-35554 Filed 12-30-82; 8:45 am]

BILLING CODE 3510-25-M

Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: The Electronic Instrumentation Technical Advisory Committee was initially established on October 23, 1973, and rechartered on September 17, 1981 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical specifications and policy issues relating to those specifications which are of concern to the Department, (B) worldwide availability of products and systems, including quantity and quality, and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to electronic instrumentation, or technology, and (D) exports of the aforementioned commodities subject to unilateral and multilateral controls which the United States establishes or in which it participates including proposed revisions of any such controls.

Time and place: January 20, 1983, at 9:30 a.m. The meeting will take place at the Main Commerce Building, Room 3708, 14th Street and Constitution Ave., N.W., Washington, D.C. The meeting will continue to its conclusion on January 21, 1983, in Room 3708, Main Commerce Building.

Agenda

General Session

(1) Opening remarks by the Chairman.

(2) Presentation of papers or comments by the public.

(3) Nomination and election of Chairman.

(4) New Business.

Executive Session

(5) Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

Public participation: The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time

permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

Supplementary Information: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 29, 1981, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In The Sunshine Act, P.L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202-377-4217.

For further information or copies of the minutes contact: Mrs. Margaret Cornejo, Committee Control Officer, Office of Export Administration, Room 2613, U.S. Department of Commerce, Washington, D.C. 20230

Telephone: 202-377-2583.

Dated: December 28, 1982

Richard Isadore,

Acting Director, Office of Export Administration.

[FR Doc. 82-35553 Filed 12-30-82; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting With a Partially Closed Session and Public Meetings of its Scientific and Statistical Committee and its Groundfish and Salmon Subpanels

AGENCY: National Marine Fisheries Service (NOAA), Commerce.

ACTION: Notice of Public Meetings with a Partially Closed Session.

SUMMARY: As required by the Federal Advisory Committee Act, this notice sets forth the schedule and proposed agendas of the forthcoming meetings of the Pacific Fishery Management Council, its Scientific and Statistical Committee (SSC), and its Groundfish and Salmon Subpanels. The Pacific Fishery Management Council was established by Section 302 of the Magnuson Fishery Conservation and Management Act (Public Law 94-265), and the Council has established a SSC and Groundfish and Salmon Subpanels to assist the Council in carrying out its responsibilities.

DATES: January 11-14, 1983.

ADDRESS: The meetings will take place at the Cosmopolitan Hotel 1030 N.E. Union Avenue, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Pacific Fishery Management Council, 526 S.W. Mill Street, Second Floor, Portland, Oregon 97201, Telephone: (503) 221-6352.

Agendas

Council (open meetings)—January 12-14, 1983 (1:30 p.m. to 5 p.m. on January 12; 8 a.m. to 5 a.m. on January 13 and 14)—discuss the drafts of the 1983 salmon plan amendment and the salmon framework plan amendment; consider 1983 management measure options to stay within the optimum yields for widow rockfish and sablefish and within an aggregate harvest guideline for non-numerical optimum yield species; review groundfish experimental fishing permit applications and discuss groundfish management. Oral comments or questions by the public will be invited beginning at 4 p.m., on January 12.

Council (closed session)— January 12, 1983 (11 a.m. to noon)—discuss the status of maritime boundary and resource negotiations between the United States and Canada. Only those Council members and selected staff having security clearances will be allowed to attend this closed session.

Scientific and Statistical Committee (open meetings)—January 11-12, 1983 (10 a.m. to 5 p.m. on January 11; 8 a.m. to noon on January 12)—evaluate and develop recommendations on the drafts of the 1983 salmon plan amendment and salmon framework plan amendment; discuss groundfish management as a topic of referral from the Council to the Committee. Oral comments or questions by the public will be invited beginning at 3:30 p.m., on January 11.

Salmon Subpanel (open meeting)—January 12, 1982 (9 a.m. to 5 p.m.)—evaluate and develop comments on the drafts of the 1983 salmon plan amendment and salmon framework plan amendment.

Groundfish Subpanel (open meeting)—January 11, 1983 (10 a.m. to 5 p.m.)—consider 1983 management measure options to stay within the optimum yields for widow rockfish and sablefish and within an aggregate harvest guideline for non-numerical optimum yield species; review groundfish experimental fishing permit applications and discuss groundfish management.

The Assistant Secretary for Administration of the Department of Commerce, with the concurrence of the General Counsel, formally determined on 12/22/82, pursuant to Section 10(d) of the Federal Advisory Committee Act, that the agenda item covered in the closed session is exempt from the provisions of the Act relating to open meetings and public participation therein, because the session will be concerned with matters that are within the purview of 5 U.S.C. 552b(c)(1) as information which will disclose matters that are (A) specifically authorized under criteria established by an executive order to be kept secret in the interests of national defense or foreign policy and (B) in fact properly classified pursuant to such executive order. (A copy of the determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6528, Department of Commerce.) All other portions of the meeting will be open to the public.

Dated: December 28, 1982.

Joe P. Clem,

Acting Chief, Operations Coordination Group, National Marine Fisheries Service.

[FR Doc. 82-35556 Filed 12-30-82; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council's Scientific and Statistical Committee; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Western Pacific Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Public Law 94-265), has established a Scientific and Statistical Committee, which will meet to review and approve methodology for projects which the Council has determined as high priority for FY 83 programmatic funding; review and discuss the status of approved (but not yet implemented) fishery management plans (FMP's)—Precious Corals (1980) and Spiny Lobster (1982); prepare a planning guide for the preparation of a bottomfish FMP, including structure and content; review and discuss the status of the Billfish FMP, as well as discuss other Committee business.

DATES: The public meetings will convene on Monday, January 17, and Tuesday, January 18, 1983, at

approximately 9 a.m., and will adjourn at approximately 4 p.m., both days; reconvene on Wednesday, January 19, 1983, at approximately 9 a.m., and adjourn at approximately 1 p.m.

ADDRESS: The public meetings will take place at the Southwest Fisheries Center, Conference Room, Honolulu Laboratory, National Marine Fisheries Service, 2570 Dole Street, Honolulu, Hawaii.

FOR FURTHER INFORMATION CONTACT: Western Pacific Fishery Management Council, 1164 Bishop Street—Room 1608, Honolulu, Hawaii 96813, Phone: (808) 523-1368.

Dated: December 28, 1982.

Joe P. Clem,

Acting Chief, Operations Coordination Group, National Marine Fisheries Service.

[FR Doc. 82-35555 Filed 12-30-82; 8:45 am]

BILLING CODE 3510-22-M

Caribbean Fishery Management Council and Its Administrative Subcommittee; Meeting Amendment

AGENCY: National Marine Fisheries Service, NOAA; Commerce.

ACTION: Notice of Public Meeting, Correction.

SUMMARY: The date for the meeting of the Caribbean Fishery Management Council's Administrative Subcommittee, as published in the **Federal Register**, December 17, 1982 (47 FR 56535), was inadvertently omitted. The Council's Administrative Subcommittee public meeting will convene on Wednesday, February 16, 1983, at approximately 10 a.m., and will adjourn at approximately noon. All other information remains unchanged.

FURTHER INFORMATION: Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00198, Telephone: (809) 753-4926.

Dated: December 28, 1982.

Joe P. Clem,

Acting Chief, Operations Coordination Group, National Marine Fisheries Service.

[FR Doc. 82-35544 Filed 12-30-82; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1983; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1983 a commodity to be produced by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: January 3, 1983.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION:

On July 9, 1982, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (47 FR 29870) of proposed addition to Procurement List 1983, November 18, 1982 (47 FR 52101).

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractor for the commodity listed.

c. The action will result in authorizing a small entity to produce a commodity procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1983:

Pencil, Fine-Line Writing: 7510-00-286-5755; 7510-00-286-5750; 7510-00-286-5751.

C. W. Fletcher,

Executive Director.

[FR Doc. 82-38552 Filed 12-30-82; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs

AGENCY: Department of Education.

ACTION: Notice of Closing Date for Institutions to Request Determination of Eligibility to Participate in the National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs for 1983-84 Award Year.

SUMMARY: The Secretary requires institutions of higher education that intend to participate in Federal student assistance programs under Title IV of the Higher Education Act of 1965, as amended (HEA), to submit a request for a determination of eligibility to participate. The Secretary announces that in order to participate in three of the Title IV HEA programs, the National Direct Student Loan (NDSL), College Work-Study (CWS) and Supplemental Educational Opportunity Grant (SEOG) (campus-based) programs, for the 1983-84 award year, an institution must submit its request by February 2, 1983. Under these programs, the Secretary allocates funds to eligible institutions for financial assistance to students to meet the cost of postsecondary education.

(20 U.S.C. 1070b-1070b-3, 1087aa-1087ii; and 42 U.S.C. 2751-2756b)

DATE: The closing date for transmitting a Request for Institutional Eligibility for Programs under the campus-based programs is February 2, 1983.

FOR FURTHER INFORMATION CONTACT: Dr. Leslie Ross, Chief, Institutional Eligibility Section, Eligibility and Agency Evaluation Staff, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, S.W., (Room 3030, ROB-3), Washington, D.C. 20202. Telephone: (202) 245-9873.

SUPPLEMENTARY INFORMATION: The Secretary requires that an institution seeking a determination of institutional eligibility to participate in the campus-based programs for award year 1983-84 submit a completed ED Form 1059 (Request for Institutional Eligibility for Programs) (hereafter referred to as the application) with the required documentation. The closing date for transmittal of an application for a determination of eligibility by an institution of higher education for participation in the campus-based programs for the 1983-84 award years is February 2, 1983. The Secretary will not award funds under the campus-based programs to institutions unless he determines that on or before February 2, 1983, the institution met the eligibility requirements established by the HEA.

Applications Delivered by Mail: An institution that sends its application by mail must address it to the U.S. Department of Education, ATTN: EAES/OPE, 400 Maryland Avenue, S.W., (Room 3030, ROB-3), 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. Each late applicant will be notified that its application will not be considered for funds under the campus-based programs for award year 1983–84. The application will also be reviewed for eligibility under other student financial assistance programs, including the campus-based programs for award year 1984–85.

Applications Delivered by Hand: An institution that hand-delivers an application must take it to the U.S. Department of Education, Eligibility and Agency Evaluation Staff (EAES), Room 3030, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C. EAES will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Eastern Standard Time) daily, except Saturdays, Sundays, and Federal holidays. An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Applicable Regulations

The following regulations apply to the campus-based programs:

34 CFR Part 668—Student Assistance General Provisions.

34 CFR Part 674—National Direct Student Loan Program.

34 CFR Part 675—College Work-Study Program.

34 CFR Part 676—Supplemental Educational Opportunity Grant Program. Final regulations for Parts 674, 675, and 676 were amended on August 2, 1982 in the **Federal Register** (47 FR 33398).

(Catalog of Federal Domestic Assistance No. 13.471, National Direct Student Loan Program; 13.463, College Work-Study Program; and 13.418, Supplemental Educational Opportunity Grant Program)

Dated: December 28, 1982.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 82-35545 Filed 12-30-82; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Extension of Request for Recommendations on Marketing of Surplus Firm Power From Federal Columbia River Power System

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Extension of Request for Recommendations on Marketing of Surplus Firm Power from Federal Columbia River Power System. File No. FS-1.

SUMMARY: By **Federal Register** notice of November 30, 1982, BPA requested recommendations from the public on how firm power from the Federal Columbia River Power System which is surplus to the requirements of BPA customers might best be marketed or used. This notice extends the period in which BPA will accept recommendations on this subject from December 31, 1982, to January 15, 1983.

DATES: Any party who wishes to discuss firm surplus power marketing issues may call the Public Involvement Coordinator at the location listed below. Written comments may be submitted through January 15, 1983.

FOR FURTHER INFORMATION CONTACT:

Ms. Donna L. Geiger, Public Involvement Coordinator, P.O. Box 12999, Portland, Oregon 97212, 503-230-3478. Oregon Callers may use the toll-free number 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800-547-6048.

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97208, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503-345-0311.

Mr. Ronald H. Wilkerson, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3860.

Mr. Ronald K. Rodewald, Wenatachee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. Richard D. Casad, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206-442-4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Popular, Walla Walla, Washington 99352, 509-525-5500, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager, 521 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Issued in Portland, Oregon, December 27, 1982.

James J. Jura,

Acting Administrator.

[FR Doc. 82-35480 Filed 12-29-82; 10:07 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER83-190-000

Alabama Power Co.; Filing

December 28, 1982.

The filing Company submits the following:

Take notice that on December 13, 1982, Alabama Power Company (Alabama) tendered for filing an Agreement with the Utilities Board of the City of Tuskegee. The filing is for the proposed new metering station at the City of Tuskegee. Service at this new metering station will replace the 44 kV service presently provided to the Utilities Board's #1, #2 and #3 delivery points. This new metering station is located within the city limits of Tuskegee. This new service agreement provides for a capacity of 40,000 kVa at 44 kV under Rate Schedule MUN-1 and the applicable revisions thereto.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 10, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-35573 Filed 12-30-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA83-1-20-002]

Algonquin Gas Transmission Co.; Rate Filing, Under Rate Schedule STB and Rate Schedule ST-T

December 28, 1982.

Take notice that Algonquin Gas Transmission Company (Algonquin) on December 15, 1982, tendered for filing Eighth Revised Sheet No. 10-C and Second Revised Sheet No. 10-D to its FERC Gas Tariff, First Revised Volume No. 1.

Algonquin Gas states that it is filing the above-mentioned tariff sheets to reflect in Algonquin's Rate Schedules, STB and ST-T, increases in Texas Eastern Transmission Corporation's underlying Rate Schedules SS-II and ISS-II.

Algonquin requests that the proposed effective date of the filing be January 1, 1983.

Algonquin notes that a copy of this filing is being served upon each affected party and interested State commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before January 6, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-35574 Filed 12-30-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-701-000]

Florida Power Corp.; Order Accepting for Filing and Suspending Phase-Two Rates, and Establishing Hearing Procedures

Issued: December 28, 1982.

On October 29, 1982, Florida Power Corporation (FPC) filed a "Supplemental Filing-Phase Two" in this proceeding. FPC's submittal included a revised cost of service study [1] and a request that the Commission assign a filing date for phase-two of the proposed two-phase wholesale rate increase for full requirements, partial requirements, and transmission service which it filed in this docket on July 30, 1982.[2] FPC states a proposed effective date of December 29, 1982, for the phase-two rates, but requests that the rates be suspended for one day, to become effective on December 30, 1982.

The background of FPC's supplemental filing may be briefly reviewed. FPC filed a proposed two-phase wholesale rate increase on July 30, 1982. The phase-one rates were designed to increase revenues by approximately $11.1 million (5.6%) for the calendar year 1982 test period. The proposed phase-two rates were designed to produce an additional increase in revenues of approximately $21.4 million (10.7%), based upon the inclusion of costs associated with Crystal River No. 4, a coal-fired generating unit scheduled for commercial operation on December 31, 1982. FPC's wholesale customers filed interventions and protests questioning, among other things, whether all necessary adjustments were made by the company to synchronize the annualization of Crystal River No. 4. Subsequently, the company answered the interventions and requested that the Commission temporarily withhold both a filing date and an effective date for the proposed phase-two rates.

By order issued September 24, 1982 (20 FERC ¶ 61,366), the Commission, *inter alia*, accepted for filing and suspended FPC's phase-one rate increase. Also, the Commission deferred the filing date for the company's proposed phase-two rates, pending a supplemental filing by FPC.

Notice of FPC's supplemental filing was published in the **Federal Register**, with comments due on or before November 24, 1982. Seminole Electric Cooperative, *et al.*, (Seminole) and Florida Cities (Cities), intervenors in this proceeding, filed timely motions protesting FPC's supplemental filing.[3]

Seminole argues that FPC's phase-two rate increase is deficient and should be rejected. Seminole asserts that the company has offset the adjustments to its original phase-two filing through the use of a floating return on equity. Also, Seminole avers that FPC's supplemental filing presents new issues including the failure to quantify or explain the claimed reduction in load growth projections,[4] overstated oil inventory level, excessive rate of return on equity, spent nuclear fuel disposal costs and an overstated cost of nuclear decommissioning. Alternatively, Seminole requests a maximum suspension of the phase-two rate increase and the initiation of phased price squeeze proceedings.

Cities urge the Commission to reject FPC's phase-two filing. Alternatively, Cities request a maximum suspension. Further, they seek summary disposition of certain issues: (1) the amortization period for spend nuclear fuel: (2) FPC's estimated allowance for Period II nuclear fuel disposal costs; (3) proposed demand allocators; and (4) FPC's alleged efforts to collect retroactive rates by "adjusting" the wholesale rates upward for the failure of this Commission to allow "CWIP" in rate base or tax normalization in prior periods. In addition, Cities again urge that the Commission consider their price squeeze claim for suspension purposes, and request a hearing.

On December 8, 1982, FPC filed a pleading answering the motions of Seminole and Cities. FPC opposes the requests for rejection, maximum suspension, or summary disposition, and addresses the various cost of service issues identified by the intervenors.

Discussion

We shall deny the motions to reject FPC's phase-two filing inasmuch as the submittal substantially complies with the Commission's filing regulations and we find that no other basis for rejection exists in this docket.[5] However, our

---

[1] FPC's revised cost of service study reflects (1) the summary dispositions required by the Commission's September 24, 1982 order; (2) cash working capital computed on the basis of a lead-lag study; (3) elimination of the cost of power purchases from Gainesville, Florida; (4) use of an end-of-year capital structure; and (5) a five year amortization period for disposal of nuclear fuel burned in prior periods.

[2] *See* Attachment A for rate schedule designations.

[3] Seminole's member systems and Cities are identified in the September 24 order at footnotes 3 and 2, respectively.

[4] On December 3, 1982, Seminole filed a motion to amend and clarify its protest with respect to FPC's alleged consideration of the commercement of commercial operation of Seminole's generating facilities and the associated reduction in load growth projections.

[5] *See Municipal Light Boards of Reading and Wakefield, Massachusetts* v. *FPC*, 450 F.2d 1341 (D.C. Cir. 1971).

preliminary review of FPC's submittal and the pleadings indicates that the phase-two rates have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. We shall therefore accept FPC's phase-two rates for filing and suspend those rates as ordered below.

In *West Texas Utilities Company*, Docket No. ER82-23-000, 18 FERC ¶ 61,189 (1982), we noted that rate filings would ordinarily be suspended for one day where preliminary review indicates that the proposed rates may be unjust and unreasonable, but may not produce substantially excessive revenues, as defined in *West Texas*. Our preliminary examination of the phase-two rates suggests that they may not yield excessive revenues. Accordingly, we shall suspend FPC's phase-two rates to become effective, subject to refund, on the later of December 30, 1982, or the date of commercial operation of Crystal River No. 4.[6] FPC shall notify the Commission and all affected parties as to the date on which service begins under the phase-two rates.

With respect to Cities' requests for summary disposition, we conclude that questions of law or fact are raised by these issues which are more appropriately resolved on the basis of an evidentiary hearing. We shall therefore deny the requests.

Coincerning the renewed requests will regard to price squeeze, we note that our order of September 24, 1982, already initiated phased price squeeze procedures. Any price squeeze issue allegedly raised by FPC's phase-two rates may be considered under the phased procedures previously established.

The Commission orders:

(A) Seminoe's and Cities' motions to reject FPC's submittal are hereby denied.

(B) Cities' motions for summary judgment are hereby denied.

(C) FPC's proposed phase-two rates are hereby accepted for filing and suspended to become effective, subject to refund, on the later of December 30, 1982, or the date of commercial operation of Crystal River No. 4. FPC shall notify the Commission and all affected parties as to the date on which service begins under the phase-two rates.

(D) Pursuant to the authority contained in and subject to the jursidiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of FPC's rates.

(E) The Commission staff shall serve top sheets in this proceeding on or before January 7, 1983.

(F) The administrative law judge designated to preside in this docket shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

(G) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[6] As we stated in the September 24, 1982 order, in response to the Cities' request that price squeeze allegations be considered in our suspension determination, in the absence of a showing of extraordinary circumstances, unproved price squeeze claims will not be a factor in arriving at an appropriate suspension period. We are not persuaded that such a showing has been made in this case.

Attachment A.—Floride Power Corporation Rate Schedule Designations

Docket No. BR82-701-000

Phase 1 Rates

FPC Electric Tariff, First Revised Volume No. 1

(1) *Full Requirements (FR) & Transmission*

Sheet No.	Supersedes
8th Revised Sheet No. 3	7th Revised Sheet No. 3.
8th Revised Sheet No. 23	7th Revised Sheet No. 23.
9th Revised Sheet No. 24	8th Revised Sheet No. 24.

(2) *Partial Requirements (PR) and Transmission*

Sheet No.	Supersedes
8 Revised Sheet No. 41	7th Revised Sheet No. 41.

(3) Other Party: Reed Creek Utility Company, Inc., Supplement No. 1 to Supplement No. 9 to Rate Schedule FPC No. 74.

(4) Other Party: City of Wauchula, Supplement No. 1 Supplement No. 4 to Rate Schedule FPC No. 77.

[FR Doc. 82-35576 Filed 12-30-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-189-000]

Kansas City Power & Light Co.; Filing

December 28, 1982.

The filing Company submits the following:

Take notice that on December 13, 1982, Kansas City Power & Light Company ("KCPL") tendered for filing Service Schedules A-MPA for Reserve Capacity and B-MPA for Standby Service under the Municipal Participation Agreements between KCPL and the following municipalities:

City	Superseding and replacing
City of Kansas City, Kansas, Board of Public Utilities.	Schedules A-MPA-2 and B-MPA-2, Supplement Nos. 13 and 14 to KCPL's Rate Schedule FPC No. 54.
City of Independence, Missouri.	Schedules A-MPA-2 and B-MPA-2, Supplement Nos. 12 and 13 to KCPL's Rate Schedule FPC No. 56.
City of Marshall, Missouri	Schedules A-MPA-2 and B-MPA-2, Supplement Nos. 15 and 16 to KCPL's Rate Schedule FPC No. 83.
City of Carrollton, Missouri	Schedules A-MPA-1 and B-MPA-1, Supplement Nos. 11 and 12 to KCPL's Rate Schedule FERC No. 86.
City of Baldwin City, Kansas.	Schedules A-MPA-1 and B-MPA-1, Supplement Nos. 11 and 12 to KCPL's Rate Schedule FERC No. 85.
City of Garnett, Kansas	Schedules A-MPA-1 and B-MPA-1, Supplement Nos. 12 and 13 to KCPL's Rate Schedule FPC No. 78.
City of Osawatomie, Kansas.	Schedules A-MPA-1 and B-MPA-1, Supplement Nos. 11 and 12 to KCPL's Rate Schedule FPC No. 77.
City of Ottawa, Kansas	Schedules A-MPA-1 and B-MPA-1, Supplement Nos. 6 and 7 to KCPL's Rate Schedule FERC No. 90.

KCPL states that the purpose of this filing is to update the Reserve Capacity and Standby Service rates to those rate levels for similar service accepted for filing by the FERC effective July 21, 1982, in Docket No. ER82-270-000. KCPL requests an effective date 60 days from the date of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 10, 1983. Protests will be considered by the

Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR. Doc. 82-35577 Filed 12-30-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EL82-27-000, ER82-146-000, EL82-16-000]

Cities of Naperville, Geneva, Batavia, St. Charles, Rock Falls, and Rochelle, Illinois v. Commonwealth Edison Co.; Order Setting Complaint for Investigation, Granting Summary Disposition in Part, Denying Motions, Consolidating Dockets, Noting Intervention, and Establishing Procedures

Issued: December 29, 1982.

On September 21, 1982, the Illinois Cities of Naperville, Geneva, Batavia, St. Charles, Rock Falls, and Rochelle, Illinois (Cities) filed a complaint against Commonwealth Edison Company (Edison). Cities allege that Edison has been collecting, through its wholesale fuel adjustment clause, charges for spent nuclear fuel disposal costs (SNFDC) since October 1, 1976, and that Edison's improper inclusion of these amounts has resulted in an overcollection of revenues through the fuel clause during the period October 1, 1976, until February 8, 1982. Cities request that the Commission grant summary disposition of this matter and order any overcollections to be refunded, with interest. In support of their complaint, Cities rely on the Commission's Opinion No. 132, *Carolina Power and Light Company,* 17 FERC ¶61,118 (November 5, 1982), in which the Commission held that the collection of SNFDC through the fuel adjustment clause was inappropriate.

Notice of the Cities' complaint was published in the **Federal Register,** with comments due on or before November 1, 1982. On October 12, 1982, the Village of Winnetka, Illinois (Winnetka) filed a motion to intervene. Winnetka states that it is a partial requirements customer of Edison that will be directly affected by Edison's overcollection of revenues for SNFDC and would be entitled to any refunds ordered by the Commission. Winnetka supports the Cities' contentions that Edison improperly collected SNFDC through the wholesale fuel adjustment clause.

On October 21, 1982, Edison submitted an answer to the Cities' complaint. Edison admits in its answer that it included SNFDC in the wholesale fuel adjustment clause. Edison states, however, that its treatment of SNFDC over that period was reasonable. While it recognizes the policy determination made by the Commission in Opinion No. 132, Edison argues that this policy should be applied on a prospective basis only. Edison also points out that the Commission permits SNFDC for prior periods to be collected through the base energy rates over a reasonable future period. Accordingly, Edison argues that even if its treatment of SNFDC was improper, the Commission should not order refunds since this would lead to intergenerational cross-subsidizations and inequity. Edison further contends that an order requiring refunds at this point would result in a windfall to the Cities to the extent that Edison has reduced its rate base through the recognition of SNFDC revenues which have had the effect of lowering Edison's cost of service. Edison therefore requests that the Commission set for hearing the issues of the propriety of its SNFDC treatment and the appropriate remedy to be granted, if any. Edison also requests that this matter be consolidated with the ongoing proceedings in Docket Nos. ER82-146-000 and EL82-16-000 which involve, *inter alia,* a request for prior SNFDC to be included in Edison's wholesale rates to the Cities.

Concerning the scope of the proceeding already pending in Docket Nos. ER82-146-000 and EL82-16-000, the Cities, on October 15, 1982, filed a petition for clarification of the Commission's September 23, 1982 order which instituted an investigation based on challenges by the Cities to Edison's fuel procurement practices associated with its Collins generating station. In their petition, Cities request clarification as to whether the Commission's order was intended to included an inquiry into Edison's charges for coal reclamation costs which are being flowed through to the wholesale customers. On October 29, 1982, Edison filed an answer to Cities' petition for clarification. Edison states that Cities' motion is, in reality, nothing more than a collateral attempt to appeal from a procedural ruling of the Presiding Judge in Docket Nos. ER82-146-000 and EL82-16-000 in which the judge denied a request by Cities for additional discovery on the coal reclamation issue.

In a separate motion filed on November 4, 1982, Edison asks for expedited disposition of the Cities; request for clarification.

On November 4, 1982, Cities filed responsive comments to Edison's answer. Cities dispute the contention of Edison that current claims for SNFDC would offset those amounts collected over past periods plus interest. Cities argue that any potential future offsets to Edison's past collections should not act to delay refunds that are presently owing for past improprieties, citing *Virginia Petroleum Jobbers Association* v. *FPC,* 259 F.2d 921 (D.C. Cir. 1978).

Discussion

Pursuant to Rule 214(c)(1) of the Commission's Rules of Practice and Procedure (18 CFR § 385.214), the timely motion to intervene serves to make Winnetka a party to this proceeding absent opposition within 15 days of its pleading.

In Opinion No. 132, the Commission determined that it was inappropriate for a utility to automatically charge SNFDC to its customers through the fuel clause.

> Such costs are particularly inappropriate for automatic fuel clause recovery because they not only involve estimates of costs which have not been incurred, [as opposed to costs *acutally* incurred [1]] but they are also based on assumptions regarding an uncertain government policy in reprocessing. To permit a utility to change its rates based on such discretionary estimates and assumptions would deprive the Commission of its authority to ensure just and reasonable rates.[2]

Edison has acknowledged in its answer that it included SNFDC in its fuel clause between October 1, 1976, and February 9, 1982. Accordingly, to the extent that Edison has collected SNFDC through its wholesale fuel adjustment clause since October 1, 1976, such recoveries have been improper. Edison has raised no new arguments in its pleadings that would distinguish Edison's actions from those of Carolina Power & Light Company. Accordingly, the Commission finds that Edison should be denied fuel clause treatment of SNFDC.

The Commission believes, however, that it would be inappropriate to summarily order refunds at the present time. Edison states that SNFDC amounts included in its accumulated reserve for depreciation have routinely been deducted from rate base in developing wholesale rates. Those rate base reductions would offset, in part, any improper recoveries which would, in turn, affect the amount of refunds appropriately due to Edison's customers. We would further note that Edison has

---

[1] *See* Order No. 517, amending Section 35.14 of the Commission's regulations, 52 FPC 1304 (1974).

[2] 17 FERC ¶61,118 at 61,237.

requested an additional charge for SNFDC from prior periods to be included in the proposed rates for its wholesale customers in Docket No. ER82-146-000. The amount of SNFDC that will be permitted to be recovered in the rates in that case may also affect the level of refunds that would be appropriate. *See* Opinion No. 118, *Virginia Electric Power & Light Co.*, 15 FERC ¶61,052 (April 10, 1981). Accordingly, the Commission finds that the proper remedy for Edison's past SNFDC treatment involves questions of law and fact that should be resolved during the course of an evidentiary hearing. We shall therefore deny Cities' request for refunds at the present time and set for hearing the question of an appropriate remedy for Edison's treatment of SNFDC. Since the treatment of some SNFDC charges in rates in Edison's wholesale customers is already at issue in Docket No. ER82-146-000, we shall consolidate Docket No. EL82-27-000 with the pending proceedings.

Turning to the Cities' petition for clarification concerning the scope of the proceedings in Docket Nos. ER82-146-000 and EL82-16-000, the Cities argue that the Commission's September 23, 1982 order addressing questions concerning fuel procurement for the Collins generating facility should be read as opening the entire area of Edison's fuel procurement practices to renewed analysis and inquiry. According to Cities, such additional inquiry should include the issue of coal land reclamation costs. Edison, in response, notes that: (1) the issue of coal land reclamation costs had already been raised in the original pleadings in Docket No. ER82-146-000, (2) the parties have already conducted some discovery on that issue, and (3) the judge, having reviewed the matter and the ability of the parties to have obtained discovery under a series of procedural schedules, determined that further discovery on this issue would be inappropriate simply on the basis of the Commission's September 23, 1982 order.

We shall deny the Cities' petition for clarification. We believe the judge is in the best posture to determine whether an adequate opportunity has been provided for discovery or for preparation of testimony pertaining to an issue already extant in the ongoing proceeding. Further, there should be no need to address the question of whether our September 23, 1982 order had the effect of "adding" a new issue concerning coal land reclamation costs if that issue has been squarely presented prior to the order. Based on our decision in this order to consolidate yet a further docket into the ongoing proceeding, the presiding judge will presumably have another opportunity to consider the need for and scope of any additional discovery or testimony. We do not, however, anticipate that the Commission will then be any more inclined to disturb the procedural rulings of the judge.

The Commission orders:

(A) Cities' request for summary disposition of the issue of Edison's past inclusion of spent nuclear fuel disposal costs in its wholesale fuel adjustment clause is granted consistent with the body of this order.

(B) Cities' request for a summary order requiring refunds for all SNFDC charges collected between October 1, 1976, through February 9, 1982, is denied without prejudice.

(C) The issue of the appropriate remedy, if any, for Edison's improper past recovery of spend nuclear fuel disposal costs through its fuel adjustment clause is hereby set for investigation.

(D) Docket No. EL82-27-000 is consolidated with the ongoing proceedings in Docket Nos. ER82-146-000 and EL82-16-000.

(E) Cities' petition for clarification is hereby denied.

(F) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-35575 Filed 12-30-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER81-653-000]

Northern States Power Co. (Wisconsin); Refund Report

December 28, 1982.

The filing company submits the following:

Take notice that on October 18, 1982, Northern States Power Company (Wisconsin) filed a refund report pursuant to the Commission's order dated September 20, 1982.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before January 7, 1983. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-35578 Filed 12-30-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-188-000]

Northern States Power Co.; Filing

December 28, 1982.

The filing Company submits the following:

Take notice that Northern States Power Company, on December 13, 1982 tendered for filing an Agreement dated November 4, 1982 with Western Area Power Administration.

The Interconnection Contract, dated June 26, 1981, terminates on December 31, 1982. The filed Agreement, dated November 4, 1982, extends the provisions of the Contract until a new interconnection contract can be executed.

Any person desiring to be heard or to protest said application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 358.214). All such motions or protests should be filed on or before January 10, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-35579 Filed 12-30-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA83-6-000]

Phelps-Dodge Corp.; Petition for Adjustment and Request for Interim Relief

December 28, 1982.

On December 17, 1982, Phelps-Dodge Corporation, 2600 North Central Avenue, Phoenix, Arizona 85004, (Petitioner) filed with the Federal Energy Regulatory Commission (Commission) a petition under § 385.1101(a)(2) for adjustment from the Commission's incremental pricing regulations issued under section 201 of the Natural Gas

Policy Act of 1978 (NGPA), 15 U.S.C. 3341 (Supp. IV 1980). Petitioner requests and adjustment to exempt Petitioner from incremental pricing surcharges under section 206(d) of the NGPA for natural gas used at its mining and smelting facility located at Morenci, Arizona. Petitioner also requests interim relief pursuant to Rule 1113 (§ 385.1113) to be effective December 1, 1982.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure.

Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-35580 Filed 12-30-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER33-187-000]

Puget Power & Light Co.; Filing

December 28, 1982.

The filing Company submits the following:

Take notice that on December 10, 1982, Puget Power & Light Company (Puget) tendered for filing Appendix 1 to Residential Purchase and Sale Agreement (Agreement), Contract No. DE-MS79-81BP90604, between Bonneville Power Administration (BPA) and Puget reflecting the Washington Utility Tax Rider—Additional 3% Surcharge, effective August 1, 1982.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 10, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-35581 Filed 12-30-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-108-000]

Southwestern Public Service Co.; Cancellation

December 28, 1982.

The filing Company submits the following:

Take notice that on November 8, 1982, Southwestern Public Service Company (Southwestern) tendered for filing a notice of cancellation of Rate Schedule F.E.R.C. No. 80. Southwestern states that since the City of Canadian, Texas is no longer purchasing wholesale electric service, no customers are being served, or are contemplated to be served, under Rate Schedule F.E.R.C. No. 80.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 4, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-35503 Filed 12-30-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER83-77-000 and ER82-708-000]

West Texas Utilities Co.; Order Accepting for Filing and Suspending Superseding Fuel Adjustment Clause and Consolidating Proceedings

Issued: December 28, 1982.

On August 2, 1982, West Texas Utilities Company (WTU) tendered for filing a two-phase rate increase for service in Docket No. ER82-708-000. By order issued September 24, 1982, the Commission accepted the rate increase for filing and suspended the first phase of the rate increase to become effective, subject to refund, on January 1, 1983. The second phase of the rate increase was suspended to become effective, subject to refund, on March 2, 1983.

On October 29, 1982, WTU submitted for filing in Docket No. ER83-77-000 a revised fuel adjustment clause to supersede the fuel adjustment clause which is a part of both phases of the rate increase in Docket No. ER82-708-000.[1] WTU states that the new fuel adjustment clause is intended to fully synchronize monthly fuel revenues with monthly fuel costs. WTU incorporates by reference the materials filed in support of the original fuel adjustment clause. WTU further states that this change will have no revenue impact in Docket No. ER82-708-000.

Notice was duly published in the **Federal Register** with responses due on or before November 22, 1982. No responses have been received.

Under the circumstances, we find that good cause exists to permit the filing of a change in WTU's suspended rates in Docket No. ER82-708-000. Insofar as the substitution has no revenue impact and no party has objected, we find that good cause exists both to permit the filing and to suspend the revised fuel adjustment clause to become effective, subject to refund, coincidentally with the effective date of the rates in Docket No. ER82-708-000. Given the relationship between the rates submitted in Docket Nos. ER82-708-000 and ER83-77-000, we shall consolidate the dockets for purposes of hearing and decision.

The Commission orders:

(A) WTU's filing in Docket No. ER83-77-000 is hereby accepted for filing pursuant to Section 35.17(b) for good cause shown, suspended, and made effective, subject to refund, as of January 1, 1983.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of WTU's fuel clause.

(C) Docket Nos. ER83-77-000 and ER82-708-000 are hereby consolidated for purposes of hearing and decision.

(D) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

---

[1] *See* Attachment A for rate schedule designations.

Attachment A.—West Texas Utilities Company

Docket No. ER83-77-000

Rate Schedule Designation

Designation	Description
(1) Seventh Revised Sheet Nos. 4 through 7 under FERC Electric Tariff Original Volume No. 1 (Supersedes Fifth Revised Sheet Nos. 4 through 7).	Tariff Customers (Step I, TR-1 Rates Excluding Full-CWIP).
(2) Eight Revised Sheet Nos. 4 through 7 under FERC Electric Tariff Original Volume No. 1 (Supersedes (1) above).	Tariff Customers (Step II, TR-1 Rates Excluding Full-CWIP).
(3) Supplement No. 10 to Rate Schedule FPC No. 39 (Supersedes Supplement No. 8)	Texas-New Mexico Power Company (Step I, TNP-2 Rates Excluding Full-CWIP).
(4) Supplement No. 11 to Rate Schedule FPC No. 39 (Supersedes (3) above)	Texas-New Mexico Power Company (Step II, TNP-2 Rates Excluding Full-CWIP).
(5) Supplement No. 6 to Rate Schedule FERC No. 40 (Supersedes Supplement No. 4)	City of Coleman, Texas (Step I, COB-2 Rates Excluding Full-CWIP).
(6) Supplement No. 7 to Rate Schedule FERC No. 40 (Supersedes (5) above)	City of Coleman, Texas (Step II, COB-2 Rates Excluding Full-CWIP).
(7) Supplement No. 6 to Rate Schedule FERC No. 42 (Supersedes Supplement No. 4)	City of Brady, Texas (Step I, COB-2 Rates Excluding Full-CWIP).
(8) Supplement No. 7 to Rate Schedule FERC No. 42 (Supersedes (7) above)	City of Brady, Texas (Step II, COB-2 Rates Excluding Full-CWIP).

[FR Doc. 82-35582 Filed 12-30-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER82-67-002]

Wisconsin Public Service Co. Refund Report

December 28, 1982.

The filing company submits the following:

Take notice that on October 18, 1982, Wisconsin Public Service Company filed a refund report pursuant to the Commission's order of September 20, 1982.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before January 7, 1983. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-35583 File 12-30-82; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53044; BH-FRL 2275-6]

Toxic Substances; Premanufacture Notices; Monthly Status Report for November 1982

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to issue a list in the **Federal Register** at the beginning of each month reporting the premanufacture notices (PMNs) pending before the Agency and the PMNs for which the review period has expired since publication of the last monthly summary. This is the report for November 1982.

DATE: Written comments are due no later than 30 days before the applicable notice review period ends on the specific chemical substance. Nonconfidential portions of the PMNs may be seen in Rm. E-106 at the address below between 8:00 a.m. and 4:00 p.m., Monday, through Friday, excluding legal holidays.

ADDRESS: Written comments are to be identified with the document control number "[OPTS-53044]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M Street, SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Kirk Maconaughey, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-208, 401 M Street, SW., Washington, DC 20460, (202-382-3746).

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012; 15 U.S.C. 2504), will identify: (a) PMNs received during November; (b) PMNs received previously and still under review at the end of November; (c) PMNs for which the notice review period has ended during November; (d) chemical substances for which EPA has received a notice of commencement to manufacture during November; and (e) PMNs for which the review period has been suspended. Therefore, the November 1982 PMN Status Report is being published.

Dated: December 21, 1982.

Woodson W. Bercaw,

Acting Director, Management Support Division.

Premanufacture Notices Monthly Status Report, November 1982

I. 176 PREMANUFACTURE NOTICES RECEIVED DURING THE MONTH:

PMN No.	Identity/generic name	FR citation	Expiration date
83-88	Generic name: Dimer fatty acids, monocarboxylic acids, and diamines polymer	47 FR 52221 (11/19/82)	Jan. 29, 1983.
83-89	Generic name: Dimer fatty acids, monocarboxylic acid, polycarboxylic acid, diamines polymer, modified with an acrylic acid copolymer.	47 FR 52221 (11/19/82)	Do.
83-90	Generic name: Polymer of polysubstituted alkyl acrylates	47 FR 52221 (11/19/82)	Do.
83-91	Polymer of tall oil rosin, gum rosin, paraformaldehyde, calcium hydroxide, and phenol	47 FR 52222 (11/19/82)	Do.
83-92	Generic name: Reaction product of a polyhalogenated anhydride, maleic anhydride and alkylene glycols.	47 FR 52222 (11/19/82)	Jan. 30, 1983.

I. 176 PREMANUFACTURE NOTICES RECEIVED DURING THE MONTH:—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
83-93	Generic name: Polyester polycarboxylate salt	47 FR 52222 (11/19/82)	Do.
83-94	Generic name: Alkyl substituted salicyaldehyde	47 FR 52222 (11/19/82)	Do.
83-95	Generic name: Trisubstituted benzothiazole salt	47 FR 52222 (11/19/82)	Do.
83-96	Generic name: ((Substituted phenyl)azo)benzene-sulfonic acid, aminium salt	47 FR 52222 (11/19/82)	Do.
83-97	Generic name: Thermoplastic polyurethane resin	47 FR 52222 (11/19/82)	Jan. 31, 1983.
83-98	Generic name: N-(trimethylcarbomonocycle) isopentanol	47 FR 52222 (11/19/82)	Do.
83-99	Generic name: Sulfonated phenol formaldehyde condensation polymer	47 FR 52222 (11/19/82)	Do.
83-100	Generic name: Copolymer of styrene with substituted alkanoic derivatives	47 FR 52222 (11/19/82)	Feb. 1, 1983.
83-101	Generic name: Polymer of diphenylmethane diisocyanate, hydroxy alkyl ethers, and substituted alkanediols.	47 FR 52223 (11/19/82)	Feb. 2, 1983.
83-102	Generic name: Polyacrylate	47 FR 52223 (11/19/82)	Feb. 5, 1983.
83-103	Generic name: Polyamine urea formaldehyde condensate	47 FR 52223 (11/19/82)	Do.
83-104	Generic name: Polyamine urea formaldehyde condensate	47 FR 52223 (11/19/82)	Do.
83-105	1,2-benzenediamine, 4-ethoxy, sulfate (1:1)	47 FR 52223 (11/19/82)	Do.
83-106	Generic name: Polymer of aliphatic and aromatic diacids and an aliphatic diol	47 FR 52223 (11/19/82)	Do.
83-107	Generic name: Modified polyester from carbomonocyclic anhydrides, an alkanediol and an alkanedioic acid.	47 FR 52223 (11/19/82)	Do.
83-108	Generic name: Polymer of fatty acids with a substituted alkanoic acid, carbomonocyclic acids, polyols and a carbomonocyclic anhydride.	47 FR 52223 (11/19/82)	Do.
83-109	Generic name: Substituted alkyl methacrylate	47 FR 52223 (11/19/82)	Do.
83-110	Generic name: Saturated acid diester	47 FR 52223 (11/19/82)	Feb. 6, 1983.
83-111	Generic name: Aromatic acid diester	47 FR 52223 (11/19/82)	Do.
83-112	Generic name: Hydroxy naphthalenedisulfonic acid, disodium salt, ((2-((sodium sulfooxyethyl) sulfonyl)azo, and dichlorotriazinylamino substituted.	47 FR 52223 (11/19/82)	Do.
83-113	Generic name: Benzenesulfonic acid, 4-(4-((4-substituted 2-sulfophenyl)azo) 3-carboxy-5-hydroxy-1H-pyrazol-1-yl)-, x sodium salt.	47 FR 52224 (11/19/82)	Do.
83-114	Generic name: Naphthalenedisulfonic acid, disodium salt, ((2-((sodium sulfooxyethyl) sulfonyl)aryl)azo, and monochlorotriazinylamino, substituted, copper complex.	47 FR 52224 (11/19/82)	Do.
83-115	Generic name: Naphthalenedisulfonic acid, disodium salt, ((2-(sodium sulfooxyethyl) sulfonyl)aryl)azo, and monochlorotriazinyl-amino, substituted, copper complex.	47 FR 52224 (11/19/82)	Do.
83-116	Generic name: Ethanol, 2-arylsulfonyl, hydrogen sulfate ester	47 FR 52224 (11/19/82)	Do.
83-117	Oxo alcohols (high boilers)-neopentyl glycol adipate ester	47 FR 52224 (11/19/82)	Do.
83-118	Generic name: Polymeric polyamidoamine	47 FR 52224 (11/19/82)	Do.
83-119	Generic name: Polyester from a carbomonocyclic anhydride and substituted alkanediols	47 FR 52224 (11/19/82)	Do.
83-120	Generic name Reaction product of isomeric mixture of dioxocarbopolycyclic amine with sulfur	47 FR 52224 (11/19/82)	Feb. 7 1983.
83-121	Polymer of diethyleneglycol polyethylene-glycol dimethylterephthalate isophthalic acid 5-sulfo-isophthalic acid dimethyl ester sodium salt.	47 FR 52224 (11/19/82)	Do.
83-122	Generic name: Organic sulfur compound	47 FR 52224 (11/19/82)	Do.
83-123	Poly[oxy(methyl-1,2-ethanediyl)]γγ'γ"-1,2,3-propanetriyltris-[ω-hydroxy-, polymer with γ-ω hydro-hydroxyoly[oxy-(methyl-1,2-ethanediyl)] and 1,1-methylene bis[4-isocyanato-benzene].	47 FR 52224 (11/19/82)	Do.
83-124	3-bromo-4-(4-bis-2-hydroxyethylamino)-2-methyl-=phenylazo)-5-nitrobenzoic acid ethyl ester	47 FR 53782 (11/29/82)	Feb. 9, 1983.
83-125	3-bromo-4-(4-(bis-2-hydroxyethylamino)-phenyl=azo)-5-nitrobenzoic acid ethyl ester	47 FR 53782 (11/29/82)	Do.
83-126	Generic name: Modified fluoroaliphatic adduct	47 FR 53782 (11/29/82)	Feb. 11, 1983.
83-127	Polymer of acrylic acid, butyl acrylate, 2-hydroxy ethyl acrylate, methyl acrylate, and 2-ethylhexyl acrylate.	47 FR 53782 (11/29/82)	Do.
83-128	Generic name: Organo zinc salt	47 FR 53782 (11/29/82)	Do.
83-129	Syncrude (full range, dewaxed dearsenited shale oil)	47 FR 54357 (12/2/82)	Feb. 13, 1983.
83-130	Light straight run naphtha (shale oil)	47 FR 54357 (12/2/82)	Do.
83-131	Heavy straight run naphtha (shale oil)	47 FR 54357 (12/2/82)	Do.
83-132	Straight run middle distillate (shale oil)	47 FR 54357 (12/2/82)	Do.
83-133	Straight run gas oil (shale oil)	47 FR 54357 (12/2/82)	Do.
83-134	Atmosphere tower residuum (shale oil)	47 FR 54357 (12/2/82)	Do.
83-135	Vacuum tower condensate (shale oil)	47 FR 54357 (12/2/82)	Do.
83-136	Light vacuum gas oil (shale oil)	47 FR 54357 (12/2/82)	Do.
83-137	Heavy vacuum gas oil (shale oil)	47 FR 54357 (12/2/82)	Do.
83-138	Vacuum residuum (shale oil)	47 FR 54357 (12/2/82)	Do.
83-139	Full range catalytic cracked naphtha (shale oil)	47 FR 54357 (12/2/82)	Do.
83-140	Light catalytic cracked distillate (shale oil)	47 FR 54357 (12/2/82)	Do.
83-141	Catalytic cracked clarified oil (shale oil)	47 FR 54357 (12/2/82)	Do.
83-142	Catalytic cracked light olefins (shale oil)	47 FR 54357 (12/2/82)	Do.
83-143	Full range catalytic reformed naphtha (shale oil)	47 FR 54357 (12/2/82)	Do.
83-144	Full range alkylate naphtha (shale oil)	47 FR 54357 (12/2/82)	Do.
83-145	Light hydrocracked naphtha (shale oil)	47 FR 54357 (12/2/82)	Do.
83-146	Heavy hydrocracked naphtha (shale oil)	47 FR 54357 (12/2/82)	Do.
83-147	Light hydrocracked naphtha (shale oil)	47 FR 54357 (12/2/82)	Do.
83-148	Light thermal cracked naphtha (shale oil)	47 FR 54357 (12/2/82)	Do.
83-149	Heavy thermal cracked naphtha (shale oil)	47 FR 54357 (12/2/82)	Do.
83-150	Light thermal cracked distillate (shale oil)	47 FR 54357 (12/2/82)	Do.
83-151	Heavy thermal cracked distillate (shale oil)	47 FR 54357 (12/2/82)	Do.
83-152	Coke (shale oil)	47 FR 54357 (12/2/82)	Do.
83-153	Sweetened naphtha (shale oil)	47 FR 54357 (12/2/82)	Do.
83-154	Hydrodesulfurized heavy naphtha (shale oil)	47 FR 54357 (12/2/82)	Do.
83-155	Hydrodesulfurized middle distillate (shale oil)	47 FR 54357 (12/2/82)	Do.
83-156	Full range straight run naphtha (shale oil)	47 FR 54357 (12/2/82)	Do.
83-157	Straight run kerosive (shale oil)	47 FR 54357 (12/2/82)	Do.
83-158	Light paraffinic distillate (shale oil)	47 FR 54357 (12/2/82)	Do.
83-159	Heavy paraffinic distillate (shale oil)	47 FR 54357 (12/2/82)	Do.
83-160	Light catalytic cracked naphtha (shale oil)	47 FR 54357 (12/2/82)	Do.
83-161	Heavy catalytic cracked naphtha (shale oil)	47 FR 54357 (12/2/82)	Do.
83-162	Intermediate catalytic cracked distillate (shale oil)	47 FR 54357 (12/2/82)	Do.
83-163	Heavy catalytic cracked distillate (shale oil)	47 FR 54357 (12/2/82)	Do.
83-164	Full range catalytic reformed naphtha (shale oil)	47 FR 54357 (12/2/82)	Do.
83-165	Light catalytic reformed naphtha (shale oil)	47 FR 54357 (12/2/82)	Do.
83-166	Heavy catalytic reformed naphtha (shale oil)	47 FR 54357 (12/2/82)	Do.
83-167	Catalytic reformer fractionator residue (shale oil)	47 FR 54357 (12/2/82)	Do.
83-168	Light alkylate naphtha (shale oil)	47 FR 54357 (12/2/82)	Do.
83-169	Heavy alkylate naphtha (shale oil)	47 FR 54357 (12/2/82)	Do.
83-170	Alkylate distillate (shale oil)	47 FR 54357 (12/2/82)	Do.
83-171	Polymerization naphtha (shale oil)	47 FR 54357 (12/2/82)	Do.
83-172	Viscous polymer (shale oil)	47 FR 54357 (12/2/82)	Do.
83-173	Isomerization naphtha (shale oil)	47 FR 54357 (12/2/82)	Do.

I. 176 PREMANUFACTURE NOTICES RECEIVED DURING THE MONTH:—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
83-174	Heavy hydrocracked distillate (shale oil)	47 FR 54357 (12/2/82)	Do.
83-175	Hydrocracked residuum (shale oil)	47 FR 54357 (12/2/82)	Do.
83-176	Sweetened middle distillate (shale oil)	47 FR 54357 (12/2/82)	Do.
83-177	Normal paraffins (shale oil)	47 FR 54357 (12/2/82)	Do.
83-178	Sorption process raffinate (shale oil)	47 FR 54357 (12/2/82)	Do.
83-179	Solvent refined light naphtha (shale oil)	47 FR 54357 (12/2/82)	Do.
83-180	Solvent refined heavy naphtha (shale oil)	47 FR 54357 (12/2/82)	Do.
83-181	Solvent refined middle distillate (shale oil)	47 FR 54357 (12/2/82)	Do.
83-182	Solvent refined gas oil (shale oil)	47 FR 54357 (12/2/82)	Do.
83-183	Solvent refined light paraffinic distillate (shale oil)	47 FR 54357 (12/2/82)	Do.
83-184	Solvent refined heavy paraffinic distillate (shale oil)	47 FR 54357 (12/2/82)	Do.
83-185	Solvent deasphalted residual oil (shale oil)	47 FR 54357 (12/2/82)	Do.
83-186	Solvent decarbonized heavy paraffinic distillate (shale oil)	47 FR 54357 (12/2/82)	Do.
83-187	Solvent refined residual oil (shale oil)	47 FR 54357 (12/2/82)	Do.
83-188	Solvent refined spent lube oil (shale oil)	47 FR 54357 (12/2/82)	Do.
83-189	Light naphtha solvent extract (shale oil)	47 FR 54357 (12/2/82)	Do.
83-190	Heavy naphtha solvent extract (shale oil)	47 FR 54357 (12/2/82)	Do.
83-191	Middle distillate solvent extract (shale oil)	47 FR 54357 (12/2/82)	Do.
83-192	Gas oil solvent extract (shale oil)	47 FR 54357 (12/2/82)	Do.
83-193	Light paraffinic distillate solvent extract (shale oil)	47 FR 54357 (12/2/82)	Do.
83-194	Heavy paraffinic distillate solvent extract (shale oil)	47 FR 54357 (12/2/82)	Do.
83-195	Residual oil solvent extract (shale oil)	47 FR 54357 (12/2/82)	Do.
83-196	Heavy paraffinic distillate decarbonization raffinate (shale oil)	47 FR 54357 (12/2/82)	Do.
83-197	Clay treated light paraffinic distillate (shale oil)	47 FR 54357 (12/2/82)	Do.
83-198	Clay treated heavy paraffinic distillate (shale oil)	47 FR 54357 (12/2/82)	Do.
83-199	Clay treated paraffin wax (shale oil)	47 FR 54357 (12/2/82)	Do.
83-200	Chemically neutralized spent lube oil (shale oil)	47 FR 54357 (12/2/82)	Do.
83-201	Hydrotreated light naphtha (shale oil)	47 FR 54357 (12/2/82)	Do.
83-202	Hydrotreated heavy naphtha (shale oil)	47 FR 54357 (12/2/82)	Do.
83-203	Hydrotreated light distillate (shale oil)	47 FR 54357 (12/2/82)	Do.
83-204	Hydrotreated middle distillate (shale oil)	47 FR 54357 (12/2/82)	Do.
83-205	Hydrotreated light paraffinic distillate (shale oil)	47 FR 54357 (12/2/82)	Do.
83-206	Hydrotreated heavy paraffinic distillate (shale oil)	47 FR 54357 (12/2/82)	Do.
83-207	Hydrotreated paraffin wax (shale oil)	47 FR 54357 (12/2/82)	Do.
83-208	Hydrotreated microcrystalline wax (shale oil)	47 FR 54357 (12/2/82)	Do.
83-209	Hydrotreated vacuum gas oil (shale oil)	47 FR 54357 (12/2/82)	Do.
83-210	Hydrotreated residual oil (shale oil)	47 FR 54357 (12/2/82)	Do.
83-211	Solvent dewaxed light paraffinic distillate (shale oil)	47 FR 54357 (12/2/82)	Do.
83-212	Solvent dewaxed heavy paraffinic distillate (shale oil)	47 FR 54357 (12/2/82)	Do.
83-213	Solvent dewaxed residual oil (shale oil)	47 FR 54357 (12/2/82)	Do.
83-214	Slack wax (shale oil)	47 FR 54357 (12/2/82)	Do.
83-215	Petrolatum (shale oil)	47 FR 54357 (12/2/82)	Do.
83-216	Foots oil (shale oil)	47 FR 54357 (12/2/82)	Do.
83-217	Paraffin wax (shale oil)	47 FR 54357 (12/2/82)	Do.
83-218	Microcrystaline wax (shale oil)	47 FR 54357 (12/2/82)	Do.
83-219	Catalytic dewaxed naphtha (shale oil)	47 FR 54358 (12/2/82)	Do.
83-220	Catalytic dewaxed middle distillate (shale oil)	47 FR 54358 (12/2/82)	Do.
83-221	Catalytic dewaxed light paraffinic oil (shale oil)	47 FR 54358 (12/2/82)	Do.
83-222	Catalytic dewaxed heavy paraffinic oil (shale oil)	47 FR 54358 (12/2/82)	Do.
83-223	Hydrodesulfurized light naphtha (shale oil)	47 FR 54358 (12/2/82)	Do.
83-224	Hydrosulfurized kerosine (shale oil)	47 FR 54358 (12/2/82)	Do.
83-225	Hydrosulfurized gas oil (shale oil)	47 FR 54358 (12/2/82)	Do.
83-226	Hydrodesulfurized atmospheric tower residuum (shale oil)	47 FR 54358 (12/2/82)	Do.
83-227	Hydrodesulfurized heavy vacuum gas oil (shale oil)	47 FR 54358 (12/2/82)	Do.
83-228	Hydrodesulfurized heavy vacuum gas oil (shale oil)	47 FR 54358 (12/2/82)	Do.
83-229	Steam cracked residuum (shale oil)	47 FR 54358 (12/2/82)	Do.
83-230	Light aliphatic solvent naphtha (shale oil)	47 FR 54358 (12/2/82)	Do.
83-231	Medium aliphatic solvent naphtha (shale oil)	47 FR 54358 (12/2/82)	Do.
83-232	Heavy aliphatic solvent naphtha (shale oil)	47 FR 54358 (12/2/82)	Do.
83-233	Light aromatic solvent naphtha (shale oil)	47 FR 54358 (12/2/82)	Do.
83-234	Heavy aromatic solvent naphtha (shale oil)	47 FR 54358 (12/2/82)	Do.
83-235	Calcined coke (shale oil)	47 FR 54358 (12/2/82)	Do.
83-236	Generaic name: Alkyl-substituted imidaxole derivative of methyl-pyrimidinone-azomethyl-phenyl benzothiazole.	47 FR 53782 (11/29/82)	Do.
83-237	Generic name: Substituted pyridine	47 FR 53782 (11/29/82)	Do.
83-238	Generic name: Polyamide	47 FR 53782 (11/29/82)	Feb. 15, 1983.
83-239	Generic name: Polyester polyurethane from a diisocyanate and an alkanediol with alkanoic acid and anhydride.	47 FR 53783 (11/29/82)	Do.
83-240	Generic name: Reaction product of inorganic acid with the reaction product of carboxylic acid and alkanolamine.	47 FR 53783 (11/29/82)	Do.
83-241	Generic name: Polyester polycarboxylate salt	47 FR 53783 (11/29/82)	Do.
83-242	Generic name: Polymer of aliphatic polyols, aliphatic and aromatic dicarboxylic acids	47 FR 53783 (11/29/82)	Do.
83-243	Generic name: Methyl-oxyethyl-methylene imidazolium deriv. of copper phthalocyanine methoxy-acetate.	47 FR 53783 (11/29/82)	Do.
83-244	Polymer of tetrahydronaphthalic anhydride, tall oil fatty acid, bisphenol A-oxirane polymer, phenol-epichlorohydrin-formaldehyde polymer, paraformaldehyde, diethylamine, diethylamino-propylamine, diisopropylamine.	47 FR 53783 (11/29/82)	Do.
83-245	Polymer of tetrahydronaphthalic anhydride, phthalic anhydride, acrylic acid, 2-ethylhexyl ester, bisphenol A-oxirane polymer, phenolepichlorohydrin-formaldehyde polymer, paraformaldehyde, aminoethylpropanediol, butanol, diethanolamine, diethylamine, diethylaminopropylamine.	47 FR 53783 (11/29/82)	Do.
83-246	Polymer of tetrahydronaphthalic anhydride, acrylic acid, 2-hydroxyethyl ester, methacrylic acid, 2-hydroxy ethyl ester, bisphenol A-oxirane polymer, neodecanoic acid, 2,3-epoxypropyl ester, toluenediisocyanate, N,N-diethanolamine, diethanolamine.	47 FR 53783 (11/29/82)	Do.
83-247	Polymer of tetrahydronaphthalic anhydride, maleic anhydride, phthalic anhydride, tall oil fatty acid, acrylic acid, 2-hydroxyethyl ester, methacrylic acid, 2-hydroxyethyl ester, methacrylic acid, 2,3-epoxy propyl ester, bisphenol A-oxirane polymer, neodecanoic acid, 2,3-epoxy propyl ester, toluenediisocyanate, N,N-diethanolamine, diethanolamine, 1,6-hexanediol, butanol.	47 FR 53783 (11/29/82)	Do.
83-248	Polymer of bisphenol A-oxirane polymer, toluenediisocyanate, diethanolamine, diethylamino-propylamine.	47 FR 53783 (11/29/82)	Do.
83-249	Polymer of malonic acid, diethyl ester, dimethylolpropane	47 FR 53783 (11/29/82)	Do.
83-250	Polymer of malonic acid, diethyl ester, trimethylolpropane, 1,6-hexanediol	47 FR 53783 (11/29/82)	Do.

I. 176 Premanufacture Notices Received During the Month:—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
83-251	Generic name: Phenoxy modified alkyd	47 FR 54537 (12/3/82)	Feb. 16, 1983.
83-252	Generic name: Alkyl amino-amide salt	47 FR 54537 (12/3/82)	Feb. 19 1983.
83-253	Generic name: Maleated rosin monobasic acids glycerol ester	47 FR 54537 (12/3/82)	Feb. 20 1983.
83-254	Generic name: Maleated rosin monobasic acids pentaerythritol ester	47 FR 54537 (12/3/82)	Do.
83-255	Generic name: Dicarboxylic acid monoester	47 FR 54537 (12/3/82)	Do.
83-256	Generic name: Polymer of acrylic acid and mixed alkyl acrylates	47 FR 55422 (12/9/82)	Feb. 23, 1983.
83-257	Generic name: Copolymer of ethenyl heterocycle and substituted, ethenyl benzene	47 FR 55422 (12/9/82)	Do.
83-258	Generic name: Polymer of styrene; methacrylate ester, acrylic ester, and acrylic acid	47 FR 55422 (12/9/82)	Do.
83-259	Generic name: Polyester resin	47 FR 55422 (12/9/82)	Do.
83-260	Generic name: Mofified maleated rosin pentaery-thritol ester alkylphenol formaldehyde resin	47 FR 55422 (12/9/82)	Feb. 27, 1983.
83-261	2,2-bis [4-(4-aminophenoxy) phenyl] hexafluoropropane	47 FR 55422 (12/9/82)	Do.
83-262	Generic name: Halogenated dinitro ether compound	47 FR 55423 (12/9/82)	Do.
83-263	Generic name: Substitute thiocyclic compound	47 FR 55423 (12/9/82)	Do.

II. 85 Premanufacture Notices Received Previously and Still Under Review at the End of the Month

PMN No.	Identity and generic name	FR citation	Expiration date
82-432	Reaction mixture containing: isobornyl acetylacetate, isobornyl acetate and ethylacetylacetate	47 FR 27610 (6/25/82)	Jan. 24, 1983.
83-2	Generic name: Polymer of styrene, substituted sytrene, and substituted methacrylate salt	47 FR 46371 (10/18/82)	Dec. 29, 1982.
83-3	Generic name: Disubstituted propane	47 FR 46371 (10/18/82)	Do.
83-4	Generic name: Substituted propane.	47 FR 46371 (10/18/82)	Do.
83-5	Generic name: Substituted alkanoic acid ester	47 FR 46371 (10/18/82)	Do.
83-6	Generic name: Substituted lactam	47 FR 46371 (10/18/82)	Do.
83-7	Generic name: Substituted lactam	47 FR 46372 (10/18/82)	Do.
83-8	Generic name: Substituted alkylsulfonic acid	47 FR 46372 (10/18/82)	Jan. 1, 1983.
83-9	Generic name: Substituted alkyl polysulfide	47 FR 46372 (10/18/82)	Do.
83-10	Generic name: Substituted urea	47 FR 46372 (10/18/82)	Do.
83-11	Oxirane [(phenyl methoxy)methyl]	47 FR 46372 (10/18/82)	Do.
83-12	Generic name: 2,7-Naphthalenedisulfonic acid, 4-amino-3-[[4-[[4-[(2,4-diamino-5-methyl phenyl)azolphenyl]substituted]phenyl]azo]-5-hydroxy-6-(substituted phenyl)azo-, sodium salt.	47 FR 46372 (10/18/82)	Jan. 2, 1983.
83-13	Generic name: Amine modified dimethylpolysiloxane	47 FR 46372 (10/18/82)	Do.
83-14	Generic name: Metal salt of sulfur analog of hydroxy-alkyl carbonic acid	47 FR 46372 (10/18/82)	Do.
83-15	Generic name: Polymer of methacrylic acid derivatives, a substituted alkane and vinyl aromatic compound.	47 FR 46372 (10/18/82)	Do.
83-16	Generic name: Polymer of acrylate and methacylate monomers and vinyl aromatic compounds	47 FR 46372 (10/18/82)	Do.
83-17	Generic name: Fatty acids, substituted aromatic esters, alkali metal salts	47 FR 46372 (10/18/82)	Do.
83-18	Generic name: Di(disubstitutednaphthyl)polyheterocycle	47 FR 46372 (10/18/82)	Do.
83-19	Generic name: Substituted benzoic acid	47 FR 46372 (10/18/82)	Do.
83-20	Generic name: Substituted phenoxy toluene	47 FR 46373 (10/18/82)	Do.
83-21	Generic name: Trisubstituted azo naphthol disulfonic acid	47 FR 46373 (10/18/82)	Jan. 3, 1983.
83-22	Generic name: Pentasubstituted pentanamide	47 FR 46373 (10/18/82)	Do.
83-23	Generic name: Substituted phenol	47 FR 46373 (10/18/82)	Jan. 4, 1983.
83-24	Generic name: Substituted pyridine	47 FR 46373 (10/18/82)	Do.
83-25	Generic name: Substituted pyridine	47 FR 46373 (10/18/82)	Do.
83-26	Antimony thioantimonate	47 FR 47067 (10/22/82)	Jan. 5, 1983.
83-27	Tetra (oxy-1, 2-ethanediyl), alfa-(carboxymethyl)-omega-hydroxy-C_{10-16} alkyl ethers	47 FR 47067 (10/22/82)	Do.
83-28	Oxiranemthanamine, N-[3-(oxiranylmethoxy) phenyl-N-(oxiranylmethyl)	47 FR 47067 (10/22/82)	Jan. 9, 1983.
83-29	Generic name: Alkyldiarylphosphine	47 FR 47067 (10/22/82)	Do.
83-30	Generic name: Disbustituted naphthalene	47 FR 47067 (10/22/82)	Do.
83-31	Generic name: Amine acid salt	47 FR 47067 (10/22/82)	Jan. 10, 1983.
83-32	Generic name: Modified polyester polyurethane from substituted alkanediols, alkanedioic acid and a diisocyanate.	47 FR 47067 (10/22/82)	Do.
83-33	1, 2, 3-propanetricarboxylic acid, 2 hydroxy, esters with high boiling C_9C_{16} alkane hydroformylation products.	47 FR 47067 (10/22/82)	Do.
83-34	Generic name: fatty acids, linseed oil glycidyl ester	47 FR 47067 (10/22/82)	Do.
83-35	Generic name: Sulfophenylazonaphthyl dye	47 FR 47067 (10/22/82)	Do.
83-36	Generic name: Acrylated alkoxylated aliphatic glycol	47 FR 47068 (10/22/82)	Do.
83-37	Generic name: Acrylated alkoxylated aliphatic glycol	47 FR 47068 (10/22/82)	Do.
83-38	Generic name: Sulfophenylazonaphthyl dye	47 FR 47068 (10/22/82)	Do.
83-39	Generic name: Polalkyl substituted unsaturated bicyclic tertiary alcohol	47 FR 47068 (10/22/82)	Jan. 11, 1983.
83-40	Generic name: Polyalkyl cycloalkenone	47 FR 47068 (10/22/82)	Do.
83-41	Generic name: Polyalkyl substituted unsaturated bicyclic ketoneb	47 FR 47068 (10/22/82)	Do.
83-42	Generic name: Polyalkyl substituted unsaturated bicyclic keto diol, alkanoic acid ester	47 FR 47068 (10/22/82)	Do.
83-43	Generic name: Polyalkyl unsaturated tricyclic diketone	47 FR 47068 (10/22/82)	Do.
83-44	Polyer of 2-propenoic acid, 2-methyl-, 2-[[(perfluoralkyl) sulfonyl]methyl]amino]ethyl ester with butyl methacrylate and lauryl methacrylate.	47 FR 47068 (10/22/82)	Do.
83-45	Propionic acid, zirconium salt	47 FR 49072 (10/29/82)	Jan. 12, 1983.
83-46	Not a PMN under Section 5 of TSCA	47 FR 49073 (10/29/82)	Do.
83-47	Generic name: Polymer of acrylic acid and acrylic esters	47 FR 49073 (10/29/82)	Do.
83-48	Generic name: Polymer of aliphatic and aromatic diacids, ester and an aliphatic diol	47 FR 39073 (10/29/82)	Do.
83-49	Generic name: Substituted pyridine	47 FR 46073 (10/29/82)	Do.
83-50	Polymer of: isophorone diisocyanate, 2-hydroxy ethyl acrylate, silicone fluid	47 FR 49073 (10/29/82)	Jan. 15, 1983.
83-51	Generic name: Alkoxylated alkyl amine	47 FR 49073 (10/29/82)	Do.
83-52	Reaction product of N, N' 2-tris(6-isocyanatohexyl)imidodicarbonic diamide with 3-(trimethoxysilyl)-1-propanethiol.	47 FR 49073 (10/29/82)	Do.
83-53	Generic name: Cobalt complex of substituted phenolazophenylacetacetamide	47 FR 49073 (10/29/82)	Jan. 16, 1983.
83-54	Generic name: Iron complex of substituted phenolazoresorcinol	47 FR 49073 (10/29/82)	Do.
83-55	Generic name: Substituted alkanediol	47 FR 49073 (10/29/82)	Do.
83-56	Generic name: Substituted acetoxyhexahydroindene	47 FR 49073 (10/29/82)	Jan. 17, 1983.
83-57	Generic name: Polymer of isophorone diisocyanate, polyhydroxyalkane, and an alkyl alkanoate	47 FR 49073 (10/29/82)	Do.
83-58	Generic name: Bis(((substituted pyrazolyl)azo)substituted phenol)metallate and bis(((substituted pyrazolyl)azo)substituted phenol)metallate, inorganic salts.	47 FR 49073 (10/29/82)	Do.
83-59	Generic name: Acrylic acid, polymer with vinyl acetate, acrylate esters and substituted ethylene	47 FR 49074 (10/29/82)	Do.
83-60	Generic name: Metal complex of methyl-substituted-((substituted-hydroxyphenyl)azo)-oxo-dihydro-1H-pyrazole and substituted-((naphthyl)azo)-2-naphthol, and metal complex of methyl-substituted-((substituted-hydroxyphenyl)azo)-oxo-dihydro-1H-pyrazole and substituted-((naphthyl)azo)-2-naphthol, inorganic salts.	47 FR 49074 (10/29/82)	Do.
83-61	Generic name: Disubstituted benzothiazole	47 FR 49074 (10/29/82)	Jan. 18, 1983.

II. 85 PREMANUFACTURE NOTICES RECEIVED PREVIOUSLY AND STILL UNDER REVIEW AT THE END OF THE MONTH—Continued

PMN No.	Identity and generic name	FR citation	Expiration date
83-62	Generic name: Disubstituted benzothiazole salt	47 FR 49074 (10/29/82)	Do.
83-63	Generic name: Succinate ester amide	47 FR 50338 (11/5/82)	Jan. 19, 1983.
83-64	Oxo alcohol (high boilers), ethoxylated alcohol ester of citric acid	47 FR 50338 (11/5/82)	Do.
83-65	Generic name: Polymer of disubstituted propenoates	47 FR 50338 (11/5/82)	Do.
83-66	Generic name: Polymer of disubstituted propenoates	47 FR 50338 (11/5/82)	Do.
83-67	Generic name: Substituted thionocarbamate	47 FR 50338 (11/5/82)	Do.
83-68	Generic name: Alkylated isopropylbenzene	47 FR 50339 (11/5/82)	Do.
83-69	Generic name: Mixed C_{21} dicarboxylic amino alkyl amines	47 FR 50339 (11/5/82)	Jan. 22, 1983.
83-70	Generic name: Benzenedicarboxylic acid saturated mixed glycols copolyester	47 FR 50339 (11/5/82)	Do.
83-71	2-propenoic acid, 2 methyl-, octahydro-2,5-methane-2H-indeneone[1,2-(b)]oxiren-3(or 4)-yl ester	47 FR 50339 (11/5/82)	Do.
83-72	Generic name: Benzoquinolinyl-sulfoindenedione	47 FR 50339 (11/5/82)	Jan. 23, 1983.
83-73	Generic name: Polymer from PMDA and diamines	47 FR 50339 (11/5/82)	Jan. 24, 1983.
83-74	Generic name: Polymer of styrene, alkyl acrylates and substituted alkyl methacrylates	47 FR 50339 (11/5/82)	Jan. 23, 1983.
83-75	Generic name: Sodium 2-substituted propanoate	47 FR 50339 (11/5/82)	Jan. 24, 1983.
83-76	Incomplete		
83-77	Generic name: Bis(((substituted propanyl)azo) substituted phenol)metallate, plus bis(((substituted propanyl)azo)substituted phenol)metallate, inorganic salts.	47 FR 52220 (11/19/82)	Jan. 26, 1983.
83-78	Generic name: Metal complex of ((substituted phenyl)azo) substituted phenol and ((aryl)azo) substituted phenol plus metal complex of ((substituted phenyl)azo)substituted phenol and ((aryl)azo)substituted phenol, inorganic salts.	47 FR 52220 (11/19/82)	Do.
83-79	Generic name: Metal complex of ((substituted phenyl)azo)naphthol and ((substituted naphthyl)azo)naphthol plus metal complex of ((substituted phenyl)azo)naphthol and ((substituted naphthyl)azo)naphthol, inorganic salts.	47 FR 52221 (11/19/82)	Do.
83-80	Generic name: Bis(((aryl)azo)substituted phenol)metallate plus bis(((aryl)azo)substituted phenol) metallate, inorganic salts.	47 FR 52221 (11/19/82)	Do.
83-81	Generic name: Metal complex of ((substituted phenyl)azo)-substituted phenol and ((substituted pyrazolyl)azo)-substituted-benzenesulfonic acid plus metal complex of ((substituted phenyl)azo)-substituted phenol and ((substituted pyrozolyl)azo)-substituted-benzenesulfonic acid, inorganic salts.	47 FR 52221 (11/19/82)	Do.
83-82	Generic name: Bis(((substituted pyrazolyl)azo)benzoic acid)metallate plus bis(((substituted pyrazolyl)azo)benzoic acid)metallate, inorganic salts.	47 FR 52221 (11/19/82)	Do.
83-83	Generic name: Bis(((substituted aryl)azo)-substituted phenol)metallate and bis(((substituted aryl)azo)-substituted phenol)metallate, inorganic salts.	47 FR 52221 (11/19/82)	Do.
83-84	Generic name: Bis(((aryl)azo)-substituted phenol)metallate and bis(((aryl)azo)-substituted phenol)metallate, inorganic salts.	47 FR 52221 (11/19/82)	Do.
83-85	Generic name: Bis(((substituted aryl)azo)-substituted phenol)metallate, and bis(((substituted aryl)azo)-substituted phenol)metallate, inorganic salts.	47 FR 52221 (11/19/82)	Do.
83-86	Generic name: Mercaptoalkylsilane	47 FR 52221 (11/19/82)	Do.
83-87	Generic name: Siloxanes and silicones, dimethyl, methyl(mercapto-alkyl), trimethyl end blocked	47 FR 52221 (11/19/82)	Do.

III. 108 PREMANUFACTURE NOTICES FOR WHICH THE NOTICE REVIEW PERIOD HAS ENDED DURING THE MONTH. (EXPIRATION OF THE NOTICE REVIEW PERIOD DOES NOT SIGNIFY THAT THE CHEMICAL HAD BEEN ADDED TO THE INVENTORY)

PMN No.	Identity and generic name	FR citation	Expiration date
82-156	Methyl-trifluoromethyl-poly-(oxy-difluoromethylene)-poly-[oxy-2-(trifluoromethyl)-trifluoroethylene]oxy difluoromethly carboxylate.	47 FR 39241 (9/7/82)	Nov. 21, 1982.
82-157	Trifluoromethyl-poly-(oxydifluoro-methylene)-poly-[oxy-2-(trifluoromethyl)-trifluoroethylene]oxy-difluoromethyl carboxylic acid.	47 FR 39241 (9/7/82)	Do.
82-158	2-trifluoromethyl-poly-(oxy-difluoromethylene)-poly-[oxy-2-(trifluoromethyl)-trifluoro-ethylene]oxy 2,2 difluoroethanol.	47 FR 39241 (9/7/82)	Do.
82-159	*Aryl-[aryl*-oxycarbonyl difluoromethyl-poly-(oxy-difluoromethylene)-poly-(oxydifluoromethylene)-poly-(oxytetrafluoro ethylene)oxy]-difluoromethyl carboxylate.	47 FR 39242 (9/7/82)	Do.
82-160	Methyl[methyloxycarbonyl difluoromethyl-poly-(oxydifluoromethylene)-poly-(oxy tetrafluoro ethylene)oxy]-difluoromethyl carboxylate.	47 FR 39242 (9/7/82)	Do.
82-161	2-(cyano difluoromethyl-poly-(oxydifluoromethylene)-poly-(oxytetrafluoroethylene)-oxy] 2,2-difluoroacetonitrile.	47 FR 39242 (9/7/82)	Do.
81-162	2-[2,2-difluorohydroxyethyl-poly-(oxy-difluoromethylene)-poly-(oxytrifluoroethylene)oxy]-2,2-difluoroethanol.	47 FR 39242 (9/7/82)	Do.
82-163	2-[2,2-difluoroaminoethyl-poly-(oxydifluoromethylene)-poly-(oxytetrafluoroethylene)oxy]2,2-difluoro-ethylamine.	47 FR 39242 (9/7/82)	Do.
82-164	2-1-[N-m-isocyanato-o-(p)-tolyl)carbamyl]2,2-difluoroethyl-poly-(Oxydifluoroethylene)-poly-tetrafluoro-ethylene)oxy 2,2-difluoroethyl-N-(m-isocyanato-o-(p)-tolyl)-carbamate.	47 FR 39242 (9/7/82)	Do.
82-165	2[isocyanato-2,2-difluoroethyl-poly-oxydifluoromethylene)-poly-(oxytetrafluoroethylene)oxy]-2,2-difluoroethyl isocyanate.	47 FR 39242 (9/7/82)	Do.
82-465	Generic name: Quaternary ammonium chloride	47 FR 30103 (7/12/82)	Nov. 2, 1982.
82-541	Generic name: Fumarated rosin ester	47 FR 35333 (8/13/82)	Nov. 1, 1982.
82-542	Generic name: Citric acid ester	47 FR 35333 (8/13/82)	Do.
82-543	Generic name: Haleic acid ester	47 FR 35333 (8/13/82)	Do.
82-544	Generic name: Benzoic acid ester	47 FR 35333 (8/13/82)	Do.
82-545	Polymer of hexane, 1,6-diisocyanato-, hopolymer, 2-butanone, oxime	47 FR 35333 (8/13/82)	Do.
82-546	Void		
82-547	Generic name: Modified polymer of styrene and substituted alkyl methacrylates	47 FR 35333 (8/13/82)	Do.
82-548	Generic name: Organometallic coupling agent	47 FR 35333 (8/13/82)	Do.
82-549	Void		
82-550	Generic name: Sulfoaryl disazo substituted naphthalenesulfonic acid salt	47 FR 35333 (8/13/82)	Do.
82-551	Generic name: Sulfoaryl disazo substitued naphthalenesulfonic acid salt	47 FR 35334 (8/13/82)	Do.
82-552	Generic name: Sulfoaryl disazo substitued naphthalenesulfonic acid salt	47 FR 35334 (8/13/82)	Do.
82-553	Generic name: Sulfoaryl disazo substitued naphthalenesulfonic acid salt	47 FR 35334 (8/13/82)	Do.
82-554	Generic name: Sulfoaryl disazo substitued naphthalenesulfonic acid salt	47 FR 35334 (8/13/82)	Do.
82-555	Generic name: Sulfoaryl disazo substitued naphthalenesulfonic acid salt	47 FR 35334 (8/13/82)	Do.
82-556	Generic name: Sulfoaryl disazo substitued naphthalenesulfonic acid salt	47 FR 35334 (8/13/82)	Do.
82-557	Generic name: Acetamidodimethylsiloxane	47 FR 35334 (8/13/82)	Nov. 2, 1982.
82-558	Generic name: Acetamidodimethylsiloxane	47 FR 35334 (8/13/82)	Do.
82-559	Generic name: Disubstituted benzene	47 FR 35334 (8/13/82)	Do.
82-560	Generic name: Polymer of the homopolymer of hexane, 1,6-diisocyanatio-, substituted alkyl alkanoates and a benzene derivative.	47 FR 35334 (8/13/82)	Do.
82-561	Generic name: Substituted unsaturated polycyclic alcohol	47 FR 35334 (8/13/82)	Do.
82-562	Generic name: 1-Naphthalenesulfonic acid, ((((traizin)amino)disulfo)azo)-, trisodium salt	47 FR 36469 (8/20/82)	Nov. 3, 1982.

III. 108 PREMANUFACTURE NOTICES FOR WHICH THE NOTICE REVIEW PERIOD HAS ENDED DURING THE MONTH. (EXPIRATION OF THE NOTICE REVIEW PERIOD DOES NOT SIGNIFY THAT THE CHEMICAL HAD BEEN ADDED TO THE INVENTORY)—Continued

PMN No.	Identity and generic name	FR citation	Expiration date
82-563	Ethyllithium:	47 FR 36469 (8/20/82)	Nov. 7, 1982.
82-564	Generic name: Aliphatic polyol oligoacrylate oligopropionate	47 FR 36469 (8/20/82)	Do.
82-565	Generic name: Alkenyl alkanoate ester	47 FR 36469 (8/20/82)	Nov. 8, 1982.
82-566	Generic name: Heteromonocycle, substituted	47 FR 36469 (8/20/82)	Nov. 9, 1982.
82-567	Generic name: Heteromonocycle, substituted	47 FR 36469 (8/20/82)	Do.
82-568	Generic name: Chromophore substituted poly(oxyalkylene)	47 FR 36469 (8/20/82)	Do.
82-569	Generic name: Epoxidized hydroxystearic acid	47 FR 36469 (8/20/82)	Do.
82-570	Generic name: Amino acid modified polyester	47 FR 37954 (8/27/82)	Nov. 10, 1982.
82-571	Generic name: Orthophthalic anhydride modified unsaturated polyester resin	47 FR 37954 (8/27/82)	Nov. 13, 1982.
82-572	Generic name: Organophosphorous compound	47 FR 37954 (8/27/82)	Do.
82-573	Generic name: Pentasubstituted pentanamide salt	47 FR 37954 (8/27/82)	Do.
82-574	Generic name: Glycol ester of fatty acids	47 FR 37954 (8/27/82)	Nov. 14, 1982.
82-575	Void		
82-576	Generic name: Unsaturated polyester	47 FR 37954 (8/27/82)	Do.
82-577	Generic name: Unsaturated polyester	47 FR 37954 (8/27/82)	Do.
82-578	Generic name: Unsaturated polyester	47 FR 37954 (8/27/82)	Do.
82-579	Generic name: Unsaturated polyester	47 FR 37954 (8/27/82)	Do.
82-580	Generic name: Salt of sulfosuccinic diester	47 FR 37954 (8/27/82)	Do.
82-581	Generic name: N-alkyl-1,3-diamine propane salts of mixed mono and dialkyl hydrogen phosphate	47 FR 37954 (8/27/82)	Do.
82-582	Generic name: N-alkyl-1,3-diamine propane salts of mixed mono and dialkyl hydrogen phosphate	47 FR 37955 (8/27/82)	Do.
82-583	Generic name: N-alkyl-1,3-diamine propane salts of mixed mono and dialkyl hydrogen phosphate	47 FR 37955 (8/27/82)	Do.
82-584	Dimethyl ester of 4,4'-(hydroxymethylene) bis-1, 2-benzenedicarboxylic acid	47 FR 39242 (9/7/82)	Nov. 17, 1982.
82-585	Polymer of dimethy ester of 4,4'-(hydroxymethylene) bis-1,2-benzenedicarboxylic acid with 4,4'-methylenedianiline.	47 FR 39242 (9/7/82)	Do.
82-587	Generic name: Alkibenzenesulfonic acid compound with dialkyl fatty amine	47 FR 39242 (9/7/82)	Do.
82-588	4-(1,1-dimethylethyl) pyridine	47 FR 39242 (9/7/82)	Do.
82-589	Generic name: Cresol novolac modified methacrylic epoxy ester	47 FR 39242 (9/7/82)	Nov. 20, 1982.
82-590	Generic name: Fatty acid esters of monohydric	47 FR 39242 (9/7/82)	Nov. 21, 1982.
82-591	Generic name: Fatty acid esters of monohydric alcohol	47 FR 39243 (9/7/82)	Do.
82-592	Generic name: Polyester polymer	47 FR 39243 (9/7/82)	Do.
82-593	Generic name: Polyester polymer	47 FR 39243 (9/7/82)	Do.
82-594	Generic name: Polymer of alkyl and substituted alkyl acrylates	47 FR 39243 (9/7/82)	Do.
82-595	Generic name: Di (substitutedalkyl) dimethylammonium salt	47 FR 39243 (9/7/82)	Do.
82-596	Generic name: Di (substitutedalkyl) dimethylammonium salt	47 FR 39243 (9/7/82)	Do.
82-597	Vinyl acetate-N-methylolacrylamide copolymer	47 FR 39243 (9/7/82)	Nov. 22, 1982.
82-598	Ethyl acrylate homopolymer	47 FR 39243 (9/7/82)	Do.
82-599	Vinyl acetate-ethyl acrylate-N methylol acrylamide polymer	47 FR 39243 (9/7/82)	Do.
82-600	Butyl acrylate-vinyl acetate copolymer	47 FR 39243 (9/7/82)	Do.
82-601	Ethyl acrylate-methyl methacrylate copolymer	47 FR 39243 (9/7/82)	Do.
82-602	Generic name: Mixed glycol oligoesters of mixed dicarboxylic acids	47 FR 39243 (9/7/82)	Do.
82-603	Generic name: Mixed glycol oligoesters of aromatic diocarboxylic acid	47 FR 39243 (9/7/82)	Do.
82-604	Generic name: Monoureido silane ester	47 FR 39244 (9/7/82)	Do.
82-605	Generic name: Thiadiazole derivative	47 FR 39244 (9/7/82)	Do.
82-606	Ethyl-trifluoromethyl-poly-(oxydifluoromethylene)-poly-[oxy-2-trifluoromethyl-trifluoromethyl-trifluoroethylene]oxy difluoromethyl carboxylate.	47 FR 39244 (9/7/82)	Nov. 23, 1982.
82-607	Isopropyl-[trifluoromethyl-poly-(oxydifluoromethylene)-poly-[oxy-2-trifluoromethyl)-trifluoromethylene]oxy] difluoromethyl carboxylate.	47 FR 39244 (9/7/82)	Do.
82-608	Ethyl[ethyl oxycarbonyl difluoromethyl-poly-(oxydifluoromethylene)-poly-(oxytetrafluoroethylene)oxy]difluoromethyl carboxylate.	47 FR 39244 (9/7/82)	Do.
82-609	Isopropyl[methyl oxycarbonyl difluoromethyl-poly-(oxydifluoromethylene)-poly-(oxytetrafluoroethylene)oxy]difluoromethyl carboxylate.	47 FR 39244 (9/7/82)	Do.
82-610	2-[2,20-difluorohydroxyethyl-poly-(oxydifluoromethylene)-poly-(oxytrifluoroethylene)oxy]-2,2-difluoroethanol.	47 FR 39244 (9/7/82)	Do.
82-611	2-[2,2-difluorohydroxyethyl-poly-(oxydifluoromethylene)-poly-(oxytrifluoroethylene)oxy]-2,2-difluoroethanol.	47 FR 39244 (9/7/82)	Do.
82-612	Mixed C_5-C_{18} perfluorinated hydrocarbons, ethers and tertiary amines, characterized by boiling point range 25°-35°.	47 FR 39244 (9/7/82)	Do.
82-613	Mixed C_5-C_{18} perfluorinated hydrocarbons, ethers and tertiary amines, characterized by boiling point range 35°-50°.	47 FR 39244 (9/7/82)	Do.
82-614	Mixed C_5-C_{18} perfluorinated hydrocarbons, ethers and tertiary amines, characterized by boiling point range 50°-60°.	47 FR 39244 (9/7/82)	Do.
82-615	Mixed C_5-C_{18} perfluorinated hydrocarbons, ethers and tertiary amines, characterized by boiling point range 60°-75°.	47 FR 39244 (9/7/82)	Do.
82-616	Mixed C_5-C_{18} perfluorinated hydrocarbons, ethers and tertiary amines, characterized by boiling point range 75°-90°.	47 FR 39245 (9/7/82)	Do.
82-617	Mixed C_5-C_{18} perfluorinated hydrocarbons, ethers and tertiary amines, characterized by boiling point range 90°-105°.	47 FR 39245 (9/7/82)	Do.
82-618	Mixed C_5-C_{18} perfluorinated hydrocarbons, ethers and tertiary amines, characterized by boiling point range 105°-120°.	47 FR 39245 (9/7/82)	Do.
82-619	Mixed C_5-C_{18} perfluorinated hydrocarbons, ethers and tertiary amines, characterized by boiling point range 120°-140°.	47 FR 39245 (9/7/82)	Do.
82-620	Mixed C_5-C_{18} perfluorinated hydrocarbons, ethers and tertiary amines, characterized by boiling point range 140°-165°.	47 FR 39245 (9/7/82)	Do.
82-621	Mixed C_5-C_{18} perfluorinated hydrocarbons, ethers and tertiary amines, characterized by boiling point range 165°-180°.	47 FR 39245 (9/7/82)	Do.
82-622	Mixed C_5-C_{18} perfluorinated hydrocarbons, ethers and tertiary amines, characterized by boiling point range 180°-190°.	47 FR 39245 (9/7/82)	Do.
82-623	Mixed C_5-C_{18} perfluorinated hydrocarbons, ethers and tertiary amines, characterized by boiling point range 190°-200°.	47 FR 39245 (9/7/82)	Do.
82-624	Mixed C_5-C_{18} perfluorinated hydrocarbons, ethers and tertiary amines, characterized by boiling point range 200°-220°.	47 FR 39245 (9/7/82)	Do.
82-625	Mixed C_5-C_{18} perfluorinated hydrocarbons, ethers and tertiary amines, characterized by boiling point range 220°-235°.	47 FR 39246 (9/7/82)	Do.
82-626	Mixed C_5-C_{18} perfluorinated hydrocarbons, ethers and tertiary amines, characterized by boiling point range 235°-255°.	47 FR 39246 (9/7/82)	Do.
82-627	Generic name: Modified polyester	47 FR 39884 (9/10/82)	Do.
82-628	Generic name: Polyacrylate	47 FR 39885 (9/10/82)	Do.
82-629	Dimethyl hydantoin, formaldehyde, toluene sulfonamide condensation product	47 FR 39885 (9/10/82)	Do.
82-630	Generic name: Unsaturated alkyl fatty amine	47 FR 39885 (9/10/82)	Do.
82-631	Generic name: Unsaturated amine adduct	47 FR 39885 (9/10/82)	Do.

III. 108 PREMANUFACTURE NOTICES FOR WHICH THE NOTICE REVIEW PERIOD HAS ENDED DURING THE MONTH. (EXPIRATION OF THE NOTICE REVIEW PERIOD DOES NOT SIGNIFY THAT THE CHEMICAL HAD BEEN ADDED TO THE INVENTORY)—Continued

PMN No.	Identity and generic name	FR citation	Expiration date
82-632	Generic name: Fatty secondary amide	47 FR 39885 (9/10/82)	Do.
82-633	Generic name: Fatty secondary amide	47 FR 39885 (9/10/82)	Do.
82-634	Generic name: Fatty secondary amide	47 FR 39885 (9/10/82)	Do.
82-635	Generic name: Alkyl acid esters	47 FR 39885 (9/10/82)	Do.
82-636	Generic name: Alkyl ester	47 FR 39885 (9/10/82)	Do.
82-637	Generic name: Stearyl methacrylate copolymer	47 FR 39885 (9/10/82)	Do.
82-638	Ethanol 2,2'-[sulfonyl bis(4,1-phenyleneoxy)]	47 FR 39885 (9/10/82)	Do.
82-639	Generic name: Polyacrylate copolymer	47 FR 39885 (9/10/82)	Do.
82-640	Generic name: Amino modified polyester	47 FR 39885 (9/10/82)	Do.
82-641	Generic name: Substituted ammonium sulfonate	47 FR 39885 (9/10/82)	Nov. 29, 1982.

IV.29 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE

PMN No.	Chemical identification	FR citation	Date of commencement
80-172	Generic name: Polyisobutenyl succinic anhydride reaction products with substituted ethanol	45 FR 52241 (8/6/80)	Sept. 28, 1982.
81-108	Generic name: Modified soya alkyd	46 FR 20767 (4/7/81)	Nov. 2, 1982.
81-578	Generic name: Modified polyethylene oxide	46 FR 57126 (11/20/81)	Nov. 17, 1982.
81-579	Generic name: Polyglycol styrene acrylic polymer	46 FR 57126 (11/20/81)	Do.
81-663	Generic name: Alkali metal salt of substituted benzoate	47 FR 1021 (1/8/82)	Aug. 16, 1982.
82-25	Generic name: Substituted amine polymer	47 FR 3595 (1/26/82)	Nov. 23, 1982.
82-86	A mixture of 1-amino-8-naphthol-4,6-disulfonic acid and its mono and disodium salts	47 FR 7753 (2/22/82)	May 29, 1982.
82-148	Generic name: Ethylene interpolymer	47 FR 10075 (3/9/82)	Nov. 1, 1982.
82-217	2-methoxy-1,4 naphthalenedione	47 FR 13038 (3/26/82)	Nov. 9, 1982.
82-253	Generic name: Urethane polyether	47 FR 16404 (4/16/82)	Nov. 12, 1982.
82-331	Generic name: Nitrophenyl amide	47 FR 20853 (5/14/82)	Nov. 15, 1982.
82-332	Generic name: Aminophenyl amide	47 FR 20853 (5/14/82)	Do.
82-391	Generic name: Cresol-formaldehyde resin	47 FR 25401 (6/11/82)	Nov. 5. 1982.
82-391	Generic name: Styrene-diene-substitited alkene copolymer	47 FR 25402 (6/11/82)	November 1982.
82-457	Generic name: Alkyd derivative from fatty acids, alkanoic acids, a carbomonocyclic anhydride, polyols and esters.	47 FR 28995 (7/2/82)	Sept. 22, 1982.
82-465	Generic name: Quaternary ammonium chloride	47 FR 30103 (7/12/82)	Dec. 1, 1982.
82-484	Generic name: Phosphorodithoic acidm dialkylester, amine salts	47 FR 31063 (7/16/82)	Oct. 20, 1982.
82-501	Generic name: Substituted pentenedioate	47 FR 33235 (7/30/82)	Nov. 15, 1982.
82-505	4,4'-bis-(2,6-dimethylphenol)sulfone	47 FR 33235 (7/30/82)	Dec. 3, 1982.
82-508	Generic name: Bis alkoxylated aluminum acetoacetic ester chelate	47 FR 33235 (7/30/82)	Oct. 21, 1982.
82-533	Generic name: Polyhydroxylated diisocyanate	47 FR 34188 (8/6/82)	Oct. 26, 1982.
82-534	Generic name: Polyether-urethane	47 FR 34188 (8/6/82)	November 1982.
82-568	Generic name: Chromophore substituted poly(oxy-alkylene)	47 FR 36469 (8/20/82)	Nov. 10, 1982.
82-581	Generic name: N-alkyl-1,3-diamine propane salts of mixed mono,and dialkyl hydrogen phosphate	47 FR 37954 (8/27/82)	Nov. 22, 1982.
82-582	Generic name: N-alkyl-1,3-diamine propane salts of mixed mono and dialkyl hydrogen phosphate	47 FR 37955 (8/27/82)	Do.
82-583	Generic name: N-alkyl-1,3-diamine propane salts of mixed mono and dialkyl hydrogen phosphate	47 FR 37955 (8/27/82)	Do.
82-584	Dimethyl ester of 4,4'-(hydroxymethylene)bis-1,2-benzenedicarboxylic acid	47 FR 39242 (9/7/82)	Do.
82-585	Polymer of dimethyl ester of 4,4'-(hydroxy-methylene)bis-1,2-benzenedicarboxylic acid with 4,4'-methylenedianiline.	47 FR 39242 (9/7/82)	Do.
82-594	Generic name: Polymer of alkyl and substituted alkyl acrylates	47 FR 39241 (9/7/82)	Do.

V. 17 PREMANUFACTURE NOTICES FOR WHICH THE REVIEW PERIOD HAS BEEN SUSPENDED

PMN No.	Identity and generic name	FR citation	Date suspended
80-137	Benzeneamine, 4,4'-methylene bis [*N*-(1-methybutylidene)	45 FR 48243 (7/18/80)	Sept. 22, 1980.
80-138	Benzeneamine, 4,4'-methylene bis [*N*-(1-methybutylidene)	45 FR 48243 (7/18/80)	Do.
80-146	Phosphorodithioic acid *O,O'-di(isohexyl, isoheptyl, isooctyl, isononyl, isodecyl) mixed esters, zinc salt.*	45 FR 49153 (7/23/80)	Sept. 17, 1980.
80-147	Phosphorodithioic acid *O,O'*-di(isohexyl, isoheptyl, isooctyl, isononyl, isodecyl) mixed esters	45 FR 49153 (7/23/80)	Do.
80-264	Generic name: Benzeneamine, [*N*-(1-methylhexylidene)-*N*-(1-methyl butylidene)-4,4'-methylene bis].	45 FR 73127 (11/4/80)	Dec. 24, 1980.
81-558	4-hydroxy-3-(5-(2-hydroxysulfonyloxy) ethylsulfonyl)-2-methoxyphenylazo)-7-succinylamino-2-naphthalenesulfonic acid disodium salt.	46 FR 55146 (11/6/81)	Jan. 27, 1982.
81-561	4-[4-[2-(hydroxysulfonyoxy)ethylsulfonyl]-5-methyl-2-methoxyphenylazo]-3-methyl-1-(3-sulfophenyl)- 5-pyrazolone disodium salt.	46 FR 55146 (11/6/81)	Do.
81-660	4-hydroxy-3-(2-methoxy-5-methyl-4-(2-(hydroxysulfonyloxy)ethylsulfonyl)phenylazo)-1-naphthalene sulfonic acid disodium salt.	47 FR 1021 (1/8/82)	Mar. 28, 1982.
81-661	4-hydroxy-3-(2-methoxy-5-methyl-4-(2-(hydroxysulfonyloxy)ethylsulfonyl)phenylazo)-6-(3-sulfophenyl)amino-2-naphthalenesulfonic acid trisodium salt.	47 FR 1021 (1/8/82)	Do.
82-60	Generic name: Zinc, O,O-bis alkylphosphoro dithioate	47 FR 5932 (2/9/82)	Apr. 15, 1982.
82-387	Phosphorodithioic acid, O,O', secondary butyl and isooctyl mixed esters	47 FR 25401 (6/11/82)	July 30, 1982.
82-388	Phosphorodithioic acid, O,O', secondary butyl and isooctyl mixed esters, zinc salt	47 FR 25401 (6/11/82)	Do.
82-586	Generic name: Ethyl ester of tertiary butyl carbomonocyclic acid	47 FR 39242 (9/7/82)	Nov. 16, 1982.
82-676	Generic name: Heterocyclic, aromatic methane	47 FR 43161 (9/30/82)	Nov. 22, 1982.
82-678	Generic name: Chlorinated aromatic azo anthraquinone pigment	47 FR 43161 (9/30/82)	Do.
82-679	Generic name: Chlorinated aromatic azo pigment	47 FR 43161 (9/30/82)	Do.
83-1	Generic name: Polyhalogenated aromatic alkylated hydrocarbon	47 FR 46371 (10/18/82)	Oct. 22, 1982.

[FR Doc. 82-35367 Filed 12-30-82; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51447; BH-FRL 2276-4]

Toxic Substances; Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the **Federal Register** of May 15, 1979 (44 FR 2558) and November 7, 1980 (45 FR 74378). This notice announces receipt of seventeen PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 83-321, 83-322, 83-323, 83-324, 83-325, 83-326 and 83-327, March 16, 1983

PMN 83-328, 83-329, 83-330, 83-331 and 83-332, March 18, 1983

PMN 83-333, 83-334, 83-335, 83-336 and 83-337, March 19, 1983

Written comments by:

PMN 83-321, 83-322, 83-323, 83-324, 83-325, 83-326 and 83-327, February 14, 1983

PMN 83-328, 83-329, 83-330, 83-331 and 83-332, February 18, 1983

PMN 83-333, 83-334, 83-335, 83-336 and 83-337, February 19, 1983

ADDRESS: Written comments, identified by the document control number "[OPTS-51447]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Theodore Jones, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460, (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107.

PMN 83-321

Manufacturer. Confidential.

Chemical. (G) Mixed glycol oligoesters of mixed dicarboxylic acids.

Use/Production. (S) Industrial component for urethane foam formulation. Prod. range: 10,000-4,500,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal, a total of 3 workers, up to 1 hr/da, up to 150 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air, 24 hrs/da, 150 da/yr. Disposal by incineration.

PMN 83-322

Manufacturer. Confidential.

Chemical. (G) Polyester of aliphatic polyol, mono basic acids and aromatic diacids.

Use/Production. (S) Commercial foam polyol. Prod. range: 1,000,000-6,000,000 lbs/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing, use and disposal: inhalation, a total of 7 workers, up to 8 hrs/da, up to 251 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air and water, 1 hr/da, 251 da/yr. Disposal by sanitary sewer.

PMN 83-323

Manufacturer. Confidential.

Chemical. (G) Polyester or aliphatic polyols, vegetable oil, and aromatic dibasic acid.

Use/Production. (S) Commercial foam polyol. Prod. range: 1,000,000-6,000,000 lbs/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing, use and disposal: inhalation, a total of 8 workers, up to 8 hrs/da, up to 251 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air with 10-100 kg/yr to water, 8 hrs/da, 251 da/yr. Disposal by sanitary sewer.

PMN 83-324

Manufacturer. Confidential.

Chemical. (G) Modified bisphenol A, epichlorohydrin polymer.

Use/Production. (G) Open use. Prod. range: 8,000-450,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal, eye, a total of 89 workers, up to 6 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air and water, 10-1,000 kg/yr to land. Disposal by biological treatment system and incineration.

PMN 83-325

Manufacturer. Confidential.

Chemical. (G) Polyester polyurethane from carbomonocyclic anhydride, alkanediols and diisocyanates.

Use/Production. (G) Open use. Prod. range: 0-300,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing, and use: dermal and eye, a total of 149 workers, up to 8 hrs/da, up to 200 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air and water, 10-10,000 kg/yr to land. Disposal by biological treatment system and incineration.

PMN 83-326

Manufacturer. Confidential.

Chemical. (G) Functionalized acrylic polymer.

Use/Production. (S) General purpose trade sales dispersant Prod. range: Confidential.

Toxicity Data. Acute oral: > 5 g/kg; Acute dermal: > 5 g/kg; Irritation: Skin — Non-irritant, Eye —Minimal.

Exposure. Manufacture, processing: dermal, eye, a total of 9 workers, up to 8 hrs/da.

Environmental Release/Disposal. More than 10,000 kg/yr released to land. Disposal by publicly owned treatment works (POTW) and approved landfill.

PMN 83-327

Manufacturer. Confidential.

Chemical. (G) Blocked isocyanate.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 83-328

Manufacturer. Confidential.

Chemical. (G) Modified copolymer of alkenoic esters and substituted alkenoic esters with styrene.

Use. (G) open use. Prod. range: 50,000-1,7500,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing and use: dermal and eye, a total of 120 workers, up to 6 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr to air and water, 10-10,000 to land. Disposal by biological treatment system, incineration and approved landfill.

PMN 83-329

Manufacturer. Confidential.

Chemical. (G) Substituted phenyl azo substituted naphthalenedisulfonic acid, sodium salt.

Use/Production. (S) Intermediate. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal, a total of 8 workers, up to 6 hrs/da, up to 5 da/yr.

Environmental Release/Disposal. No release. Disposal by navigable waterway.

PMN 83-330

Manufacturer. Confidential.
Chemical. (G) Substituted phenate.
Use/Production. (S) Intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: >3,500 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Moderate, Eye—Moderate.
Exposure. Manufacture: dermal and inhalation, a total of 12 workers, up to 2 hrs/da, up to 26 wks/yr.
Environmental Release/Disposal. No release.

PMN 83-331

Manufacturer. Confidential.
Chemical. (G) Bis-alkylated phenol.
Use/Production. Confidential. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 83-332

Manufacturer. Confidential.
Chemical. (G) Aromatic alkyd—silicone modified.
Use/Production. (S) Resin for industrial coatings low V.O.C. Prod. range: 5,000-50,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture, processing and use: dermal, inhalation and eye, a total of 53 workers, up to 8 hrs/da, up to 250 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to air and water, >10-10,000 kg/yr to land. Disposal by POTW and approved landfill.

PMN 83-333

Importer. Confidential.
Chemical. (G) Reaction product of polycyclesulfonic acid salt with phosphorus halide/halogen, subsequent reaction with an amine, subsequent reaction with an aldehyde/sodium bisulfite alkali.
Use/Import. (G) Closed use. Import range: Confidential.
Toxicity Data. Acute oral: 5,000 mg/kg; Irritation: Skin—Moderate, Eye—Moderate; LC_{50}, 96 hr, 240 mg/l; Ames Test: Negative.
Exposure. Use: dermal, up to 2 hrs/da.
Environmental Release/Disposal. No release. Disposal by biological treatment system, incineration and approved landfill.

PMN 83-334

Manufacturer. Confidential.
Chemical. (G) Polymer of alkane polyols, alkanedioic acid, and aromatic diacid.
Use/Production. (S) Coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No exposure.
Environmental Release/Disposal. No release. Disposal by incineration.

PMN 83-335

Importer. Confidential.
Chemical. (G) ((substituted phenyl)azo)naphthalenesulfonic acid, sodium salt.
Use/Production. (S) Colorant for textile fibers. Prod. range: Confidential.
Toxicity Data. Acute oral: >5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; LC_{50}>100 mg/l.
Exposure. No exposure.
Environmental Release/Disposal. No release. Disposal by POTW and biological treatment system.

PMN 83-336

Manufacturer. Minnesota Mining & Manufacturing Company.
Chemical. (S) Methanesulfonic acid, tin (2+) salt.
Use/Production. (S) Solder electroplating. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 4 workers, up to 8 hrs/da, up to 10 da/yr.
Environmental Release/Disposal. Minimal. Disposal by approved landfill.

PMN 83-337

Manufacturer. Minnesota Mining & Manufacturing Company.
Chemical. (S) Methanesulfonic acid, lead (2+) salt.
Use/Production. (S) Solder electroplating. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 4 workers, up to 8 hrs/da, up to 10 da/yr.
Environmental Release/Disposal. Minimal. Disposal by approved landfill.

Dated: December 27, 1982.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 82-35531 Filed 12-30-82; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-140027; BH-FRL 2275-5]

Toxic Substances; General Accounting Office; Disclosure of Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The General Accounting Office (GAO) has requested access to all information on premanufacture notices (PMNs) submitted under section 5(a) of the Toxic Substances Control Act (TSCA). GAO will be conducting a study of EPA's implementation of the premanufacture notification provisions of section 5 of TSCA for the Subcommittee on Commerce, Transportation, and Tourism of the House Committee on Energy and Commerce. Much of the PMN information has been claimed as confidential by submitters.

DATE: This information will be provided to GAO no sooner than January 13, 1983.

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Acting Director, Industry Assistance Office (TS-799), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Toll Free: (800-424-9065), In Washington, D.C.: (544-1404), Outside the USA: (Operator—202-544-1404).

SUPPLEMENTARY INFORMATION: In a letter to EPA, the Director of the Resources, Community, and Economic Development Division of the GAO, as the duly authorized representative of the Comptroller General, stated that GAO had been asked "to analyze EPA's process for reviewing PMNs and for deciding on the potential risks posed by new chemical substances and the need for regulatory action by EPA." To perform its analysis GAO has requested access to the PMNs. The PMN information which EPA will be providing GAO may contain confidential business information. Manufacturers and importers have been given the opportunity to claim information confidential in the PMNs submitted to EPA under section 5(a) of TSCA and have made such claims. Pursuant to 40 CFR 2.209(b), which applies to information submitted under TSCA by 40 CFR 2.306(h), EPA must provide confidential business information to GAO in response to a written request from the Comptroller General. (In this case, the Director has made the request on the Comptroller General's behalf as his authorized representative.) Before providing the information EPA is required by 40 CFR 2.209(b) to notify the submitters of the information at least ten days in advance of disclosure.

This is a notice under 40 CFR 2.209(b) to all manufacturers and importers who have submitted PMNs under section 5(a) of TSCA that EPA will provide the requested confidential business information to GAO no sooner than ten

days after publication of this notice in the **Federal Register.**

EPA will identify any information that is subject to a confidentiality claim and will inform GAO of the provisions of section 14(d) of TSCA which set criminal penalties for unlawful disclosure of confidential business information.

GAO recognizes that this confidential business information is commericially sensitive. Its auditors have experience conducting studies at other agencies involving such information. The auditors at other agenceis involving such information. The auditors have undergone background investigations to be cleared for access to national security information. Prior to access, the auditors will be briefed on EPA's security procedures as set forth in the TSCA Confidential Business Information Security Manual.

GAO auditors will be given access to confidential business information contained in PMNs and related EPA documents and will be allowed to attend meetings where such information is discussed. In addition, EPA employees will be authorized to discuss confidential PMN information with the GAO auditors.

GAO has indicated that, during the study, the auditors will have access to confidential business information only on EPA's premises and that no such information will be removed from EPA. In addition, GAO has indicated that it does not intend to include any such information in the final report to the Subcommittee. To this end, GAO will ask EPA to review any technical information to be included in the final report to verify that it does not contain confidential business information.

Dated: December 21, 1982.

John A. Todhunter,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 82-35532 Filed 12-30-82; 8:45am]

BILLING CODE 6560-50-M

[OPTS-59113; BH-FRL 2276-5]

Toxic Substances; 2-Propoxyethyl Acetate Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's revised statement of interim policy published in the **Federal Register** of November 7, 1980 (45 FR 74378). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for an exemption, provides a summary, and requests comments on the appropriateness of granting the exemption.

DATE: Written comments by: January 18, 1983.

ADDRESS: Written comments, identified by the document control number "[OPTS-59113]" and the specific TME number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Management Support Division, Environmental Protection Agency, Rm. E-401, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Theodore Jones, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M Street, SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E-107.

TME 83-18

Close of Review Period. February 3, 1983.

Manufacturer. Eastman Kodak.

Chemical. (S) 2-propoxyethyl acetate.

Use. (G) Coatings for articles. Prod. range: 135 days—14,000 kg (max).

Toxicity Data. Acute oral: 8.7 g/kg (fed), 9.5 g/kg (fasted); Acute dermal: >198/kg; Irritation: Skin, Slight; Eye, Slight; Inhalation: >934 ppm/6h; LC_{50} (96 hr.); Fathead minnow: 10-100 ul/1; LC_{50} (96 hr.); Water flea: >100 ul/1; Skin sensitization: None.

Exposure. Manufacture: dermal and inhalation, a total of 12 workers, up to 8 hrs/da, up to 12 da; processing—dermal and inhalation, a maximum of 150 workers up to 4 hrs/da, up to 30 days; use—dermal and inhalation, a maximum of 150 workers up to 4 hr/da, up to 4 days.

Environmental Release/Disposal. Less than 5 kg released to air, negligible amounts to land and water.

Dated: December 27, 1982.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 82-35530 Filed 12-30-82; 8:45 am]

BILLING CODE 6560-50-M

[OPRM FRL No. 2275-7]

Agency Forms Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 USC 3501 et seq.) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests that have been forwarded to the Office of Management and Budget (OMB) for review. The information collection requests listed are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: David Bowers; Office of Standards and Regulations; Information Management Section (PM-223); U.S. Environmental Protection Agency; 401 M Street, SW.; Washington, D.C. 20460; telephone (202) 382-2742 or FTS 382-2742.

SUPPLEMENTARY INFORMATION:

Water Programs

National Pollutant Discharge Elimination System (NPDES) Application Forms

- Title: Application for Permit to Discharge Wastewater (EPA ID 0178)—

Form A (Major Publicly Owned Treatment Works)
Form C (Major New Industrial Sources)
Short Form A (Minor Publicly Owned Treatment Works)
Short Form C (Minor New Industrial Sources)
Short Form D (Services, Wholesale and Retail Trade, and Other Commercial Establishments)

Respondents: Owners and operators of businesses, publicly owned treatment works and other institutions applying for an NPDES permit, except those covered under Form 2B, below.

- Title: Application Form 1—General Information (EPA ID 0227).

Respondents: Owners and operators of businesses and other institutions applying for an NPDES permit under Forms 2B or 2C, below.

- Title: Application for Permit to Discharge Wastewater—Form 2B (EPA ID 0226).

Respondents: Owners and operators of concentrated animal feeding and

aquatic animal production facilities (new sources and existing permits).

• Title: Application for Permit to Discharge Wastewater—Form 2C (EPA ID 0238).

Respondents: Owners and operators of businesses with existing manufacturing, commercial, mining or silvicultural operations (existing permits only).

Abstract for EPA IDs 0178, 0226, 0227 and 0238: Under the Clean Water Act, facilities intending to discharge any pollutant into national waters must obtain an NPDES permit. Applicants submit the appropriate form(s) to the permit authority (state agency or EPA regional offices), describing the facility location, receiving waters and nature of the proposed discharge. The permit authority approves/disapproves the application and decides what conditions will be included on those approved.

• Title: Recordkeeping of Supporting Data for Application for Permit to Discharge Wastewater (EPA ID 0094).

Abstract: Data used to support applications must be retained by permittees for at least three years. This information must be available for EPA review during compliance inspections and possible subsequent enforcement actions.

Respondents: Owners and operators of facilities applying for an NPDES permit under any of the above application forms (EPA IDs 0178, 0226, 0227, 0238).

Industry Surveys for Development of Effluent Limitation Regulations

• Title: Survey of Nonferrous Metals Manufacturing Industry, Phase 2 (EPA ID 1016).

Respondents: Owners and operators of businesses involved in the manufacture of nonferrous metals that were not covered by 40 CFR 421.

• Title: Survey of Nonferrous Metals Forming Industry (EPA ID 1017).

Respondents: Owners and operators of businesses involved in the deformation of nonferrous metals to produce mill products, except aluminum, coper and there alloys, SIC Codes 335, 336, 349.

• Title: Survey of Plastic Molding and Finishing Industry (EPA ID 1018).

Respondents: Owners and operators of industries in the plastics molding and forming category, SIC Code 3079.

Abstract for EPA IDs 1016, 1017 and 1018: EPA is surveying businesses on production processes, wastewater characteristics, and wastewater treatment technologies and costs. The Agency will use the information to develop effluent limitation regulations as required by the Clean Water Act.

Solid Waste Programs

• Title: Location Requirements for Hazardous Waste Management Facilities (EPA ID 0812).

Abstract: Hazardous waste facilities must apply for a permit to locate their operation in seismically active areas and/or 100-year floodplains. EPA requires this information to determine if facilities are in compliance with the locations standards under the Resource Conservation and Recovery Act (RCRA) and for further refinement of EPA's permitting requirements.

Respondents: Owners or operators of hazardous waste facilities.

Agency Forms Cleared by OMB Between November 15 and December 10, 1982

• EPA ID 0011, Selective Enforcement Auditing—Automobile, was cleared on November 18 (OMB #2000-0225).

• EPA ID 0971, Application for Variance from Secondary Treatment Requirements, was cleared on December 7 (OMB #2000-0427).

Comments on all parts of this notice should be sent to:

David Bowers, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), 401 M Street, SW., Washington, D.C. 20460.

and

Anita Ducca, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, D.C. 20503.

Dated: December 21, 1982.

C. Ronald Smith,

Director, Office of Standards and Regulations.

[FR Doc. 82-35535 Filed 12-30-82; 8:45 am]

BILLING CODE 6560-50-M

[OPTS 46011A; TSH-FRL 2277-3]

Initiation of Annual Review Process of Guidelines for Development of Test Data; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Extension of Comment Period.

SUMMARY: EPA is extending the comment period on the testing guidelines it offered for comment in its notice of initiation of the agency's annual review of these guidelines. The agency is taking this action to insure all interested persons an adequate opportunity to comment on the guidelines.

DATE: Written comments must be received on or before Feburary 4, 1983.

ADDRESS: Written comment should be sent to: Document Control Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, D.C. 20460.

Comments should bear the identifying document control number OPTS 460011A. The public record regarding this notice is available for public inspection in Rm. E-107, at the above address from 8:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTRACT: Douglas G. Bannerman, Acting Director, Industry Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-511, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9056), In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 22, 1982 (47 FR 41857), EPA announced the initiation of its annual review of generic test guidelines. In the announcement, EPA indicated that the test guidelines would be available from the National Technical Information Service (NTIS) early in October 1982 and that the comment period on them would close on January 3, 1983.

In view of the fact that the guidelines did not become available from NTIS until several weeks later than anticipated, several organizations have requested an extension of time for providing comments. In response to this need for additional time to comment, the agency has extended the comment period to February 4, 1983.

Dated: December 23, 1982.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 82-35538 Filed 12-30-82; 8:45 am]

BILLING CODE 6560-50-M

[OW-Frl 2276-2]

Management Advisory Group to the Construction Grants Program; Open Meeting

Under Public Law 92-463, notice is hereby given that a meeting of the Management Advisory Group (MAG) to the Construction Grants Program will be held at the Marina Marriott Hotel, 13480 Maxella Avenue, Marina del Rey (Los Angeles), California, on January 24, 1983, at 9:00 AM and at the Joint Water Pollution Control Plant, 24501 S. Fiqueroa, Carson, California, on January 25, 1983.

The agenda for the meeting includes reviews of the status of the Evironmental Protection Agency (EPA) municipal wastewater treatment construction grants program, municipal compliance policy, and completion or reports by task forces on the financial capability of municipalities to finance wastewater treatment facilities, municipal compliance with the requirements of the Clean Water Act, and management of sludge. New task forces on other subjects are expected to be established. The agenda will also include briefings and discussions on other topics of current or future interest to MAG.

The meeting will be open to the public. To assist in planning, it would be appreciated if members of the public who will be attending the meeting, would contact Ms. Georgette Brown, at the Environmental Protection Agency, WH-547, 401 M Street, S.W. Washington, D.C. 20460 or on (202) 382-5859, but this is optional.

Date: December 15, 1982.

Frederic A. Eidsness, Jr.,

Assistant Administrator for Water.

[FR. Doc. 82-35534 Filed 12-30-82; 8:45 am]

BILLING CODE 6560-50-M

[W-9-FRL 2271-1]

Modification of General NPDES Permit for Oil and Gas Operations on the Outer Continental Shelf (OCS) off Southern California

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice of proposed modification of general NPDES permit.

SUMMARY: On February 18, 1982, the Regional Administrator, Region 9, Environmental Protection Agency, issued a general National Pollutant Discharge Elimination System (NPDES) permit (No. CA0110516) authorizing discharges from offshore oil and gas facilities operating in Federal waters off Southern California (47 FR 7312). EPA proposes to modify this permit to include as authorized discharge sites the tracts which were leased in two recent Minerals Management Service (MMS) lease sales: Lease Sale #68 held on June 2, 1982 and Reoffering Sale #2 (Southern California area) held on August 5, 1982. The new parcels are in the same geographic area and oil and gas facilities which will operate in these parcels will involve the same types of operations, discharge the same types of wastes, and require the same effluent limitations, operating conditions, and monitoring requirements. Therefore, these facilities will be more appropriately controlled under the general permit (No. CA 0110516) than under individual permits or a separate general NPDES permit.

DATES: Comment Period—Interested persons may submit to the Regional Administrator, Region 9, comments on this proposed modification, at the address shown below no later than February 2, 1983.

ADDRESS: Comments should be sent to the Regional Administrator, Region 9, U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Eugene Bromley, Region 9, Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105. [Telephone (415) 974-8330].

SUPPLEMENTARY INFORMATION: General NPDES permit No. CA0110516 authorizes discharges from offshore oil and gas facilities operating on currently active lease parcels in Federal waters offshore Southern California. These parcels were leased in Lease Sales #53, #48, #35 and the 1966 and 1968 Federal lease sales. Twenty-nine additional tracts were leased by MMS in the recent Lease Sale #68. These tracts are (by OCS lease parcel number): P-0456, P-0457, P-0459, P-0460, P-0461, P-0462, P-0463, P-0464, P-0465, P-0467, P-0468, P-0469, P-0472, P-0473, P-0474, P-0475, P-0478, P-0479, P-0480, P-0481, P-0482, P-0483, P-0484, P-0485, P-0486, P-0487, P-0488, P-0489, P-0490. Ten additional tracts were leased in Reoffering Sale #2, Southern California area. The numbers of these parcels are (by OCS lease parcel number): P-0491 through P-0500, inclusive. EPA proposes to modify the geographic area covered by the general permit to include authorization to discharge on the tracts awarded in these two two lease sales.

The fact sheet accompanying the issuance of the general permit set forth the principal facts and the significant factual, legal, and policy questions considered in the development of the terms and conditions of the permit. As discussed below EPA believes that these terms and conditions are also appropriate for discharges occurring on the new lease parcels.

(1) *Geographical coverage of the General Permit.* Section I of the fact sheet discussed the basis for the geographic coverage of the general permit. The Consolidated Permit Regulations provide that the Director of an NPDES permit program may modify a NPDES permit upon receipt of any information which indicates substantial additions to permitted activities after final permit issuance (40 CFR 122.15(a)). New lease sales conducted by the MMS authorizing offshore oil and gas activities in the same geographic area covered by a final general NPDES permit are cause for permit modification. The proposed modification is a change in the geographic area only and extends authorization to discharge from oil and gas operations to parcels adjacent or nearly adjacent to those already covered by the general NPDES permit. In accordance with 40 CFR 122.59, the effluent limitations, operating conditions and monitoring requirements of the general permit will remain the same. Under certain circumstances outlined in Part III.A of the general permit, an individual NPDES permit may be required by the Regional Administrator.

(2) *403 Ocean Discharge Criteria.* Section 403 of the Clean Water Act requires that an NPDES permit for a discharge into marine waters be issued in compliance with EPA's guidelines for determining the degradation of marine waters. The Agency's finding under the guidelines were presented in Part III.F. of the general permit fact sheet. Since the Agency has not identified any new biological communities, critical or endangered species in the new lease parcels, its conclusions relative to the physical, chemical and biological transport of the pollutants to be discharged from the permitted facilities remain the same. The Agency has also not identified any new special aquatic sites, recreational or major commercial fishing areas in the proposed expansion of the general permit area. The special effluent limitations and operating conditions imposed on drilling muds and cuttings and on produced waters in the general permit should provide adequate protection of the marine environment and not adversely affect marine species or marine communities beyond the immediate area of the discharge.

(3) *Consistency with California Coastal Zone Management Program.* The Coastal Zone Management Act (CZMA) and its implementing regulations (15 CFR Part 930) require that any Federally-licensed activity affecting the coastal zone with an approved Coastal Zone Management Program (CZMP) be determined to be consistent with the CZMP. The proposed modification of the general permit will not authorize discharges into the territorial seas of the State of California, nor into any body of water landward of the inner boundary of the territorial seas or any wetland adjacent to such waters. However, several of the new lease

parcels lie within 1,000 meters of State waters and discharges on these parcels may have some effect on the coastal zone of the State of California. Therefore, the provision of the general permit providing for CZMP consistency review prior to authorization to discharge from facilities within 1,000 meters will be applicable to some new lease parcels. The provision requires that operations under the general permit may not be conducted within 1,000 meters of the territorial seas of the State of California until the plan of exploration or development has been certified to the Coastal Commission of the State of California as consistent with the CZMP and has been concurred upon by that Commission. Since the requirements for certification will apply to the new parcels as well as to the old, the proposed modification will not conflict with the requirements of the CZMP.

(4) *Endangered Species Consultations.* The Endangered Species Act requires that each Federal Agency ensure that any of their actions, such as permit issuance, do not jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of their habitats. The MMS has undertaken endangered species reviews including full consultation with the Department of Commerce, the National Marine Fisheries Service and the Department of the Interior's Fish and Wildlife Service, with respect to all oil and gas leasing in the general permit area. Prior to issuance of the general permit EPA concluded that the discharges authorized by the general permit would neither jeopardize the continued existence of any endangered or threatened species nor adversely affect its critical habitat. Both the National Marine Fisheries Service and the U.S. Fish and Wildlife Service concurred with this conclusion.

The proposed modification extends the authorization to discharge to parcels nearby to those on which discharges are currently authorized and within the general area in which the endangered species reviews were conducted. As these new parcels do not contain any previously unidentified listed species or any newly identified habitats which will be jeopardized or adversely affected by an authorization to discharge under the general permit, EPA believes that the previous conclusion regarding effects on endangered species is applicable to the new parcels included in this proposed modification.

(5) *Economic Impact.* EPA has reviewed the effect of Executive Order 12291 on this permit modification and has determined that it is not a major rule under that order. The modification will result in reduced paperwork required of regulated facilities by consolidating the currently active lease parcels into one permit.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

After review of the facts presented in the notice printed above, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that this modification will not have a significant impact on a substantial number of small entities.

Dated: October 27, 1982.

Richard Coddington,

Acting Director, Water Management Division.

[FR Doc. 82-35528 Filed 12-30-82; 8:45 am]

BILLING CODE 6560-50-M

[W-9-FRL-2271-2]

Issuance of Final General NPDES Permit for Oil and Gas Operations on the Outer Continental Shelf (OCS) off Southern California; Corrections

AGENCY: Environmental Protection Agency.

ACTION: Notice of final general NPDES permit; correction.

SUMMARY: On Thursday, February 18, 1982, Region 9 of the Environmental Protection Agency published at 47 FR 7312 notice of a final general NPDES permit for oil and gas operations on the outer continental shelf off Southern California. Part III.C.18 of the permit contains a table of maximum quantities of drilling mud components to be used in formulating drilling mud which is discharged. The heading "number per barrel" should read "pounds per barrel." The last sentence of Section I of the fact sheet (FR 7318) should read: "Until new source performance standards are finally promulgated, and EPA determines that it is appropriate to modify this general permit to include new sources, the Agency is not required to conduct an environmental review for the issuance of this general NPDES permit under the National Environmental Policy Act (NEPA)." In Appendix A, Public Comments (FR 7320) the equation to be used for determining compliance with the heavy metals limits for produced water should be:

$C_e = C_o - D_m (C_o - C_s)$

Richard Coddington,

Acting Director, Water Management Division.

[FR Doc. 82-35529 Filed 12-30-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Colonial Bancorporation, Inc.,* Thiensville, Wisconsin; to acquire 100 percent of the voting shares or assets of The First National Bank of Port Washington, Port Washington, Wisconsin. Comments on this application must be received not later than January 26, 1983.

2. *F & M Bancorporation, Inc.,* Kaukauna, Wisconsin; to acquire at least 80 percent of the voting shares or assets of Forest Junction State Bank of Forest Junction, Forest Junction, Wisconsin. Comments on this application must be received not later than January 26, 1983.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Western Bancorporation, Inc.,* Houston, Texas; to acquire 100 percent of the voting shares or assets of Western Bank—North Wilcrest, N.A., Houston, Texas, a proposed new bank. Comments on this application must be received not later than January 26, 1983.

Board of Governors of the Federal Reserve System, December 27, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-35507 Filed 12-30-82; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed De Novo Nonbank Activities

The organizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 115.4(b)(1)), for permission to engage de novo, directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to product benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *Security Pacific Corporation*, Los Angeles, California (commercial financing, leasing and servicing activities; United States): To engage through its subsidiary, Security Pacific Finance Corp., in making or acquiring for its own account, or for the account of others, asset based business loans and other commercial or industrial loans and extensions of credit, such as would be made by a factoring, rediscount or commercial finance company, and leasing and servicing activities with respect to personal property and equipment and real property. These activities would be conducted from an office of Security Pacific Finance Corp., in Oak Brook, Illinois, serving the United States. Comments on this application must be received not later than January 24, 1983.

2. *Security Pacific Corporation*, Los Angeles, California (investment and financial advising; United States): To engage through its subsidiary, Security Pacific Investment Real Estate, Inc. in acting as investment or financial adviser to the extent of providing portfolio investment advice with respect to real property interests. Such activities would be conducted from offices of Security Pacific Investment Real Estate, Inc. in Los Angeles, California and New York, New York, serving the United States. Comments on this application must be received not later than January 26, 1983.

Board of Governors of the Federal Reserve System, December 27, 1982.

James McAfee,

Associate Secretary of the Board.

[FR. Doc. 82-35510 Filed 12-30-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Straz Investment Co., Inc.*, St. Petersburg Beach, Florida; to become a bank holding company by acquiring 93.24 percent of the voting shares of First Bank & Trust Company, Belleair Bluffs, Florida. Comments on this application must be received not later than January 26, 1983.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *The Sedgwick Bancshares, Inc.*, Sedgwick, Kansas; to become a bank holding company by acquiring 80 percent of the voting shares of The Sedgwick State Bank, Sedgwick, Kansas. Comments on this application must be received not later than January 26, 1983.

Board of Governors of the Federal Reserve System, December 27, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-35509 Filed 12-30-82; 8:45 am]

BILLING CODE 6210-01-M

Barnett Banks of Florida, Inc.; Merger of Bank Holding Companies

Barnett Banks of Florida, Inc., Jacksonville, Florida, has applied for the Board's approval under section 3(a)(5) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5)) to merge with Suncoast Bancorp, Inc., Vero Beach, Florida. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than January 21, 1983. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 27, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-35506 Filed 12-30-82; 8:45 am]

BILLING CODE 6210-01-M

Ranchers Investment Corp.; Formation of Bank Holding Company

Ranchers Investment Corporation, Winner, South Dakota, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Ranchers National Bank of Winner, Winner, South Dakota. The factors that are considered in acting on the

application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Ranchers Investment Corporation, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Ranchers National Agency, Winner, South Dakota.

Applicant states that the proposed subsidiary would engage in general insurance agency activities in a community that has a population not exceeding 5,000. These activities would be performed from offices of Applicant's subsidiary in Winner, South Dakota, and the geographic areas to be served are the Winner, South Dakota area. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. not later than January 26, 1983.

Board of Governors of the Federal Reserve System, December 27, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-35508 Filed 12-30-82; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

December 22, 1982.

Background

When executive departments and independent agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Paperwork Reduction Act (44 U.S.C. Chapter 35). Departments and agencies use a number of techniques to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibilities under the act also considers comments on the forms and recordkeeping requirements that will affect the public. Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. OMB's usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

List of Forms Under Review

Immediately following the submission of a request by the Federal Reserve for OMB approval of a reporting or recordkeeping requirement, a description of the report is published in the **Federal Register**. This information contains the name and telephone number of the Federal Reserve Board clearance officer (from whom a copy of the form and supporting documents is available). The entries are grouped by type of submission—i.e., new forms, revisions, extensions (burden change), extensions (no change), and reinstatements.

Copies of the proposed forms and supporting documents may be obtained from the Federal Reserve Board clearance officer whose name, address, and telephone number appear below. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

OMB Reviewer—Richard Sheppard—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-6880)

Request for Revision to an Existing Report

1. Report title: Weekly Report of Assets and Liabilities for Large Banks
Agency form number: FR 2416.
Frequency: Weekly
Reporters: Commercial banks
SIC Code: 602pt.
Small businesses are affected
General description of report:
Respondent's obligation to respond is voluntary (12 U.S.C. 248(a), (i) and 353 *et seq.*); a pledge of confidentiality is promised (5 U.S.C. 552(b)(4) and (b)(8)).

The report provides balance sheet data used for the calculation of various components of the money supply and bank credit, the trends in investment policy, and liquidity analysis; liability-side balance sheet data are used for analysis of sources of funds and capital adequacy.

2. Report title: Weekly Survey of Money Market Deposit Accounts and "Super NOW" accounts.
Agency form number: FR 2900s
Frequency: Weekly; quarterly
Reporters: depository institutions; commercial banks
SIC Code: 602, 603, 605, 612, 614
Small business are affected
General description of report:
Respondent's obligation to reply is mandatory (12 U.S.C. 248, 461, 3105); a pledge of confidentiality is promised.

A Survey of MMDAs and "Super NOWs"—for a period of six months—to obtain amounts outstanding of new money market deposit accounts and "Super Now" accounts established by the DIDC.

Board of Governors of the Federal Reserve System, December 27, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-35505 Filed 12-30-82; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. R-0414]

Modifications to Federal Reserve Bank Check Collection Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Approval of proposal to modify Federal Reserve Bank check collection services.

SUMMARY: The Board of Governors has approved a proposal of the Federal Reserve Banks to modify their check

collection services. The program will extend the times during which checks may be deposited at Federal Reserve offices and the times at which checks are presented to certain paying banks.

EFFECTIVE DATE: February 24, 1983. On that date, Reserve Banks will begin implementing new fee schedules, deposit deadlines, and funds availability schedules for check collection services. The program will be implemented over a five month period.

FOR FURTHER INFORMATION CONTACT: Elliott C. McEntee, Assistant Director (202/452-2231), or Florence M. Young, Program Manager (202/452-3955), Division of Federal Reserve Bank Operations; Gilbert T. Schwartz, Associate General Counsel (202/452-3625), Daniel L. Rhoads, Attorney (202/452-3711), or Joseph R. Alexander, Attorney (202/452/2489), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: On August 4, 1982, the Board requested comment on a proposal by the Federal Reserve Banks to improve the speed and efficiency of the nation's payments mechanism by modifying the Federal Reserve System's check collection procedures. 47 FR 34190 (August 6, 1982). The proposal presented an integrated plan (1) to extend the deadlines for depositing checks for collection at Federal Reserve offices and (2) to extend the times at which Federal Reserve offices present checks to certain paying institutions. Under the proposal, Reserve Banks would accept checks three to five hours later from depository institutions using the Federal Reserve's Interdistrict Transportation System ("ITS"). As a result of extended deposit deadlines, depository institutions would have a longer time to process checks and receive improved funds availability for such checks.

Under the proposal, the earliest final presentment time for checks drawn of depository institutions located in Federal Reserve cities would be established at 12:00 noon local time. Later presentment might also be implemented for institutions located outside of Federal Reserve cities that receive a substantial dollar value of checks each day and where special arrangements are warranted. The proposal also stated that Reserve Banks were considering development of special services, such as providing the MICR line data from checks on computer tape or providing account information and dollar totals to payors, in advance of the presentment of the checks where requested by the paying bank.

The Reserve Banks informed depository institutions of the proposed changes to the Reserve Bank's check clearing services in May and June, 1982. Subsequently, the Board determined that it would be desirable to request public comment to assist it in evaluating the Reserve Banks' proposal.

Shortly after the proposal was published for comment, to assist interested parties in evaluating the proposal, the Reserve Banks distributed the fee schedules and deposit deadlines that they planned to implement if the proposal were adopted. A comprehensive proposal for eliminating and pricing Federal Reserve float was published for public comment also. 47 FR 50342 (November 5, 1982).

A. *Comments and Analysis.* A total of 557 comments were received on the proposal. Most of the commenters supported the overall purpose of the proposal to accelerate the collection of checks. The specific proposal received general support from 255 commenters. Thrity-five commenters supported a portion of the proposal but expressed reservations about certain of its aspects. Two hundred sixty-seven commenters opposed the proposal.

Support for the proposal was received primarily from small- and medium-sized commercial banks, savings and loan associations, credit unions, consumers, and several trade associations representing these parties. In addition, 20 correspondent and city banks concurred with the proposal. These commenters believed that if the proposal were implemented it would speed up the collection of checks and would benefit most depository institutions and their customers. The types of improvements that were anticipated included: (1) Increased collected deposit balances; (2) reduced levels of check clearing float; and (3) expedited returns of unpaid checks. Further, many depository institutions mentioned that they would benefit from the increased competition among providers of check collection services.

Objections to the proposal were raised primarily by banks located in Federal Reserve cities, larger correspondent banks located outside of Federal Reserve cities, small depository institutions that are dependent upon third-party processors, non-financial companies, and air couriers. The concerns expressed by these commenters generally fell into three broad categories—the operational ramifications of the proposal, the impact on competition among depository institutions, and the impact on competition between the Reserve Banks and correspondent banks.

(1) *Operational concerns.* Commenters opposed to the proposal raised several operational concerns. Some commenters stated that later presentment of checks to city and selected RCPC and country institutions[1] would disrupt current internal processing schedules, necessitating additional staff and equipment, and make the calculation of reserve positions more difficult. A number of commenters also stated that later presentment would disrupt the cash management services provided to corporations and services provided to smaller depository institutions, such as demand deposit accounting and account balance reporting.

It is recognized that implementation of a policy to present or dispatch checks to paying institutions located in Federal Reserve cities later would be a departure from the practice of most Federal Reserve Banks to present checks within the time frames established by local clearinghouse associations. However, the Board does not believe that the later presentment times proposed by the Reserve Banks would represent a substantial change from current practice. First, the final presentment times established by a majority of clearinghouse associations located in Federal Reserve cities range from 10:00 a.m. to 11:30 a.m. local time, which are close to the proposed times. Second, the Reserve Bank's current practice of making earlier "courtesy" presentments would not change.

Studies also indicated that large correspondent banks make extensive use of direct presentment of "on us" checks.[2] An analysis of availability schedules for a sample of banks demonstrated that some correspondent banks have as many as 200 direct-send relationships with depository institutions throughout the country. Currently, deadlines for "on us" presentments are usually the close of the business day for "over-the counter" (teller) transactions, which is typically 4:00 p.m. Based on these findings, it appears that many depository institutions already have made, and are willing to make, operational adjustments in order to derive the benefits that can

[1] RCPC institutions are depository institutions located in areas designated as RCPC zones which are outside Federal Reserve office cities. Country institutions are depository institutions located outside Federal Reserve office cities and RCPC zones.

[2] "On us" checks refer to those checks drawn by cutomers on the paying institution.

be realized by accelerating the collection of checks.

Only a few commenters submitted estimates of the impact of the proposal on their operating costs. It appears that their responses were based on the assumption that a large number of the checks presented to them would be received at 12:00 noon. Since the Reserve Banks would continue to make earlier courtesy presentments, such that only a small proportion of checks presented for payment will be received by these institutions later, these estimates generally were not helpful in evaluating the effects of the proposal.

While reserve account charges for check presentments are an important element in the calculation of an institution's reserve position, the dollar value of the charges is only a small proportion (about 10 percent) of total reserve account charges. Therefore, effecting the charge somewhat later in the day to the institution's reserve account for checks presented to it should not pose a major problem. Additionally, depository institutions are able to adjust their reserve positions until 6:30 p.m., Eastern time, when the Fedwire closes.

The potential of the proposal to disrupt the provision of cash management services to corporate customers was also considered. After considering the comments on this issue, the Board determined that the program should not have any significant disruptive effect upon the provision of such services or on financial markets. To the extent that there is any effect, the Board believes that it would be temporary until the markets have had an opportunity to adjust. Further, the impact of later presentment will be minimized by the provision of special services for payor banks (such as providing MICR line data on computer tapes or providing balance information) that Reserve Banks are developing. These services and courtesy presentments should also help alleviate the impact of later presentment times on service bureaus and correspondent banks that may choose to modify their processing schedules. In addition, the 6:30 p.m. Fedwire cut-off time should provide institutions with ample time to sell or purchase funds.

(2) *Competition among depository institutions.* Some commenters also expressed concern that the proposal would disrupt current patterns of competition among different classes of depository institutions. Specifically, some commenters expressed their belief that later presentment to city institutions that provide corporate disbursement services could result in a competitive disadvantage to those institutions unless a similar change were made in the presentment times for RCPC and country institutions that may provide similar corporate services. Further, it was stated that later presentment to selected RCPC and country institutions that provide corporate disbursement services would result in a competitive advantage to other RCPC and country institutions in the same region.

The program has been modified to take these comments into account. In order to assure that non-city institutions do not obtain an unfair advantage, later presentment will be applied to RCPC and country paying institutions that receive a substantial dollar value of checks. Further, deposit deadlines for checks drawn on these institutions will be extended to times generally comparable to deadlines for checks drawn on city institutions. However, because of the large geographic area and the large number of institutions in RCPC and country zones, it is not possible to treat all of these institutions in exactly the same manner. In order to assure that similarly situated RCPC and country institutions are treated comparably, if the volume of activity increases for specific institutions, they may also be included in this program.

(3) *Competition between Reserve Banks and depository institutions.* The third major concern raised by commenters was that the Federal Reserve was competing unfairly with other providers of payments services. Several commenters stated that the proposal to extend deposit deadlines for institutions using Federal Reserve transportation without similar extensions for institutions using their own transportation would enhance the Federal Reserve's competitive position *vis-a-vis* the private sector and result in volume shifts to the Federal Reserve. It was also stated that the proposed prices would provide the Reserve Banks an unfair competitive advantage because processing fees would not recover total costs, the interdistrict transportation surcharge would not fully recover costs, and the cost of Federal Reserve float would not be included in the fees. Some commenters also stated tht the Reserve Banks' proposed fee schedules favored smaller depository institutions and, therefore, discriminated against larger institutions.

Further analysis of the proposed different deposit deadlines for ITS users and direct sending institutions indicated the potential for temporary disruptions in check clearing patterns. To avoid this problem, the program has been modified to provide later deposit deadlines to all depositors—intraterritory institutions, institutions that direct send to other Federal Reserve offices, and institutions using the Federal Reserve's ITS network.

The fee schedules that the Reserve Banks proposed for implementation in conjunction with the changes in the System's check collection services were designed to recover total operating costs plus the private sector adjustment factor ("PSAF"). A review of the proposed prices indicates, that they fairly reflect the cost of providing the services. The schedule of fees to be implemented in 1983 by the Reserve Banks will recover the total costs of providing the check collection services, including the 16 percent PSAF.

The proposed ITS surcharge was designed to recover the costs of transporting checks on the network based on estimated mature volume levels. The surcharge has been modified to assure that all costs of transporting checks on the network, based on estimated 1983 volume are recovered.

As previously indicated, the Board has requested comment on proposals to reduce and price for float. It is anticipated that the proposals will be reviewed by the Board in late January.

(4) *Other issues.* A number of commenters expressed concern that the Federal Reserve had a competitive advantage over the private sector because of its role as both competitor and regulator. Commenters cited the ability of Reserve Banks to avoid payment of presentment fees, to obtain payment from paying institutions by the close of business on the day of presentment in the form of immediately available funds, and to vary the check collection rules of the Uniform Commercial Code. The Board has carefully evaluated these comments. The Board believes that the program does not represent an exercise of regulatory authority and does not result in a competitive advantage for Reserve Banks. The move to later presentment represent the exercise of the same rights that all presenting banks possess under the Uniform Commercial Code. With regard to the issue of presentment fees, the Federal Reserve Act (12 U.S.C. 342) prohibits the imposition of such fees on Reserve Banks. In any event, there is a question as to whether a paying bank is performing a service for which a fee may be assessed when it pays checks drawn on it in the ordinary course of business. In addition, the Board does not believe that the ability to charge an institution's account at the Reserve Bank represents a significant advantage since correspondent relationships

between depository institutions may also provide for such arrangements.

Several commenters also suggested that the manner in which the proposal was being implemented did not comply with the procedural requirements of the Administrative Procedure Act or the due process guarantees of the Constitution. These commenters expressed the view that the request for comment did not provide enough time or information to enable interested parties to comment on the proposal in a meaningful way. Some commenters also suggested that the Board should conduct formal hearings before an administrative law judge before making its decision on the proposal. After a review of applicable law, the Board has concluded that the notice and comment procedures adopted by the Board were sufficient to inform interested parties of the scope and nature of the proposal and that, under current law, a formal hearing before an administrative law judge is not required.

B. *Board Action.* After review of the comments the Board has determined to approve the following program to accelerate the collection of checks by Reserve Banks.

1. Reserve Banks will have checks available for presentment [3] (or dispatch) to paying institutions no later than 12:00 noon local time. The transition to later presentment will be accomplished in two steps. On February 24, 1983, presentment will be moved to 11:00 a.m.; on May 2, 1983, it will be moved to 12:00 noon.

2. The later presentment policy program will be applied to RCPC and country paying institutions that receive a substantial dollar value of checks. Further, deposit deadlines for checks drawn on high dollar RCPC and country institutions will be extended beyond the deadlines that were originally published by the Reserve Banks. Generally, these deadlines will be comparable to the deadlines for checks drawn on city institutions.

3. Each Reserve office's later deposit deadlines will be made available to all depositors—intraterritory institutions, institutions that direct send to other Federal Reserve offices, and institutions using the Federal Reserve's ITS network.

4. The revised fee schedules, like those published in August, will be deigned to recover the full costs of the check collection service plus the 16 percent private sector adjustment factor. The ITS surcharge will be set to recover the full costs of transporting checks over the network, based on 1983 volume estimates.

5. In order to provide depository institutions and their customers with adequate lead time, the program will be implemented in 1983 as follows:

Jan. 17—Reserve Banks announce new prices, deposit deadlines, and funds availability schedules for check services.

Jan. 31—Recommendations will be presented to the Board on the float reduction/pricing program.

Feb. 24—Reserve Banks implement new deposit deadlines and new prices for check services, and move the time for presentation of checks drawn on city institutions to 11:00 a.m.

May 2—Reserve Banks move presentment for checks drawn on city institutions to 12:00 noon.

July 1—Reserve Banks implement new deposit deadlines for checks drawn on certain non-city institutions and implement the later presentment times for these institutions.

The Board has carefully reviewed the impact of the program on depository institutions. The Board believes that smaller institutions will benefit substantially from the program in the form of better funds availability. Larger institutions will also benefit from better funds availability and the payor bank services to be offered by the Reserve Banks. The Board has determined that the program will accelerate the collection of checks and represent a more efficient utilization of resources, theregy enhancing the efficiency of the nation's payments mechanism.

By order of the Board of Governors of the Federal Reserve System, December 27, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-35504 Filed 12-30-82; 8:45 am]

BILLING CODE 6210-01-M

[3] Presentment indicates the time that Federal Reserve offices will present checks at clearinghouses or make them available for pick up at the Reserve office. Where deliveries must be made to city institutions outside a clearinghouse, delivery will be made as close as possible to these hours.

HEALTH AND HUMAN SERVICES DEPARTMENT

Public Health Service

Health Resources and Services Administration; Medical Reimbursement Rates for Fiscal Year 1983; Inpatient and Outpatient Medical Care

Notice is given that the Assistant Secretary for Health, under the authority of Sections 321(a) and 322(b) of the Public Health Service Act (42 U.S.C. 248(a) and 249(b)), has approved the following reimbursement rates for inpatient and outpatient medical care in facilities operated by the Health Resources and Services Administration for Fiscal Year 1983: Emergency Non-Beneficiaries, Beneficiaries of Other Federal Agencies, Medicare and Medicaid Beneficiaries.

Inpatient Services per day—$282.00 (In Alaska $358.00).

Outpatient Services per visit—$55.00 (In Alaska $88.00).

Dated: December 27, 1982.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

[FR Doc. 82-35558 Filed 12-30-82; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-6659-A]

Alaska Native Claims Selection

Executive Order (EO) 626, as amended, withdrew an area not to exceed 40 acres for school purposes on May 4, 1907 at Kanakanak, Alaska. On April 26, 1910, approximately 15.4 acres was withdrawn near Kanakanak by EO 1194, as amended, for the purpose of providing educational facilities for Natives of Alaska. The area was expanded by and is currently withdrawn by EO 5391, dated July 8, 1930. The withdrawal has been surveyed as U.S. Survey No. 937 and U.S. Survey No. 2013. The Bureau of Land Management's records were noted on March 24, 1958, that these lands were transferred by the Bureau of Indian Affairs to the Department of Health, Education and Public Welfare, now the Public Health Service (PHS), within the Department of Health and Human Services, and on September 25, 1979, were serialized as AA-29646 for the purpose of an Alaska Native Claims Settlement Act Sec. 3(e) determination.

On December 4, 1973, Choggiung Limited for the Native village of Dillingham, filed selection application AA-6659-A under the provisions of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611) (Supp. IV, 1980) (ANCSA), for those portions of U.S. Survey No. 937 and U.S. Survey No. 2013 located within T. 13 S., R. 56 W., Seward Meridian.

United States Survey No. 937 and U.S. Survey No. 2013 were selected pursuant to Sec. 12(a) of ANCSA and are not lands in the national park system, lands withdrawn or reserved for national defense purposes, or former reserves selected pursuant to Sec. 19(b) of ANCSA. Therefore they are subject to a determination pursuant to Sec. 3(e) of ANCSA, which states:

"Public lands" means all Federal lands and interests therein located in Alaska except: (1) the smallest practicable tract, as determined by the Secretary, enclosing land actually used in connection with the administration of any Federal installation. * * *

On January 25, 1982 (as amended), the Bureau of Land Management made a determination that the following described lands are the smallest practicable tract of that portion of U.S. Survey No. 937 and U.S. Survey No. 2013, located in T. 13 S., R. 56 W., Seward Meridian, actually used in connection with the administration of this Public Health Service facility:

That portion of U.S. Survey No. 2013 and U.S. Survey No. 937 that lies north of the township line between Tps. 13 and 14 S., R. 56 W., Seward Meridian, except for the following described parcel:

Commencing at the true point of beginning for this description as Corner 14, U.S. Survey No. 2013, thence N.0°03'W. 432.30 feet to Corner 13, U.S. Survey No. 2013; thence N. 70°48'W. 931.26 feet to Corner 12, U.S. Survey No. 2013; thence S. 15°44'W. 1,730.00 feet along line 12–11 of U.S. Survey No. 2013; thence N.65°00'E. 1,668.67 feet to the westerly side of the Dillingham-Kanakanak Road; thence N.5°00'W. 222.39 feet along the westerly side of said road to line 1–2 of amended U.S. Survey No. 66; thence S.89°57'W. 144.00 feet more or less along line 1–2 of amended U.S. Survey No. 66 to the true point of beginning.

Containing approximately 46 acres.

As to the lands described below, application AA–6659–A, submitted by Choggiung Limited, as amended, is properly filed and meets the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands have been determined to be public lands, and do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a) of ANCSA, containing approximately 31 acres, is considered proper for acquisition by Choggiung Limited and is hereby approved for conveyance pursuant to Sec. 14(a) of ANCSA:

Commencing at the true point of beginning for this description as Corner 14, U.S. Survey No. 2013, thence N.0°03'W. 432.30 feet to Corner 13, U.S. Survey No. 2013, thence N.70°48'W. 931.26 feet to Corner 12, U.S. Survey No. 2013, thence S.15°44'W. 1,730.00 feet along line 12–11 of U.S. Survey No. 2013; thence N.65°00'E. 1,668.67 feet to the westerly side of the Dillingham-Kanakanak Road; thence N.5°00'W. 222.39 feet along the westerly side of said road to line 1–2 of amended U.S. Survey No. 66; thence S.89°57'W. 144.00 feet more or less along line 1–2 of amended U.S. Survey No. 66 to the true point of beginning.

Containing approximately 31 acres.

There are no inland water bodies considered to be navigable within the above-described lands.

The conveyance issued for the surface estate of the lands described above shall contain the following reservation to the United States:

The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601 1613(f)).

There are no easements to be reserved to the United States pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent after approval and filing by the Bureau of Land Management of the official supplemental plat of survey confirming the boundary description and acreage of the lands hereinabove granted;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (48 U.S.C. Ch. 2, Sec. 6(g))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of ANCSA, any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law;

3. A right-of-way, AA–9170, for a Federal Aid Highway. Act of August 27, 1958, as amended (23 U.S.C. 317); and

4. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(c)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

Choggiung Limited is entitled to conveyance of 161,280 acres of land selected pursuant to Sec. 12(a) of the Alaska Native Claims Settlement Act. To date, approximately 153,630 acres of this entitlement have been approved for conveyance. The remaining entitlement of approximately 7,650 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of ANCSA and Departmental regulation 43 CFR 2652.4, conveyance of the subsurface estate shall be issued to Bristol Bay Native Corporation when the surface estate is conveyed to Chogguing Limited, and shall be subject to the same conditions as the surface conveyance, except for those provisions under Sec. 14(c) of ANCSA; also the right to explore, develop or remove mineral materials from the subsurface estate in lands within the boundaries of the Native village shall be subject to the consent of Chogguing Limited.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in the Anchorage Times.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the attached regulations in title 43 Code of Federal Regulations (CFR, Part 4, Subpart E, as revised. However, pursuant to Pub. L. 96–487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances, (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of this decision by personal service or certified mail, return receipt requested, shall have thirty days from receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who failed or refused to sign their return receipt and parties who received a copy of this decision by regular mail which is not certified, return receipt requested, shall have until February 2, 1983, to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Department of Health and Human Services, Alaska Area Native Health Service, Box 7-741, Anchorage, Alaska 99510

Choggiung Limited, P.O. Box 237, Dillingham, Alaska 99576

Bristol Bay Native Corporation, P.O. Box 198, Dillingham, Alaska 99576

Ann Johnson,

Chief, Branch of ANCSA Adjudication.

[FR Doc. 82-35539 Filed 12-30-82; 8:45 am]

BILLING CODE 4310-84-M

[AA-6657-H]

Alaska Native Claims Selection

Executive Order (EO) 626, as amended, withdrew an area not to exceed 40 acres for school purposes on May 4, 1907 at Kanakanak, Alaska. On April 26, 1910, approximately 15.4 acres was withdrawn near Kanakanak by EO 1194, as amended, for the purpose of providing educational facilities for Natives of Alaska. The area was expanded by and is currently withdrawn by EO 5391, dated July 8, 1930. The withdrawl has been surveyed as U.S. Survey No. 937 and U.S. Survey No. 2013. The Bureau of Land Management's records were noted on March 24, 1958, that these lands were transferred by the Bureau of Indian Affairs to the Department of Health, Education and Public Welfare, now the Public Health Service (PHS) within the Department of Health and Human Services, and on September 25, 1979, were serialized as AA-29646 for the purpose of an Alaska Native Claims Settlement Act Sec. 3(e) determination.

On October 3, 1974, Saguyak Incorporated, for the Native village of Clark's Point, filed selection application AA-6657-H under the provisions of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611) (Supp. IV, 1980) (ANCSA), for those portions of U.S. Survey No. 937 and U.S. Survey No. 2013 located within T. 14 S., R. 56 W., Seward Meridian.

United States Survey No. 937 and U.S. Survey No. 2013 were selected pursuant to Sec. 12(a) of ANCSA and are not lands in the national park system, lands withdrawn or reserved for national defense purposes, or former reserves selected pursuant to Sec. 19(b) of ANCSA. Therefore they are subject to a determination pursuant to Sec. 3(e) of ANCSA, which state:

"Public lands" means all federal lands and interests therein located in Alaska except: (1) the smallest practicable tract, as determined by the Secretary, enclosing land actually used in connection with the administration of any Federal installation. * * *

On May 28, 1982 (as amended), the Bureau of Land Management made a determination that the following described lands are the smallest practicable tract of that portion of U.S. Survey No. 937 and U.S. Survey No. 2013, located in T. 14 S., R. 56 W., Seward Meridian, actually used in connection with the administration of this Public Health Service facility:

Beginning at the point for corner No. 1, identical with corner No. 11, U.S. Survey No. 2013; thence S. 75°00'E., 1400.00' to corner No. 2; thence S. 44°52'46.4"E., approximately 1262.51' to corner No. 3, a meander corner at the line of mean high-tide on the right bank of the Nushagak River, at the angle point formed by the meander lines 3 and 4, U.S. Survey No. 2013; thence along a portion of the original meanders of U.S. Surveys Nos. 937 and 2013, along the line of mean high-tide on the right bank of the Nushagak River, N. 25°00'E., 660.00" N. 10°35'E., 660.00', and N. 10°29'E., approximately 289.50', to corner No. 4, a meander corner at the line of mean-high tide on the right bank of the Nushagak River, at the intersection of the theoretical township line of Townships 13 and 14 South, Range 56 West, Seward Meridian, with the original meander line of the right bank of the Nushagak River; thence west, along the theoretical township line of Townships 13 and 14 South, Range 56 West, Seward Meridian, approximately 2618.60' to corner No. 5, at the intersection of the theoretical township line of Townships 13 and 14, South, Range 56 West, Seward Meridian, with line 11-12, U.S. Survey No. 2013; thence S. 15°44'W., along a portion of line 12-11, U.S. Survey No. 2013, approximately 285.34' to corner No. 1, the point of beginning.

Containing approximately 46 acres.

Accordingly, selection application AA-6657-H must be and is hereby rejected as to the above-described lands. Further action on Sec. 12(a) selection AA-6657-H as to those lands not rejected herein, will be taken at a later date.

As to the lands described below, application AA-6657-H submitted by Saguyak, Incorporated, as amended, is properly filed and meets the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands have been determined to be public lands, and do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a) of ANCSA, containing approximately 52 acres, is considered proper for acquisition by Saguyak Incorporated, and is hereby approved for conveyance pursuant to Sec. 14(a) of ANCSA:

Beginning at the point for corner No. 1, identical with corner No. 11, U.S. Survey No. 2013; thence S. 75°00'E., 1400.00' to corner No. 2; thence S. 44°52'46.4"E., approximately 1262.51' to corner No. 3, a meander corner at the line of mean high-tide on the right bank of the Nushagak River, at the angle point formed by the meander lines 3 and 4, U.S. Survey No. 2013; thence along a portion of the original meanders of U.S. Survey No. 2013, along the line of mean high-tide on the right bank of the Nushagak River, S. 34°22'W., approximately 673.20' to corner No. 4, a meander corner at the line of mean high-tide on the right bank of the Nushagak River, identical with corner No. 1., U.S. Survey No. 869 and corner No. 6, U.S. Survey No. 2013; thence N. 52°33'W., along line 1-2, U.S. Survey No. 869, identical with line 6-7, U.S. Survey No. 2013, approximately 660.00'to corner No. 5, identical with corner No. 2, U.S. Survey No. 869 and corner No. 7, U.S. Survey No. 2013; thence S. 37°27'W., along line 2-3, U.S. Survey No. 869, identical with line 7-8, U.S. Survey No. 2013, 660.00' to corner No. 6, identical with corner No. 3, U.S. Survey No. 869 and corner No. 8, U.S. Survey No. 2013; thence S. 52°33'E., along line 3-4, U.S. Survey No. 869, identical with line 8-9, U.S. Survey No. 2013, approximately 759.66' to corner No. 7, a meander corner at the line of mean high-tide on the right bank of the Nushagak River, identical with corner No. 4, U.S. Survey No. 869 and corner No. 9, U.S. Survey No. 2013; thence along a portion of the original meanders of U.S. Survey No. 2013, along the line of mean high-tide on the right bank of the Nushagak River, S. 33°00'W., approximately 467.94' to corner No. 8, a meander corner at the line of mean high-tide on the right bank of the Nushagak River, identical with corner No. 10, U.S. Survey No. 2013; thence N., 24°42'W., along line 1-11, U.S. Survey No. 2013, approximately 3070.32' to corner No. 1, the point of beginning

Containing approximately 52 acres.

There are no inland water bodies considered to be navigable within the above-described lands.

The conveyance issued for the surface estate of the lands described above shall contain the following reservation to the United States:

The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(f)).

There are no easements to be reserved to the United States pursuant

to Sec. 17(b) of the Alaska Native Claims Settlement Act.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent after approval and filing by the Bureau of Land Management of the official supplemental plat of survey confirming the boundary description and acreage of the lands hereinabove granted;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (48 U.S.C. Ch. 2, Sec. 6(g))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of ANCSA, any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law; and

3. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(c)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

Saguyak Incorporated is entitled to conveyance of 92,160 acres of land selected pursuant to Sec. 12(a) of the Alaska Native Claims Settlement Act. To date, approximately 88,839 acres of this entitlement have been approved for conveyance. The remaining entitlement of approximately 3,321 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of ANCSA and Departmental regulation 43 CFR 2652.4, conveyance of the subsurface estate shall be issued to Bristol Bay Native Corporation when the surface estate is conveyed to Saguyak, Incorporated, and shall be subject to the same conditions as the surface conveyance, except for those provisions under Sec. 14(c) of ANCSA; also the right to explore, develop or remove mineral materials from the subsurface estate in the lands within the boundaries of the Native village shall be subject to the consent of Saguyak, Incorporated.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in the Anchorage Times.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal Government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the attached regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E, as revised. However, pursuant to Public Law 96-487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances, (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of this decision by personal service or certified mail, return receipt requested, shall have thirty days from receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who failed or refused to sign their return receipt and parties who received a copy of this decision by regular mail which is not certified, return receipt requested, shall have until February 2, 1983, to file an appeal.

Any parties known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 113, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Department of Health and Human Services, Alaska Area Native Health Service, Box 7-741, Anchorage, Alaska 99510

Saguyak, Incorporated, General Delivery, Clarks Point, Alaska 99569

Bristol Bay Native Corporation, P.O. Box 198, Dillingham, Alaska 99576

Ann Johnson,

Chief, Branch of ANCSA Adjudication.

[FR Doc. 82-35540 Filed 12-30-82; 8:45 am]

BILLING CODE 4310-84-M

Delegation of Authority; Abolishment

AGENCY: Bureau of Land Management, Interior.

ACTION: Abolishment of Bureau Order No. 701.

SUMMARY: Bureau Order No. 701 (B.O. 701) as amended, concerning Delegaton of Authority in the Bureau of Land Management (BLM), is abolished. B.O. 701 is replaced with BLM Manual Section 1203—Delegation of Authority.

The BLM Manual Secton 1203—Delegtion of Authority, is available for review by the public in any Bureau field office during regular business hours.

EFFECTIVE DATE: January 3, 1983.

ADDRESS: Director (840), U.S.D.I., BLM, 18th & C Sts., N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Pamala R. Quallich, (202) 343-6825.

Dated: December 23, 1982.

Arnold E. Petty,

Acting Associate Director.

[FR Doc. 82-35546 Filed 12-30-82; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Land Protection Policy

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is announcing withdrawal of its previous "Land Acquisition Policy Statement" and "Land Acquisition Policy Implementation Guidelines" published in the **Federal Register** on April 26, 1979. The National Park Service is taking this action in conformance with the Department of the Interior's "Policy for Use of the Federal Portion of the Land and Water Conservation Fund" published in the **Federal Register** on May 7, 1982 (47 FR 19784).

SUPPLEMENTARY INFORMATION: The Department of the Interior's policy, as stated in 47 FR 19784, is to utilize, to the maximum extent possible, the most cost-effective methods of protecting nationally important natural, cultural and recreational resources. This Interior policy applies to the National Park Service, among others, and was

developed in response to several factors including:

Concerns about the adequacy of the Land Water Conservation Fund to provide for the purchase of remaining non-Federal lands in authorized units of the National Park System;

A need to employ the most "cost-effective" protection methods (considering both acquisition and management costs) to meet management objectives in line with Congressional mandates;

An effort to better utilize the assets of the United States through exchanges; and a need for closer cooperation with local governments, neighbors to Park System units and owners of land in Park areas.

The primary effect of the new policy is that alternatives to the cash purchase of fee simple title are being more fully explored and employed wherever practicable. Further instructions and procedures are being prepared. Prior to final adoption, an opportunity for public comment on these instructions and procedures will be provided through notice in the **Federal Register**. Thereafter, these instructions and procedures will be issued internally by the National Park Service in final form for implementation. The major elements of the former land acquisition policy implementation guideline will be retained in the internal instructions and procedures. The former policy and guideline required the preparation of land acquisition plans at each unit of the National Park System having an active land acquisition program. Under the new policy, a land protection plan will be prepared for each unit containing non-Federal lands within its authorized boundaries. Public participation in the planning process and identification of protection techniques will continue to be required.

Specific protection techniques and interests to be acquired are to be identified in a Land Protection Plan for each unit. These plans will be prepared in compliance with legislation (including the National Environmental Policy Act), other Congressional Guidelines, Executive Orders, and Departmental and National Park Service Policies. Each plan will be simple, concise, prepared with public participation at the individual park level, and with the utmost consideration given to alternatives available for land protection. The plans also will identify priorities for protection considering resource significance and other factors.

The Land Protection Policy applies to three categories of areas in the National Park System in terms of the various park authorizing acts and oher congressional mandates. These are:

(a) *Newly Authorized Areas.* Areas authorized after July 1959 where protection is carried out in accordance with the policies prescribed in the authorizing legislation and in accordance with existing appropriations.

(b) *Inholding Areas.* Areas authorized before July 1959 where the Service will pursue subject to the availability of funds, an opportunity-purchase program by acquiring those interests in lands offered for sale by owners of property so identified in the plan. The Service will also acquire sufficient interests in land to prevent uses that would be inconsistent with park purposes as identified in each park's Land Protection Plan.

(c) *Areas Where Acquisition is Limited to Donation or Exchange.* Those areas whose enabling legislation provides that interest in land is to be acquired solely by donation or exchange as opportunities occur.

Land protection in all areas of the National Park System is executed in accordance with the enabling act of each unit, Appropriation Act requirements, and provisions of other applicable legislation, including Pub. L. 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. This latter-cited statute requires fair and equitable treatment of owners from whom land or interest in land is acquired and provides many benefits to both owners and tenants.

As indicated above, detailed procedures for the execution of the land protection program will be outlined in separate National Park Service directives.

The Revised Land Acquisition Policy and Land Acquisition Policy Implementation Guideline, as published in the **Federal Register** on April 26, 1979, have been superseded and are withdrawn.

Dated: December 23, 1982.

Russell E. Dickenson,

Director, National Park Service.

[FR Doc. 82-35498 Filed 12-30-82; 8:45 am]

BILLING CODE 4310-70-M

Office of the Secretary

National Environmental Policy Act; Withdrawal of Draft Environmental Impact Statements

AGENCY: Department of the Interior.

ACTION: Notice of Withdrawal of Draft Environmental Impact Statements.

SUMMARY: This notice announces the withdrawal of draft environmental impact statements (DEIS) that were issued during the period 1970-1976.

DATE: Effective December 31, 1982.

FOR FURTHER INFORMATION CONTACT: Bruce Blanchard, Director of Environmental Project Review, Office of the Secretary, Department of the Interior, Washington, D.C. 20240; Telephone (202) 343-3891.

SUPPLEMENTARY INFORMATION: From the enactment of the National Environmental Policy Act (NEPA) on January 1, 1970, through December 31, 1976, the Department of the Interior prepared 559 draft EIS's, including supplemental draft EIS's. Of these, 426 went directly into final EIS's (FEIS), 67 were superseded by another DEIS, and 48 were closed without an FEIS for various reasons (e.g., proposal dropped, modified, implemented by someone else, etc.).

The 18 remaining DEIS's are from six to eleven years old. In most cases policies, proposals and environments have changed. Moreover, and possibly more important, comments received from reviewers are out of date and may not reflect current positions.

These DEIS's, shown below, are being withdrawn effective December 31, 1982. If further Departmental action is necessary for any of these proposals, the NEPA process will be reinitiated.

Dated: December 23, 1982.

William D. Bettenberg,

Deputy Assistant Secretary of the Interior.

ATTACHMENT 1

DEIS	Bureau	Proposal
71-62	Legislative Counsel.	Omnibus Wilderness (includes North Cascades/WA and Sequoia-Kings Canyon/CA).
71-74	NPS	Glacier Bay General Management Plan/AK.
71-93	NPS	Joshua Tree General Management Plan/CA.
73-78	FWS	Hart Mountain Wilderness/OR.
74-4	BLM	OCS Hard Rock Leasing.
74-15	NPS	Death Valley Wilderness/CA.
74-33	FWS/NPS	Assateague/Chincoteague Wilderness/MD-VA.
74-35	FWS	Parker River Wilderness/MA.
74-38	FWS	Kofa Wilderness/AZ.
74-54	FWS	Russell Wilderness/MT.
74-55	FWS	Sheldon Wilderness/NV.
74-68	NPS	Arches Wilderness/UT.
74-70	NPS	Canyonlands Wilderness/UT.
74-73	NPS	Capitol Reef Wilderness/UT.
74-104	NPS	Great Smoky Mountains Wilderness/NC-TN.
76-17	BR	Orme Dam Construction/AZ.
76-24	NPS	Acadia General Management Plan/ME.
76-28	NPS	Grand Canyon Wilderness/AZ.

[FR Doc. 82-35527 Filed 12-30-82; 8:45 am]

BILLING CODE 4310-10-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Finance Application; Decision Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is Ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

No. MC-FC-80082. By decision of October 4, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132 Review Board Number 3 approved the transfer to Finn Motor Lines, Inc. of Certificate No. MC-18343 issued April 17, 1950 to Nicholas Martella doing business as Martella Motor Freight (by William B. Scatchurd, Jr. Substituted Administrator of the Estate of Nicholas Martella, authorizing the transportation of *Plumbing supplies,* From Williamstown, NJ, to Wilmington, DE, Baltimore, MD, Peekskill, NJ, and Allentown, Lebanon, Mt. Carmel, Philadelphia, and Williamsport, PA. *Coke* and *pig iron,* from Conshohocken, PA, to Williamstown, NJ. *Scrap iron,* from Philadelphia, to PA to Williamstown, NJ. *Canned goods,* From Vincentown, NJ, to New York, NY, Philadelphia, PA, and Baltimore, MD. *Empty tin cans,* From Baltimore, MD, to Vincentown, NJ. *Acids, chemcials, blacks,* and *soaps,* From Camden, NJ, to Philadelphia, PA, Baltimore, MD, Wilmington, DE, and points and places in the New York, NY, Commercial Zone, as defined by the Commission in 1 M.C.C. 665. *General commodities,* except those of unusual value, and except dangerous explosives, liquor, household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M.C.C. 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, Between Philadelphia, PA, and points and places within 15 miles of Camden. *Paper and paperboard,* From Wilmington, DE, to Philadelphia, PA, and New York, Brooklyn, and Long Island City, NY. From Philadelphia, PA, to New York and Brooklyn, NY, and Baltimore, MD; and *Scrap paper,* From the above-specified destination points to Wilmington and Philadelphia. *Flooring brick, and equipment, machinery and materials used or necessary to install such brick,* Between Philadelphia, PA, on the one hand, and, on the other, points and places in DE, MD, NJ, and NY. *Materials used in the manufacture of radios,* From Philadelphia, PA, to New York, NY.

No. MC-FC-80122. By decision of December 13, 1982 issued under 49 U.S.C. 10926 and the transfer rules at CFR 1181 Subpart A, Review Board Number 3 approved the transfer to FTL, INC., of Portland, OR of Certificate No. MC-112188 and Sub-Nos. 6, 8, 10, and 12, issued October 25, 1963, March 17, 1964, October 26, 1965, November 7, 1966 and May 12, 1980, respectively to McBREEN TRUCKING, INC., of Portland, OR authorizing the transportation as summarized: (A) over regular routes, (1) *films and articles associated with the exhibition of motion pictures,* as described in Descriptions in Motor Carrier Certificates, 61 M.C.C. 766, (a) between Portland, OR and LaGrande, OR and (b) between Hood River, OR and White Salmon, WA, and (2) *motion picture films, theatre advertising matter, and motion picture machine parts and accessories,* (a) between Portland, OR and Ashland, OR, (b) between McMinnville, OR and Myrtle Point, OR, (c) between Portland, OR and junction OR Hwy 47 and US Hwy 99w near McMinnville, OR, (d) between Oregon City, OR and Salem, OR, (e) between Salem, OR and junction OR Hwy 22 and US Hwy 99w at Rickreall, OR, (f) between Albany, OR and Sweet Home, OR, and (g) between Sweet Home, OR and Halsey, OR, serving specified immediate points, and (B) over irregular routes, (1) *motion picture film, theatre advertising matter, and motion picture machine parts and accessories,* (a) between Portland, OR, on the one hand, and, on the the other, Baker and-Freewater, OR, (2) *bread, pies, and pastries* (a) from Portland, OR to Walla Walla, WA, and points within 10 miles thereof and return shipments, (3) *blood specimens,* (a) from Vancouver, WA, and points in OR to Portland, OR, (4) *time-dated magazines and advertising material moving in connection therewith* and (5) *paperback books,* from Portland, OR to Baker, Coos Bay, Corvallis, Roseburg, Eugene, LaGrande, Medford, Salem, The Dalles, Klamath Falls, and Bend, OR (6) *magazines, paperback* and books, periodicals, and printed matter, between points in OR and WA, and (7) *newspapers* from Portland, OR, to Walla Walla, WA. Representative: Lawrence V. Smart, Jr., 419 N. W. 23rd Avenue, Portland, OR 97210.

Note.—Transferee holds authority in MC-52914. No TA filed.

No. MC-FC-80143. By decision of November 18, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132 Review Board Number 3 approved the transfer to Camion's Inc. of Certificates No. MC-149563 (Sub-No. 4) issued October 31, 1981; No. MC-149563 (Sub-No. 6) issued June 8, 1981; No. MC-149563 (Sub-No. 9) issued August 12, 1981; No. MC-149563 (Sub-No. 10) issued August 12, 1981; No. MC-149563 (Sub-No. 11) issued January 13, 1982; No. MC-149563 (Sub-No. 12) issued March 12, 1982; and No. MC-149563 (Sub-No. 13X(c)) issued March 9, 1982; and Permits No. MC-149563 (Sub-No. 8) issued August 21, 1981 and No. MC-149563 (Sub-No. 13X(P)) issued March 9, 1982 (except for the first operating paragraph authorizing service on behalf of Decor, Inc.) to Super Truckers, Inc, authorizing transportation (A) as a common carrier over irregular routes, of

(1) general commodities between points in, MS counties, (3) LA parishes, (2) TX counties, (1) OH county, and (2) AL counties, on the one hand, and, on the other, points in the United States, (2) metal products between points in the United States, (2) metal products between points in the United States; (3) rubber and plastic products between points in 3 AL counties, 2 IL counties, 2 KS counties, 1, WV county, 1 OH county, 1 MO county, 1 IA county, 2 TX counties, 1 MI county, 1 KY county, 1 NE county, and 1 OK county, on the one hand, and, on the other points in the United States; (4) ores and minerals, and clay, concrete, glass or stone products radially between points in 2 TN counties and points in 8 states; (5) clay, concrete, glass or stone products radially between points in 2 TX counties and points in the United States (c) plastic pipe and pipe fittings between Houston, TX, New Orleans, LA, and points in Scotts County, KS, on the one hand, and, on the other, points in the United States; and (7) lumber and lumber products between points in the United States and (B) as a contract carrier of general and specified commodities for 9 named shippers between points in the United States. Representative: Gerald D. Colvin, Jr., 603 Frank Nelson Bldg., Birmingham, AL 35203–3668.

James H. Bayne,

Acting Secretary.

[FR Doc. 82–35514 Filed 12–30–82; 8:45 am]

BILLING CODE 7025-01-M

Motor Carriers; Permanent Authority Decision; Decision-Notice

In the matter of Motor Common and Contract Carriers of Property (except fitness-only); Motor Common Carriers of Passengers (public interest); Freight Forwarders; Water Carriers; Household Goods Brokers.

The following applications for motor common or contract carriers of property, water carriage, freight forwarders, and household goods brokers are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common carriage of passengers, filed on or after November 19, 1982, are governed by Subpart D of 49 CFR Part 1160, published in the **Federal Register** on November 24, 1982 at 47 FR 53271. For compliance procedures, see 49 CFR 1160.86. Carriers operating pursuant to an intrastate certificate also must comply with 49 U.S.C. 10922(c)(2)(E). Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E. In addition to fitness grounds, these applications may be opposed on the grounds that the transportation to be authorized is not consistent with the public interest.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of these applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: common carrier of property—that the service proposed will serve a useful public purpose, responsive to a public demand or need; water common carrier—that the transportation to be provided under the certificate is or will be required by the public convenience and necessity; water contract carrier, motor contract carrier of property, freight forwarder, and household goods broker—that the transportation will be consistent with the public interest and the transportation policy of section 10101 of chapter 101 of Title 49 of the United State Code.

These presumptions shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board No. 2 Members Carleton, Williams, Ewing.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract." Applications filed under 49 U.S.C. 10922(c)(2)(B) to operate in intrastate commerce over regular routes as a motor common carrier of passengers are duly noted.

Please direct status inquiries to Team Four (202) 275–7669.

Volume No. OP4–090

Decided: December 27, 1982.

MC 138146 (Sub-4), filed December 10, 1982. Applicant: OLYMPIA TRAILS BUS COMPANY, INC., Rear 30, 116 Port St., Newark, NJ 07105. Representative: Eric Meiehoefer, 915 Pennsylvania Bldg., 425 13th St., NW., Washington, DC 20004, (202) 737–1030. Over regular routes, transporting *passengers*, between New York, NY and Atlantic City, NJ, (1) from New York over city streets to junction Holland Tunnel, then through Holland Tunnel to junction access roads, then over access roads to junction NJ Turnpike Interchange 14C, then over NJ Turnpike to junction NJ Turnpike Interchange 14, then over NJ Turnpike to junction NJ Turnpike Interchange 11, then over NJ Turnpike access roads to junction Garden State Parkway access roads in Woodbridge, NJ, then over Garden State Parkway to junction Atlantic City Expressway in Pleasantville, NJ, then over Atlantic City Expressway to Atlantic City, NJ, serving all intermediate points; (2) from New York over city streets to junction Lincoln Tunnel, then through Lincoln Tunnel to junction Interstate Hwy 495, then over

Interstate Hwy 495 to junction NJ Hwy 3, then over NJ Hwy 3 to junction NJ Turnpike access roads, then over NJ Turnpike access roads to junction NJ Turnpike Interchange 16, in Secaucus, NJ, then over NJ Turnpike to junction NJ Turnpike Interchange 14, serving all intermediate points; and (3) from New York over city streets to junction the George Washington Bridge, then over the George Washington Bridge to junction access roads, then over access roads to junction Interstate Hwy 95, then over Interstate Hwy 95 to junction NJ Turnpike access roads, then over NJ Turnpike access roads to junction NJ Turnpike Interchange 18, then over NJ Turnpike to junction NJ Turnpike Interchange 14, serving all intermediate points. Note: Applicant seeks to provide regular-route service in interstate or foreign commerce and in intrastate commerce under 49 U.S.C. 10922(c)(2)(B) over the same route.

Volume No. OP4-092

Decided: December 27, 1982.

(Member Ewing not participating.)

MC 152337 (Sub-7), filed December 17, 1982. Applicant: CENTRAL STATES TRUCKING CO., 5101 S. Lawndale Ave., P.O. Box 450, Summit, IL 60501. Representative: Edward G. Bazelon, 135 S. LaSalle St., Chicago, IL 60603, (312) 236-9375. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Schwinn Bicycle Co., of Chicago, IL.

MC 158207 (Sub-1), filed December 17, 1982. Applicant: MASS TRANSPORTATION CO., INC., 5616 Snowdrop Lane, Lisle, IL 60532. Representative: James Robert Evans, 145 W. Wisconsin Ave., Neenah, WI 54956, (414) 722-2848. Transporting *food and related products*, between Chicago, IL, on the one hand, and, on the other, points in OK and TX.

MC 165247, filed December 17, 1982. Applicant: CARMELA P. GOLDSTEIN d.b.a. CPG TRUCKING, 10 Mamaroneck Rd., White Plains, NY 10605. Representative Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666, (201) 836-1144. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in MA, RI, CT, NY, NJ, DE, PA, MD, VA, NC, SC, GA, FL, and DC.

MC 165237, filed December 16, 1982, Applicant: EAST SIDE GRAVEL, INC., P.O. Box 491, Elkhart, IN 46515. Representative: Norman R. Garvin, 1301 Merchants Plaza, E. Tower, Indianapolis, IN 46204-3491, (317) 638-1301. Transporting *commodities in bulk*, between points in IL, IN and MI.

James H. Bayne,

Acting Secretary.

[FR Doc. 82-35511 Filed 12-30-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (fitness-only); Motor Common Carriers of Passengers (fitness-only); Motor Contract Carriers of Passengers; Property Brokers (other than household goods).

The following applications for motor common or contract carriage of property and for a broker of property (other than household goods) are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** on December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common or contract carriage of passengers filed on or after November 19, 1982, are governed by Subpart D of the Commission's Rules of Practice. See 49 CFR Part 1160, Subpart D, published in the **Federal Register** on November 24, 1982, at 49 CFR 53271. For compliance procedures, see 49 CFR 1160.86. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E.

These applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board No. 2, Members Carleton, Williams, Ewing.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce, over irregular routes unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

Please direct status inquiries to Team Four at (202) 275-7669.

Volume No. OP4-091

Decided: December 27, 1982.

MC 125506 (Sub-39), filed December 15, 1982. Applicant: JOSEPH ELETTO TRANSFER, INC., 445 Northern Blvd., Great Neck, NY 11021. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048, (212) 466-0220. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 142846 (Sub-2), filed December 15, 1982. Applicant: ROYAL COACH TOURS, 644 Stockton Ave., San Jose, CA 95126. Representative: Joanne S. Christian, (same address as applicant), (408) 279–4801. Transporting *passengers*, in charter and special operations, beginning and ending at points in the U.S. (except AK and HI), and extending to points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 143686 (Sub-3), filed December 15, 1982. Applicant: AMRAM ENTERPRISES, INC., 4823 Pennsylvania Avenue, Pittsburgh, PA 15224. Representative: Amram Onyundo (same address as applicant), (412) 661–7030. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

Volume NO. OP4–093

Decided: December 27, 1982.

(Member Ewing not participating.)

MC 126667 (Sub-7), filed December 17, 1982. Applicant: BRUSH HILL TRANSPORTATION COMPANY, 109 Norfolk St., Dorchester, MA 02124. Representative: Jeremy Kahn, Suite 733, Investment Bldg., 1511 K St., NW, Washington, DC 20005, (202) 783–3525. Transporting *passengers*, in charter and special operations, between CT, ME, MA, NH, NY, RI, and VT, on the one hand, and, on the other, points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 156307 (Sub-1), filed December 17, 1982. Applicant: ANTHONY M. BUTLER d.b.a., PLEASURE RIDE, 16108 Minean Court, Upper Marlboro, MD 20772. Representative: James Robert Evans, 145 W. Wisconsin Ave., Neenah, WI 54956, (414) 722–2848. Transporting *passengers*, in charter and special operations, beginning and ending at points in MD, VA, and DC, and extending to points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 165257, filed December 17, 1982. Applicant: G & J BUS RENTAL INC., R.D. No. 2, Schoolhouse Lane, Box 965, Chester, NJ 07930. Representative: Ronald I. Shapss, 450 7th Ave., New York, NY 10123, (212) 239–4610. Transporting *passengers*, in special and charter operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

James H. Bayne,

Acting Secretary.

[FR Doc. 82-35516 Filed 12-30-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register.** One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F-226

The following applications were filed in Region 3. Send protests to: ICC, Regional Authority Center, Room 300, 1776 Peachtree Street, N.E., Atlanta, GA 30309.

MC 2934 (Sub-3–49 TA), filed December 17, 1982. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry (same as above). *Contract:* Irregular: *IBM GSD Equipment Systems;* from Seattle, WA to points and places in the States of: AL, AZ, AR, CA, CO, CT, DC, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WV, WI, and WY, under continuing contracts with D. P. Enterprises, 1320 Prospect Street, Seattle, WA 98109. Supporting shipper: D. P. Enterprises, Inc., 1320 Prospect Street, Seattle, WA 98109.

MC 165258 (Sub-3–1 TA), filed December 17, 1982. Applicant: CHARLES E. WILLIFORD, JR., Route 1, Box 20–C, Engelhard, NC 27824. Representative: Geo. Thomas Davis, Jr., P.O. Box 277, Swan Quarter, NC 27885. *Potash, fertilizers, agricultural nitrogen, trace elements, agricultural limestone, other soil conditioners, soybean and other meals* between all points in SC, NC, VA. Supporting Shipper: Pamlico Chemical Company, 933 West 3rd Street, Washington, NC 27889.

MC 165253 (Sub-3–1TA), filed December 17, 1982. Applicant: KERR CARTAGE INC., Route 1, Box 122A, Mt. Holly, NC 28120. Representative: Thomas C. Kerr Jr., 111 Kingsway Circle, Charlotte, NC 28214. Contract irregular route, *Such commodities as are dealt in by discount department stores,* Under continuing contract with Cook United Inc., Maple Heights OH, Between points in NC, SC, GA, FL and OH. Supporting shipper: Cook United, 16501 Rockside Road, Maple Heights, OH 44137.

MC 165225 (Sub-3–1TA), filed December 17, 1982. Applicant: LEWCO, INC., 1900 Dahlia Road, Jacksonville, FL 32205. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *General Commodities (except classes A and B explosives, household goods, commodities in bulk or hazardous materials),* between points in Duval, Nassau, Baker, Clay, Union and St. Johns Counties, FL. Restricted to shipments having a prior or subsequent movement by water. Supporting shippers: Hawkins Sandblasting, Inc., 7254 Old Plank Road, Jacksonville, FL 32205; General Machine and Fabricating Corp., 7254 Old Plank Road, Jacksonville, FL 32205; Pittman & Sons, 3335 N. Edgewood Avenue, Jacksonville, FL 32205.

MC 165250 (Sub-3–1TA), filed December 17, 1982. Applicant: B A R TRANSPORTATION, INC., P.O. Box 863, Calhoun, GA 30701. Representative: Mark S. Gray, Suite 1006, 225 Peachtree St., N.E., Atlanta, GA 30303. *Such commodities as are dealt in by auto*

supply stores (except household goods, Class A and B explosives and commodities in bulk): between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Brad Ragan, Inc. Supporting shipper: Brad Ragan, Inc., Route 5, Dews Pond Road, Calhoun, GA 30701.

MC 165208 (Sub-3-1TA), filed December 17, 1982. Applicant: LINDSEY TRANSPORT SERVICE, INC., 3465A Bayliss, Memphis, TN 38122. Representative: Thomas A. Stroud, 109 Madison Avenue, Memphis, TN 38103. *Petroleum products,* in bulk, in tank vehicles, from the facilities of Amoco Oil Company at or near West Memphis, AR, to Jackson, TN and points in its commercial zone. Supporting shipper: Amoco Oil Company, 200 E. Randolph Dr., Chicago, IL 60601.

MC 165196 (Sub-3-1TA), filed December 17, 1982. Applicant: EAST COAST LEASING, INC., 5910 W. Market St., Greensboro, NC 27509. Representative: Jack L. Schiller, 111-56 76th Dr., Forest Hills, NY 11375. *Contract,* irregular: *printed material* from the facilities of Henry Wurst, Inc., located at or near Apex, NC, to Jacksonville, FL; Atlanta, GA; Chicago, IL; Raleigh, Greensboro and High Point, NC; and Washington, DC, under account with Henry Wurst, Inc. of Apex, NC. Supporting shipper: Henry Wurst, Inc., P.O. Box 917, Apex, NC 27502.

MC 141339 (Sub-3-2TA), filed December 17, 1982. Applicant: DAVIS EXPRESS, INC,. Route 3, Box 651, Starke, FL 32091. Representative: Sol H. Proctor, 1101 Blackstone building, Jacksonville, FL 32202. *Contract,* irregular; *general commodities (except classes A and B explosives, household goods, commodities in bulk, hazardous materials or waste)* between points in U. S. (except AK and HI). Supporting shipper: Economics Laboratory, Inc., 255 Blair Road, Avenel, NY 07001.

MC 143956 (Sub-3-28TA), filed December 17, 1982. Applicant: GARDNER TRUCKING CO., INC., P.O. Drawer 493, Walterboro, SC 29488. Representative: Steven W. Gardner, P.O. Box 393, Berne, IN 46711. *General commodities (except classes A and B explosives, commodities in bulk and household goods);* from Ardmore, OK; Eau Claire, WI; Santa Ana, CA; Opelika, Al; Naugatuck, CT; Geismar, La; Gastonia, NC; Lenexa, KS; Port Clinton, OH; Red Oak, IN; Kennett, MO; to points in the US, (except AK and HI). Supporting shipper: Uniroyal, Inc., World Headquarters, Middlebury, CT 06749.

MC 2934 (Sub-3-50TA), filed December 17, 1982. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Road, Carmel., IN 46032. Representative: W. G. Lowry (same as above). *Contract:* Irregular: *Household goods;* between points in the US, (excluding AK & HI), under continuing contracts with Computer Sciences Corporation and its subsidiaries, 650 North Sepulveda Boulevard, El Segundo, CA 90254. Supporting shipper: Computer Science Corporation, 65. North Sepulveda Boulevard, El Segundo, CA 90254.

MC 152950 (Sub-3-5TA), filed December 17, 1982. Applicant: CENTURY TRANSPORTATION CORPORATION, Post Office Box 207, Columbus, MS 39703. Representative: Lloyd R. Pate (same as applicant). *Contract Carrier;* Irregular Route; *General Commodities (except Classes A & B Explosives; Household Goods; and Commodities in Bulk)* between MS, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with: Fine Vines, Inc., Greenville, MS, Supporting shipper: Fine Vines, Inc., 517 Washington St., Greenville, MS.

MC 165162 (Sub-3-1TA), filed December 17, 1982. Applicant: NELSON DE MIRANDA, dba. N.T.I. EXPRESS, 1750 W. 39th Place, Hialeah, FL 33012. Representative: Gerard J. Donovan, Registered Practioner, 4791 S.W. 82nd Ave., Davie, FL 33328. *General Commodities, (Except Classes A and B Explosives, Household Goods and those injurious to other commodities, commodities in bulk)* in Containers having a prior or subsequent movement by water. Between all points and places in the state of FL. Supporting shipper(s): There are 12 statements in support of this application whose statements may be examined at the ICC Regional Office, Atlanta, GA.

MC 104149 (Sub-3-5TA), filed November 15, 1982. Republication—originally publish in **Federal Register** of 11-24-82, page 53141 volume 47, No. 227. Applicant: OSBORNE TRUCK LINE, INC., 516 North 31st Street, Birmingham, AL 35202. Representative: William P. Jackson, Jr., 3426 N. Washington Boulevard, Post Office Box 1240, Arlington, VA 22210. Contract; irregular routes, transporting: *Such commodities as are dealt in or used by a manufacturer of metal products,* between the facilities of Cooperweld Corporation at or near Warren, OH, Shelby, OH, and Chicago, IL, on the one hand, and, on the other, points in the US (except AK and HI). Restriction: Restricted to transportation provided under continuing contract or contracts with Copperweld Corporation. Supporting shipper: Copperweld Corporation, 7410 South Linder, Chicago, IL 60638.

MC 164947 (Sub-3-1TA), filed December 13, 1982. Applicant: HAF GROUP, INC., 341 Cumberland St., Memphis, TN. 38112. Representative: Ralph D. Golden, Suite 2348-100 N. Main Bldg., Memphis, TN. 38103. *Contract;* irregular; *carpet and carpet products* from the facilities of Columbus Mills, Inc. located at Columbus, GA, to all points in the states of TN, MS, LA, AR, MO, AL, TX, OK, KY, NC, SC, and GA under continuing contract with Columbus Mills, Inc. of Columbus, GA. Supporting shipper: Columbus Mills, Inc., 4500 River Road, Columbus, GA 31504.

MC 150536 (Sub-3-5TA), filed December 13, 1982. Applicant: THE STACY WILLIAMS CO., INC., P.O. Box 10884, Birmingham, AL 35202. Representative: Calvin R. Turner, Jr., P.O. Box 517, Evergreen, AL 36401. *Sugar, corn, syrup and blends thereof,* between Marshall County, AL on the one hand, and, on the other, points in AL, AR, FL, GA, LA, MS, and TN. This includes commodities which have a prior or subsequent movement by water. Supporting shipper(s): Archer-Daniels-Midland Company, Decatur, IL; Nutritive Sweeteners, Birmingham, AL; Mid-South Sweeteners, Birmingham, AL.

MC 149560 (Sub-3-2TA), filed December 22, 1982. Applicant: BRYSON INDUSTRIAL SERVICES, INC., 108 White Oak Lane, Lexington, SC 29072. Representative: Mrs. Anne Greene (same as applicant). Contract: irregular: *Crushed clay, cat litter, oil and grease absorbents* from Pinewood, SC, to NC, TN, CT, VT, MA, NY, PA, IL, OH, GA, MD, MI, ME, NJ, and SC. Supporting shipper: Mid-Florida Mining Company, County Road 329 and SCL Railroad Tracks, Lowell, FL 32663.

MC 165317 (Sub-3-1TA), filed December 22, 1982. Applicant: COMMERCIAL FREIGHT CARRIERS, INC., P.O. Box 160066, Mobile, AL 36616. Representative: John W. Brown (address same as above). *General Commodities (except Classes A & B explosives, Household goods, and commodities in bulk),* between points in Mobile, AL, New Orleans, LA, and Houston, TX, on the one hand, and, on the other, points in FL, GA, SC, NC, AL, MS, LA, TX, AR, TN, and KY. Supporting shippers: Richard Murray & Company, 904 Commerce Bldg., Mobile, AL 36602; B & B Supply Company, Inc., P.O. Box 116, Mobile AL 36601; Barber Steamship Company, Inc., 515 International Trade Mart Bldg., New Orleans, LA 70130;

Climate Masters, Inc., P.O. Box 6254, Pearl, MS 39208.

MC 45656 (Sub-3-5 TA), filed December 22, 1982. Applicant: ANDERSON TRUCK LINE, INC., P.O. BOX 1196, Lenoir, NC 28645. Representative: Dan E. Anderson (same as above). *Furniture, furniture parts and materials used in the manufacture and distribution of furniture (except commodities in bulk)* between points in PA on the one hand; and on the other, points in AL, GA, SC, NC, TN, and VA. Supporting shippers: Madison Square Furniture, P.O. Box 65, Hanover, PA 17331.

Note.—Applicant intends to interline with other carriers pat Catawba and Caldwell Counties, NC.

MC 162832 (Sub-3-2 TA), filed December 22, 1982. Applicant: SOUTHERN REFRIGERATED CARRIERS, INC., 1720 Central Avenue, Memphis, Tennessee 38104. Representative: Kim D. Mann, 7101 Wisconsin Avenue, Suite 1010, Washington, D.C. 20814. *Food and related products* between points in Madison and Gibson Counties, TN, on the one hand, and, on the other, points in AL, AR, IL, IN, KY, TN, GA, MS, TX, MO, LA, NY, OH, FL, NJ, PA, VA, NC, SC, and WV. Supporting shipper: The Beare Company, 100 Lee Street, Jackson, TN 38301.

MC 165321 (Sub-3-1 TA), filed December 22, 1982. Applicant: LARRY RICE d.b.a. LARRY RICE TRUCKING, Rte. 1, Box 6757, Grayson, KY. 41143. Representative: Jack L. Schiller, 111-56 76th Dr., Forest Hills, NY 11375. *Contract,* irregular: *coal* from the facilities of Can-Do Stoker, Inc., located at or near Grayson, KY, to points in IL, IN, MI, OH, TN, VA, and WV under account with Can-Do Stoker, Inc. of Grayson, KY. Supporting shipper: Can-Do Stoker, Inc. P.O. Box 903, Grayson, KY 41134.

MC 2934 (Sub-3-51 TA), filed December 22, 1982. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry (same as above). *Contract:* Irregular: *Household Goods;* between points in the U.S. (except AK and HI) with GTE Corporation, One Stamford Forum, Stamford, Stamford, CT 06904. Supporting shipper: GTE Corporation, One Stamford Forum, Stamford, CT 06904.

MC 165153 (Sub-3-1 TA), filed December 22, 1982. Applicant: ECKEL BAKING COMPANY, DIVISION OF ECKEL INC., 1771 Sunshine Drive, Clearwater, FL 33515. Representative: John A. Eckel (same as applicant). *Contract:* Irregular: *Shortening, margerine, cooking, and salad oil except in bulk,* from Hamilton County, TN to points in FL. Supporting shipper: Bunge Edible Oil Corporation, P.O. Box 192, Kankakee, IL 60901.

MC 164805 (Sub-3-1TA), filed December 22, 1982. Applicant: G B TECHNICAL SERVICES, INC., 2810 Mercury Road, Jacksonville, Florida 32207. Representative: Robert S. Galloway, III, P.O. Box 11598, Columbia, South Carolina 29211. *Contract:* Irregular, *PBX Telephone Equipment and Scrap* from points and places, in FL, GA, and NC, to Columbia, SC. Supporting Shipper: Southern Bell Telephone & Telegraph Company, 2001 Assembly Street, Columbia, SC 29201.

The following applications were filed in Region 4: Send protests to: ICC, Complaint and Authority Branch, P.O. Box 2980, Chicago, IL 60604.

MC 112223 (Sub-4-11TA), filed October 18, 1982. Applicant: QUICKIE TRANSPORT COMPANY, 1700 New Brighton Blvd., Minneapolis, MN 55413. Representative: Earl Hacking, 1700 New Brighton Blvd., Minneapolis, MN 55413 *Polymeric Isocyanates and Polyurethane Resins in Bulk* between points in WV, MD, MN and TN limited to the account of Foam Enterprise, Inc. Supporting shipper: Foam Enterprise, Inc., 13630 Watertower Circle, Minneapolis, MN 55441.

MC 15735 (Sub-No. 4-48TA), filed December 17, 1982. Applicant: ALLIED VAN LINES, INC., 2120 S. 25th Avenue, Broadview, IL 60153. Representative: Richard V. Merrill, P.O. Box 4403, Chicago, IL 60680. *Contract* irregular: *Household goods* between points in the U.S. (except AK and HI) under a continuing contract with Nixdorf Computer Corporation, 80 Main Street, North Reading, MA 01864.

MC 112223 (Sub-4-11TA), filed October 18, 1982. Applicant: QUICKIE TRANSPORT COMPANY, 1700 New Brighton Blvd., Minneapolis, MN 55413. Representative: Earl Hacking, 1700 New Brighton Blvd., Minneapolis, MN 55413. *Polymeric Isocyanates and Polyurethane Resins in Bulk* between points in WV, MD, MN and TN limited to the account of Foam Enterprise, Inc. Supporting Shipper: Foam Enterprise, Inc., 13630 Watertower Circle, Minneapolis, MN 55441.

MC 143732 (Sub-4-2TA), filed December 10, 1982. Applicant: PICK-A-TREAT, INC., 3820 West Wisconsin Ave., Milwaukee, WI. 53208. Representative: Lawrence P. Kahn, 633 West Wisconsin Ave., Milwaukee, WI. 53203: *Food, foodstuffs, alcoholic beverages and supplies and equipment related to the sale, handling and preparation of such commodities* between points in IA, IL, MI, MN, and WO. There is three supporting shippers.

MC 154674 (Sub-4-3TA), filed December 17, 1982. Applicant: ELMER BUCHTA TRUCKING, INC., 414 Washington Street, Otwell, IN 47564 Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *Coal,* from near Bloomfield, IN to Cape Girardeau, MO. Supporting Shipper: BNI American, Inc., New Albany, IN.

MC 160303 (Sub-4-2TA), filed December 16, 1982. Applicant: RAPID TRANSPORT, INC., P.O. Box 215, Glyndon, MN 56547. Representative: Thomas J. Van Osdel, 15 Broadway—Suite 502, Fargo, ND 58102. (1) *Carpet,* and (2) *materials, equipment and supplies used in the sale, distribution, and installation of carpet,* from points in GA, SC, and TN, to points in MN, ND, SD and WI. There are twelve supporting shippers.

MC 164700 (Sub-4-1TA), filed December 17, 1982. Applicant: 48 FREIGHTWAYS, INC., 1875 North State Street, Belvidere, IL 61008. Representative: Richard D. Armstrong, 925 Hyland Drive, Stoughton, WI 53589. *Contract irregular: Food and related products* between Belvidere, IL, Monroe, WI and Weyauwega, WI on the one hand and, on the other, points in AR, CA, CO, IA, IL, IN, KS, KY, MI, MN, MO, ND, NE, NV, OK, SD, TX and UT under continuing contract(s) with Belvidere Cheese Company, Inc.

MC 165216 (Sub-4-1TA), filed December 15, 1982. Applicant: STEIL TRUCK LINES, 591 Montogomery Road, Aurora, IL 60538. Representative: Anthony E. Young, 29 South LaSalle Street, Suite 350, Chicago, IL 60603, 312/782-8880. *General commodities* (except Classes A & B explosives, household goods and commodities in bulk), between Chicago, IL and its commercial zone on the one hand, and, on the other, points in MN, WI, IA, NE, IN, and IL. There are five (5) supporting shippers.

MC 165217 (Sub-No. 4-1 TA), filed December 15, 1982. Applicant: POSTMA CARTAGE, INC., 13550 South Indiana, Riverdale, IL 60626. Representative: Andrew K. Light, Scopelitis & Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. *Plastic products* (except in bulk) and materials and supplies utilized in the manufacture thereof, between points in Chicago, IL, and its commercial zone, on the one hand, and, on the other, points in IL, IN, MI, MN, OH and WI. An underlying ETA seeks 120 days

authority. Supporting shipper: There are 3 statements of support attached.

MC 165219 (Sub-4-1 TA), filed December 15, 1982. Applicant: JAMES REDMAN, d.b.a. REDMAN AUTO TRANSPORT, 4640 W. 135th Street, Crestwood, IL 60445. Representative: James R. Madler, 120 W. Madison Street, Chicago, IL 60602. *Motor vechicles* (except agricultural vehicles), between points in IL, IN, OH, MO and KY. There are four supporting shippers.

MC 165251 (Sub-No. 4-1 TA), filed December 17, 1982. Applicant: CENTRAL CITIES FREIGHT LINES, INC., P. O. Box 241, Columbia, City, IN 46725. Representative: Robert B. Hebert, Miller, Faires, Hebert & Woddell, P. C., Suite 1600, One Indiana Square, Indianapolis, IN 46204. *General commodities,* (except commodities in bulk, household goods and Classes A and B explosives), between points in Allen, Whitley, Noble and Huntington Counties, IN, on the one hand, and on the other, Chicago, IL; and from Chicago, IL to points in Wabash, Kosciusko, LaGrange and DeKalb Counties, IN. Supporting shipper: Superior Wall Book, Inc., Gerber Street Industrial Park, Ligonier, IN 46767, Rea Magnet Wire Company, Inc., 3600 East Pontiac, Fort Wayne, IN 46896; Clear-Pack Company, 11610 Copenhagen Court, Franklin Park, IL 60131; Carroll Cable Company, 1900 North Fifth Avenue, River Grove, IL 60171; Phelps Dodge Copper Products Company, 4400 New Haven Avenue, Fort Wayne, IN 46801; Reel Craft Industries, Inc., P. O. Box 248, Columbia City, IN 46725; General Electric Company, 2000 Taylor Street, Fort Wayne, IN 46804; Shuttleworth, Inc., 10 Commercial Road, Huntington, In 46750.

The following applications were filed in Region 5. Send protest to: Consumer Assistance Center, Interstate Commerce Commission, 411 West 7th Street, Suite 500, Fort Worth, TX 76102.

MC 67234 (Sub-5-40 TA), filed December 16, 1982. Applicant: UNITED VAN LINES, INC., One United Drive, Fenton, MO 63026. Representative: B. W. LaTourette, Jr., 11 South Meramec, Suite 1400, St. Louis, MO 63105. Contract; irregular, transporting *General Commodities (except Classes A and B explosives and commodities in bulk)* between points in the U. S. (including AK and HI) under continuing contract(s) with Monsanto Company. Supporting shipper: Monsanto Company, St. Louis, MO.

MC 143043 (Sub-5-4TA), filed December 15, 1982. Applicant: WATSON TRUCK LINES, INC., Rte. 2, Box 612, Colfax, LA 71417. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103. *Food and related products,* between points in LA, on the one hand, and, on the other, points in AZ, CA, CO, ID, NV, UT, WA and OR. Supporting shipper: Joan of Arc Company, Inc., Peoria, IL

MC 148199 (Sub-1TA), filed December 15, 1982. Applicant: T. G. AND J. C. GARLAND, d.b.a. AQUARIAN LINES, Rt. 1, Box 261, Van Alstyne, TX 75095. Representative: T. G. Garland (same as above), Common; regular. *General commodities, (except classes A and B explosives)* between Tulsa, OK and Amarillo, TX via U.S. Highway 66, serving all intermediate points. Applicant intends to tack and interline. Supporting shipper(s): six.

MC 160279 (Sub-5-1TA), filed December 17, 1982. Applicant: MBPXL TRANSPORTATION, INC., 2901 N. Mead, P.O. Box 2519, Wichita, KS. 67201. Representative: James T. Ferguson, P.O. Box 2519, Wichita, KS. 67201. Contract, irregular; *equipment, parts, and materials, except in bulk, used in the manufacturing, assembling, and repairing of automotive buses* between points in the U.S. (except AK and HI), under continuing contract with Transportation Manufacturing Corp.

Supporting shipper: Transportation Manufacturing Corp., Roswell, NM.

MC 162566 (Sub-5-2TA), filed December 16, 1982. Applicant: LEONARD & IRIS PALMER TRUCKING, INC., Box 187, Wilsonville, NE 69046. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Meat, meat products, meat by-products, and articles distributed by meat packinghouses* from the facilities of Victor's Iowa Pack, Inc., at or near Council Bluffs, IA, and from Harlan, IA, to points in CA, FL, MA, NJ, OR, PA and TX. Supporting shipper: Victor's Iowa Pack, Inc., Council Bluffs, IA.

MC 163503 (Sub-5-7TA), filed December 16, 1982. Applicant: NATIONAL FREIGHT SYSTEM, INC., 2305 Oak Lane, Suite 115, Grand Prairie, TX 75051. Representative: Stephen W. Mitchell, (same as above), *Primary and Fabricated Metal Products and Machinery (Except Ordnance and Transportation Equipment)* between TX, AR, CA, on the one hand, and, on the other, points in the continental U.S. Supporting shipper(s): 11.

MC 164095 (Sub-5-2TA), filed December 16, 1982. Applicant: BIG RED EXPRESS, INC., 7911 L Street, Omaha, NE 68127. Representative: James M. Hodge, 3730 Ingersoll Avenue, Des Moines, IA 50312. *Such merchandise as is dealt in by home centers and hardware stores* from points in the U.S. (except AK and HI) to the facilities of John L. Hoppe Lumber Co. at Lincoln, NE. Supporting shipper: John L. Hoppe Lumber Co., Lincoln, NE.

MC 165213 (Sub-5-1TA), filed December 15, 1982. Applicant: Bill Purdy d.b.a. SERVICE EXPRESS COMPANY, 2204 South Tyler, Amarillo, TX 79190. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062. *General Commodities (except classes A and B explosives, household goods as defined by the Commission or bulk commodities)* between Amarillo, TX on the one hand, and, on the other, points in NM. Supporting shipper: (19).

MC 165215 (Sub-5-1TA), filed December 15, 1982. Applicant: K & W TRANSPORTS, INC., Route 5, Box 350, Kemp, TX 75143. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062. *Bananas* from Galveston, TX to points in TX and OK. Restricted to shipments for the account of Castle & Cooke Foods. Supporting shipper: Castle & Cooke Foods, Metairie, LA.

The following applications were filed in Region 6. Send protests to: Interstate Commerce Commission, Region 6, Motor Carrier Board, 211 Main St., Suite 50, San Francisco, CA 94105.

MC 144047 (Sub-6-1TA), filed December 20, 1982. Applicant: BROOKSIDE TRANSPORT LTD., P.O. Box 2091, Brooks Alberta, CD TOJOJO. Representative: Dale E. Isley, Esq., 50 South Steele St., Suite 330, Denver, CO 80209. *Contract Carrier:* irregular routes: *Fresh and Frozen Meat,* between the Port of Entry on the International Boundary Line between the U.S. and CD at or near Eastport, ID.; Sweetgrass, MT.; Portal, N.D.; Pembina, N.D.; and Sault Ste. Marie, MI. and points in CA, CO, KS, OH, OK, OR, and UT for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Lakeside Packers, P.O. Box 1868, Brooks, Alberta, CD, TOJOJO.

MC 135215 (Sub-6-7TA), filed December 16, 1982. Applicant: BULK TRANSPORTATION, 415 Lemon Ave., Walnut, CA 91789. Representative: Ronald C. Chauvel, 100 Pine St., #2550, San Francisco, CA 94111. *Wine, brandy, foods, chemical fertilizers and agricultural chemicals, and aluminum extrusions and products,* between all points in CA north of the southern boundaries of Santa Barbara, Kern, Tulare, Fresno and Mono counties, for 270 days. An underlying ETA seeks 120 day authority. Supporting shippers: There are 6 shippers. Their statements may be examined in the office listed.

MC 152155 (Sub-6-1TA), filed December 17, 1982. Applicant: BOBBY

AND/OR DONNA COLE, d.b.a., COLE TRUCKING, 2910 55th Wy, Long Beach, CA 90805. Representative: Lawrence V. Smart, Jr., 419 NW 23rd Av, Portland, OR 97210. *Contract carrier:* irregular routes: *Pulp, paper and related products,* between points in OR, WA, CA, MT, NV, ID, UT, CO, NM, WY, AZ, TX, OK, AR, KS, ND, SD, NE, MN, IA and WI, under continuing contract(s) with Superior Transportation Systems, Inc., for 270 days. Supporting shipper: Superior Transportation Systems, Inc., 9450 S W Commerce Ct, Ste 400, Wilsonville, OR 97070.

MC 56640 (Sub-6-11TA), filed December 20, 1982. Applicant: DELTA LINES, INC., P.O. B. 2081, Oakland, CA. 94604. Representative: Kirk Wm. Horton, 333 Hegenberger Rd. Ste. 408, Oakland, CA 94621. *Contract carrier,* irregular routes, *general commodities* (except household goods, commodities in bulk, classes A & B explosives, and those of unusual value), between points in AZ, CA, CO, ID, MT, NV, OR, UT, WA and WY under continuing contract(s) with MDCI Corporation d/b/a Transtop United, Los Angeles, CA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Metropolitan Distribution Centers, Inc., 1340 E. 6th St., Los Angeles, CA 90021.

MC 58166 (Sub-6-2TA), filed December 16, 1982. Applicant: GIBSON TRUCK LINES, INC., South Highway 285. La Jara, CO 81140. Representative: Nancy P. Bigbee, 745 E. 18th Ave., #101, Denver, CO 80203. *Contract carrier,* irregular route: *perlite ore, diatomaceous earth, firebrick, and materials, equipment, and supplies* used in the processing, manufacture, production, and distribution of those commodities, between points in the U.S. (except AK and HI), under continuing contract(s) with Grefco, Inc., and its parent General Refractories Co., Bala Cynwyd, PA; for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Grefco, Inc. (subsidiary of General Refractories Co.), Antonito, CO.

MC 165267 (Sub-6-1TA), filed December 17, 1982. Applicant: KENNETH M. COON AND M. MARGARET COON d.b.a. INDU-PRISE, 850 SE Coon Ave., Corvallis, OR 97333. Representative: Donald A. Coon (same as applicant). *General commodities* (except hazardous materials, class A and B explosives, household goods, and products in bulk), between points, in WA, OR, CA, ID, NV, AZ, and MT for 270 days. Supporting shipper: Tri-Border Transportation, P.O.B. 8258, C Coburg, OR 97401.

MC 165266 (Sub-6-1TA), filed December 17, 1982. Applicant: JOHN J. GURZYNSKI, d.b.a. JAMESWAY TRANSPORTATION, 80 Volcic Court, Box 161, Rock Springs, WY 82901. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. *Contract carrier,* irregular routes (1) *Wood excelsior or wood excelsior pads,* (2) *carpet padding,* and (3) *wood excelsior filters or pads,* (1) between Rice Lake and Marinette, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI); (2) between Cairo, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI); and (3) between Englewood, CO, on the one hand, and, on the other, points in the U.S. in and west of ND, SD, NE, KS, OK, and TX (except AK and HI), under continuing contract(s) with American Excelsior, for 270 days. Supporting shipper: American Excelsior, 850 Avenue "H" East, P.O. Box 5067, Arlington, TX 76011.

MC 147896 (Sub-6-TA), filed December 17, 1982. Applicant: WESTERN SONTEX, INC., P.O. B 667, Seal Beach, CA 90740. Representative: Kevin Steiner (same as applicant). *Contract Carrier,* Irregular routes: *Foods and related products; and, chemicals,* between points in the U.S. (except AK and HI), for the account of A. E. Staley Mfg. Co., for 270 days. Supporting shipper: A. E. Staley Mfg. Co., 2200 E. El Dorado St., Decatur, IL. 62525.

James H. Bayne

Acting Secretary.

[FR Doc. 82-35513 Filed 12-30-82; 8:45 am]

BILLING CODE 7035-01-M

Agricultural Cooperative; Intent To Perform Interstate Transportation for Certain Nonmembers

Dated: December 28, 1982.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) Agway Inc.
(2) Box 4933, Syracuse, NY 13221.
(3) 333 Butternut Dr., DeWitt, NY 13214.
(4) Ralph E. Hallock, Box 4933, Syracuse, NY 13221.

(1) Dairymen, Inc.
(2) 10140 Linn Station Rd., Louisville, KY 40223.
(3) Georgia Division—5305 Panola Industrial Blvd., Decatur, GA 30031.
Gulf Division—P.O. Box 667, Enon Hwy., Franklinton, LA 70438.
Kyana Division, P.O. Box 18118, Louisville, KY 40218.
Old Dominion Division, P.O. Box 27522, Richmond, VA 23261.
Southeast Division—P.O. Box 1099, Bristol, VA 24201.
(4) Mr. Beverly Williams, 10140 Linn Station Rd., Louisville, KY 40223.

(1) Linsid Transportation.
(2) P.O. Box 1828, Kankakee, IL 60901.
(3) Route 1, Box 347, Kankakee, IL 60901.
(4) Sidney Levin, P.O. Box 1828, Kankakee, IL 60901.

(1) Rainbow Farms Cooperative Association.
(2) 925 West Main St., Rock Hill, SC 29730.
(3) 925 West Main St., Rock Hill, SC 29730.
(4) Brenda M. Carpenter, 925 West Main St., Rock Hill, SC 29730.

(1) Union Transport Association.
(2) Route 4, 6310 Armfield Mill Rd., Monroe, NC 28110.
(3) Route 4, 6310 Armfield Mill Rd., Monroe, NC 28110.
(4) J. F. Beck, Route 4, 6310 Armfield Mill Rd., Monroe, NC 28110.

James H. Bayne,

Acting Secretary.

[FR Doc. 82-35517 Filed 12-30-82; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30091]

Garden City Co-op, Inc.; Acquisition and Operation; Exemption Between Garden City and Wolf, in Finney County, KS

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirement of prior approval under 49 U.S.C. 10901, the acquisition and operation by the Garden City Co-op, Inc., a non-carrier, of approximately 14.5 miles of railroad track of the Garden City Western Railway Company between Garden City and Wolf in Finney County, KS.

DATES: This exemption will be effective on January 3, 1983. Petitions to reopen must be filed by January 24, 1983.

SEND PLEADINGS TO:

(1) Rail Section, Room 5349, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's Representative: Michael E. Collins, 607 N. Seventh, P.O. Box 439, Garden City, KS 67846.

Pleadings should refer to Finance Docket No. 30091.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision contact: TS Infosystems, Inc., Room 2227, 12th & Constitution Ave., NW., Washington, DC 20423, (202) 289-4357—DC metropolitan area (800) 424-5403—Toll free for outside the DC area.

DECIDED: December 23, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

James H. Bayne,

Acting Secretary.

[FR Doc. 82-35512 Filed 12-30-82; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-F-15033]

Ligon Transport, Inc.; Purchase Exemption; Ligon Specialized Hauler, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Pursuant to 49 U.S.C. 11343(e), added by section 21 of the Bus Regulatory Reform Act of 1982, Pub. L. 97-261 (September 20, 1982), motor carrier Ligon Transport, Inc., (Transport) (MC-109462) and, in turn, Herbert A. Ligon, Jr., who controls Transport, seek an exemption from the requirement under section 11343 of prior regulatory approval for the purchase of a portion of the operating authorities of motor carrier Ligon Specialized Hauler, Inc., (Specialized) (MC-119777). Transport and Specialized are affiliated through common ownership with each other and with (1) Ligon Transportation Company of Kentucky (MC-117109), (2) Ligon Transportation Company of Tennessee (MC-127834), and Ligon Transportation Company of Georgia (MC-35045).

DATES: Comments must be received on or before February 2, 1983.

ADDRESSES: Send comments to:

(1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423, and

(2) Petitioner's representative: Carl U. Hurst, Esq., P.O. Box 691, Madisonville, KY 42431.

Comments should refer to No. MC-F-15033.

FOR FURTHER INFORMATION CONTACT: Warren C. Wood (202) 275-7949.

SUPPLEMENTARY INFORMATION: Please refer to the petition for exemption, which may be obtained free of charge by contacting petitioner's representative. In the alternative, the petition for exemption may be inspected at the offices of the Interstate Commerce Commission during usual business hours.

Decided: December 27, 1982.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Acting Secretary.

[FR Doc. 82-35515 Filed 12-30-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387]

Rail Carriers; Exemptions for Contract Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Notices of provisional exemptions.

SUMMARY: Provisional exemptions are granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the below-listed contract tariffs may become effective on one day's notice. These exemptions may be revoked if protests are filed.

DATES: Protests are due within 15 days of publication in the **Federal Register.**

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275-7278 or Tom Smerdon, (202) 275-7277

SUPPLEMENTARY INFORMATION:

The 30-day notice requirement is not necessary in these instances to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption requests meet the requirements of 49 U.S.C. 10505(a) and are granted subject to the following conditions.

These grants neither shall be construed to mean that the Commission has approved the contracts for purposes of 49 U.S.C. 10713(e) not that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review these contracts and to determine their lawfulness.

Sub-No.	Name of railroad, contract No. and specifics	Review Board	Decided date
498	Union Pacific Railroad Co., ICC-UP-C-0163, (Paper and paper articles)	[1]2	12-21-82
517	Atchison, Topeka and Santa Fe Railway Co., ICC-ATSF-C-0025, Amendment 2, (Coal)	[1]1	12-21-82
518	Denver and Rio Grande Western Railroad Co., ICC-DRGW-C-0075, (Lumber)	[2]2	12-22-82
519	Burlington Northern Railroad Co., ICC-BN-C-0202, (Aluminum coiled sheet and can stock)	[1]3	12-22-82
520	Grand Trunk Western Railroad Co., ICC-GTW-C-0080, (Grain and grain products)	[2]2	12-22-82
522	Southern Pacific Transportation Co., ICC-SP-C-0294, (Corn, grain sorghums, wheat, soybeans)	[2]2	12-22-82
523	Chicago and North Western Transportation Co., ICC-CNW-C-0005, Supplement 1, (Corn products, in bulk)	[1]3	12-22-82
524	Chicago and North Western Transportation Co., ICC-CNW-C-0400, (Malt)	[1]1	12-22-82
525	Chicago, Milwaukee, St. Paul and Pacific Railroad Co., ICC-MILW-C-0057, Supplement 1, (Salt, rock crushed or screened)	[2]2	12-22-82
530	Grand Trunk Western Railroad Co., ICC-GTW-C0070, (Sheet or strip steel)	[1]3	12-22-82

[1]Review Board No. 1, Members Parker, Chandler, and Fortier. Member Parker not participating. Review Board No. 2, Members Carleton, Williams, and Ewing. Review Board No. 3, Members Krock, Joyce, and Dowell.

[2]Review Board No. 2, Members Carleton, Williams, and Ewing. Member Ewing not participating.

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

(49 U.S.C. 10505)

James H. Bayne,

Acting Secretary.

[FR Doc. 82-35357 Filed 12-30-82; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 13, 1983.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 13, 1983.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C. this 20th day of December 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Am. Ship Division, American Ship Building Co. (workers)	Toledo, Ohio	12/2/82	11/24/82	TA-W-14,158	Ships—for U.S. carriers.
Climax Molybdenum Co., Henderson Mine (workers)	Empire, Colo	11/29/82	11/1/82	TA-W-14,159	Molybdenum.
Doris Ann Fashions, Inc. (company)	Union City, N.J	12/10/82	11/30/82	TA-W-14,160	Sportswear—ladies.
Great Western Sugar Co. (Teamsters, Warehouse & Sugar Workers)	Bayard, Nebr	12/14/82	11/22/82	TA-W-14,161	Sugar—pure.
Jameson East/Delta Shoe Corp. (workers)	Somersworth, N.H	12/3/82	11/29/82	TA-W-14,162	Sandals and shoes—ladies.
Kay Fries, Inc. (ICWU)	Stony Point, N.Y	12/3/82	11/23/82	TA-W-14,163	Chemicals—organic, intefmediate.
Levi Strauss & Co. (company)	Beaufort, S.C	12/6/82	12/1/82	TA-W-14,164	Shirts—men's.
Misty Manufacturing Corp. (ILGWU)	Parkersburg, W. Va	12/15/82	12/9/82	TA-W-14,165	Sportswear—ladies', childrens'.
Renola Sportswear, Inc. (ILGWU)	New York, N.Y	12/4/82	11/30/82	TA-W-14,166	Blouses—ladies, sewing, contractor.
Uniroyal, Inc. (URW)	Opelika, Ala	12/13/82	12/2/82	TA-W-14,167	Tires—passenger, radial.
Ameron, Inc., Ameron Steel & Wire Division (USWA)	Etiwanda, Calif	12/10/82	12/6/82	TA-W-14,168	Rebar, pipe rod, construction wire, fabric.
Bethlehem Mines Corp. (workers)	Drennen, W. Va	11/30/82	11/24/82	TA-W-14,169	Coal mining.
Bonney Forge—a Gulf & Western Manufacturing Co. (Boilermakers—Blacksmiths).	Allentown, Pa	12/4/82	11/15/82	TA-W-14,170	Forgings steel fittings.
Clark Equipment Co. Construction Machinery Division (workers).	Benton Harbor, Mich	12/9/82	12/3/82	TA-W-14,171	Machines—construction and mining.
Cyclops Corp., Universal Cyclops Special Steel Division (USWA).	Bridgeville, Pa	11/30/82	11/24/82	TA-W-14,172	Bars—steel, stainless, billets, sheet.
Electron Corp. (workers)	Littleton, Colo	11/30/82	11/24/82	TA-W-14,173	Transmissions, gears, housing, shieves, pulleys—for equipment.
RMI Company (USWA)	Niles, Ohio	12/10/82	12/6/82	TA-W-14,174	Titanium mill products.
Teledyne Portland Forge (IAM)	Portland, Ind	11/29/82	11/23/82	TA-W-14,175	Forgings.
Walpole Woodworkers, Inc. (company)	Detroit, Maine	12/4/82	11/23/82	TA-W-14,176	Post, rails, pickets, panels of cedar fence.
Walpole Woodworkers, Inc. (company)	Chester, Maine	12/4/82	11/23/82	TA-W-14,177	Post, rails, pickets, panels of cedar fence.
Colorado & Wyoming Rail Road (Brotherhood of Maintenance of Way).	Pueblo, Colo	11/22/82	11/18/82	TA-W-14,178	Rails, tubular goods, rail spikes, basic steel.
E.-Systems, Inc., Memcor Division, Huntington Operations (workers).	Huntington, Ind	12/8/82	12/1/82	TA-W-14,179	VRC-12 military radio.
Foote Mineral Co. (workers)	New Haven, W. Va	12/10/82	12/7/82	TA-W-14,180	Metal alloys.
Modern Clothing (ILGWU)	Hammonton, N.J	12/10/82	12/1/82	TA-W-14,181	Coats and suits, ladies.
TRW, Inc., TRW Casting Division (workers)	Noblesville, Ind	12/9/82	12/1/82	TA-W-14,182	Castings—steel, ductile.

[FR Doc. 82-35126 Filed 12-30-82; 8:45 am]
BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-82-92-C]

Acme Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Acme Coal Company, 130 Broad Street, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity and velocity) to its mine (I.D. No. 36-01778) located in Dauphin County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. Air sample analysis history reveals that harmful quantities of methane are non-existent in the mine.

2. Ignition, explosion and mine fire history are non-existent for the mine.

3. There is no history of harmful quantities of carbon dioxide and other noxious or poisonous gases.

4. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

5. Extremely high velocities in small cross sectional areas of airways and manways required in friable anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners.

6. High velocities and large air quantities cause extremely uncomfortable damp and cold conditions in the already uncomfortable, wet mines.

7. As an alternative method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

9. Petitioner states that the alternative method proposed will at all times provide the same measure of protection for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 2, 1983. Copies of the petition are available for inspection at that address.

Dated: December 23, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-35520 Filed 12-30-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-31-M]

International Salt Co.; Petition for Modification of Application of Mandatory Safety Standard

International Salt Company, 2400 Ships Channel, Whiskey Island, Cleveland, Ohio 44113 has filed a petition to modify the application of 30 CFR 57.4-61A (ventilation doors) to its Cleveland Mine (I.D. No. 33-01994) located in Cuyahoga County, Ohio. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that ventilation doors be installed at or near shaft stations to prevent the spread of smoke or gas in the event of a fire.

2. The mine operates from a single level and produces rock salt by conventional room and pillar mining. The rooms are 45 feet wide with 105 foot pillars; the room height varies between 18 and 22 feet. Rock salt is non-combustible; no traces of methane have ever been found in the mine.

3. Petitioner states that the installation of ventilation doors would result in a diminution of safety for the miners affected because the entries around the shaft and shop areas are large. In order to install ventilation doors, it would be necessary to construct supporting door frames and bulkheads which would restrict the return air flow and could cause recirculation. Closing off the exhaust air shaft would greatly diminish or eliminate the effectiveness of the ventilation system, resulting in a diminution of safety. Ventilation doors, if closed, would create an unnecessary concentration of toxic gases which could recirculate if one or more of the air doors or air locks were damaged by fire.

4. As an alternative method, petitioner proposes to use a refuge chamber in lieu of installing ventilation doors. Petitioner states that the refuge chamber is approximately 100 feet from the service shaft (primary escapeway) and 400 feet from the production shaft at its nearest point. The refuge chamber contains 156,000 cubic feet of air, which will support 100 people for four days without any additional air supply. The refuge chamber has water and air lines direct to the surface through the production shaft. It is equipped with Foam Pac to seal the doors air tight or construct barricades, and contains standard safety equipment, including fire extinguishers, tools, telephone to the surface, first aid kits, and carbon monoxide detectors.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 2, 1983. Copies of the petition are available for inspection at that address.

Dated: December 22, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-35519 Filed 12-30-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-32-M]

International Salt Co.; Petition for Modification of Application of Mandatory Safety Standard

International Salt Company, 2400 Ships Channel, Whiskey Island, Cleveland, Ohio 44113 has filed a petition to modify the application of 30 CFR 57.4-61B (fire doors) to its Cleveland Mine (I.D. No. 33-01994) located in Cuyahoga County, Ohio. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that fire doors or bulkheads be constructed in all openings to underground shops in order to confine or prevent the spread of toxic gases from a fire originating in the shop.

2. The mine operates from a single level and produces rock salt by conventional room and pillar mining. The rooms are 45 feet wide with 105 foot pillars; the room height varies between 18 and 22 feet. Rock salt is non-combustible; no traces of methane have ever been found in the mine.

3. Petitioner states that the installation of fire doors would result in a diminution of safety for the miners affected because the entries around that shaft and shop areas are large. In order to install fire doors, it would be necessary to construct supporting door frames and bulkheads which would restrict the return air flow and could cause recirculation. Closing off the exhaust air shaft would greatly diminish or eliminate the effectiveness of the ventilation system, resulting in a diminution of safety. Fire doors, if closed, would create an unnecessary concentration of toxic gases which could recirculate if one or more of the air doors or air locks were damaged by fire.

4. As an alternative method, petitioner proposes to use a refuge chamber in lieu of installing fire doors. Petitioner states that the refuge chamber is approximately 100 feet from the service shaft (primary escapeway) and 400 feet from the production shaft at its nearest point. The refuge chamber contains 156,000 cubic feet of air, which will support 100 people for four days without any additional air supply. The refuge chamber has water and air lines direct to the surface through the production shaft. It is equipped with Foam Pac to seal the doors air tight or construct barricades, and contains standard safety equipment, including fire extinguishers, tools, telephone to the surface, first aid kits, and carbon monoxide detectors.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and

Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 2, 1983. Copies of the petition are available for inspection at that address.

Dated: December 22, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-35518 Filed 12-30-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-119-C]

Jeff Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Jeff Coal Company, R.D. #1, Box 315A, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its Tracy Vein Slope (I.D. No. 36-07328) located in Schuykill County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. Air sample analysis history reveals that harmful quantities of methane are non-existent in the mine.

2. Ignition, explosion and mine fire history are non-existent for the mine.

3. There is no history of harmful quantities of carbon dioxide and other noxious or poisonous gases.

4. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

5. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners.

6. High velocities and large air quantities cause extremely uncomfortable damp and cold conditions in the already uncomfortable, wet mines.

7. As an alternative method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

8. Petitioner states that the alternative method proposed will at all times provide the same measure of protection for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 2, 1983. Copies of the petition are available for inspection at that address.

Dated: December 22, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-35522 Filed 12-30-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-94-C]

New River Co.; Petition for Modification of Application of Mandatory Safety Standard

The New River Company, Lock Drawer 711, Mount Hope, West Virginia 25880 has filed a petition to modify the application of 39 CFR 75.326 (aircourses and belt haulage entries) to its Skelton Mine (I.D. No. 46-01500) located in Raleigh County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that entries used as intake and return aircourses be separated from belt haulage entries.

2. Quantities of methane are expected to be liberated from the mine as new areas are developed. Petitioner states that additional entries are necessary to course sufficient air to the active workings to protect the miners from the hazards of methane. Additional entries will also be used as belt haulage entries.

3. As an alternative method, petitioner proposes to use belt haulage entries as additional intake and return aircourses, with the following safeguards:

a. A visual and audible automatic fire detection system will be installed on the belt conveyors. The conveyors are approved and flame resistant, provided with automatic sprinkler systems and fire sensor devices;

b. The automatic fire detection system will be calibrated to activate warning signals if the carbon monoxide concentrations reach 10 p.p.m. above ambient air;

c. Should the fire detection system be affected by a power interruption or other malfunction, a qualified person will be stationed at the belt conveyors to continually test for carbon monoxide;

d. Each carbon monoxide monitor and sensor will be visually inspected at least once each 24 hours, checked weekly for proper operation, and checked at least every 30 days for operating accuracy. A record of these tests will be kept and made available to interested persons. The sensors will be located within 50 feet of the section loading points and in by the direction of airflow. A sensor will be limited to monitoring 4,000 feet in length. Once the belt entry exceeds 4,000 feet in length, a second sensor will be installed at a fixed location in the entry. The original sensor will continue to be moved with the section loading point.

e. The stoppings separating the belt haulage entry from the intake escapeway will be constructed of concrete blocks, cinderblocks, brick or tile with mortared joints.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 2, 1983. Copies of the petition are available for inspection at that address.

Dated December 22, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-35521 Filed 12-30-82; 8:45 am]

BILLING CODE 4510-43-M

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new forms, revisions, extensions (burden change), extensions (no change), or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The Agency form number, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small business or organizations are affected.

The standard industrial classification (SIC) codes, referring to specific respondent groups that are affected.

An estimate of the number of responses.

A estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Norman Frumkin, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration

Survey of the Causes of Retention and Attrition in Apprenticeship Programs
MT-333
Nonrecurring
Individuals or households
2,458 responses; 1,215 hours

A survey of people who entered registered apprenticeship programs and apprenticeship coordinators will be conducted to determine the causes of retention in apprenticeship programs. The survey will identify three types of factors which may be associated with retention: economic characteristics of local labor markets; apprentice characteristics; and characteristics of apprenticeship programs.

Mine Safety and Health Administration

Trade-Name Chemicals
Nonrecurring
Businesses or other institutions
Small business or organization
SIC: 147
300 responses; 150 hours

MSHA needs to identify the major chemical components of trade-name products found to be used on mining property. We intend to use the information in our regulatory review process to make our air quality regulations more applicable to the metal and nonmental mining industry.

Mine Safety and Health Administration

Wire Rope Diameter Measurements and Tests
MSHA 720R
Semi-annually
Businesses or other institutions
Small business or organization
SIC: Major groups, 10, 11, 12, and 14
1,322 responses; 330 hours

Record of initial wire rope diameters after break-in is used to make subsequent semi-annual evaluations of wire rope wear. These evaluations indicate whether unsafe conditions are arising.

Revision

Mine Safety and Health Administration

Hoist and Shaft Inspection Records
MSHA 414R
Semi-annually; varying intervals—hoist equipment; daily—wire rope
Businesses or other institutions
Small business or organization
SIC: Major groups 10 and 14
424 responses; 1,060 hours

A record of systematic inspections of shafts and hoists expecially of the wire rope and its attachments, assures that mine operators are inspecting their equipment for any development of unsafe conditions.

Reinstatement

Mine Safety and Health Administration

Gamma Radiation Exposure Records
MSHA 405R
Quarterly
Businesses or other institutions
Small business or organization
SIC: 1094
64 responses; 1,024 hours

Requires records to be kept of accumulative individual gamma radiation exposure to ensure that annual exposure does not exceed 5 Rems per year. It is intended to protect the health of the worker.

Signed at Washington, D.C. this 28th day of December, 1982.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 82-35523 Filed 12-30-82; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 83-1]

NASA Advisory Council, Aeronautics Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Subcommittee on Aerodynamics.

DATE: February 1, 1983, 8:30 a.m. to 5 p.m.; February 2, 1983, 8 a.m. to 12 noon.

ADDRESS: National Aeronautics and Space Administration, Lewis Research Center, Administration Building, Room 215, Cleveland, OH.

FOR FURTHER INFORMATION CONTACT: Mr. Clinton E. Brown, National Aeronautics and Space Administration, Code RTF-6, Washington, DC 20546 (202/755-3280).

SUPPLEMENTARY INFORMATION: The Informal Advisory Subcommittee on Aerodynamics was established to provide advice and coordination of NASA Aerodynamics research programs with efforts in other agencies, universities, and industry. The Subcommittee, chaired by Dr. Joseph Cornish, is comprised of ten members. The meeting will be open to the public up to the seating capacity of the room (approximately 60 persons including the Subcommittee members and participants).

TYPE OF MEETING: Open.

AGENDA:

February 1, 1983;

8:30 a.m.–3 p.m.—Review of Lewis Research Center Aerodynamic programs.

3 p.m.–5 p.m.—Member comments.

February 2, 1983

8:30 a.m.–11 a.m.—Program status, budget, and long range plan.

11 a.m.–12 noon—Issues and questions. Future plans and recommendations.

12 noon—Adjourn.

Richard L. Daniels,

Director, Management Support Office, Office of Management.

December 22, 1982.

[FR Doc. 82-35502 Filed 12-30-82; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 806 15th Street, N.W., Washington, D.C. 20506:

1. Date: January 20-21, 1983.
Time: January 20, 1983—8:30 a.m. to 7:00 p.m. January 21, 1983—8:30 a.m. to 5:00 p.m.
Room: 807.
Program: This meeting will review applications submitted for Humanistic Projects in Media, Division of General Programs, for projects beginning after July 1, 1983.

2. Date: January 24-25, 1983.
Time: January 24, 1983—8:30 a.m. to 7:00 p.m. January 25, 1983—8:30 a.m. to 5:00 p.m.
Room: 807.
Program: This meeting will review applications submitted for Humanistic Projects in Media, Division of General Programs, for projects beginning after July 1, 1983.

3. Date: January 27-28, 1983.
Time: January 27, 1983—8:30 a.m. to 7:00 p.m. January 28, 1983—8:30 a.m. to 5:00 p.m.
Room: 807.
Program: This meeting will review applications submitted for Humanistic Projects in Media, Division of General Programs, for projects beginning after July 1, 1983.

4. Date: January 31, 1983–February 1, 1983.
Time: January 31, 1983—8:30 a.m. to 7:00 p.m. February 1, 1983—8:30 a.m. to 5:00 p.m.
Room: 807.
Program: This meeting will review applications submitted for Humanistic Projects in Media, Division of General Programs, for projects beginning after July 1, 1983.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 724-0367.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 82-35557 Filed 12-30-82; 8:45 am]

BILLING CODE 7536-01-M

National Council on the Humanities Advisory Committee; Meeting

December 23, 1982.

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, D.C. on Saturday, January 15, 1983 from 9:00 a.m. to 5:30 p.m. in Room 314 in the Shoreham Building, 806 15th Street, N.W., Washington, D.C. This meeting will be open to the public. The purpose of the meeting is for five Council members to discuss the applications review process. Because the Shoreham Building will be locked on January 15, persons wishing to attend this meeting will have to call 202-724-0238 no later than 4:45 p.m. on January 14, 1983 to make arrangements to be admitted.

Further information about this meeting can be obtained from Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call 202-724-0367.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 82-35541 Filed 12-30-82; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-325 and 50-324]

Carolina Power & Light Company; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 53 and 78 to Facility Operating License Nos. DPR-71 and DPR-62 issued to Carolina Power & Light Company (the licensee) which revised the Technical Specifications for operation of the Brunswick Steam Electric Plant, Units 1 and 2 (the facility), located in Brunswick County, North Carolina. The amendments are effective as of the date of issuance.

The amendments revise the Technical Specifications to reflect certain digital to analog instrument replacements, revise instrumentation formats, and correct miscellaneous typographical errors.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendments.

For further details with respect to this action, see (1) the application for amendments dated November 12, 1982, (2) Amendment Nos. 53 and 78 to License Nos. DPR-71 and DPR-62, and (3) the Commission's related Safety Evaluation. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Southport-Brunswick County

Library, 109 West Moore Street, Southport, North Carolina 28461. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 20th day of December 1982.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 82-35559 Filed 12-30-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-254 and 50-265]

Commonwealth Edison Company and Iowa-Illinois Gas and Electric Company; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 84 and 77 to Facility Operating License Nos. DPR-29 and DPR-30, issued to Commonwealth Edison Company and Iowa-Illinois Gas and Electric Company, which revised the Technical Specifications for operation of the Quad-Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, Illinois. The amendments are effective as of the date of issuance.

The amendments expand the Technical Specifications for the scram discharge volume (SDV) to include surveillance requirements for SDV vent and surveillance requirements for the reactor protection system (RPS) and control rod block SDV limit switches.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of the amendments was not required since they do not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of the amendments.

For further details with respect to this action, see (1) the application for amendments dated October 14, 1980, as supplemented October 22, 1981, (2) Amendment Nos. 84 and 77 to License Nos. DPR-29 and DPR-30 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room 1717 H Street N.W. Washington, D.C., and at the Moline Public Library, 504-17th Street, Moline, Illinois. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 23rd day of December 1982.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 82-35560 Filed 12-30-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-247

Consolidated Edison Company of New York, Inc.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 83 to Facility Operating License No. DPR-26, issued to the Consolidated Edison Company of New York, Inc. (the licensee), which revised Technical Specifications for operation of the Indian Point Nuclear Generating Unit No. 2 (the facility) located in Buchanan, Westchester County, New York. The amendment is effective as of the date of issuance.

The amendment modifies your Technical Specifications to require a prompt report in the event of a hurricane and action to ensure that the plant is in a cold shutdown condition prior to hurricane arrival on site.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) and environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated December 17, 1982, (2) Amendment No. 83 to License No. DPR-26, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the White Plains Public Library, 100 Maritime Avenue, White Plains, New York. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 23rd day of December 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 82-35561 Filed 12-30-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-220]

Niagara Mohawk Power Corporation; Nine Mile Point Nuclear Station, Unit No. 1; Exemption

Niagara Mohawk Power Corporation (the licensee) is the holder of Facility Operating License No. DPR-63 (the license) which authorizes operation of the Nine Mile Point Nuclear Station, Unit No. 1 (the facility) at steady state reactor power level not in excess of 1850 megawatts thermal. The facility is a boiling water reactor located at the licensee's site in Oswego County, New York.

The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission.

Section 50.54(q) of 10 CFR Part 50 requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans which meet the standards of 10 CFR 50.47(b) and the requirements of Appendix E to 10 CFR Part 50. Section IV.F.1 of Appendix E requires each licensee to conduct an emergency preparedness exercise annually.

By letter dated August 20, 1982, as revised by letter dated October 6, 1982, the licensee requested an exemption from the schedular requirements of Section IV.F.1. of Appendix E. A full-scale emergency preparedness exercise was conducted at the Nine Mile Point Nuclear Station Unit No. 1 during September 1981. The next annual

exercise, therefore, was due to be conducted in September 1982. The licensee requests that it be granted an exemption on a one-time basis to allow the next exercise to be conducted within 12 months prior to achieving 5% of rated power at the completion of the current extended outage.

The licensee indicates that scheduling problems and constraints are being experienced during the current plant outage. A significant workload has been undertaken necessitated by the replacement of recirculation system piping. The licensee has also stated that all nuclear fuel has been removed from the reactor and is stored in the spent fuel pool. Finally, the licensee has committee to continual training of personnel as outlined in the Nine Mile Point Nuclear Station Emergency Plan to ensure that personnel remain familiar with emergency response duties.

The last exercise at Nine Mile Point was held on September 16, 1981. The James A. FitzPatrick Nuclear Power Plant is adjacent to the Nine Mile plant and located on the same site. Subsequent to this Nine Mile exercise a full-scale exercise was conducted by FitzPatrick personnel on August 11, 1982. These two exercises provide assurance regarding the capability of State and local officials to respond to an emergency at either nuclear plant.

Based on the above, we conclude that the licensee's request for a one time delay of the next emergency preparedness exercise at the Nine Mile plant until the completion of the current outage is reasonable and that granting the request will not adversely affect the state of emergency preparedness at Nine Mile Point. We conclude, therefore, that the licensee's request for exemption should be granted.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption requested by the licensee's letter of August 20, 1982, as revised by letter dated October 6, 1982, as discussed above, is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. The exemption is hereby granted as follows:

In order to allow for schedule changes, the next emergency preparedness exercise at the Nine Mile Point Nuclear Station, Unit No. 1 shall be conducted anytime during the 12 month period prior to achieving 5% of rated power at the completion of the current extended maintenance outage. This exercise shall include appropriate participation by the State and local authorities.

The Commission has determined that the granting of this Exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 23rd day of December, 1982.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 82-35562 Filed 12-30-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-263]

Northern States Power Company; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 15 to Facility Operating License No. DPR-22, issued to Northern States Power Company, which revised the Technical Specifications for operation of the Monticello Nuclear Generating Plant (the facility) located in Wright County, Minnesota. The amendment is effective on January 1, 1983.

The amendment authorizes changes to the Technical Specifications 1) to implement the requirements of Appendix I to 10 CFR Part 50, 2) to establish new limiting conditions for operation for the quarterly and annual average release rates, and 3) to revise environmental monitoring programs to assure conformance with the Commission's regulations.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Notice of Proposed Issuance of Amendment to Facility Operating License was published in the **Federal Register** on July 9, 1979 (44 FR 40163). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated May 1, 1979, as revised by letter dated July 23, 1982 (2) Amendment No. 15 to License No. DPR-22, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 17th day of December, 1982.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 82-35563 Filed 12-30-82; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review, the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Revision and extension.

2. The title of the information collection: 10 CFR 25, Access Authorization for Licensee Personnel.

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: Nuclear facility licensees, nuclear transportation companies and other organizations requiring access to NRC classified information.

6. An estimate of the number of responses: 3,864.

7. An estimate of the total number of hours needed to complete the requirement or request: 2,058.

8. An indication of whether section 3504 (h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: Licensees and other organizations are required to provide information to ensure that an adequate level of protection is provided NRC classified information and material.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555.

Comments and questions sholud be directed to the OMB reviewer, Jefferson B. Hill, (202) 395–7430.

NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland the 27th day of December 1982.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 82-35564 Filed 12-30-82; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension.

2. The title of the information collection: 10 CFR Part 30, Rules of General Applicability to Domestic Licensing of Byproduct Material.

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: All persons desiring to receive, possess, use, or transfer byproduct material.

6. An estimate of the number of responses: 1,000,635.

7. An estimate of the total number of hours needed to complete the requirement or request: 30,091.

8. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: 10 CFR Part 30 establishes rules governing the domestic licensing of byproduct material.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, N.W., 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 27th day of December 1982.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 82-35565 Filed 12-30-82; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review, the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Revision and extension.

2. The title of the information collection: 10 CFR 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: Nuclear facility licensees, nuclear transportation companies and other organizations requiring access to NRC classified information.

6. An estimate of the number of responses: 1,006.

7. An estimate of the total number of hours needed to complete the requirement or request: 1,680.

8. An indication of whether Section 3504 (h), Pub. L. 96–511 applies. Not applicable.

9. Abstract: Licensees and other organizations are required to provide information to ensure that an adequate level of protection is provided NRC classified information and material.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395–7430.

NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland the 27th day of December 1982.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 82-35566 Filed 12-30-82; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension.

2. The title of the information collection: Orders to Licensees on BWR Scram Discharge Volume System.

3. The form number if applicable: Not applicable.

4. How often the collection is required: Non-recurring.

5. Who will be required or asked to report: BWR Nuclear Power Plant Licensees.

6. An estimate of the number of responses: 14.

7. An estimate of the total number of hours needed to complete the requirement or request: 3060 staff hours.

8. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: The Nuclear Regulatory Commission is issuing Confirmatory Orders to confirm BWR licensees commitments to install long-term BWR scram discharge system modifications and to install diverse instrumentation in accordance with NRC criteria.

Copies of the submittal may be inspected or obtained for a fee from NRC Public Document Room, 1717 H Street N.W., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill (202) 395–7340.

NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland, this 27th day of December 1982.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 82-35567 Filed 12-30-82; 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Pendency of Request for Approval of Special Withdrawal Liability Rules; Division 1181 Amalgamated Transit Union-New York Employees Pension Fund and Plan

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation has received a request from the Division 1181 Amalgamated Transit Union-New York Employees Pension Fund and Plan for approval of a plan amendment providing for special withdrawal liability rules. Under section 4203(f) of the Employee Retirement Income Security Act of 1974, as amended, a plan may establish special withdrawal liability rules if PBGC finds that the rules apply to an industry that has the characteristics that would make use of the special rules appropriate, and that the rules would not pose a significant risk to the PBGC insurance system. The effect of this notice is to advise interested persons of this request for approval of special withdrawal liability rules and to solicit their views on it.

DATE: Comments must be submitted on or before February 17, 1983.

ADDRESSES: All written comments (at least three copies) should be addressed to: Assistant Executive Director for Policy and Planning (140), Pension Benefit Guaranty Corporation 2020 K Street, N.W., Washington, D.C. 20006. The complete request for approval is available for public inspection at the PBGC Public Affairs Office, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m. Any comments received will also be made available to the public at the above address at those times.

FOR FURTHER INFORMATION CONTACT: James M. Graham, Office of the Executive Director, Policy and Planning (140), Pension Benefit Guaranty Corporation, 2020 K street, N.W., Washington, D.C. 20006; (202) 254-4862. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION:

Background

Under section 4203(a) of Employee Retirement Income Security Act of 1974, as amended ("ERISA") a complete withdrawal is generally defined as the permanent cessation of an employer's obligation to contribute under the plan, or the permanent cessation of all covered operations under the plan. Under section 4205, a partial withdrawal generally occurs when an employer reduces covered operations by 70 percent, or removes a continuing facility or bargaining unit from the plan while continuing to do the previously covered work in the area. Thus, the general rules on complete and partial withdrawal identify those events that normally result in a loss to the plan's contribution base.

However, Congress recognized that, in certain industries and under certain circumstances, a complete or partial cessation of the obligation to contribute by an employer normally does not weaken the plan's contribution base. For that reason, Congress established special withdrawal rules for the construction and entertainment industries.

Under the definition in ERISA section 4203(b)(2), a complete withdrawal occurs only if a construction industry employer ceases to have an obligation to contribute under the plan, and the employer either continues to perform previously covered work in the area of the collective bargaining agreement or resumes such work within five years without renewing the obligation to contribute at the time of resumption. Section 4203(c)(1) applies the same special definition of complete withdrawal to the entertainment industry, except that the pertinent area is the area of the plan rather than the area of the collective bargaining agreement. In contrast, the general definition of complete withdrawal imposes liability regardless of the continued activities of the withdrawn employer (section 4203(a)).

Congress also established special partial withdrawal liability rules for the construction and entertainment industries. In construction, a partial withdrawal occurs "only if the employer's obligation to contribute under the plan is continued for no more than an insubstantial portion of its work in the craft and area jurisdiction of the collective bargaining agreement of the type for which contributions are required" (ERISA section 4208(d)(1)). The entertainment industry is exempt from partial withdrawal liability "except under the conditions and to the extent prescribed by the corporation by regulation" (section 4208(d)(2)).

ERISA section 4203(f) provides that PBGC may authorize plans in industries other than construction and entertainment to adopt special complete withdrawal liability rules similar to those for the construction and entertainment industries in section 4203 (b) and (c). Section 4208(e)(3) provides that PBGC may permit plans to adopt special partial withdrawal liability rules upon a finding by PBGC that the rules are consistent with the purposes of Title IV of ERISA. Under ERISA section 4203(f) and § 2645.4(a) of the PBGC's regulation on procedures for extension of special withdrawal liability rules (47 FR 12622, March 24, 1982), PBGC will approve a plan amendment establishing special withdrawal rules if the PBGC determines that the plan amendment—

(A) Will apply only to an industry that has characteristics that would make use of the special withdrawal rules appropriate; and

(B) Will not pose a significant risk to the insurance system.

In making these determinations, PBGC will conduct a comprehensive analysis of the request, the actuarial data submitted and other relevant information relating to the industry and the plan. PBGC may condition its approval of the special rules on the plan's taking certain additional actions in order to ensure satisfaction of the regulatory standards. For example, PBGC approval may be conditioned on the plan's modification of the rule or a change in the plan's funding practices.

In order for the PBGC to determine whether a special withdrawal rule is appropriate, § 2645.3(d)(7) of the regulation requires that plans provide information on the industry which is the subject of the rule. This includes information on the effects of withdrawals on the plan's contribution base, as well as information sufficient to demonstrate the existence of industry characteristics which would indicate that withdrawals in the industry do not typically have an adverse effect on the plan's contribution base. (These characteristics include the mobility of employees, the intermittent nature of employment, the project-by-project nature of the work, extreme fluctuations in the level of an employer's covered work under the plan, the existence of a consistent pattern of entry and withdrawal by employers, and the local nature of the work performed.)

Under § 2645.2(a) of the regulation, a special partial withdrawal rule must be consistent with the rule the plan has adopted on complete withdrawals. The

regulation also requires that a plan indicate how the special rules will operate in the event of a sale of assets by a contributing employer or the withdrawal from the plan of all employers (§ 2645.3(d)(4)). Finally, § 2645.4(b) requires PBGC to publish a notice of the pendency of a request for approval of special withdrawal rules in the **Federal Register**, and to provide interested parties with an opportunity to comment on the request.

The Request

PBGC has received a request from the Division 1181 Amalgamated Transit Union-New York Employees Pension Fund and Plan (the "Plan") for approval of a Plan amendment providing for special withdrawal liability rules. In the request, the Plan represents, among other things, that:

The Plan

The Plan is a multiemployer plan, with approximately 84 contributing employers, that is maintained pursuant to collective bargaining agreements between Division 1811-1061 Amalgamated Transit Union, AFL-CIO, and employers operating school buses under contract with the Board of Education of the City of New York ("Board of Education"). The Plan is the only multiemployer plan in New York City, which covers drivers, maintenance employees and matron-attendant escorts on buses used to transport school children to and from the New York City public schools. The Plan also covers employees who transport handicapped and emotionally disturbed children to and from public and nonpublic schools in New York City.

Virtually, all of the employees covered by the Plan work in the school transportation industry in New York City. As of August 31, 1982, The Plan covered 4,259 active workers and 519 retired and terminated vested participants. The Plan had assets of $34.7 million. With minor exceptions, all of the current contributing employers are school bus operators. The only non-school bus contributors are Division 1181-1061 and three organizations connected to it. Those four contributors account for only 39 of the approximate 4,600 participants in the Plan.

Special Characteristics of the Plan and Industry

Pursuant to a 1979 order of the Supreme Court of New York, contracts for school busing between the Board of Education and a contractor with more than five vehicles must contain certain employee protection provisions. Under the court order, as extended by the Board of Education, a contractor is required to give priority in employment to any employee who was employed prior to June 1, 1982 under a school bus contract, and who is on furlough or is unemployed as a result of a loss of contract or a reduction in service ordered by the Board of the Education ("Master Seniority List Employees"). In addition, the contractor is required to sign an agreement with the Plan to contribute on behalf of Master Seniority List Employees. The Board of Education is authorized to cancel any transportation contract if an employer willfully fails to comply with the employee protection provisions. Therefore, employers who are awarded transportation contracts are bound by law to contribute to the Plan on behalf of Master Seniority List Employees.

For this reason, the Plan is not dependent for contributions on the participation of a specific employer. Under the employee protection provisions required by law, when a contributing employer no longer holds a contract, the new employer must hire Master Seniority List Employees and must then contribute to the Plan on behalf of those employees.[1] As the Plan stated in its application:

> This industry is therefore unique in that it does not depend upon the existence of any one employer (company) or group of employers (companies). The fact that one such employer of group of employers cease operation or go out of business, does not affect the aggregate level of work, number of employees or contributions.

As long as the Board of Education requires school transportation, pursuant to the employee protection provisions in the contracts, contributions will be made to the Plan.

The school bus transportation contracts are subject to competitive bidding and are normally for a 3-year period. The employee protection provisions apply to contracts for handicapped pupils effective through June 30, 1984, and have been extended to cover all contracts for normal pupils through June 30, 1983.

The Plan also points out that the work in the industry is local in nature. Covered work can only be performed in New York City. If an employer ceases to operate in New York City, it can no longer compete for that work.

Actuarial Data

As part of its request, the Plan submitted copies of its two most recent actuarial valuation reports. These reports where for the plan years ending August 31, 1977 and August 31, 1981. The valuations were as of August 31, 1977 and August 31, 1980. Plan costs for funding purposes are determined on the Frozen Initial Liability Method.

In addition to the actuarial reports, the Plan submitted Forms 5500 (including Schedule B's) and audited financial statements for all plan years commencing in 1976 through plan years commencing in 1980.

The information submited shows that from August 31, 1977, to August 31, 1981, the Plan experienced growth in its population base. The number of active participants increased 36.0 percent, representing an average compounded growth rate of 8.0 percent. The number of retirees, as a percentage of the number of actives, went from 7.0 percent to 11.3 percent

The Plan requires employee contributions. During the period under discussion, total contributions went from $3,741,159 to $5,437,254. The contribution rate for employers increased, while that for employees remained constant. Benefits plus expenses increased from $889,132 to $2,182,807. The excess of contributions over benefits and expenses went from $2,852,030 to $3,254,447. Assets have almost doubled from $17,445,817 to $34,687,944.

There was a benefit increase in 1981, which increased the Plan's unfunded accrued liability as of August 31, 1980 by approximately $5.5 million. This benefit increase consisted of raising the minimum benefits payable under the plan. An increase in the assumed interest rate from 5½ to 7 percent lowered unfunded accrued liability as of September 1, 1979 by approximately $4.4 million. Overall, the plan's unfunded accrued liability went from $23,292,422 as of August 31, 1977 to $21,168,484 as of August 31, 1980.

As of September 1, 1980, approximately 50 percent of the active participants were under age 42.5; approximately 82 percent were under age 52.5 Approximately 1 percent of the active participants were age 62.5 or older.

A summary of the actuarial information is set forth below.

[1] The employee protection provisions do not apply with respect to drivers, mechanics and dispatchers of contractors providing five vehicles or less.

SUMMARY OF ACTUARIAL VALUATION RESULTS

	Aug. 31, 1981	Aug. 31, 1980	Aug. 31, 1979	Aug. 31, 1978	Aug. 31, 1977
A. Participants and benefits:					
1. Number of participants and beneficiaries:					
a. Active	4,259	[1]4,251	3,143	3,113	[2]3,132
b. Retired	483	[1]389	317	240	[2]221
c. Terminated vested and beneficiaries in pay status	58	[1]35	19	33	[2]9
2. Benefit formula: benefit	([3])	([3])	([3])	([3])	([3])
B. Income and expenses (in dollars):					
1. Annual contributions:					
a. Employer	$4,042,997	$3,938,503	$2,479,024	$2,965,091	$2,567,886
b. Employee	1,394,257	1,425,309	922,848	1,192,207	1,173,273
c. Total	5,437,254	5,363,812	3,401,872	4,157,298	3,741,159
2. Benefits and expenses:					
a. Annual benefit payout including refunds of employee contributions	1,729,630	1,508,269	1,168,045	886,515	706,205
b. Expenses	453,177	234,789	177,345	162,765	182,924
c. Total	2,182,807	1,743,058	1,345,390	1,049,280	889,129
C. Plan assets and liabilities (in dollars):					
1. Frozen initial liability normal cost for plan year ending	1,902,156	2,137,418	1,101,015	1,086,462	1,106,621
2. Net charge to funding standard account (without regard to prior year credit balance) for plan year ending	3,517,688	3,341,623	2,405,175	2,390,622	2,410,781
3. Unfunded value of:					
a. Accrued liability-FIL	NA	[1]21,168,484	NA	NA	[2]23,292,422
b. Liability for Vested Benefits	NA	[4]3,974,918	[5]6,416,439	NA	NA
4. Market value of assets	34,687,944	31,266,626	25,865,105	22,070,753	17,445,817
D. Interest rate used to value liabilities	NA	7%	7%	NA	5½%

[1] From 1981 Actuarial Report.
[2] From 1977 Actuarial Report.
[3] Percentage of pay, depending upon years of service, with specified minimum benefit.
[4] From 1980 Schedule B—September 1, 1980 figure.
[5] From 1979 Schedule B—September 1, 1979 figure.
NA = Not available from information submitted.
Source: Forms 5500 and attached financial statements except where otherwise noted.

Complete Withdrawal Rule

On April 28, 1982, the Plan adopted an amendment prescribing special withdrawal rules to take effect as of January 1, 1981. The amendment was modified by the Plan on November 10, 1982. The amendment would apply to any contributing employer under the Plan. Under the amendment, a complete withdrawal from the Plan would occur if:

(1) An Employer ceases to have an obligation to contribute under the Plan, and

(2) The Employer—

(a) Continues to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required, or

(b) Resumes such work within five years after the date on which the obligation to contribute under the Plan ceases, and does not renew the obligation at the time of resumption.

(3) If the Plan is terminated by mass withdrawal as determined in Section 4041(a)(2) of ERISA paragraph (2)(b) above shall be applied by substituting "three years" for "five years".

(*Plan Amendment:* Article XI, section 1(A).)

Partial Withdrawal Rule

The Plan amendment also provides special partial withdrawal liability rules. Under the amendment, a partial withdrawal from the Plan shall occur if, on the last day of the plan year, for such year—

(1) There is a 70-percent contribution decline in an Employer's contribution to the Plan which shall be defined in accordance with the appropriate provisions of ERISA § 4205, or

(2) There is a partial cessation of an Employer's contribution obligation which shall be defined in accordance with the appropriate provisions of ERISA § 4205, and

(3) In addition to (a) or (b) above, the Employer is performing work of the type for which contributions were required in the jurisdiction of the collective bargaining agreement on a non-covered basis.

(*Plan Amendment;* Article XI, section 1(B).)

Treatment of Sales of Assets and Mass Withdrawal

The Plan amendment does not contain rules specifically pertaining to sales of assets or mass withdrawal by all employers. The request states that those rules are not necessary due to the nature of the industry, described above, which is covered by the Plan.

Notice

The Plan has given notice of the adoption of the amendment and of the request for PBGC approval of the amendment to all employers who have an obligation to contribute under the Plan and to the union representing employees covered under the Plan.

Comments

All interested persons are invited to submit written comments on the pending request to the above address, on or before February 17, 1983. All comments will be made a part of the record. Comments received, as well as the application for approval of the plan amendment, will be available for public inspection at the address set forth above.

Issued at Washington, D.C., on this 27th day of December 1982.

Edwin M. Jones,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 82-35477 Filed 12-30-82; 8:45 am]

BILLING CODE 7708-01-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 1
Monday, January 3, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Civil Rights Commission	1
Consumer Product Safety Commission	2
Federal Maritime Commission	3
Tennessee Valley Authority	4

1

COMMISSION ON CIVIL RIGHTS

PLACE: Room 512, 1121 Vermont Avenue, N.W., Washington, D.C.

DATE AND TIME: January 10, 1983, 9:30 a.m.–12:00 noon; 1:30–4:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda.
II. Approval of Minutes of Last Meeting.
III. Review of the Religious Discrimination Statement.
IV. Review of Staff Comments on the Analysis of Executive Order 11246 by the Senate Committee on Labor and Human Resources.
V. Discussion of a Proposal for the Commission to Establish Business-Labor Advisory Committees.
VI. State Advisory Committee Recharters.
A. Iowa.
B. North Dakota.
C. Texas.
D. Utah.
E. Virginia.
VII. Illinois Advisory Committee Report Entitled *Housing: Chicago Style.*
VIII. Connecticut Advisory Committee Report Entitled *Hate Groups and Acts of Bigotry.*
IX. Oregon Advisory Committee Report Entitled *External Review of Police Misconduct in Portland, Oregon.*
X. Civil Rights Developments in the Northwestern Region.
XI. Staff Director's Report.
A. Status of Funds.
B. Personnel Report.
C. Office Directors' Reports.

PERSON TO CONTACT FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications Division, (202) 254–6697.

[FR Doc. S-1871-82 Filed 12-29-82; 11:10 am]

BILLING CODE 6335-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission meeting, Wednesday, January 5, 1983, 10 a.m.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW, Washington, D.C.

STATUS:

Open to the Public

1. *Special Packaging Requirements Under the Poison Prevention Packaging Act: ANPR.*
The staff will brief the Commission on a draft Advance Notice of Proposed Rulemaking (ANPR) which solicits suggestions for methods to improve the effectiveness of child-resistant packaging and which requests comments on specific suggested revisions to the child and adult test procedures.

Closed to the Public

2. *Compliance Report.*
The staff will brief the Commission of a special compliance report.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Bethesda, MD 20207, 301–492–6800.

[S-1873-82 Filed 12-29-82; 3:57 pm]

BILLING CODE 6355-01-M

3

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9 a.m., January 7, 1983.

PLACE: Hearing Room 1, 1100 L Street, NW., Washington, D.C. 20573.

STATUS: Closed.

MATTER TO BE CONSIDERED: 1. Docket No. 82-58: Actions To Adjust or Meet Conditions Unfavorable to Shipping in the United States/Venezuela Trade—Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523-5725.

[S-1870-82 Filed 12-29-82; 10:55 am]

BILLING CODE 6730-01-M

4

TENNESSEE VALLEY AUTHORITY (MEETING NO. 1303)

TIME AND DATE: 1 p.m. (EST), Wednesday, January 5, 1983.

PLACE: TVA West Tower Audititorium.

STATUS: Open.

C—Power Items

C1. Adoption of supplemental resolution authorizing 1983 Series A power bonds.
C2. Resolution authorizing the Chairman and other executive officers to take further action relating to issuance and sale of 1983 Series A power bonds.

D—Personnel Actions

D1. Revised pay plan for certain management and physician schedule employees.

DATED: December 29, 1982.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

[S-1872-82 Filed 12-29-82; 3:49 pm]

BILLING CODE 8120-01-M

federal register

Monday
January 3, 1983

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modification to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Alabama: AL82-1082	November 19, 1982.
California:	
CA82-5112	July 16, 1982
CA82-5120	August 27, 1982
CA82-5118	August 20, 1982
CA82-5122	September 3, 1982
Hawaii: HI82-5123	October 1, 1982
Indiana:	
IN80-2082	September 26, 1980
IN80-2015	April 11, 1980
Louisiana:	
LA82-4021	May 7, 1982
LA82-4022	May 7, 1982
LA82-4053	November 5, 1982
Nevada: NV82-5113	August 6, 1982
New York:	
NY81-3061	September 11, 1981
NY82-3025	September 3, 1982
Texas:	
TX82-4046	October 1, 1982
TX82-4054	November 5, 1982.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Indiana: IN80-2007 (IN82-2070).	March 14, 1980.

Special Notice

Inasmuch as Friday December 24 and 31, 1982 falls on Federal holidays, the Davis-Bacon wage determinations will be published the next work days, i.e., Monday, December 27, 1982, and Monday, January 3, 1983, respectively.

Signed at Washington, D.C., this 23th day of December 1982.

Dorothy P. Come,

Assistant Administrator Wage and Hour Division.

BILLING CODE 4510-27-M

MODIFICATIONS P. 1

DECISION NO. CA82-5112 - Mod. #8
(47 FR 31154 - July 16, 1982)
Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas , Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba Counties, California

	Basic Hourly Rates	Fringe Benefits
Change:		
Boilermakers	$21.39	$3.86
Bricklayers; Stonemasons:		
Area 4	17.53	3.46
Area 6	20.25	3.87
Line Construction:		
Groundmen	18.70	5.75+ 3%
Linemen; Line Equipment Operators	22.00	5.75+ 3%
Cable Splicers	24.75	5.75+ 3%
Plasterers:		
Area 1	18.83	4.43
Area 4	16.63	5.44
Plumbers; Steamfitters:		
Area 3	$26.64	$8.30
Area 4	20.90	5.43
Sheet Metal Workers:		
Area 4	18.25	4.32
Area 5	20.00	5.22
Area 11	20.86	4.32
Soft Floor Layers:		
Area 1	16.01	3.00

DECISION NO. CA82-5120 - Mod. #5
(47 FR 38022 - August 27, 1982)
Alameda, Amador, Calaveras, Contra Costa, Del Norte, El Dorado, Humboldt, Marin, Mariposa, Merced, Monterey, Napa, Nevada, Placer, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Sutter, Tuolumne, Yolo, and Yuba Counties, California

	Basic Hourly Rates	Fringe Benefits
Change:		
Boilermakers	$21.39	$3.86
Bricklayers; Stonemasons:		
Area 4	17.53	3.46
Area 6	20.25	3.87
Plasterers:		
Area 1	18.83	4.43
Area 5	16.63	5.44
Plumbers; Steamfitters:		
Area 3	26.64	8.30
Area 6	20.90	5.43
Sheet Metal Workers:		
Area 1	$25.73	$5.14
Area 4	18.25	4.32
Soft Floor Layers:		
Area 1	16.01	3.00
Add:		
Sheet Metal Workers:		
Area 9 (Monterey and San Benito Counties):	20.00	5.22
Area 10 (Santa Cruz County)	20.86	4.32

MODIFICATIONS P. 2

DECISION NO. CA82-5118 - Mod. #4
(47 FR 36513 - August 20, 1982)
Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernatdino, San Luis Obispo, Santa Barbara, and Ventura Counties, California

	Basic Hourly Rates	Fringe Benefits
Change:		
Electricians:		
Area 7:		
Electricians	$22.23	$3.36+ 3%
Cable Splicers	24.45	3.36+ 3%
Residential Electricians	11.40	3.36+ 3%
Area 8:		
Electricians	20.95	3.18+ 3%
Cable Splicers	22.45	3.18+ 3%
Area 9:		
Electricians	20.41	3.67+ 3%
Area 10:		
Electricians	24.20	3.18+ 3%
Cable Splicers	25.70	3.18+ 3%
Line Construction:		
Area 7:		
Groundman	16.67	3.33+ 3%
Lineman Equipment Operators	22.23	3.33+ 3%
Cable Splicers	24.45	3.33+ 3%
Area 8:		
Lineman; Equipment Operators	20.41	3.67+ 3%
Area 9:		
Groundman	18.96	3.18+ 3%
Lineman; Equipment Operators	24.20	3.18+ 3%
Cable Splicers	25.70	3.18+ 3%
Marble Setters:		
Area 2	$18.50	$2.95
Marble Finishers:		
Area 1	14.14	3.30
Painters:		
Area 4:		
Brush, Pot Tender	18.48	3.61
Paperhangers, Paste Machine Operators; Iron and Steel	18.73	3.61
Spray, Taper; Sandblaster	18.18	3.61
Sign Painter	19.13	3.61
Steeplejack	19.48	3.61
Drywall Taper and Spray Texture	19.81	3.61
Sheet Metal Workers:		
Area 6	19.17	4.20+ 10%
Terrazzo Workers:		
Area 1	18.50	2.95
Tile Setters:		
Area 1	18.50	2.95
Power Equipment Operators:		
Dredging:		
(Hydraulic Suction Dredges)		
Leverman	18.10	6.41
Watch Engineer Welder; Deckmate	17.52	6.41
Winchman (stern winch or Dredge)	16.97	6.41
Bargeman; Deckhand; Fireman; Oiler; Leveehand	16.43	6.41
Dozer	17.63	6.41
(Clamshell Dredges):		
Leverman	18.10	6.41
Watch Engineer; Deckmate	17.52	6.41
Barge Mate	17.04	6.41
Bargeman; Deckhand; Fireman; Oiler	16.43	6.41

MODIFICATIONS P. 3

DECISION NO. CA82-5118 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Power Equipment Operators:		
Group 1	$16.25	$6.41
Group 2	16.53	6.41
Group 3	16.82	6.41
Group 4	16.96	6.41
Group 5	17.18	6.41
Group 6	17.29	6.41
Group 7	17.41	6.41
Group 8	17.58	6.41
Group 9	17.71	6.41

	Basic Hourly Rates	Fringe Benefits

MODIFICATIONS P. 4

DECISION NO. CA82-5122 - Mod. #2
(47 FR 39075 - September 3, 1982)
San Diego County, California

	Basic Hourly Rates	Fringe Benefits
Change:		
Asbestos Workers	$21.29	$3.83
Boilermakers	20.01	3.59
Carpenters:		
Carpenters	18.61	3.23
Piledriver	18.86	3.23
Millwrights; Pneumatic Nailer; Hardwood Floorlayers	19.21	3.23
Divers:		
Divers	42.22	3.23
Stand-by Divers	21.11	3.23
Tender	20.11	3.23
Electricians:		
Electricians; Technicians	21.32	3.61+ 3%
Cable Splicers	21.77	3.61+ 3%
Utility Technician	16.00	3%+.47
Soft Floor Layers	17.80	3.59
Tile, Marble, and Terrazzo Setters	18.50	2.95
Tile, Marble, and Terrazzo Finishers	14.14	3.30

	Basic Hourly Rates	Fringe Benefits
Power Equipment Operators:		
Group 1	$16.25	$6.41
Group 2	16.53	6.41
Group 3	16.82	6.41
Group 4	16.96	6.41
Group 5	17.18	6.41
Group 6	17.29	6.41
Group 7	17.41	6.41
Group 8	17.58	6.41
Group 9	17.71	6.41
Dredging: (Hydraulic Suction Dredge);		
Leverman	18.10	6.41
Watch Engineer; Welder; and Deckmate	17.52	6.41
Winchman (Stern Winch or Dredge)	16.97	6.41
Bargeman; Deckhand; Fireman; Oiler; Leveehand	16.43	6.41
Clamshell Dredges:		
Leverman	18.10	6.41
Watch Engineers and Deckmate	17.52	6.41
Bargemate	17.04	6.41
Bargeman; Deckhand: Fireman; Oiler	16.43	6.41
Add:		
Sound Installers	16.47	1.46+ 3%

MODIFICATIONS P. 5

DECISION NO. HI82-5123 - Mod. #2
(47 FR 43513 - October 1982)
Statewide, Hawaii

	Basic Hourly Rates	Fringe Benefits
Change:		
Boilermakers	$15.10	$4.06
Marble Setters	15.03	4.75
Sheet Metal Workers	14.25	7.30
Terrazzo Workers and Tile Setters:		
Terrazzo Base Grinder	13.45	4.75
Terrazzo Floor Grinder and Finisher	12.02	4.75
Terrazzo Workers and Tile Setters	15.03	4.75

DECISION #AL82-1082 - Mod. #1
(47 FR 52316 - November 19, 1982)
Madison County, Alabama

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Cement masons	$12.75	

Basic Hourly Rates	Fringe Benefits

MODIFICATIONS P. 6

DECISION NO. IN80-2082 - MOD. #1
(45 FR 64052 - September 26, 1980)
Elkhart, Jasper, Kosciusko, LaGrange, Marshall, Newton, Pulaski & Starke Counties, Indiana

	Basic Hourly Rates	Fringe Benefits
Change:		
Asbestos Workers: Elkhart, Jasper, Kosciusko, Marshall, & Stark Cos.	$16.96	2.57
Bricklayers & Stonemasons Elkhart, Kosciusko & LaGrange Cos.	15.77	1.68
Carpenters; Millwrights; Piledrivermen & Soft Floor Layers: Elkhart Co.;		
Carpenters	14.30	2.48
Millwrights/Piledrivermen	14.55	2.48
Cement Masons: Elkhart, Kosciusko, & LaGrange Cos.	14.92	1.58
Electricians: Elkhart, Kosciusko & Marshall Cos.	17.40	14.38
Ironworkers: Elkhart, Kosciusko (W. Portion exclu. Warsaw), LaGrange, (W 1/2 exclu. City of LaGrange, Marshall, Pulaski, & Starke Cos.	15.40	4.61
Laborers:-		
Semi-Skilled	11.45	1.89
Skilled	11.65	1.89
Painters: Elkhart, Kosciusko, Marshall, Pulaski, & Starke Cos.	12.64	1.95
Plumbers: Elkhart, Kosciusko & LaGrange	16.48	2.70
Roofers: Elkhart, Kosciusko, Marshall, Pulaski & Starke Cos.:		
Composition; Damp & Waterproof	14.60	2.03
Slate	15.10	2.03
Sheet Metal Workers: Elkhart, Kosciusko & Marshall Cos.	15.76	2.21
Sprinkler Fitters	16.67	2.83

DECISION NO. IN80-2015 - MOD. #3
(45 FR 24985 - April 11, 1980)
Statewide, Except Lake, LaPorte, Porter, and St. Joseph Counties

	Basic Hourly Rates	Fringe Benefits
Change:		
Carpenters: Elkhart County Zone II	$13.36	2.15

DECISION NO. LA82-4021 - MOD. #6 (47 FR 19877 - 5/7/82) Bossier & Caddo Pars., Louisiana	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Painters - Painters, tape & float, vinyl & paperhangers	$11.25	1.25
DECISION NO. LA82-4022 - MOD. #9 (47 FR 19877 - 5/7/82) Calcasieu Par., Louisiana		
CHANGE:		
Painters - Group 1	15.795	.45
Group 2	16.01	.45
Group 3	16.17	.45
Tile setters	13.07	1.70
DECISION NO. LA82-4053 - MOD. #5 (47 FR 50421 - 11/5/82) Statewide Louisiana		
CHANGE:		
Asbestos workers:		
Zone 3	14.80	2.32
Zone 4	14.29	1.36
Boilermakers	16.60	2.415
Carpenters:		
Zone 7:		
Carpenters & soft floor layers	13.35	
Millwrights	14.10	
Piledrivermen	13.85	
Glaziers - Zone 2	12.25	.01
Lathers - Zone 6	13.35	
Marble, tile & terrazzo workers & finishers:		
Zone 2 - Tile setters	13.07	1.70
Painters:		
Zone 1 - Group 1	15.795	.45
Group 2	16.01	.45
Group 3	16.17	.45
Group 4	17.73	.45
Zone 6 - Painters, tape & float, vinyl & paper-hanger	11.25	1.25
Zone 7 - Group 1	9.55	
Group 2	10.05	
Group 3	10.55	
Plasterers - Zone 2	13.25	.01

DECISION NO. LA82-4053 - MOD. #5 (CONT'D)	Basic Hourly Rates	Fringe Benefits
Power equipment ops.:		
Zones 2, 3 & 4:		
Group 1	$ 9.55	2.20
Group 2	10.58	2.20
Group 3	10.68	2.20
Group 4	11.15	2.20
Group 5	13.32	2.20
Group 6	12.32	2.20
Roofers:		
Zone 2:		
Roofers	10.11	3.10
Preparers remove old roofing, place, stock or move material, tools or equipment for journeymen	4.90	1.15
Zone 3 - Roofers	12.18	1.94
Zone 4 - Roofers	11.50	.30
Kettlemen	9.20	.30

DECISION NO. NV82-5113 - Mod. #5 (47 FR 34300 - August 6, 1982) Clark County (does not include the Nevada Test Site), Nevada	Basic Hourly Rates	Fringe Benefits
Change:		
Cement Masons:		
Cement Masons	$16.05	$3.70
Cement Floor Finishing Machine; Color Work	16.43	3.70
Plasterers	16.95	3.70
Truck Drivers:		
Group 1	14.18	2.54
Group 2	14.29	2.54
Group 3	14.34	2.54
Group 4	14.50	2.54
Group 5	14.68	2.54
Group 6	15.18	2.54

DECISION NO. NY81-3061 - MOD. #3 (46 FR 45525 - Sept. 11, 1981) CLINTON COUNTY, NEW YORK	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS		
Zone 1 - City Of Plattsburg and 5 mile radius		
Electricians	13.30	1.75+ 4%+a
Cable Splicers	13.60	1.75+ 4%+a
Zone II - From Zone I to a 20 mile radius of Plattsburg		
Electricians	13.50	1.75+ 4%+a
Cable Splicers	13.80	1.75+ 4%+a
Zone III - Beyond Zone II		
Electricians	13.70	1.75+ 4%+a
Cable Splicers	14.00	1.75+ 4%+a

Basic Hourly Rates	Fringe Benefits

MODIFICATIONS P. 9

DECISION NO. NY82-3025-
MOD. #3
(47 FR 39079 - Sept. 3, 1982)
ORANGE COUNTY, NEW YORK

	Basic Hourly Rates	Fringe Benefits
ADD:		
ELECTRICIANS		
Twps. of Otisville, Middletown, Goshen, Florida, Warwick, Port Jervis, Sparrow Bush, Monroe, Harman, Southfield, Tuxedo Lake and Tuxedo	14.00	30%
Remainder of County	14.90	1.97+ 10.55%

DECISION NO. TX82-4046 -
MOD. #4
(47 FR 43525 - 10/1/82)
Jefferson & Orange Cos., Texas

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Carpenters-residential const. of not more than 2 units & condominium townhouses of not more than 10 units excluding all apt. const. & multiple bldgs. for rental purposes	$15.19	1.765
Laborers - Group 1	10.66	1.50
Group 2	10.86	1.50
Group 3	10.96	1.50
Group 4	11.11	1.50

DECISION NO. TX82-4054 -
MOD. #4
(47 FR 50430 - 11/5/82)
Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos., Texas

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Bricklayer & stonemason:		
Zone 1	15.58	1.74
Zone 2	15.57	1.71
Painters:		
Zone 2 - Group 1	15.75	1.12
Group 2	16.00	1.12
Group 3	17.00	1.12
Group 4	16.125	1.12
Plumber & pipefitter:		
Zone 1	16.62	1.99

SUPERSEDEAS DECISION

STATE: Indiana
DECISION NO.: IN82-2070
COUNTY: Blackford & Delaware
DATE: Date of Publication
Supersedes Decision No. IN80-2007, dated March 14, 1980 in 45 FR 16817
DESCRIPTION OF WORK: Residential Construction Consisting of single family homes and apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING MECHANIC	$ 7.50	
BRICKLAYERS	10.00	
CARPENTERS	7.95	
CEMENT MASONS	9.00	
DRYWALL FINISHERS/TAPERS	6.95	
DRYWALL HANGERS	8.00	
ELECTRICIANS	6.96	
HEATING MECHANICS	7.50	
INSULATORS	6.63	
LABORERS	5.78	
PAINTERS	6.75	
PLASTERERS	7.00	
PLUMBERS	10.30	1.15
ROOFERS	6.23	
SHEET METAL WORKERS	9.00	
TRUCK DRIVERS	7.35	
POWER EQUIPMENT OPERATORS		
BACKHOE OPERATOR	10.00	
FRONT END LOADER	10.40	
BULLDOZER OPERATOR	10.00	
GRADER OPERATOR	10.73	
SCRAPER OPERATOR	10.00	

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

[FR Doc. 82-35228 Filed 12-30-82; 8:45 am]
BILLING CODE 4510-27-C

federal register

Monday
January 3, 1983

Part III

Environmental Protection Agency

Hazardous Waste Management System; Standards Applicable to Generators of Hazardous Waste; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 262

[SW FRI 1970-2]

Hazardous Waste Management System; Standards Applicable To Generators of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On February 26, May 19, and November 19, 1980, and January 11, 1982, the Environmental Protection Agency (EPA) published regulations pursuant to the Resource Conservation and Recovery Act (RCRA). Those regulations allow hazardous waste generators to accumulate hazardous waste generators to accumulate hazardous waste on-site for 90 days without obtaining a permit or having interim status under RCRA, provided that they accumulate the waste in accordance with certain standards.

EPA has received comments from the regulated community indicating that industries which generate hazardous waste typically have numerous locations on-site where waste is initially generated and accumulated, often in small amounts, prior to consolidation at centralized accumulation areas. In response to concerns that the standards for 90-day accumulation are unnecessary and impractical to apply at these "satellite" areas, EPA is proposing to amend the generator standards to allow generators to accumulate as much as 55 gallons of hazardous waste (except for acutely hazardous waste as listed in 40 CFR 261.33(e) of the regulations) at each satellite area for any length of time without complying with the 90-day accumulation standards. Generators could accumulate wastes under this provision provided that: (1) The wastes are placed in containers which are in good condition, (2) the wastes are compatible with their containers, and (3) the containers are marked with the words "Hazardous Waste" or other words that identify their contents. Within 72 hours of accumulating over 55 gallons at a satellite area, the generator would be required to comply with all applicable requirements under RCRA for further management of any waste in excess of 55 gallons.

EPA believes that protection of human health and the environment will not be affected by this action. EPA also estimates that this action will result in a savings to the regulated community of approximately $5,000,000 per year.

DATES: EPA will accept public comments on the proposed amendment until March 4, 1983.

ADDRESSES: Comments should be addressed to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460. Communications should identify the regulatory docket number "Section 262.34(c)."

The public docket for this proposed rule is located in Room S-269C, U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C., and is available for viewing from 9:00 am to 4:00 pm Monday through Friday excluding holidays.

FOR FURTHER INFORMATION CONTACT: Amy Mills, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, Washington, D.C. 20460, (202) 382-4755, or the RCRA Hotline at (800) 424-9346 or (202) 382-3000.

SUPPLEMENTARY INFORMATION:

I. Background

On February 26, 1980, May 19, 1980, and November 19, 1980, EPA promulgated regulations pursuant to the Solid Waste Disposal Act, as amended by the Resource Consevation and Recovery Act (RCRA), as amended, 42 U.S.C. 6901, *et seq.* The regulations established a system to manage hazardous waste, and include standards for generators of hazardous waste. (40 CFR Part 262, 45 FR 12732, 45 FR 33142, and 47 FR 1251). In § 262.34(a) of the regulations, EPA stated that generators may accumulate hazardous waste on-site for up to 90 days without obtaining a storage permit, provided they accumulate the waste in accordance with certain standards. These standards include requirements for: the use of tanks and containers, personnel training, and the preparation of contingency plans. In establishing those standards, EPA had assumed that accumulation generally occurred at one or two discrete locations within an industrial facility, and that the § 262.34 requirements would apply to loading docks, storage buildings, sheds and other central areas where wastes are accumulated.

Members fo the regulated community, however, have pointed out that within an industrial complex there may be dozens of paces where hazardous wastes are initially generated and collected during daily operations prior to consolidation at a loading dock or other central waste accumulation area. At present, the regulations make no distinction between the initial collection of hazardous waste at various points of generation ("satellite" accumulation) and accumulation at a central area on-site where these wastes are consolidated for on-site managment or transportation off-site. Therefore, the standards for 90-day accumulation apply to both.

In the preamble to the November 19, 1980, **Federal Register** notice amending § 262.34, the Agency raised the issue of whether a distinction should be drawn between satellite accumulation and central accumulation areas. 45 FR 76624. EPA expressed the view that the requirements of § 262.34(a) appear appropriate for all types of accumulation areas, but solicited comments on the subject.

Various groups responded and all asserted that there is indeed a practical distinction between satellite and central accumulation which should be recognized in the regulations. The commenters supported a reduction or deletion of regulatory requirements for initial accumulation of hazardous wastes at or near points of generation.

Some commenters expressed the opinion that regulation of hazardous waste in satellite areas is unnecessary because these waste quantities are small and pose a very low risk to human health and the environment. Some noted that hazardous waste in satellite areas is typically held in a bucket or other container for only several days or a week before being emptied; therefore, they contended that there is little risk of undetected corrosion or leakage. Commenters also pointed out that unlike central accumulation areas where the variety and quantity of wastes contribute to the likelihood of serious incidents and chain reactions (fires, explosions, etc.), satellite areas usually Have only one type of waste and are not prone to accidents of serious magnitude.

Most of the industries that commented reported that their satellite areas are close to manufacturing process areas and are under close company supervision. They stated that personnel who work in these areas are trained and experienced with hazardous raw materials and wastes. One example given was that of degreasing solvents accumulated in closed containers in a machine shop prior to being transferred to a central accumulation point. The satellite area is properly ventilated and equipped with a sprinkler system, mainly because of the risks posed by the raw material solvents and their use. The personnel who work in this area are said to be trained and experienced with the handling of these solvents before and after use. The commenters concluded that the additional training

required under § 262.34(a), which requires compliance with § 265.16, is unnecessary and burdensome.

In addition, by applying the training requirements to personnel who work at satellite areas, some plant officials have to train very large numbers of employees and keep extensive records on each person. One commenter noted that at one manufacturing plant, the personnel training requirements apply to ten times as many employees as they would if the requirements applied only to central accumulation areas. In his opinion, this large difference in cost and paperwork is not justified.

Some commenters claimed that the requirement that the date upon which each period of accumulation begins be marked on each container is too stringent for wastes accumulated at satellite areas. They stated that it is unnecessarily burdensome to mark dates on buckets and other small containers in which these wastes are likely to be collected. Further, since these vessels are emptied frequently, they must be marked repeatedly with new accumulation dates. This aspect of the requirement was also thought to be burdensome.

One commenter wrote that requirements in § 262.34(a) which requires compliance with Part 265 Subpart D (Contingency Plans and Emergency Procedures) are too stringent for satellite areas. In his opinion, it is not necessary to prepare contingency plans and designate emergency coordinators for these small, scattered accumulation areas.

Several commenters remarked that Congress intended that RCRA not interfere in manufacturing processes. They stated that initial accumulation of hazardous waste at or near the points of generation are integral parts of the manufacturing process, and should therefore not be subject to regulation under RCRA. They also noted that most of the accumulation areas are indoor workplaces and are subject to regulation under OSHA. Regulation of satellite areas under RCRA appears to them to be duplicative and unwarranted.

In general, the commenters believed that applying the requirements of § 262.34(a) to activities at satellite accumulation areas add unnecessary paperwork and cost without improving protection of human health or the environment. They advocated an exemption for satellite areas from some or all of the requirements of § 262.34(a).

While the Agency does not agree with all of the arguments raised by the commenters, EPA does agree with the general conclusion that there is little need for extensive regulation of satellite areas under RCRA. The Agency agrees that it should not apply most of the requirements of § 262.34(a), which were intended for more centralized, higher volume accumulation, to the smaller volumes of waste at satellite areas. Specifically, the Agency believes that wastes collected at or near points of generation in small quantities need not be subject to requirements for marking of dates on containers, contingency plans, personnel training, and most standards for the management of containers and tanks required by Part 265 Subparts I and J.

As previously stated, some commenters claimed that OSHA standards protect the safety and health of persons handling hazardous materials in the workplace, and therefore RCRA regulations are redundant. EPA has considered OSHA's standards and has concluded that EPA should retain some regulation for accumulation of hazardous waste in the workplace. First, current OSHA regulations concern the handling of various hazardous materials in the workplace, but OSHA does not specifically regulate hazardous waste as defined under RCRA. Also, OSHA's rules do not deal specifically with aspects of accumulation that affect human health and the environment immediately outside the workplace. For instance, OSHA does not regulate the condition of containers used for accumulation. EPA therefore believes it is within the Agency's purview to continue to regulate the accumulation of hazardous waste within industrial areas insofar as those regulations do not duplicate or interfere with ongoing practices.

In a proposed rule published in the March 19, 1982, **Federal Register** (47 FR 12119), OSHA proposed new safety regulations for manufacturing entities which produce hazardous chemicals. The rule, which would apply to most kinds of hazardous wastes accumulated by generators, would require labeling, material safety data sheets (MSDS) and training for employees of manufacturing industries who work around hazardous chemicals. When and if OSHA's proposal is promulgated in final form, EPA will ensure that any final rulemaking on the subject of hazardous waste accumulation is consistent with and will not duplicate OSHA's requirements.

II. Today's Proposed Rule

For the reasons expressed above, EPA is today proposing to amend § 262.34 by adding a paragraph (c) to provide that small quantity accumulation of hazardous waste at satellite areas be exempt from the requirements of § 262.34(a). Section 262.34(c) would allow for accumulation of as much as 55 gallons of hazardous waste (other than "acutely" hazardous wastes listed in § 262.33(e) of the regulations) at or near any point of generation for any amount of time if the generator complies with §§ 265.171 and 265.172 and marks the containers with the words "Hazardous Waste" or with another description of their contents (e.g., "waste organics" or "waste solvent"). Within 72 hours of accumulating over 55 gallons at any satellite area, the generator would be required to manage that waste in excess of 55 gallons on conformance with all applicable standards under RCRA, including the 90-day time limit and other requirements under § 262.34(a) for further on-site accumulation. During the 72-hour interim period, §§ 265.171 and 265.172 and the container marking requirement would continue to apply.

After considering several alternatives, EPA has selected 55 gallons as a quantity threshold for this provision. The regulated community has indicated that a 55-gallon threshold would accommodate the variety of satellite situations they encounter. At the same time, EPA believes this threshold will provide a reasonable limit to the amount of hazardous waste managed without the benefit of the more environmentally protective measures of § 262.34(a). Fifty-five gallons of waste fills approximately one standard size drum, which, to EPA's knowledge, is the largest commonly used container for such accumulation.

EPA had considered setting a limit of one container at each satellite location instead of setting a waste volume limit. That option was rejected because different industries use different sizes of containers for satellite accumulation, and the Agency believes it would be unreasonable to limit all generators to one contrainer per area, regardless of container size. Further, the Agency believes that protection of health and the environment is more closely associated with the quantity of accumulation at each location than with the number of containers used to accumulate the waste.

EPA had also considered setting a limit at each satellite area of 200 kilograms (kg) or ten days of accumulation, whichever occurs first. Although 200 kg and 55 gallons of waste are approximatly equivalent, the Agency selected the volume limit (gallons) because it believes that a volume limit would provide for greater equity under the regulations for generators with wastes of higher unit weight. With regard to the 10-day threshold, the Agency believes there is little to be

gained by applying a time limit to the accumulation of small quantities of wastes in satellite areas if they are containerized and marked properly. For these reasons, EPA has decided not to propose either a weight limit or a time limit for satellite accumulation. However, the Agency requests comments on this determination and on whether a threshold other than 55 gallons should be used in this provision.

The 55-gallon threshold applies to each satellite area where hazardous wastes are accumulated. One manufacturing plant, therefore, may have several satellite areas on-site where as much as 55 gallons may be accumulated in conformance with § 262.34(c).

When over 55 gallons of hazardous waste has been accumulated at any point of generation, the generator would have 72 hours in which to comply with other hazardous waste management standards, such as § 262.34(a), for that amount of waste in excess of 55 gallons. The 72-hour period is intended to provide generators with adequate lead time to remove the excess wastes from the satellite area and to comply with the appropriate standards for subsequent management of the wastes. However, the same hazardous waste management standards that would apply during 55-gallon accumulation would continue to apply during the 72-hour period.

The proposed rule would require that waste in satellite areas be managed in accordance with §§ 265.171 and 265.172 of the interim status standards for storage. These standards are general, good-housekeeping measures which ensure that containers used for storage of hazardous wastes are in good condition, and are compatible with their contents. EPA believes that these are sensible requirements which should provide protection to human health and the environment.

EPA believes it is appropriate that the contents of containers used for satellite accumulation be identified clearly for safe handling and storage. The standards in § 262.34(a) require the containers used for 90-day accumulation be marked with the words "hazardous waste". EPA believes that the same standard should apply to satellite accumulation, but recognizes that in many satellite areas these containers are already routinely labelled with more explicit information about the materials they contain. Either a marking of "hazardous waste" or another marking identifying the contents of the container would probably serve the purpose of informing persons in the area of the hazardous nature of the material. EPA is therefore proposing to allow either type of marking during the satellite accumulation period.

The proposed rule does not provide for the satellite accumulation of acutely hazardous wastes, (wastes comprised of those commercial chemical products and chemical intermediates listed in § 261.33(e), their off-specification species, containers and inner liners containing these materials, and spill residue and debris created by spills of these materials). The Agency identified those wastes as being particularly hazardous, and believes that all generators should use extra precautions wherever they handle acutely hazardous wastes, including at satellite accumulation areas. For this reason, today's proposal to exempt satellite accumulation of hazardous waste from many regulatory requirements does not include acutely hazardous waste. Acutely hazardous waste would therefore continue to be subject to § 262.34(a) at both central and satellite accumulation areas. The Agency welcomes comments on this determination.

III. Laboratory Wastes

Today's proposed exemption for satellite accumulation of hazardous wastes could be applied to laboratories where waste chemicals are initially generated and collected in small containers. Laboratory chemicals which have served their intended purpose, including discarded samples and spent solvents, are often collected initially in small containers such as 5-gallon cans or jars. When a number of these containers are aggregated, they are commonly placed in "lab packs" (as discussed in the preamble to § 265.316, November 17, 1981) and sent off-site for disposal. Some laboratories cannot qualify for the small quantity generator exemption in 40 CFR § 261.5; therefore, under current regulations, these laboratories must comply with § 262.34(a) from the moment they begin accumulating hazardous waste. If today's proposed rule is promulgated in final form, the initial accumulation of as much as 55 gallons of hazardous waste at or near any point of generation in a laboratory will be governed by § 262.34(c) rather than § 262.34(a).

Some laboratories that handle hazardous waste have indicated to EPA that the RCRA regulations regarding accumulation have been impractical to implement in laboratories. Their main concern has been the problem of accumulating quantities of hazardous waste that can be practically transported off-site. Because laboratories commonly collect waste chemicals at slow rates, it often takes longer than 90 days in which to accumulate enough waste to fill a shipment. EPA believes that today's proposed rule, together with the current provisions for accumulation by small quantity generators (§ 261.5), will alleviate most of the operational problems associated with accumulation of hazardous waste by laboratories. However, the Agency welcomes comments and suggestions on this matter.

IV. Maintenance of Vessels at Manufacturing Areas

Hazardous wastes are sometimes generated when product vessels in manufacturing plants are periodically cleaned out. This maintenance procedure may produce a number of drums of hazardous waste which, according to the current regulations, must be managed in accordance with § 262.34(a) as soon as accumulation begins. Some generators find this requirement unreasonable, explaining that these drums are commonly removed from the clean-out area within two or three days, and therefore the immediate need to comply with the regulatory requirements for 90-day accumulation poses an unreasonable burden. Under the amendment being proposed today, a generator would have 72 hours after the first 55 gallons are accumulated in which to comply with either § 262.34(a) for continued on-site accumulation, or other hazardous waste management standards, as appropriate. EPA believes that today's proposal would alleviate the problems that generators experience with complying with § 262.34(a) during maintenance of product vessels.

V. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect six months after their promulgation. In addition, 5 U.S.C. 553 of the Administrative Procedure Act requires that substantive rules not become effective until at least 30 days after promulgation unless there is good cause for shortening the period. The purpose of these requirements is to allow persons affected by the rulemaking sufficient lead time to prepare to comply with major new regulatory requirements. However, for the amendment proposed today, the Agency believes that delaying the effective date for any period of time after promulgation would cause substantial and unecessary disruption in the implementation of the regulations and would be contrary to the public interest. This amendment, if promulgated in final form, would relieve

hazardous waste generators of having to comply with a number of requirements with respect to the initial, small quantity accumulation of hazardous waste in containers within a generating area. The Agency believes that this is not the type of regulation revision that Congress had in mind when it provided a delay between the promulgation and the effective date of revisions to regulations. Consequently, the Agency plans to make this amendment effecive immediately if an when it is promulgated in final form.

VI. Compliance With Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a regulatory Impact Analysis. This proposed regulation is not major because it will not result in an effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. There would be no adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Because this amendment is not a major regulation, no Regulatory Impact Analysis is being conducted.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

VII. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information collection request contained in a proposed or final rule. This proposed rule, if promulgated, will not impose any new information collection requirements on the regulated community. In fact, this rule would reduce the information collection requirements contained in the cleared OMB request #2000-0062.

VIII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis for all proposed rules to assess their impact on small entities. No regulatory analysis is requred however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The economic impact of this regulation will be to reduce the costs of complying with EPA's hazardous waste management regulations for generators of hazardous waste, including those which are small entities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 601(b), that this proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 262

Hazardous materials, packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal water supply.

Dated: December 20, 1982.

Anne M. Gorsuch,

Administrator.

It is proposed that Title 40 of the Code of Federal Regulations Part 262 be amended as follows:

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for Part 262 reads as follows:

Authority: Secs. 1006, 2002, 3002, 3003, 3004, and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6905, 6912, 6922, 6923, 6924, 6925.

2. In § 262.34, paragraph (c) is added to read as follows:

§ 262.34 Accumulation time.

* * * * *

(c)(1) Except as provided by paragraph (c)(2) of this section, a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near any point of generation without a permit or interim status and without complying with paragraph (a) of this section provided he—

(i) Complies with §§ 265.171 and 265.172 of this chapter; and

(ii) Marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

(2) Paragraph (c)(1) of this section does not apply to the accumulation of acute hazardous wastes as identified in § 261.33(e) of this chapter.

(3) A generator who accumulates hazardous waste in accordance with paragraph (c)(1) of this section and exceeds 55 gallons at or near any point of generation must, with respect to that amount of waste in excess of 55 gallons, comply within 72 hours with paragraph (a) of this section or other applicable provisions of this chapter. During the 72-hour period, the generator must continue to comply with paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

[FR Doc. 82-35150 Filed 12-30-82; 8:45 am]

BILLING CODE 6560-50-M

federal register

Monday
January 3, 1983

Part IV

Environmental Protection Agency

Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Amendment To Use Authorization for PCB Railroad Transformers

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS-62020A; TSH-FRL 2205-7]

Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Amendment To Use Authorization for PCB Railroad Transformers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On May 31, 1979, EPA promulgated a rule under section 6(e) of the Toxic Substances Control Act (TSCA) that authorizes the use of polychlorinated biphenyls (PCBs) in railroad transformers until July 1, 1984. Under this authorization, these transformers may not contain dielectric fluids with a PCB concentration exceeding 60,000 parts per million (ppm) (6 percent) after January 1, 1982, and exceeding 1,000 ppm (0.1 percent) after January 1, 1984. This rule amends the use authorization by: (1) Requiring these railroad organizations to meet the 60,000 ppm concentration level by July 1, 1984; (2) requiring these railroad organizations to meet the 1,000 ppm concentration level by July 1, 1986; and (3) authorizing the use of PCBs for the remaining useful life of these transformers at concentrations below 1,000 ppm. Finally, EPA is also amending the May 1979 rule to permit railroad organizations to service these transformers to reduce PCB concentrations and thereby to reduce the costs of disposal. The two primary reasons for these amendments are: (1) The majority of the affected railroad organizations did not select an adequate non-PCB substitute until October 1981, and (2) for certain organizations, necessary Federal funding for this activity was not received in time to perform the required servicing on PCB railroad transformers.

DATES: These amendments shall be considered promulgated for purposes of judicial review under section 19 of TSCA at 1:00 p.m. Eastern Daylight Time on January 17, 1983. These amendments shall be effective on February 2, 1983.

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Acting Director, Industry Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-509, 401 M St., SW., Washington, D.C. 20460; toll free: (800-424-9065); in Washington, D.C.: (554-1404); outside the USA: (Operator 202-554-1404).

SUPPLEMENTARY INFORMATION: EPA regulation at 40 CFR Part 761 have been recodified. Notice of the recodification appeared in the **Federal Register** of May 6, 1982 (47 FR 19527). As a result of this recodification, the revised section numbers will be used in this rule. Refer to the **Federal Register** Notice of May 6, 1982 to determine equivalent provisions under the former codification.

I. Background

On January 1, 1982, there were 756 railroad transformers in service that contained PCB dielectric fluid. Of this equipment, 730 transformers are used in self-propelled railroad cars and 26 transformers are used in locomotives. These PCB railroad transformers are operated in the northeastern United States by the National Railroad Passenger Corporation (Amtrak) and four State and metropolitan transit authorities.

Section 6 (e) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.*, prohibit the manufacture, processing, distribution in commerce, and use of polychlorinated biphenyls (PCBs). In section 6(e) (2), there are two exceptions under which EPA may, by rule, allow a particular use of PCBs to continue. First, EPA may find that the use is in a "totally enclosed" manner. A "totally enclosed" manner is defined in section 6 (e) (2) (C) to be "any manner which will ensure that any exposure of human beings or the environment to a polychlorinated biphenyl will be insignificant as determined by the Administrator by rule." Second, EPA may authorize PCBs to be used in a manner other than in a "totally enclosed manner" if the Agency finds that the use "will not present an unreasonable risk of injury to health or the environment."

A. Other PCB Regulations

EPA issued in the **Federal Register** of May 31, 1979 (44 FR 31514) final rules to modify the general ban on the manufacture, processing, distribution in commerce, and use of PCBs. The May 1979 rule, *inter alia:* (1) Excluded from regulation PCBs in concentrations less than 50 ppm: (2) defined all electrical capacitors, electromagnets, and non-railroad transformers as "totally enclosed," thus automatically exempting them from regulation under the Act; and (3) authorized 11 non-totally enclosed uses based on consideration of the health and environmental effects of PCBs, the exposure to PCBs resulting from these activities, the availability of substitutes for the PCBs, and the economic impact of restricting those uses. Included in the non-totally enclosed uses was an authorization to use PCBs in railroad transformers until July 1, 1984, with certain use and servicing restrictions. This authorization provided that railroad transformers in active service may not contain dielectric fluid with a PCB concentration exceeding 60,000 ppm (6.0 percent on a dry weight basis) after January 1, 1982, may not contain greater than 1,000 ppm (0.1 percent on a dry weight basis) after January 1, 1984, and may not contain PCBs after July 1, 1984.

The Environmental Defense Fund (EDF) obtained judical review of the provisions described above in the U.S. Court of Appeals for the District of Columbia Circuit. *Environment Defense Fund* v. *Environmental Protection Agency,* 636 F.2d 1267. As a result of the lawsuit, the court invalidated the 50 ppm regulatory exclusion and the EPA determination that the use of PCBs in electrical equipment was "totally enclosed" and remanded these issues to EPA for further action consistent with its opinion. The court upheld all PCB use authorizations including the use authorization for railroad transformers. Accordingly, this rulemaking is not affected by the PCB litigation.

Invalidation of the 50 ppm regulatory cutoff and the "totally enclosed" use finding would have made effective the general statutory ban on PCBs. This would have caused significant disruption in the electrical industry, which heavily depends on PCB equipment in current use, and in the chemical industry, which uses a large number of processes that inadvertently generate PCBs in very low concentrations. To avoid this disruption, parties to the lawsuit sought a stay of the court's mandate pending further rulemaking. As a result, the court entered orders for futher actions by EPA and industry groups leading toward future rulemakings on PCBs. These court-ordered activities do not affect this final rule on the use of PCBs in railroad transformers. In response to the court order, EPA issued a proposed rule on the use of PCBs in electrical equipment which was published in the **Federal Register** of April 22, 1982 (47 FR 17426). The final rule for this use of PCBs was published in the **Federal Register** of August 25, 1982 (47 FR 37342). In addition, EPA issued a proposed rule excluding from regulation certain PCBs manufactured under conditions of very low risk, which was published in the **Federal Register** of June 8, 1982 (47 FR 24976). The final rule for this regulatory exclusion was published in the **Federal Register** of October 21, 1982 (47 FR 46980).

B. EPA Rulemaking Activities on the Use of PCBs in Railroad Transformers

Several railroad organizations had indicated to EPA that they could not comply with the deadlines affecting railroad transformers in the May 1979 rule. As a result, EPA proposed to extend the deadlines as published in the **Federal Register** of November 18, 1981 (46 FR 56626). The proposed deadline extension for the 60,000 parts per million (ppm) concentration level was based on a schedule submitted by the Southeastern Pennsylvania Transportation Authority (SEPTA) on February 5, 1981. Under that schedule, SEPTA estimated that the earliest that it could complete its servicing ("retrofill") program to meet the 6 percent PCB concentration level was October 1, 1983. (The term "retrofill" is used to denote the entire process of draining, flushing, and refilling a transformer with a non-PCB fluid.) This date was based on SEPTA's assumption that Federal funding for this retrofill activity would be received by October 1, 1981. SEPTA later requested an extension of the first two performance deadlines to July 1, 1984 and July 1, 1986, respectively. In addition, it requested an amendment of the second performance deadline to require a 20,000 ppm (2 percent) PCB concentration level. The November 1981 proposed amendment to the May 1979 rule also requested comment on the compliance deadline for achieving a 1,000 ppm concentration level.

Following a comment period for these proposed amendments, an informal hearing was held on January 5, 1982. Participants included SEPTA, other affected railroad organizations, representatives from transformer servicing firms, and manufacturers of substitute dielectric fluids. Reply comments were received through January 19, 1982. Many of the participants in the January 5, 1982 hearing contributed reply comments.

II. Specific Amendments to the Railroad Transformer Use Authorization

EPA considered three options in this rulemaking: (1) To maintain the deadlines in the May 1979 rule and thereby prohibit the use of PCBs in railroad transformers in violation of the January 1, 1982 deadline; (2) to rescind the deadlines in the May 1979 rule and to allow the use of PCBs in railroad transformers at their present concentration level; and (3) to extend the deadlines in the May 1979 rule. With respect to the third option, there were three additional considerations: (1) whether to change the PCB concentration levels mandated for the respective deadlines; (2) whether to require a phased schedule for the lowering of the PCB concentration levels in railroad transformers and thereby to require six performance deadlines rather than two deadlines; and (3) whether to delete the expiration deadline of July 1, 1984 and thereby allow the use of PCBs for the remaining useful life of these transformers at a concentration level at or below 1,000 ppm. In this rule, EPA has chosen: (1) To extend the deadlines in the May 1979 rule; (2) to require a six-stage schedule of deadlines for lowering the PCB concentration levels in railroad transformers; and (3) to allow the use of PCBs at a concentration level at or below 1,000 ppm for the remaining useful lives of the railroad transformers. In addition, EPA is adding a provision to the servicing conditions of this use rule to allow for the reclassification of railroad transformers using PCBs.

A. Deadlines for Attaining PCB Concentration Levels

In this amendment to the May 1979 rule, two sets of three performance deadlines are established to meet the 60,000 ppm and 1,000 ppm PCB concentration levels, respectively. The three performance deadlines that these railroad organizations must achieve to meet the 60,000 ppm level are: (1) After July 1, 1983, the number of railroad transformers containing a PCB concentration greater than 60,000 ppm in use by any railroad oganization may not exceed two-thirds of the total railroad transformers containing PCBs in use by that organization on January 1, 1982; (2) after January 1, 1984, the number of railroad transformers containing a PCB concentration greater than 60,000 ppm in use by any railroad organization may not exceed one-third of the total railroad transformers containing PCBs in use by that organization on January 1, 1982; and (3) after July 1, 1984, the use of railroad transformers that contain dielectric fluids with a PCB concentration level of greater than 60,000 ppm is prohibited. The environmental risks and economic impacts involved in these three performance deadlines for the 60,000 ppm concentration level are discussed in Unit IV.D.3. of this preamble.

The three performance deadlines for the 1,000 ppm concentration level follow a schedule that parallels that set for the 60,000 ppm level: (1) After July 1, 1985, the number of railroad transformers containing a PCB concentration greater than 1,000 ppm in use by any affected railroad organization may not exceed two-thirds of the total railroad transformers containing PCBs in use by that organization on July 1, 1984; (2) after January 1, 1986, the number of railroad transformers containing a PCB concentration greater than 1,000 ppm in use by any affected railroad organization may not exceed one-third of the total railroad transformers containing PCBs in use by that organization on July 1, 1984; and (3) after July 1, 1986, use of railroad transformers that contain dielectric fluids with a PCB concentration greater than 1,000 ppm is prohibited. The environmental risks and economic impacts involved in these three performance deadlines for the 1,000 ppm concentration level are discussed in Unit IV.D.3. of this preamble.

As required by section 6(e)(2)(B) of TSCA, the Agency has balanced the public health and environmental risks of this use of PCBs with the benefits and economic impacts of this use. In addition, EPA has compared the risks and benefits involved in the proposed amendment with the comparable risks and benefits of the alternative regulatory options. This analysis is discussed, together with the Agency's unreasonable risk determination and findings in Unit IV of this preamble.

B. Provision for the Reclassification of Railroad Transformers Subject to This Use Rule

EPA has added a provision to the PCB rules to permit these railroad organizations to service PCB railroad transformers in order to change their classification and thereby reduce burdens associated with disposal. Thus, railroad transformers will be serviced in a manner consistent with other transformers under 40 CFR 761.30(a)(5). Section 761.30(a)(5) allows the conversion of a PCB Transformer to a PCB-Contaminated Transformer or a non-PCB Transformer by draining, refilling, and otherwise servicing the non-railroad transformer. In order to reclassify, the non-railroad transformer's dielectric fluid must contain less than 500 ppm PCB (for conversion to a PCB-Contaminated Transformer) or less than 50 ppm (for conversion to a non-PCB Transformer) after a minimum of three months of in-service use subsequent to the last servicing conducted for the purpose of reducing the PCB concentration in the transformer. Therefore, paragraph (b)(2)(vii) of § 761.30 has been added to this use rule to provide similar reclassification procedures for both railroad and non-railroad transformers. This amendment is intended to provide an additional incentive for railroad organizations to conduct the necessary retrofill operations to lower the PCB concentration levels in their railroad

transformers below 1,000 ppm. These organizations can realize cost savings through lower disposal costs for PCB-Contaminated and non-PCB Transformers under EPA regulations at 40 CFR 761.60. By providing further incentive for railroad organizations to lower PCB concentrations in these transformers below 1,000 ppm, this provision will also aid in ensuring that unreasonable risks are not presented by the promulgation of this rule.

C. Date of Promulgation for This Rule

In order to avoid a "race to the courthouse" by persons seeking judicial review of this rule, EPA has decided to designate the time and date of promulgation of this rule as 1:00 p.m. Eastern Daylight Time on January 17, 1983. The Agency has previously taken this approach for rules promulgated under the Clean Water Act (see 40 CFR 100.01, 45 FR 26048). The Agency will be considering a general rule for TSCA similar to 40 CFR 100.01.

The remainder of this preamble includes three primary units. Unit III of the preamble presents a review of significant information submitted by the railroad organizations during this rulemaking activity. Unit IV includes a discussion of the specific factors considered in the unreasonable risk determination with respect to these changes in the use rule. Finally, in Unit V, the Agency will respond to other proposed amendments presented by railroad organizations in this rulemaking.

III. Information Submitted by the Railroad Organizations on Technical Problems of Retrofilling PCB Railroad Transformers

During this rulemaking activity, the affected railroad organizations contributed information directly related to EPA concerns in promulgating the May 1979 rule. The following categories of information have been relied on by the Agency in the development of this rule.

A. Compliance Problems With the May 1979 Rule

The affected railroad organizations contributed significant information with respect to specific performance deadline requirements. These organizations provided two primary reasons for their failure to comply with the performance deadlines in the May 1979 rule: (1) The majority of these railroad organizations did not select an adequate non-PCB substitute until October 15, 1981, and (2) for certain organizations, necessary Federal funding for this activity was not received in time to perform the required retrofills on transformers. The factors in the respective choices of substitute dielectric fluids are discussed in Unit IV.C. of this preamble. The issue of Federal funding for this activity is of particular importance for one of these organizations, the Southeastern Pennsylvania Transportation Authority (SEPTA). Of these organizations, SEPTA owns the largest number of PCB railroad transformers. As a result of the limited amount of non-Federal funds for its maintenance projects, SEPTA depends significantly on funding from the Urban Mass Transit Administration (UMTA) of the U.S. Department of Transportation. SEPTA's delay in receiving necessary UMTA funds was due to several factors: (1) Its failure to receive the necessary matching funds from the Commonwealth of Pennsylvania and its constituent localities; (2) alterations in the UMTA procedure for funding applications for capital modification projects; and (3) the delay in the submission of the SEPTA application for the first phase of retrofilling which was not formally received by UMTA until April 8, 1982.

B. Restrictions in Conducting the Necessary Retrofills

In its consideration of specific compliance dates for the 60,000 ppm and 1,000 ppm concentration levels, EPA has relied on information from the railroad organizations with respect to the maximum amount of railroad transformers that can be serviced each week. SEPTA has stated that only four of its cars per week can be properly retrofilled by its servicing contractor. In addition, SEPTA commented that, if the New York Metropolitan Transportation Authority (New York MTA) and the New Jersey Transit Corporation (New Jersey Transit) are each planning to retrofill one transformer per week, in addition to SEPTA's four transformers per week, the General Electric service shop in Philadelphia, Pennsylvania would probably be at its limit of capacity. Hence, the most rapid retrofill schedule that can be conducted for the transformers in violation of the January 1, 1982 deadline of the May 1979 rule is 6 transformers per week. (This calculation disregards Amtrak which performs its own retrofilling operations.)

SEPTA and other railroad organizations have commented that certain factors limit their capacity to retrofill their railroad transformers. First, they believe that only "quality" retrofills will result in meeting the compliance deadlines. This process requires removal of the transformer, application of a proper retrofill process, and the subsequent reattachment of the transformer to the respective vehicles. SEPTA has stated that if retrofilling is performed on a transformer attached to a self-propelled car, approximately 15 percent of the total dielectric fluid would still remain. As a result, any non-PCB substitute used to retrofill a transformer would become contaminated with the remaining PCB fluid. Hence, SEPTA has concluded that removal of the transformer from the car can decrease the amount of PCB fluid remaining in the transformer after draining. Second, with the exception of Amtrak, these railroad organizations rely on the General Electric service shop in Philadelphia, Pennsylvania as their sole contractor for these retrofilling operations. In particular, SEPTA believes that the General Electric shop is the only service facility that is capable of providing the required retrofill services with the removal of the transformers from the respective cars. Third, the "drop tables" at each of the railroad organization's facilities used to remove the transformers from the cars cannot be used exclusively for retrofilling, because these facilities are also required for routine maintenance and repairs resulting from collisions or other non-routine maintenance damage. At least 10 percent of each of these railroad organization's cars are out of service for routine inspection and maintenance.

The maximum retrofill schedule might be accelerated by the entry of additional service contractors with the capacity to perform retrofills with the removal of the transformer from the car. Comments from Westinghouse Electric Corporation and Energy Optimization Incorporated (EOI) indicated that other retrofill servicing firms might be able to provide the required retrofill services in the near future. Amtrak has also provided information that it could perform these retrofill services for other railroad organizations. Despite the possible entry of these firms to provide retrofilling services for these railroad organizations, a large number of railroad cars or locomotives to be retrofilled cannot be removed from service within any single period.

According to SEPTA and the other railroad organizations, the aforementioned constraints on their compliance with the respective PCB concentration levels require that they proceed on a phased, uniform retrofilling schedule. Any clustering of retrofilling operations resulting in the removal of a

large number of self-propelled cars from commuter service is not possible.

C. Necessary Retrofill Operations To Achieve Compliance With the 1,000 PPM PCB Concentration Level

In their comments, all of the railroad organizations agreed that the 60,000 ppm PCB concentration level could be achieved in one retrofill. Prior to recent results from a SEPTA demonstration project, however, there was concern whether the 1,000 ppm concentration level could be met in two retrofills. A demonstration project by SEPTA on a PCB railroad transformer in operation since June 1979 has contributed important information following the first and second retrofills of this transformer with a non-PCB dielectric fluid (IRA-LEC T1). After one retrofill, in February 1980, the PCB concentration level was measured at 15,600 ppm (1.56 percent PCB concentration level). Following a second retrofill, the transformer was measured in August 1981 as containing a PCB concentration level of 137 ppm. Later measurements in November 1981 and February 1982 showed levels of approximately 480 ppm and 489 ppm, respectively.

Comments have also been received that in addition to traditional technologies that use liquid solvents as a flushing medium, there exists an alternative method for the railroad organizations to meet the 1,000 ppm concentration level requirement. This alternative retrofill method uses an electrical grade non-PCB flushing fluid which is chemically equivalent to standard freon refrigerants. This method transforms the fluid into a gas for penetration of the transformer interior. (The freon product used in this method is commercially known as "freon 113.") According to the developer of this method, the process depends on a combination of liquid sprays, rinses, and soaks, interspersed with freon gas bombardment of the transformer interiors. The process will require approximately five days per railroad transformer. This method can be applied with the transformer in place under the railroad car.

The developer of this system conducted a demonstration on a 750 KVA network transformer containing 270 gallons of PCB dielectric fluid. The trend in the leaching rate for PCBs into transformer fluid used in this demonstration indicates that after 53 days of operation, the PCB concentration has leveled off and remained under 500 ppm.

IV. Specific Factors Considered in This Unreasonable Risk Determination Concerning PCB Railroad Transformers

To authorize any use of PCBs under section 6(e)(2)(B) of TSCA, EPA must find that the activity will not present an unreasonable risk of injury to human health or the environment. This determination involves balancing the probability that harm will occur from the use of PCBs and the magnitude and severity of that harm against the benefits to society that would result from the proposed regulatory action. In determining whether an unreasonable risk is present, EPA has considered the following factors:

1. The effects of PCBs on human health and the environment, including the magnitude of PCB exposure.
2. The benefits of PCBs in railroad transformers.
3. The adequacy of the available substitute dielectric fluids.
4. The reasonably ascertainable economic impact of the rule after the consideration of impacts on the national economy, small business, technological innovation, the environment, and public health.

These factors are listed in section 6(c) of TSCA and are applicable to determinations concerning whether a chemical presents an unreasonable risk under section 6(a) and 6(e) of TSCA.

This unit will discuss these key factors in the unreasonable risk determination for this use rule. Finally, it will present specific findings for the determination that this use of PCBs does not present an unreasonable risk.

A. Human Health and Environmental Risks

In determining whether this amendment to the May 1979 rule is warranted, EPA considered information concerning the effects of PCBs on human health and the environment. The effects of PCBs were described in various documents which were part of the rulemaking record for the May 1979 rule. EPA evaluated this information, new information submitted to the Agency, as well as other recent literature on the effects of PCBs. The results are presented in the document "Response to Comments on Health Effects of PCBs." This document is included in the rulemaking record. Copies of this document are available through the Industry Assistance Office (see the "**FOR FURTHER INFORMATION CONTACT**" paragraph).

1. *Health effects.* In sum, EPA has determined that while PCBs have not been found to be uniquely toxic, they are toxic and persistent.

Chloracne occurs in humans exposed to PCBs. Although the effects of chloracne are reversible, EPA does not consider it insignificant. Chloracne is painful, disfiguring, and may require a long period of time before symptomatology disappears. Other areas of major concern have been identified by EPA. EPA finds that reproductive effects, developmental toxicity, and oncogenicity are areas of concern and may produce effects in humans exposed to PCBs.

Available data show that some PCBs have the ability to alter reproductive processes in mammalian species, sometimes even at doses that do not cause other signs of toxicity. Animal data and limited available human data indicate that prenatal exposure to PCBs can result in various degrees of developmentally toxic effects. Postnatal effects have also been demonstrated on immature animals following exposure prenatally and via breast milk.

Available animal studies indicate an oncogenic potential (the degree of which would be dependent on exposure). Available epidemiological data are not adequate to confirm or negate oncogenic potential in humans at this time. Further epidemiological research is needed in order to correlate human and animal data, but EPA does not find any evidence to suggest that the animal data would not be predictive of human potential.

EPA agrees that little or no mutagenic activity from PCBs is indicated from available data. It is EPA's opinion that more information is needed to draw a final conclusion on the possibility of mutagenic effects from PCBs.

EPA does not attribute all the effects observed with PCBs to be due to toxic impurities. Relatively pure PCB congeners have been shown to produce toxicity equivalent to that found when testing commercial PCB mixtures containing higher levels of impurities.

EPA also does not assume that all PCBs are equivalent toxicologically. It cannot be assumed that if one PCB congener is positive or negative for a specific health effect, then all PCB congeners are also positive or negative for that specific health effect. Research is just beginning in this area; many more studies need to be conducted on specific congeners before conclusions can be reached on an isomer or cogener specific basis. Until such time, however, based on long-standing EPA policy, the Agency has determined that under section 6(e) all PCB congeners will be regulated uniformly.

2. *Environmental effects.* PCBs have been shown to affect the productivity of

phytoplankton and the composition of phytoplankton communities. Deleterious effects on environmentally important freshwater invertebrates from PCBs have been demonstrated. PCBs have also been shown to impair reproductive success in birds and mammals.

It has been demonstrated that PCBs are toxic to fish at very low exposure levels. The survival rate and the reproductive success of fish can be adversely affected in the presence of PCBs. Various sublethal physiological effects attributed to PCBs have been recorded in the literature. Abnormalities in bone development and reproductive organs have also been demonstrated.

EPA concludes that PCBs can be concentrated and transferred in freshwater and marine organisms. Transfer up the food chain from phytoplankton to invertebrates, fish, and mammals can result ultimately in human exposure through consumption of PCB-containing food sources.

3. *Risks.* Toxicity and exposure are the two basic components of risk. As indicated above, EPA concludes that in addition to chloracne, there is the potential for reproductive effects and developmental toxicity as well as oncogenic effects in humans based on animal data. EPA also concludes that PCBs do present a hazard to the environment.

Minimizing exposure to PCBs should minimize any potential risk. The requirements in this amendment to the May 1979 rule will result in the reduction of exposure relative to present exposure levels from railroad transformer use. EPA's analysis of regulatory options in section D. of this unit includes examining the effectiveness of each option in reducing exposure, thereby reducing the associated risk.

Human health and environmental risks involved in this use authorization relate to several categories of activity. Through normal operation of railroad cars, certain concentrations of PCBs in dielectric fluid are frequently spilled onto railroad beds. These spills can occur as a result of overheating or electrical failure in the transformers and of damage to these transformers from rocks and debris on the railroad bed. The transformers on self-propelled railroad cars are hung beneath their mainframes, and they are consequently vulnerable to puncture and other damage when the trains strike debris on the tracks. These activities result in risks to human health and the environment. As noted in the preamble to the proposed PCB ban rule published in the **Federal Register** of June 7, 1978 (43 FR 24808), PCBs in railroad transformers are released during servicing and volatilized during overheating in operation. The design of these transformers, to fit within confined spaces on locomotives and self-propelled cars, has compounded the overheating problem.

There are two categories of persons that could be exposed to PCBs by the continuation of this use authorization: (1) Workers in service shops and railroad lines, and (2) persons exposed to PCBs leaked or spilled on railroad lines. PCB exposure from servicing operations is largely confined to workers in service shops. EPA believes that current service practices will result in minimal human exposure to PCBs. According to comments submitted in this rulemaking proceeding by various railroad organizations, adequate workplace controls to reduce risks from exposure to PCBs are provided by the marking and disposal requirements in 40 CFR Part 761, together with procedures for the handling and disposal of PCBs used by the Consolidated Rail Corporation (Conrail). Conrail is a railroad organization created by Congress in the Regional Rail Reorganization Act of 1973, 45 U.S.C. 741, which provides maintenance and other operational services to the railroad organizations subject to this rule except for Amtrak. Amtrak has developed its own procedures for the handling and disposal of PCBs. The railroad organizations have stated that when Conrail ceases to provide operational service after January 1, 1983, Conrail's servicing procedures will be continued by servicing contractor(s). It is also anticipated that at least a portion of the present servicing obligations of Conrail will be replaced by the recently incorporated Commuter Services Corporation which was created by Congress in 1981 to replace Conrail's maintenance and other operational services. Included in these procedures are guidelines concerning: (1) Protective clothing to minimize exposure during retrofills and normal shop maintenance functions; (2) workplace procedures for conducting retrofills; (3) precautionary measures, including cleanup procedures, to prevent skin contact with or ingestion of PCBs; (4) floor and curbing specifications; (5) inspection of storage areas for leaks; and (6) handling and storage of PCBs in yard and shop areas. In addition to these general guidelines, there exist more detailed procedures that have been designed by railroad organizations for certain railroad work sites and retrofill/repair shops. These general and particular servicing practices, and strict compliance with EPA marking and disposal requirements in 40 CFR Part 761 will significantly reduce any potential exposure to PCBs suffered by workers who service transformers.

Because leaks and moderate spills do not cause the immediate failure of railroad transformers, railroad transformer leaks and spills can spread PCBs over extensive distances along the railroad beds. Hence, persons can be exposed to PCBs leaked or spilled on these railroad lines. Westinghouse Electric Corporation has indicated that as much as 30 percent of the dielectric fluid of a railroad transformer can leak before the unit fails. SEPTA has commented that its self-propelled cars operate from one to twenty miles between stops. There are some express commuter cars in SEPTA's system that could run twenty miles without stopping. In Amtrak's experience, punctures frequently result in leaks of dielectric fluid along the right of way.

The magnitude of exposure to PCBs from railroad transformers relates to the amount and concentration of PCBs in dielectric fluid that are released from these transformers. The capacity of self-propelled cars and locomotives varies in the ranges of 130–220 gallons and 420–750 gallons of dielectric fluid, respectively. The magnitude of exposure to PCBs in these transformers resulting from leaks and spill events will vary by the concentration levels of PCBs in the dielectric fluid of these transformers and by the amounts of PCBs which are leaked or spilled. For example, at a 550,000 ppm PCB concentration level (a typical PCB concentration in a railroad transformer in violation of the May 1979 rule), the maximum leakage of PCBs and exposure to PCBs from a single spill event would be approximately 268 pounds. In contrast, at a concentration of 60,000 ppm, the maximum leakage of PCBs from a transformer would be lowered to 29 pounds. Further, at a concentration of 1,000 ppm, the maximum leakage of PCBs from a transformer would be lowered to about 0.5 pounds. (Under 40 CFR 761.3(m), "leaks" refer to instances in which any electrical equipment, including PCB railroad transformers, have any PCBs on any portion of their external surface(s). Hence, the Agency views "leaks" as any release of PCBs on any portion of the railroad transformer. "Spill events" refer to significant leaks of dielectric fluid that can be identified by the railroad organizations in their normal operational practices.)

EPA has extrapolated to determine the maximum PCB leakage from the operation of railroad transformers. Given the information received during

this rulemaking activity, EPA has determined that if no restrictions were required for railroad transformers, a maximum of approximately 231,000 pounds would be released over the remaining useful lives of the PCB railroad transformers in active service on January 1, 1982. This determination is based on the following assumptions: (1) 773,000 pounds of PCBs are present in railroad transformers in active service on January 1, 1982, and (2) a maximum of 30 percent of the total dielectric fluid in a railroad transformer can be released as leaks or spills before the transformers fail. This amount of PCBs potentially released in railroad beds or workplaces could cause a significant risk of injury to human health or the environment.

Data concerning recorded spill events experienced by certain railroad organizations support the finding that this use of PCBs presents a risk of injury to human health or the environment. The New York Metropolitan Transportation Authority (New York MTA) has submitted information that in 1980 and 1981, there were 11 recorded spills in the New York MTA/Connecticut Department of Transportation (ConnDOT) systems. SEPTA has submitted data that in 1981, there were 15 recorded spill events in its system, with 168 gallons of dielectric fluid (approximately 1,155 pounds of PCBs) discharged into the environment as a result of these events.

B. Benefits of PCB Use in Railroad Transformers

The benefits of PCB use in railroad transformers include: (1) The unique properties of PCBs as a dielectric fluid, and (2) the benefits derived from allowing their continued use in railroad transformers, i.e., avoidance of further retrofilling or replacement costs and of service interruptions.

Perhaps the most important attribute of PCBs as a dielectric fluid for railroad transformers is their nonflammability. Prior to the enactment of section 6(e) of TSCA in 1976, these railroad organizations had relied on PCBs as a liquid coolant and as an insulating medium in railroad transformers. PCBs have good heat transfer and dielectric properties.

At present, these railroad organizations do not have a sufficient number of locomotives and self-propelled cars equipped with non-PCB railroad transformers to enable them to retire those equipped with PCB transformers. Transformers in 756 electric railroad self-propelled cars and locomotives operated in the northeastern United States by Amtrak and four State/metropolitan commuter transit authorities contain PCBs. The respective railroad organizations' reliance on PCB railroad transformers varies among the organizations. The respective levels of reliance on PCB railroad transformers include: (1) 53 percent for Amtrak's commuter service in the Northeast Corridor; (2) 86 percent for SEPTA's metropolitan Philadelphia commuter service; and (3) 100 percent for the New Haven, Connecticut to New York City line of New York MTA and ConnDOT. New Jersey Transit relies on its self-propelled cars and locomotives with PCB transformers for its South Amboy, New Jersey to New York City line. Removal of these transformers without adequate replacements would seriously disrupt necessary commuter rail service areas. In addition, these organizations do not have adequate funding to replace these transformers. Moreover, the accquisition of new transformers or entire new self-propelled cars by these organizations cannot be accomplished within the time frame of the 1979 use authorization.

The aforementioned problems of these railroad organizations are particularly significant as related to the number of PCB railroad transformers operating in these specific service areas. According to information submitted during this rulemaking, SEPTA owns 319 transformers in self-propelled cars. New York MTA and ConnDOT own 244 PCB transformers in self-propelled cars. New Jersey Transit owns 106 PCB transformers used in self-propelled cars and 11 PCB transformers in its locomotives. Amtrak owns 87 PCB transformers, with 61 transformers in self-propelled cars and 26 transformers in locomotives. The 61 transformers in self-propelled cars were in compliance with the January 1, 1982 deadline. The 26 transformers in locomotives are not in compliance with that deadline. In addition, Conrail and the Maryland Department of Transportation own PCB railroad transformers in inactive service.

Because of the reliance of these organizations on PCB railroad transformers to maintain commuter service, it is important that EPA provide performance deadlines that allow for the continuation of this use of PCBs with consideration for the minimization of risks to public health or the environment.

C. Adequacy of the Available Substitute Dielectric Fluids

At the time of promulgation of the May 31, 1979 rule, railroad organizations had been testing for potential substitute dielectric fluids. By that date, no PCB substitutes had performed satisfactorily in tests in railroad transformers. When the performance deadlines in the May 1979 rule were promulgated, EPA had expected timely testing and selection of an adequate PCB substitute from these continuing tests. In this testing, several non-PCB dielectric fluids successfully used for retrofilling non-railroad transformers overheated or created pumping problems in railroad applications. The failure of these common PCB substitutes considerably delayed the process of selecting a suitable non-PCB dielectric fluid for PCB railroad transformers. In the preamble to the proposed amendment to this use rule, EPA stated that certain dielectric fluids appeared to be feasible PCB substitutes: IRA-LEC, FR-15, Midel 7131, and RTEmp Blend (Rail Temp). Subsequent to the publication of the proposed amendment on November 18, 1981, Rail Temp (a trichlorobenzene product) has been canceled by its distributor. In its comments concerning this decision, the distributor of Rail Temp cited a 1979 report concerning certain public health and environmental risks that might result from the incineration of chlorobenzenes at high temperatures. Following a review of this report, the distributor chose to concentrate its marketing efforts on a synthetic ester substitute, Envirotemp 100. During this period, EPA has been informed of other substitute fluids that have been introduced to the market.

1. *Information Concerning Non-PCB Dielectric Fluids.* a. *IRA-LEC/FR-15.* IRA-LEC and FR-15 have been tested by SEPTA and other railroad organizations and have been found to be suitable dielectric fluids for PCB railroad transformers. Unlike substitute dielectric fluids with synthetic esters, IRA-LEC and FR-15 are non-flammable. According to SEPTA and other railroad organizations, these fluids possess good dielectric properties and thermal characteristics. IRA-LEC and FR-15 are mixtures of 1,2,3-trichlorobenzene; 1,2,4-trichlorobenzene; 1,2,3,4-tetrachlorobenzene; and other hydrocarbons.

Certain railroad organizations have expressed concern that the toxicity and persistence of the chlorinated benzenes contained in FR-15 and IRA-LEC may make them subject to future regulatory action. One of the trichlorobenzenes contained in these fluids, 1,2,4-trichlorobenzene, is listed as a "hazardous constituent" for EPA regulations, 40 CFR Part 261, under the Resource Conservation and Recovery Act, 42 U.S.C. 6902. Therefore, given this possibility of future Federal regulation, certain railroad organizations have been

reluctant to use these fluids for retrofilling. At this point, however, these fluids are suitable for meeting the performance deadlines in this use rule. EPA is in the process of negotiating an agreement with producers of certain isomers of chlorinated benzenes to conduct specific health effects tests of these isomers, including 1,2,4-trichlorobenzene contained in FR-15 and IRA-LEC. A notice describing the terms of this agreement will be published for public comment in the **Federal Register** prior to the commencement of these health effects tests. An evaluation of the results of these tests will determine whether any regulatory action is necessary under section 6 of TSCA to protect public health and the environment from exposure to trichlorobenzene.

b. *Midel 7131.* Midel 7131 is composed of pentaerythritol esters and is manufactured in the United Kingdom and the United States. According to SEPTA and other railroad organizations, Midel provides good dielectric strength and is non-toxic and biodegradable. However, certain railroad organizations have expressed concern about Midel's fire point of 310° C. which is close to the minimum standard of section 450-23 of the National Electrical Code of the National Fire Protection Association, i.e., 300° C. This standard has been accepted by these railroad organizations as their minimum standard for dielectric fluids in passenger applications.

According to Amtrak, Midel's fire point is sufficiently higher than the minimum standard of the National Electrical Code. In addition, Amtrak has cited the successful use of Midel as a substitute for PCB fluids in enclosed switches in the Dartford Tunnel, London. According to Amtrak's comment, this application of Midel demonstrates its high resistance to repeated arcing in the fluid as compared with the arcing which would be experienced, mainly under fault conditions, in a PCB railroad transformer.

Based on a review of tests of the flammability of Midel in railroad transformers as conducted by Factory Mutual Research Corporation, the Federal Railroad Administration has concluded that Midel is satisfactory as a non-PCB dielectric fluid for railroad transformer use.

c. *Other non-PCB dielectric fluids.* Envirotemp 100 is composed of pentaerythritol esters, and its dielectric properties and chemical composition are similar to Midel 7131. Like Midel, Envirotemp is biodegradable, non-bioaccumulating, and non-toxic.

Given comments received from a major supplier of synthetic-based lubricants for jet engines, another transformer fluid with a chemical composition and dielectric properties similar to Midel could be introduced in the near future.

2. *Technological feasibility of achieving the 1,000 ppm PCB concentration level.* As described in Unit III.C. of this preamble, the Agency has received information that confirms that these PCB railroad transformers can achieve the 1,000 ppm PCB concentration level in two retrofills. As a result of a demonstration project conducted by SEPTA on a PCB railroad transformer in operation since June 1979, there is substantial evidence that the PCB concentration level has been lowered to below 1,000 ppm after two retrofills using FR-15 or IRA-LEC. The last recorded reading of this demonstration, conducted eight months after the second retrofill, has shown that the leaching of PCBs from the transformer has not resulted in a PCB concentration level exceeding the 1,000 ppm level. As described in Unit III.C. of this preamble, the results of the SEPTA demonstration project indicate that the PCB concentration level in the transformer has leveled off and remained under 500 ppm. Although EPA believes that this demonstration confirms that the 1,000 ppm level is feasible as a mandated concentration level for the second set of performance deadlines, the results from this demonstration have not yet provided sufficient data to confirm the feasibility of a 500 ppm mandated concentration level.

D. Economic and Environmental Impacts of Regulatory Options

EPA considered three primary regulatory options in amending this use rule. These options were: (1) To maintain the deadlines in the May 1979 rule, (2) to rescind the performance deadlines of the May 1979 rule, and (3) to extend the deadlines in the May 1979 rule. This unit will consider the economic and environmental impacts of these regulatory options.

1. *Maintenance of the performance deadlines in the May 1979 use rule.* Without this amendment to the current performance deadlines, approximately 669 transformers would be in violation of the January 1, 1982 performance deadline. These transformers provide most of the daily commuter service to the metropolitan areas of the northeastern United States. If transformers were removed from service, there would be severe interruptions in daily commuter service which could affect both users of the railroads and railroad workers, and would have secondary effects on related businesses. For example, small businesses serving metropolitan areas of the northeastern United States could suffer significant commercial losses resulting from a temporary cessation of public transit. This effect on small businesses would result from the dependency of businesses in these commercial areas on public transit operations conducted by these railroad organizations. These public transit operations provide necessary access for residents of the affected metropolitan areas to shop in commercial areas served by public rail transit.

Without an extension of the performance deadlines in the May 1979 rule, there would be increased vehicular traffic in the affected metropolitan areas resulting from reduced railroad commuter traffic. Congestion would be increased in these metropolitan areas, with increased air pollution and a higher risk of automobile accidents. If the current performance deadlines are not extended and these railroad organizations ceased commuter service, SEPTA has estimated that the following impacts would result in its service area: (1) Approximately 73,000 increased auto trips per day; (2) approximately 32,500,000 aggregate pounds per year in increased air pollution through emissions of carbon monoxide, hydrocarbons, and nitrogen oxide; and (3) an increase of approximately 61,000 gallons in daily regional gasoline consumption. Similar impacts could be expected for other affected metropolitan areas in the northeastern United States.

Existing service capacity for commuters could be maintained only by these organizations incurring significant costs to replace existing PCB railroad transformers. Given cost estimates provided by SEPTA and the other affected organizations, the total incremental replacement costs for these transformers would range from approximately $28 million, assuming a useful life of 15 years for a transformer, to $63 million assuming a useful life of 30 years for a transformer.

The advantages of maintaining the performance deadlines of the May 1979 rule include the prevention of PCB exposure to railroad workers and persons affected by PCB leaks and spills along the railroad lines, and the avoidance of cleanup costs that result from releases of PCBs during this use.

2. *Rescission of the performance deadlines in the May 1979 rule.* This option was proposed by certain railroad organizations, including SEPTA and

New York MTA, as an alternative to their proposed modification of the performance deadlines in the May 1979 rule. It was presented in conjunction with their argument that PCB railroad transformers should qualify as "totally enclosed" uses under section 6(e)(2)(C) of TSCA. (For a discussion of this issue, see Unit V.A. of this preamble.)

Under this option, 773,000 pounds of PCBs in railroad transformers would be used in active service for the remaining useful lives of these transformers. Westinghouse Electric Corporation estimated that a maximum of 30 percent of the total dielectric fluid in a railroad transformer might be released as leaks and spills before the transformer fails. Hence, a maximum of approximately 231,000 pounds of PCBs could be released into the environment under this alternative. Compared with the other options, this alternative would represent the greatest magnitude and risk of exposure from the use of PCBs in railroad transformers.

The advantage of this option is the avoidance of the cost of performing one or two retrofills for these transformers. The total costs of retrofilling these PCB railroad transformers to meet the 1,000 ppm concentration level ranges from $8.3 to $23 million. Under this option, however, small businesses that could provide retrofilling functions for these railroad organizations would lose the opportunity to perform these services. These cost estimates are described in greater detail in the Agency's economic analysis prepared for this rulemaking.

3. *Extension of the performance deadlines in the May 1979 rule.* As described in Unit II, in their comments for this rulemaking, the railroad organizations presented the following proposal for the extension of the performance deadlines in the May 1979 rule. In sum, they urged EPA to: (1) Order the reduction of PCB concentrations in railroad transformers to 60,000 ppm by July 1, 1984; (2) order the reduction of PCB concentrations in railroad transformers to 20,000 ppm by July 1, 1986; and (3) allow the use of PCBs for the remaining useful lives of these transformers below 20,000 ppm.

This amendment to the use rule differs from the proposed rule in the following requirements. First, the amendment establishes a set of three performance deadlines for these transformers to achieve a 60,000 ppm level. Under these deadlines, one-third of the transformers in active service by each railroad organization must reach this level by July 1, 1983; another third by January 1, 1984; and the final third by July 1, 1984. Second, the amendment establishes a set of three performance deadlines for meeting the 1,000 ppm level. Under these deadlines, one-third of the transformers in active service by each railroad organization must reach this level by July 1, 1985; another third by January 1, 1986; and the final third by July 1, 1986. Finally, the amendment deletes an expiration deadline for this use of PCBs at or below 1,000 ppm, allowing this use of PCBs for the remaining useful lives of these transformers below 1,000 ppm. This unit will analyze the economic impacts and environmental risks of each of the principal requirements of this amendment to the May 1979 rule.

a. *Extension of the performance deadlines for the 60,000 and 1,000 ppm concentration levels.* In its joint petition of October 15, 1981, SEPTA together with New Jersey Transit, New York MTA, and ConnDOT has provided certain cost assumptions which the Agency has used to calculate the economic impact of this amendment. In addition, the Agency has applied other assumptions in calculating the total cost of retrofilling railroad transformers under the deadlines of this amendment. These costs were estimated based on present value calculations. (These present value calculations take into account the opportunity costs of expenditures that are deferred by railroad organizations and shifted into retrofilling operations required under this rule.) The total costs of retrofilling these PCB railroad transformers to meet the 1,000 ppm concentration level ranges from $8.3 million to $23 million. For SEPTA, the range is between $3 million and $9.65 million. The estimate ranges of costs for the other railroad organizations are: $3 million to $7.4 million for New York MTA/ConnDOT, $938,000 to $3.2 million for New Jersey Transit, and $654,000 to $2.4 million for Amtrak. According to the Agency's economic analysis, the average cost-effectiveness of this amendment, excluding clean-up cost savings, ranges from $85 to $1,205 per pound of PCBs saved from the environment. The assumptions and calculations supporting these estimates are presented in the economic analysis prepared for this rulemaking.

The developer of the freon retrofill method has commented that through application of its method, the 1,000 ppm PCB concentration level can be met in one retrofill. Under cost assumptions presented by Positive Technologies Inc. (PTI), the total cost for the railroad organizations to meet the 1,000 ppm PCB concentration level could range from approximately $8.3 million, assuming a 15-year useful life for transformers, to $9.7 million, assuring a 30-year useful life. At this time, the Agency cannot confirm the accuracy of the cost assumptions presented by PTI.

The extension of these performance deadlines would also have economic implications for small businesses. This amendment to the use rule for PCB railroad transformers would avoid any adverse economic impact on small businesses. This amendment should provide incentives for the development of non-PCB substitute fluids and alternative retrofill technologies, a portion of which is provided by small businesses. In addition, this amendment will provide a stimulus for continued improvements in existing alternative retrofill methods including those retrofill methods provided by small businesses.

Compliance by railroad organizations under the performance deadlines of this amendment would remove most of the PCBs in the dielectric fluid of railroad transformers. On January 1, 1982, there were 773,000 pounds of PCBs in railroad transformers used in active service. Under the performance deadlines of this rule, by July 1, 1984, there should be 93,000 pounds of PCBs remaining in railroad transformers used in active service (60,000 ppm PCB concentration). Under the 1,000 ppm concentration requirement, by July 1, 1986, there would be only 1,550 pounds of PCBs remaining in railroad transformers used in active service. This will represent the maximum pounds of PCBs remaining in railroad transformers used in active service with the elimination of an expiration deadline under this rule. Therefore, with full compliance by railroad organizations, 99.8 percent of the PCBs present in the transformers on January 1, 1982 will be eliminated by this rule. This will greatly reduce the potential for contamination of the environment and exposure to humans from the continued use of railroad transformers.

The aforementioned estimates have been derived from data provided by several railroad organizations. A key assumption for these estimates was an average PCB concentration in railroad transformers, with the exception of transformers used in Amtrak self-propelled cars, of 550,000 ppm (55.0 percent on a dry weight basis). Amtrak was able to retrofill the 61 transformers in its self-propelled cars to meet the 60,000 ppm (6 percent) concentration level by January 1, 1982. Hence, for these estimates, the average PCB concentration in these transformers is at a 6 percent PCB level, rather than at a 55 percent PCB level. Amtrak did not, however, retrofill the 26 PCB railroad transformers in its locomotives by that date. The average PCB concentration in

these transformers is at a 55 percent concentration level.

The possible reliance by certain railroad organizations on the freon gas method to supplement the retrofilling of these transformers with a non-PCB substitute fluid will present no known risks to public health or the environment. Given information provided by the developer of this method, EPA has determined that as used in the retrofill of these transformers, an insignificant amount of this freon product will be released into the environment. After each retrofill of a transformer with this process, the freon gas is recycled and used for other retrofills. Given the minimal exposure risk presented by the use of the freon product in this retrofill process, no regulatory action by the Agency under section 6 of TSCA will be initiated.

b. *Performance deadlines for lowering PCB concentration levels in railroad transformers to 60,000 ppm and 1,000 ppm.* The Agency considered three options for the establishment of performance deadlines for lowering PCB concentration levels in railroad transformers to 1,000 ppm by July 1, 1986. These options were: (1) Requiring only a single performance deadline of July 1, 1986, for compliance with the 1,000 ppm concentration level; (2) requiring one performance deadline for compliance with the 60,000 ppm level (July 1, 1984) and one performance deadline for compliance with the 1,000 ppm level (July 1, 1986); and (3) requiring three performance deadlines for compliance with the 60,000 ppm level and three additional deadlines for compliance with the 1,000 ppm level. The Agency also considered requiring periodic reports of progress together with each of these options.

Under any of these approaches, with traditional retrofill technology, these organizations will conduct two retrofills of their railroad transformers to meet the 1,000 ppm PCB concentration level by July 1, 1986. The testing, inspection, and maintenance costs should be identical under any of these approaches.

EPA has determined that options with more performance deadlines ensure the reduction of risk to human health and the environment associated with this use of PCBs in a shorter period than options with fewer deadlines. Because there are significant differences in the risks involved with use of PCBs at different concentrations, the six-stage PCB reduction schedule has been promulgated in this amendment to hasten retrofill progress. Given the present concentration level in most PCB railroad transformers, there would be a maximum release of 268 pounds of PCBs from a maximum spill of 39 gallons of dielectric fluid. With the 60,000 ppm level, there would be a maximum release of approximately 29 pounds of PCBs from a similar transformer. With the 1,000 ppm level, there would be a maximum release of approximately 0.5 pound of PCBs from a similar transformer. It is EPA's concern for the minimization of risks from a single spill event that makes a schedule with more performance deadlines more desirable. Requiring periodic reports of progress from these organizations would not contribute to the reduction of risks. Such a requirement would merely provide information, rather than risk-minimization.

EPA has determined that of the options considered, a schedule with six performance deadlines provides the greatest assurance that these railroad organizations will not fall behind in their retrofill schedule. This safeguard is important because, according to the comments provided by these organizations, each of them is limited as to the rate at which cars can be removed from service. Because of the limitation, it is necessary for the retrofilling to proceed at a steady rate. Options which theoretically would provide greater flexibility for the railroad organizations by specifying fewer interim deadlines are not desirable because such flexibility has no practical value. This conclusion is supported by the comments of the railroad organizations that the maximum rate of removal of cars from service cannot be exceeded. Therefore, to comply with the final deadline, railroad organizations must not fall behind schedule. Requiring compliance with interim deadlines provides incentive for these organizations to stay on schedule. Requiring periodic reports of progress from these organizations would not provide additional incentive for them to maintain their schedule, and would impose unnecessary costs.

Given these considerations, EPA has decided that a total of six performance deadlines should be required for compliance with the rule. Periodic progress reports will not be required. The six performance deadlines in this rule are easily achievable by any of the railroad organizations because the deadlines have been developed to follow the schedule proposed by them.

EPA has determined that no adverse economic impacts will result from the promulgation of a uniformly phased schedule of six performance deadlines as compared with the performance deadlines that would be established under any of the other options. Compared with these options, the establishment of six performance deadlines will not impose any additional costs on the affected railroad organizations.

c. *Deletion of the expiration deadline for this use of PCBs at a concentration level below 1,000 ppm.* The use authorization for PCB railroad transformers in the May 1979 rule expires on July 1, 1984, six months after the performance deadline for the 1,000 ppm concentration level. This amendment will delete the expiration deadline for this use of PCBs below a concentration of 1,000 ppm.

This deletion of the expiration deadline will allow these railroad organizations to avoid the cost of at least an additional retrofill of their transformers to further reduce PCB concentrations below 1,000 ppm. EPA has estimated that the cost of a third retrofill for these transformers to further reduce PCB concentrations below 1,000 ppm would range from approximately $6.7 million to $9.1 million. Alternatively, the replacement costs for these transformers would range from approximately $28 million to $63 million. Finally, the Agency cannot determine that it is technologically possible to completely eliminate PCBs from railroad transformers through retrofilling operations, including the freon gas method.

After the last performance deadline of this rule, July 1, 1986, there will remain a maximum of approximately 1,550 pounds of PCBs in active service in these transformers. These transformers can lose at most 30 percent of their dielectric fluid before they fail. Hence, approximately 460 pounds of PCBs as a portion of the total dielectric fluid of these transformers could be released through leaks and spills on railroad beds before the transformers fail. Similarly, under the 1,000 ppm concentration level, the maximum leakage of PCBs from a railroad transformer for a single spill event will be approximately 0.5 pound of PCBs.

E. Findings on the Use of PCBs in Railroad Transformers

The Agency has concluded that the risks associated with extending the deadlines and allowing the use of PCBs for the useful remaining lives of railroad transformers at a concentration level at or below 1,000 ppm are outweighed by the benefits of continued operation of commuter rail service in the northeastern United States and the costs that are avoided by not requiring the reduction of the PCB concentration level below 1,000 ppm. Therefore, EPA finds that authorizing the use of PCBs in

railroad transformers with the performance deadlines specified in this rule does not present an unreasonable risk to health or the environment for the following reasons:

1. These performance deadlines should progressively reduce the human health and environmental risks involved in this use of PCBs. By July 1, 1986, PCB concentration levels in dielectric fluid in railroad transformers will be at or below 1,000 ppm. At this concentration level, a minimal amount of PCBs (approximately 1,550 pounds) will remain in railroad transformers. This amount constitutes 0.2 percent of the amount of PCBs used in railroad transformers in active service on January 1, 1982. Under this schedule, the risks involved in a release of PCBs from these transformers will decrease from a maximum release of 268 pounds of PCBs from a single spill event under present concentration levels to a maximum release of 0.5 pound of PCBs under the 1,000 ppm concentration level. Further reductions in risk should occur as a result of servicing provisions permitting transformer reclassifications. Railroad organizations will have the incentive to reduce PCB concentrations in transformers below 500 ppm, if feasible, in order to reduce their disposal burdens.

2. The risks from continued use of PCBs in railroad transformers would be low, given the amount and concentrations of PCBs remaining after July 1, 1986, existing railroad workplace controls, and EPA disposal requirements in 40 CFR Part 761.

3. The estimated costs for the necessary retrofill operations under this amendment will range between $8.3 million and $23 million.

4. The costs to these railroad organizations associated with retrofilling under these performance deadlines are not excessive compared to the amount of PCBs that are removed from potential release into the environment.

5. Compared with the alternative of two final compliance dates for the 60,000 ppm and 1,000 ppm PCB concentration levels, the establishment of six performance deadlines will not impose any additional costs for testing, inspection, and maintenance of these transformers under requirements in 40 CFR Part 761.

6. The continued use of PCBs in railroad transformers under the performance deadlines of this rule would avoid a disruption of necessary commuter rail service in the northeastern United States.

7. The continued use of PCBs in railroad transformers under the performance deadlines of this rule would avoid increased vehicular traffic in affected metropolitan areas with related congestion and air pollution.

8. There exist adequate non-PCB dielectric fluids for use in railroad transformers to lower the PCB concentration level in railroad transformers below 1,000 ppm. In addition, there is evidence that railroad organizations might be able to lower PCB concentration levels to below 500 ppm. These organizations are encouraged to reach this level in order to reduce their disposal burdens.

9. The elimination of PCBs from these railroad transformers might not be technologically feasible through retrofill operations. Hypothetically, assuming that additional retrofills could eliminate all PCB fluid from these transformers, the costs of such retrofills (at least $6.7 million to $9.1 million) would be excessive. It would cost approximately as much to eliminate the last 0.2 percent of the PCB fluid as the first 99.8 percent. In addition, the cost of replacement for these transformers (between $28 million and $63 million) would be an unreasonable burden considering the small amount of PCBs (a maximum of 1,550 pounds) that would be eliminated. Under the 1,000 ppm concentration level, the maximum release of PCBs from these transformers for a single spill event would be only 0.5 pound of PCBs.

V. Other Proposed Amendments Presented by Railroad Organizations in This Rulemaking

Through the comment periods and informal hearing related to the proposed amendments to this use rule as published in the **Federal Register** of November 18, 1981, the affected railroad organizations presented several regulatory options not adopted in this final use rule. This section presents summaries of these proposed amendments as presented by the affected railroad organizations and EPA determinations on the validity of these proposed options.

A. Issue Concerning Whether PCB Railroad Transformers Should Qualify as "Totally Enclosed" Uses Under Section 6(e)(2)(C) of the Toxic Substances Control Act

Reply comments presented by SEPTA and New York MTA proposed that their PCB railroad transformers should be defined as "totally enclosed" uses and thereby excluded from this use rule. Under section 6(e)(2)(C) of TSCA, the continued use of PCBs in a "totally enclosed" manner is permitted. TSCA defines that category as "any manner which will ensure that any exposure of human beings or the environment to a polychlorinated biphenyl will be insignificant as determined by the Administrator." As presented in EPA regulations at 40 CFR 761.20, the Agency found that any exposure of humans or the environment to PCBs as measured or detected by any scientifically acceptable analytical method is a significant exposure.

In the comments of SEPTA and New York MTA, no information was provided by these organizations that the use of their railroad transformers would result in no exposure to humans or the environment. Documentation was provided concerning the number of recorded spill accidents during 1980 and 1981. According to these data, in 1980 and 1981, there were eleven recorded spill events in the New York MTA and ConnDOT service system (five recorded spills in 1980, six recorded spills in 1981). In 1981, there were 15 recorded spill events of 168 gallons of dielectric fluid, including PCBs, in the SEPTA system.

Through data received during this rulemaking activity from the affected railroad organizations, estimates of maximum leakage from these PCB transformers in active service have been developed. These estimates are presented in Unit IV of this preamble.

The U.S. Circuit Court of Appeals for the District of Columbia in *Environmental Defense Fund* v. *Environmental Protection Agency*, 636 F.2d 1267 (1980), has reviewed the legal status of the current use rule for PCB railroad transformers. In footnote 31 of that decision, the Court acknowledged the Agency conclusion that railroad transformers cannot be considered totally enclosed. In addition, the Court stated that "[b]ecause of the strenuous conditions under which they operate, railroad transformers often leak PCBs onto railroad beds, risking exposure to the environment and to workers and other persons near rail lines." 636 F.2d at 1279.

B. Transfer of PCB Railroad Transformers to Museums or Historical Societies

In its comments, Amtrak has proposed amendments to 40 CFR 761.20 concerning the distribution in commerce of PCB equipment, including PCB railroad transformers. First, Amtrak proposed that the owner of a railroad locomotive or self-propelled car with a PCB railroad transformer may at any time sell or otherwise distribute in commerce or export the locomotive or car provided that certain conditions are met. These conditions are that these Amtrak transformers must contain

dielectric fluid with either: (1) A concentration level no greater than 60,000 ppm or (2) the concentration level set by EPA for the first retrofill requirement in effect six months after the date of sale, distribution, or export, whichever is lower. Second, Amtrak proposed that the owner of an electric locomotive or self-propelled car containing a PCB Transformer may at any time transfer ownership of such locomotive or car to a "reputable historical society or institution" for premanent display. This transfer would be permitted provided that certain precautions were met prior to the transfer. These precautions would be: (1) All free-flowing dielectric fluid would be drained from the transformer; (2) the transformer would be filled with an appropriate non-PCB solvent and allowed to stand for a period of not less than 18 hours; (3) a sufficient quantity of appropriate absorbent material would be placed in the transformer to absorb any remaining fluid; (4) the transformer would be sealed by welding or another process to insure that it is totally enclosed within the statutory definition; and (5) the transformer must be prominently marked as a PCB Transformer, consistent with EPA marking rules presented in 40 CFR 761.40(a)(2).

The first proposal of Amtrak should be submitted in the form of an exemption petition under section 6(e) of TSCA for the distribution in commerce of railroad cars and locomotives equipped with railroad transformers with PCB fluid. Section 6(e)(3)(A)(ii) of TSCA prohibits the distribution in commerce of PCBs after July 1, 1979 unless the agency has granted an exemption for the activities. Section 6 of TSCA provides exemption procedures applicable to Amtrak's proposal for the distribution in commerce of locomotives or self-propelled cars equipped with a PCB railroad transformer. Exemption petitions must be consistent with procedures presented in section 6(e)(3)(B) of TSCA and EPA regulations at 40 CFR Part 750.

EPA regulatory provisions in 40 CFR Part 761 are applicable to Amtrak's second proposal for the transfer of ownership of GG-1 locomotives to historical institutions and the related retirement of these locomotives with their PCB railroad transformers. PCB Transformers must be disposed in accordance with the disposal requirements of the PCB rule, 40 CFR 761.60. Section 761.60(b) of the disposal requirements states that drained PCB Transformers must be sent either to an incinerator under § 761.70 or to an EPA-approved chemical waste landfill. EPA rules at 40 CFR 761.65 provide requirements for transformers in locomotives or cars that are stored for disposal. Furthermore, if the transformers were not disposed of, the museums and historical societies would be using PCBs in a manner not found to be totally enclosed or authorized by the PCB rule. Such uses are banned under section 6(e)(2)(A) of TSCA.

The use authorization for PCBs in electrical equipment in the May 1979 rule has recently been amended. The final amendment to the use authorization was published in the **Federal Register** of August 25, 1982 (47 FR 37342). Included in this final amendment are modifications to the distribution in commerce provisions in 40 CFR 761.20 for electrical equipment with PCB fluid. This provision allows the distribution in commerce of all intact, nonleaking electrical equipment with PCB fluid including PCB railroad transformers. Hence, under this provision, in order to transfer ownership of these GG-1 locomotives, Amtrak must ensure that these locomotives are "intact" and "nonleaking."

VI. Executive Order 12291

Under Executive Order 12291, issued February 17, 1981, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this amendment to the PCB rule is not a "major rule" as that term is defined in section 1(b) of the Executive Order. Therefore, EPA has not prepared a Regulatory Impact Analysis for this rule.

EPA has concluded that the amendment is not "major" under the criteria of section 1(b) because the annual effect of the rule on the economy will be less than $100 million; it will not cause a major increase in costs or prices for any sector of the economy or for any geographic region; and it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States enterprises to compete in domestic or foreign markets. Indeed, it will reduce the burden on railroad organizations to comply with the PCB rule. By extending the performance deadlines in the May 1979 rule and eliminating an expiration deadline for this use of PCBs at or below 1,000 ppm, this amendment should reduce costs for the railroad industry and for governmental bodies that operate railroads.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

VII. Regulatory Flexibility Act

Section 604 of the Regulatory Flexibility Act (5 U.S.C. 604) requires EPA to prepare a "regulatory flexibility analysis" in connection with any rulemaking for which there is a statutory requirement that a general notice of proposed rulemaking shall be published. The "regulatory flexibility analysis" describes the effect of a final rule on small business entities.

Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), however, provides that section 604 of the Act "shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

Since the effect of this rule avoids the economic impact associated with a disruption of passenger railroad service, and no negative economic effect is expected upon any business entity from this amendment, the Administrator of EPA has certified that promulgation of this amendment will not have a significant economic impact on a substantial number of small entities. Therefore, a "regulatory flexibility analysis" is not required and will not be prepared for this rulemaking.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1980, 44 U.S.C. 3501 *et seq.*, requires Federal agencies to submit certain collection of information requests to the Office of Management and Budget (OMB) for its review and approval. Without appropriate approval from OMB under the Act, agencies may not impose penalties for noncompliance with certain types of collection of information requests, including recordkeeping requirements. Based on a review of the specific recordkeeping requirements under this use rule, EPA has determined that these requirements do not meet the threshold criteria for "collection of information" under the PRA.

The recordkeeping requirements of this use rule are presented in 40 CFR 761.30(b)(1)(iii). This provision requires that the concentration of PCBs in the dielectric fluid of railroad transformers must be measured at two points in time:

(1) Immediately upon completion of any authorized servicing of a railroad transformer conducted for the purpose of reducing the PCB concentration in the transformer, and (2) between 12 and 24 months after each servicing conducted

under this rule. In addition, these measurements must be recorded and retained until January 1, 1991.

This amendment does not alter the recordkeeping requirements contained in 40 CFR 761.30 (b)(1)(iii) of the current rule. The only change in the recordkeeping requirements from the current rule refers to the extension of the performance deadlines and the related extension of the period for railroad organizations to measure the concentration of PCBs in the dielectric fluid of railroad transformers. Under this change, these organizations would be required to measure the concentration of PCBs for compliance with the respective performance deadlines through July 1, 1986, rather than through July 1, 1984, under the current rule.

Under section 3502(4) of the Act, "collection of information" includes "the obtaining or soliciting of facts or opinions by an agency through the use of written report forms, application forms, schedules, questionnaires, reporting or recordkeeping requirements, or other similar methods." In addition, to meet the statutory definition of "collection of information," any recordkeeping requirements under this use rule must request either of the following responses: (1) "Answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States" or (2) "answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes." The recordkeeping requirements under this use rule do not meet either of these categories. With respect to the first response category, the requirements in the use rule are applicable to less than 10 affected railroad organizations with PCB railroad transformers in either active or inactive service. With respect to the second category, none of the affected railroad organizations are "agencies, instrumentalities, or employees of the United States." In addition, the testing records concerning PCB concentration levels that must be maintained through January 1, 1991 are to measure compliance with the performance deadlines, and are not to be used for general statistical purposes.

IX. Official Record of Rulemaking

In accordance with the requirements of section 19 (a)(3)(E) of TSCA, EPA is issuing the following list of documents constituting the record of this rulemaking. However, this list does not include public comments, the transcript of the rulemaking, hearing, or submissions made at the rulemaking hearing or in connection with it. These documents are exempt from **Federal Register** listing under section 19(a)(3). A full list of these materials will be available on request from the Industry Assistance Office listed under **"FOR FURTHER INFORMATION CONTACT."**

A. Previous Rulemaking Records

1. Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions Rule" published in the **Federal Register** of May 31, 1979, (44 FR 31514).
2. Official Rulemaking Record from "Proposed Amendment to Use Authorization for PCB Railroad Transformers" published in the **Federal Register** of November 18, 1981, (46 FR 56626).

B. Support Documents

3. USEPA, OTS, "Cost-Effectiveness Analysis for the PCB Railroad Transformer Rule Amendment."
4. USEPA, OTS, "Response to Comments on Health Effects of PCBs."
5. USEPA, OTS, "Support Document for the PCB Railroad Transformer Rule: Response to Comments."

C. Reports

6. Buser, H. R., "Formation of Polychlorinated Dibenzofurans (PCDFs) and Dibenzo-p-dioxins (PCDDs) from the Pyrolysis of Chlorobenzenes," 8 *Chemosphere*, 415 (1979).

X. Statutory Authority

Under section 6(e) of TSCA (15 U.S.C. 2605), the Administrator may by rule authorize the manufacture, processing, distribution in commerce, or use (or any combination of such activities) of any PCBs in other than a totally enclosed manner if the Administrator finds that it will not present an unreasonable risk of injury to human health or the environment.

List of Subjects in 40 CFR Part 761

Hazardous materials, Labeling, Polychlorinated biphenyls, Recordkeeping and reporting requirements, Environmental protection.

Dated: December 20, 1982.

Anne M. Gorsuch,

Administrator.

PART 761—[AMENDED]

Therefore, in 40 CFR 761.30, the introductory text in paragraph(b) and paragraph(b)(1) are revised, and paragraph(b)(2)(vii) is added to read as follows:

§ 761.30 Authorizations.

* * * * *

(b) *Use in and servicing of railroad transformers.* PCBs may be used in transformers in railroad locomotives or railroad self-propelled cars ("railroad transformers") and may be processed and distributed in commerce for purposes of servicing these transformers in a manner other than a totally enclosed manner subject to the following conditions:

(1) *Use restrictions.* (i) After July 1, 1983, the number of railroad transformers containing a PCB concentration greater than 60,000 ppm (6.0 percent on a dry weight basis) in use by any affected railroad organization may not exceed two-thirds of the total railroad transformers containing PCBs in use by that organization on January 1, 1982.

(ii) After January 1, 1984, the number of railroad transformers containing a PCB concentration greater than 60,000 ppm in use by any affected railroad organization may not exceed one-third of the total railroad transformers containing PCBs in use by that organization on January 1, 1982.

(iii) After July 1, 1984, use of railroad transformers that contain dielectric fluids with a PCB concentration greater than 60,000 ppm is prohibited.

(iv) After July 1, 1985, the number of railroad transformers containing a PCB concentration greater than 1,000 ppm (0.1 percent on a dry weight basis) in use by any affected railroad organization may not exceed two-thirds of the total railroad transformers containing PCBs in use by that organization on July 1, 1984.

(v) After January 1, 1986, the number of railroad transformers containing a PCB concentration greater than 1,000 ppm in use by any affected railroad organization may not exceed one-third of the total railroad transformers containing PCBs in use by that organization on July 1, 1984.

(vi) After July 1, 1986, use of railroad transformers that contain dielectric fluids with a PCB concentration greater than 1,000 ppm is prohibited.

(vii) The concentration of PCBs in the dielectric fluid contained in railroad transformers must be measured:

(A) Immediately upon completion of any authorized servicing of a railroad transformer conducted for the purpose of reducing the PCB concentration in the dielectric fluid in the transformer, and

(B) Between 12 and 24 months after each servicing conducted in accordance with paragraph (b)(1)(vii)(A) of this section;

(C) The data obtained as a result of paragraph (b)(1)(vii) (A) and (B) of this

section shall be retained until January 1, 1991.

(2) * * *

(vii) A PCB Transformer may be converted to a PCB-Contaminated Transformer or to a non-PCB Transformer by draining, refilling, and/or otherwise servicing the railroad transformer. In order to reclassify, the railroad transformer's dielectric fluid must contain less than 500 ppm (for conversion to PCB-Contaminated Transformer) or less than 50 ppm PCB (for conversion to a non-PCB Transformer) after a minimum of three months of inservice use subsequent to the last servicing conducted for the purpose of reducing the PCB concentration in the transformer.

* * * * *

[FR Doc. 82-35528 Filed 12-30-82; 8:45 am]
BILLING CODE 6560-50-M

federal register

Monday
January 3, 1983

Part V

Equal Employment Opportunity Commission

Final Procedural Regulations; Age Discrimination in Employment Act

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1626

Final Procedural Regulations; Age Discrimination in Employment Act

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final procedural regulations.

SUMMARY: On July 1, 1979, pursuant to Reorganization Plan No. 1 of 1978, 43 FR 19807 (May 9, 1978), responsibility and authority for enforcement of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621 *et seq.*, (ADEA), was transferred from the Department of Labor to the Equal Employment Opportunity Commission.

On January 30, 1981, the EEOC published for comment proposed ADEA procedural regulations. *See* 46 FR 9970. After receipt and review of these comments, the Commission herein publishes in final form its procedural regulations for the administration and enforcement of the ADEA. These regulations advise the public as to the procedures the Commission proposes to follow in processing charges and issuing interpretations and opinions under the Age Discrimination in Employment Act. These regulations will complement the Commission's existing procedural regulations under Title VII of the Civil Rights Act of 1964.

DATE: These procedural regulations are effective January 3, 1983.

FOR FURTHER INFORMATION CONTACT: John Pagano, Office of the Legal Counsel, Legal Services Division, 2401 E Street, N.W. Room 2254, Washington, D.C. 20506, telephone (202) 634-6592.

SUPPLEMENTARY INFORMATION: The Commission publishes the regulations herein with the desire to provide continuity with the Commission's procedural regulations under Title VII. In those areas where the statutory provisions of the two Acts allow, the final procedural regulations under the ADEA conform to the Title VII procedural regulations. Total conformity, however, is not possible for the reason that while the substantive provisions of the ADEA are derived for the most part from Title VII, the ADEA statutory procedures are taken from the Fair Labor Standards Act of 1938 (FLSA). *Lorillard* v. *Pons*, 434 U.S. 575 (1975).

The Commission received numerous suggestions that the ADEA procedures should incorporate charges processing restrictions such as are found in the Title VII procedures. In this context it was suggested that the ADEA procedural regulations require that a charge be made in writing, be signed and verified, that time restrictions be placed on the administrative process, that the Commission investigate before conciliation, that the Commission issue no violation letters, and that the Commission's authority to investigate be limited to timely filed charges. These and other similar suggestions were rejected because to implement them would impose upon the ADEA practice restrictions that were placed on Title VII by statute. As the Supreme Court noted in *Lorillard* v. *Pons, supra*, Congress considered and rejected incorporating Title VII procedures into the ADEA in favor of the FLSA enforcement scheme.

In areas where conformity to the Title VII procedures does not offend the ADEA statutory scheme, however, the Commission has adopted Title VII practice. Thus for example Sections 1626.8 and 1626.19 mirror in part Title VII regulations and Title VII case law. *See EEOC* v. *Western Publishing Co.*, 502 F.2d 599 (8th Cir. 1974); *Sanchez* v. *Standard Brands, Inc.*, 431 F.2d 455 (5th Cir. 1970).

After reviewing the comments received on the proposed procedures, the Commission has reconsidered the positions taken therein and has determined that certain modifications are necessary. Sections receiving no comments or comments generally addressed above will be published without modification except as noted below.

§ 1626.3 Other definitions.

Numerous comments were received on this section. The comments suggested that the difference between a charge and a complaint was not clear, that the ADEA did not require confidentiality of complaints, that there is no statutory authority for the Commission accepting charges filed "on behalf of" an aggrieved party, and that there is no statutory authority for accepting complaints or charges on alleged future violations. Several commentors question the acceptance of a charge of a future violation. The ADEA prohibits discrimination in employee benefits and other matters that are often committed to writing. Therefore, a future violation may be apparent, and the regulation is so worded to allow an individual to challenge an employment policy such as mandatory retirement before the practice actually affects the complaining person.

The Commission responds to the queries regarding the difference between a charge and a complaint by clarifying the legal effect of each in §§ 1626.3 and .4. The regulations now make clear that a complaint is one method by which the Commission may receive information about alleged violations of the Act, where the party providing the information does not wish to file a charge. Section 1626.4 provides, however, that where a complaint or information received discloses a possible violation, the Commission will so advise the informant and assist in filing a charge if the individual wishes to preserve the right of all aggrieved persons to file a civil action.

One commentor found this section unclear as to whether a complaint would trigger the 7(d) requirement that the Commission conciliate the matter. The Commission feels that § 1626.4 provides the answer. The Commission may on its own initiate and conduct an investigation based on information received from any source, including a complaint. This function is clearly discretionary, but the regulation goes on to suggest that the Commission will render assistance to, among others, a complainant who may wish to change his or her complaint to a charge, thereby triggering the 7(d) requirement that the Commission conciliate.

Three comments focused on the question of confidentiality. This section as proposed makes it clear that an individual has the choice of remaining anonymous by either filing a complaint or by having someone else file a charge on his or her behalf. Filing an individual charge implies that the charging party is prepared to make known his or her identity. While the first notice to the respondent of the charge may not state who the charging party is, his or her identity will generally be made known to the respondent through the conciliation process. The Commission wishes to note that while the practice under Title VII is to identify the charging party to the respondent, the Title VII regulations provide confidentiality, if sought. 29 CFR 1601.7.

One commentor correctly noted that while under section 706(b) of Title VII, charges may be filed "on behalf of" an aggrieved person, there is no precisely similar language in the ADEA. However, an examination of the 1978 amendments shows that Congress intended that charges "on behalf of" be sufficient for the purposes of preserving the private right of action. Prior to 1978, section 7(d) of the ADEA required that the individual give the Secretary not less than 60 days notice of intent to file suit. In 1978 section 7(d) was amended to provide that an aggrieved person could not commence a suit until 60 days after a charge covering the matter complained of had been filed with the Secretary. The

change from the active to the passive mode lifts the burden from the individual aggrieved to personally file the charge, and allows any charge made in accordance with § 1626.8 which gives sufficient notice to the Commission to conciliate, to satisfy the 7(d) requirement.

For the reasons stated above, the proposed regulation remains unchanged with the following exceptions: The definition of a "charge" has been reworded to conform to § 1626.6, the language on future violations has been clarified, the definition of a "charging party" has been shortened to clarify the distinction between the party filing a charge and persons aggrieved by the subject matter of the charge, and the definition of a complaint has been altered to indicate that information received by the Commission that is not a charge creates no legal obligations nor protects any individual right.

§ 1626.4 Information concerning alleged violations of the Act.

The comments on § 1626.4 focus on the confidentiality provisions and the assistance provided in filing a charge and has been reworded to indicate that the confidentiality provision is within the Commission's discretion, not mandated by statute. The provision on providing assistance in filing a charge has likewise been reworded to show that the assistance is discretionary.

§ 1626.5 Where to submit complaints and charges.

One commentor noted that the DOL offices have been receiving ADEA complaints and charges, and suggests that if this practice is to be discontinued, the public should be informed. The Commission agrees. The notice at 44 FR 37975 is hereby rescinded with respect to the designation of the offices of the Wage and Hour Division of the DOL to receive complaints and information relating to possible violations of the ADEA.

§ 1626.6 Form of charge.

This section remains unchanged, except that language was added to this section to harmonize with §1626.7 which specifically provides for oral charges.

§ 1626.7 Timeliness of charges.

The Commission received comments on this section questioning the use of the "mailbox" rule, and generally opposing the Commission accepting untimely charges.

The Commission feels that the regulation as proposed makes clear that a charge must be filed within certain time frames to preserve the right of any person aggrieved by actions which fall within the scope of the charge to bring a private action. However, information received from charges filed, whether timely or not, may still form the basis of a Commission-initiated suit. To only accept charges that were timely for the purposes of individual suits would be to ignore the Commission's own enforcement function. Furthermore, the timeliness of filing a charge may be subject to equitable tolling, an issue which must ultimately be judicially decided. *See Coke* v. *General Adjustment Bureau*, 640 F. 2d 584 (5th Cir. 1981).

On the use of the mailbox rule, the statute is silent on what constitutes the date of filing, and the Commission has constructed an adequate general rule. It should be noted that the rule parallels in part the state agency filing rule set forth in 14(b) of the ADEA. Several commentors felt that subsection (c)(1)(ii) would encourage fabrication, but this argument was rejected in light of the fact that a post mark occurs after a letter is dated, making the utility of a fabrication highly speculative.

This section has been reworded, however, to use the language of 7(d) of the ADEA. The regulation as proposed may have created the impression that 7(d) requires that the individual who wishes to file suit, must file a charge. The statute and Commission regulations provide that a properly filed charge may be filed on behalf of the individual, or that an aggrieved person may bring suit so long as the matter complained of was within the scope of the previously filed charge, regardless of who filed it.

§ 1626.9 Referrals to and from state agencies; referral states.

In response to requests to clarify the federal/state relationship, § 1625.10 has been added. This section, like 29 CFR 1601.70, provides both employers and potential charging parties with guidance on the effect of filing with one or both authorities. Former § 1626.10 is now § 1626.9(b). In addition, the language in this section concerning referrals was altered to indicate that referral to a state agency is a matter of Commission policy and that the Commission will encourage referrals from state agencies, and that a charge so referred shall be deemed to have been filed simultaneously with both agencies.

§ 1626.12 Conciliation efforts pursuant to Section 7(d) of the Act.

The Commission has added a provision to § 1626.12 which allows a charging party or person aggrieved by the subject matter of the charge to commence action after 60 days or upon failure of conciliation, whichever occurs first. This addition mirrors a similar provision in section 14(b) of the Act regarding the early termination of state proceedings.

§ 1626.15 Commission enforcement.

The following editorial changes were made in this section:

Specific reference to the Act was expanded in subsection (a); language that was duplicative of other sections was deleted from subsections (b) and (c), the references to confidentiality in subsection (b) and (c) were consolidated in subsection (b); subsection (d) was deleted as material more appropriate for inclusion in the *Compliance Manual*; and language was added to subsection (b) to focus on the commencement of conciliation rather than the conclusion of investigation and to indicate that when the Commission has concluded that a violation of the Act has occurred or is about to occur, the Commission will attempt to notify aggrieved persons who have a private right to preserve or act upon. New language was added to make it clear that the purpose of subsection (b) is to procedurally define the period during which the statute of limitations is tolled under section 7(e)(2) of the Act.

§ 1626.16 Subpoenas.

Seven comments were received on this section. The primary concern is that the Commission has delegated the power to issue subpoenas to certain Commission offices without a right to appeal to the full Commission. The commentors note that this practice differs both from the Title VII regulation and the Equal Pay Act regulation providing for the issuance of subpoenas.

Under Title VII, the authority to issue subpoenas has been delegated by the Commission in conjunction with a right of appeal to the Commission. *See* 29 CFR 1601.12. This practice mirrors that of the NLRB form whence Title VII takes its provision for the issuance of subpoenas, and has been judicially approved. *EEOC* v. *Chrysler Corp.*, 14 E.P.D. ¶7516 (D.C. Mo. 1977) (delegation lawful where Commission exercises final review powers).

Under the Equal Pay Act, the Commission is authorized to utilize the subpoena procedures of sections 9 and 10 of the Federal Trade Commission Act. Pursuant to that authority, the Commission has not delegated the authority to issue subpoenas nor has provided a right of appeal to the Commission when one Commissioner issues a subpoena. *See* 29 CFR 1620.20.

As in the EPA, the ADEA authorizes the Commission to use the FTC subpoena provisions. However, unlike either Title VII or the EPA, the ADEA also provides in section 6(a) that the Commission may make delegations as it deems necessary. Therefore, the Commission is not constrained to provide a right of appeal as provided in the Title VII regulation.

The Commission sees no reason to impose additional procedures on ADEA enforcement simply to conform to the practice under Title VII or the EPA. This is not the first instance where more latitude exists under the ADEA. Since the ADEA statute of limitations continues to run until the Commission begins conciliation under Section 7(b), the additional latitude is necessary to limit the ability of respondents to avoid liability through delay of the investigative process.

§ 1626.19 Rules to be liberally construed.

This section was amended in response to a request for clarification. As noted above, this section reflects settled law under Title VII and is in harmony with FLSA procedures.

The Commission has determined that these procedural regulations are not a "major rule" under section 1(b) of Executive Order 12291. This document has been submitted to the Office of Management and Budget in accordance with the requirements of section 3(c)(3) of Executive Order 12291.

Signed at Washington, D.C., this 25th day of October 1982.

For the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

List of Subjects in 29 CFR Part 1626

Administrative practice and procedure, Aged, Equal employment opportunity.

In 29 CFR Ch. XIV Part 1626 is added as follows:

PART 1626—PROCEDURES—AGE DISCRIMINATION IN EMPLOYMENT ACT

Sec.

1626.1 Purpose.
1626.2 Terms defined in the Age Discrimination in Employment Act of 1967, as amended.
1626.3 Other definitions.
1626.4 Information concerning alleged violations of the Act.
1626.5 Where to submit complaints and charges.
1626.6 Form of charge.
1626.7 Timeliness of charge.
1626.8 Contents of charge; amendment of charge.
1626.9 Referrals to and from State agencies; referral States.
1626.10 Agreements with State and local fair employment practices agencies.
1626.11 Notice of charge.
1626.12 Conciliation efforts pursuant to Section 7(d) of the Act.
1626.13 Withdrawal of charge.
1626.14 Right to inspect or copy data.
1626.15 Commission enforcement.
1626.16 Subpoenas.
1626.17 Procedure for requesting an opinion letter.
1626.18 Effect of Opinions and Interpretations of the Commission.
1626.19 Rules to be liberally construed.

Authority: Sec. 9, 81 Stat. 605, 29 U.S.C. 628; Sec. 2, Reorg. Plan No. 1 of 1978, 3 CFR 321 (1979).

§ 1626.1 Purpose.

The regulations set forth in this part contain the procedures established by the Equal Employment Opportunity Commission for carrying out its responsibilities in the administration and enforcement of the Age Discrimination in Employment Act of 1967, as amended.

§ 1626.2 Terms defined in the Age Discrimination in Employment Act of 1967, as amended.

The terms "person," "employer," "employment agency," "labor organization," "employee," "commerce," "industry affecting commerce," and "State" as used herein shall have the meanings set forth in section 11 of the Age Discrimination in Employment Act, as amended.

§ 1626.3 Other definitions.

For purpose of this part, the term "the Act" shall mean the Age Discrimination in Employment Act of 1967, as amended; the "Commission" shall mean the Equal Employment Opportunity Commission or any of its designated representatives; "charge" shall mean a statement filed with the Commission by or on behalf of an aggrieved person which alleges that the named prospective defendant has engaged in or is about to engage in actions in violation of the Act; "complaint" shall mean information received from any source, that is not a charge, which alleges that a named prospective defendant has engaged in or is about to engage in actions in violation of the Act; "charging party" means the person filing a charge; "complainant" means the person filing a complaint; and "respondent" means the person named as a prospective defendant in a charge or complaint, or as a result of a Commission-initiated investigation.

§ 1626.4 Information concerning alleged violations of the Act.

The Commission may, on its own initiative, conduct investigations of employers, employment agencies and labor organizations, in accordance with the powers vested in it pursuant to sections 6 and 7 of the Act. The Commission shall also receive information concerning alleged violations of the Act, including charges and complaints, from any source. Where the information discloses a possible violation, the appropriate Commission office may render assistance in the filing of a charge. The identity of a complainant, confidential witness, or aggrieved person on whose behalf a charge was filed will ordinarily not be disclosed without prior written consent, unless necessary in a court proceeding.

§ 1626.5 Where to submit complaints and charges.

Complaints and charges may be submitted in person, by telephone, or by mail to any of the District or Area Offices of the Commission, or at the Headquarters of the Commission at Washington, D.C., or with any designated representative of the Commission. The addresses of the Commission's District Offices appear at § 1610.4.

§ 1626.6 Form of charge.

A charge shall be in writing and shall name the prospective respondent and shall generally allege the discriminatory act(s). Charges received in person or by telephone shall be reduced to writing.

§ 1626.7 Timeliness of charge.

(a) Charges will not be rejected as untimely provided that they are not barred by the statute of limitations as stated in section 6 of the Portal to Portal Act of 1947.

(b) Potential charging parties will be advised that, pursuant to section 7(d) (1) and (2) of the Act, no civil suit may be commenced by an individual until 60 days after a charge has been filed on the subject matter of the suit, and such charge shall be filed with the Commission or its designated agent within 180 days of the alleged discriminatory action, or, in a case where the alleged discriminatory action occurs in a state which has its own age discrimination law and authority administering that law, within 300 days of the alleged discriminatory action, or 30 days after receipt of notice of termination of State proceedings, whichever is earlier.

(c) For purposes of determining the date of filing with the Commission, the following applies:

(1) Charges filed by mail: (i) Date of postmark, if legible, (ii) Date of letter, if postmark is illegible, (iii) Date of receipt by Commission, or its designated agent, if postmark and letter date are illegible and/or cannot be accurately affixed;

(2) Written charges filed in person: Date of receipt;

(3) Oral charges filed in person or by telephone, as reduced to writing: Date of oral communication received by Commission.

§ 1626.8 Contents of charge; amendment of charge.

(a) In addition to the requirements of § 1626.6, each charge should contain the following:

(1) The full name, address and telephone number of the person making the charge;

(2) The full name and address of the person against whom the charge is made;

(3) A clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful employment practices;

(4) If known, the approximate number of employees of the prospective defendant employer or members of the prospective defendant labor organization.

(5) A statement disclosing whether proceedings involving the alleged unlawful employment practice have been commenced before a State agency charged with the enforcement of fair employment practice laws and, if so, the date of such commencement and the name of the agency.

(b) Notwithstanding the provisions of paragraph (a) of this section, a charge is sufficient when the Commission receives from the person making the charge either a written statement or information reduced to writing by the Commission that conforms to the requirements of § 1626.6.

(c) A charge may be amended to clarify or amplify allegations made therein. Such amendments and amendments alleging additional acts which constitute unlawful employment practices related to or growing out of the subject matter of the original charge will relate back to the date the charge was first received. A charge that has been so amended shall not again be referred to the appropriate State agency.

§ 1626.9 Referral to and from State agencies; referral States.

(a) The Commission may refer all charges to any appropriate State agency and will encourage State agencies to refer charges to the Commission in order to assure that the prerequisites for private law suits, as set out in section 14(b) of the Act, are met. Charges so referred shall be deemed to have been filed with the Commission in accordance with the specifications contained in § 1626.7(b). The Commission may process any charge at any time, notwithstanding provisions for referral to and from appropriate State agencies.

(b) States to which all ADEA charges may be referred: Alaska, California, Connecticut, Delaware, District of Columbia, Florida, Georgia, Guam, Hawaii, Idaho, Illinois, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Puerto Rico, South Carolina, Utah, Virgin Islands, West Virginia, and Wisconsin.

(c) States to which only specified classes of charges are referred: Arizona, Colorado, Kansas, Maine, Ohio, Rhode Island, South Dakota, and Washington.

§ 1626.10 Agreements with State or local fair employment practices agencies.

(a) Pursuant to sections 6 and 7 of the ADEA and section 11(b) of the FLSA, the Commission may enter into agreements with state or local fair employment practices agencies to cooperate in enforcement, technical assistance, research, or public informational activities, and may engage the services of such agencies in processing charges assuring the safeguard of the federal rights of aggrieved persons.

(b) The Commission may enter into agreements with state or local agencies which authorize such agencies to receive charges and complaints pursuant to § 1626.5 and in accordance with the specifications contained in §§ 1626.7 and 1626.8.

(c) When a worksharing agreement with a State agency is in effect, the State agency will act on certain charges and the Commission will promptly process charges which the State agency does not pursue. Charges received by one agency under the agreement shall be deemed received by the other agency for purposes of § 1626.7

§ 1626.11 Notice of charge.

Upon receipt of a charge, the Commission shall promptly notify the respondent that a charge has been filed.

§ 1626.12 Conciliation efforts pursuant to section 7(d) of the Act.

Upon receipt of a charge, the Commission shall promptly attempt to eliminate any alleged unlawful practice by informal methods of conciliation, conference and persuasion. Upon failure of such conciliation the Commission will notify the charging party. Such notification enables the charging party or any person aggrieved by the subject matter of the charge to commence action to enforce their rights without waiting for the lapse of 60 days.

§ 1626.13 Withdrawal of charge.

Charging parties may request withdrawal of a charge. Because the Commission has independent investigative authority, see § 1626.4, it may continue any investigation and may secure relief for all affected persons notwithstanding a request by a charging party to withdraw a charge.

§ 1626.14 Right to inspect or copy data.

A person who submits data or evidence to the Commission may retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that a witness may for good cause be limited to inspection of the official transcript of his or her testimony.

§ 1626.15 Commission enforcement.

(a) As provided in Sections 9, 11, 16 and 17 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 209, 211, 216 and 217) (FLSA) and Sections 6 and 7 of this Act, the Commission and its authorized representatives may (1) investigate and gather data; (2) enter and inspect establishments and records and make transcripts thereof; (3) interview employees; (4) impose on persons subject to the Act appropriate recordkeeping and reporting requirements; (5) advise employers, employment agencies and labor organizations with regard to their obligations under the Act and any changes necessary in their policies, practices and procedures to assure compliance with the Act; (6) subpoena witnesses and require the production of documents and other evidence; (7) supervise the payment of amounts owing pursuant to section 16(c) of the FLSA, and (8) institute action under section 16(c) or section 17 of the FLSA or both to obtain appropriate relief.

(b) Whenever the Commission has a reasonable basis to conclude that a violation of the Act has occurred or will occur, it may commence conciliation under section 7(b) of the Act. The date of issuance of written notice to the respondent of the Commission's intent to begin or continue conciliation shall determine when the statute of limitations is tolled pursuant to section 7(e)(2) of the Act. Such notice will

ordinarily be issued in the form of a letter of violation; provided, however, that failure to issue a written violation letter shall in no instance be construed as a finding of no violation. The Commission will ordinarily notify the respondent and aggrieved persons of its determination. In the process of conducting any investigation or conciliation under this Act, the identity of persons who have provided information in confidence shall not be disclosed except in accordance with § 1626.4. When the written notice prescribed above is issued, the statute of limitations shall be tolled for a period of one year unless a conciliation agreement is obtained earlier.

(c) Any agreement reached as a result of efforts undertaken pursuant to this section shall, as far as practicable, require the respondent to eliminate the unlawful practice(s) and provide appropriate affirmative relief. Such agreement shall be reduced to writing and will ordinarily be signed by the Commission's delegated representative, the respondent, and the charging party, if any. A copy of the signed agreement shall be sent to all the signatories thereto.

(d) Upon the failure of informal conciliation, conference and persuasion under section 7(b) of the Act, the Commission may initiate and conduct litigation.

(e) The District Directors and the Director of the Office of Program Operations or their designees, are hereby delegated authority to exercise the powers enumerated in § 1626.15(a) (1) through (7) and (b) and (c). The General Counsel or his/her designee is hereby delegated the authority to exercise the powers in paragraph (a) of this section and at the direction of the Commission to initiate and conduct litigation.

§ 1626.16 Subpoenas.

(a) To effectuate the purposes of the Act the Commission shall have the authority to issue a subpoena requiring:

(1) The attendance and testimony of witnesses;

(2) The production of evidence including, but not limited to, books, records, correspondence, or documents, in the possession or under the control of the person subpoenaed; and

(3) Access to evidence for the purpose of examination and the right to copy.

(b) The power to issue subpoenas has been delegated by the Commission, pursuant to section 6(a) of the Act, to the General Counsel, the District Directors, the Director of the Office of Program Operations, or their designees. The subpoena shall state the name, address and title of the issuer, identify the person or evidence subpoenaed, the name of the person to whom the subpoena is returnable, the date, time and place that testimony is to be given or that documents are to be provided or access provided.

(c) A subpoena issued by the Commission or its designee pursuant to the Act is not subject to review or appeal.

(d) Upon the failure of any person to comply with a subpoena issued under this section, the Commission may utilize the provisions of sections 9 and 10 of the Federal Trade Commission Act, 15 U.S.C. 49 and 50, to compel compliance with the subpoena.

(e) Persons subpoenaed shall be entitled to the same fees and mileage that are paid witnesses in the courts of the United States.

§ 1626.17 Procedure for requesting an opinion letter.

(a) A request for an opinion letter should be submitted in writing to the Chairman, Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D.C. 20506, and shall contain:

(1) A concise statement of the issues on which an opinion is requested;

(2) As full a statement as possible of relevant facts and law; and

(3) The names and addresses of the person making the request and other interested persons.

(b) Issuance of an opinion letter by the Commission is discretionary.

(c) Informal Advice: When the Commission, at its discretion, determines that it will not issue an opinion letter as defined in § 1626.18, the Commission may provide informal advice or guidance to the requestor. An informal letter of advice does not represent the formal position of the Commission and does not commit the Commission to the views expressed therein. Any letter other than those defined in § 1626.18(a)(1) will be considered a letter of advice and may not be relied upon by any employer within the meaning of section 10 of the Portal to Portal Act of 1947, incorporated into the Age Discrimination in Employment Act of 1967 through section 7(e)(1) of the Act.

§ 1626.18 Effect of opinions and interpretations of the Commission.

(a) Section 10 of the Portal to Portal Act of 1947, incorporated into the Age Discrimination in Employment Act of 1967 through section 7(e)(1) of the Act, provides that:

> In any action or proceeding based on any act or omission on or after the date of the enactment of this Act, no employer shall be subject to any liability or punishment . . . if he pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any written administrative regulations, order, ruling, approval or interpretation . . . or any administrative practice or enforcement policy of [the Commission].

The Commission has determined that only (1) a written document, entitled "opinion letter," signed by the Legal Counsel on behalf of and as approved by the Commission, or (2) a written document issued in the conduct of litigation, entitled "opinion letter," signed by the General Counsel on behalf of and as approved by the Commission, or (3) matter published and specifically designated as such in the **Federal Register**, may be relied upon by any employer as a "written regulation, order, ruling, approval or interpretation" or "evidence of any administrative practice or enforcement policy" of the Commission "with respect to the class of employers to which he belongs," within the meaning of the statutory provisions quoted above.

(b) An opinion letter issued pursuant to § 1626.18 (a) (1) above, when issued to the specific addressee, has no effect upon situations other than that of the specific addressee.

(c) When an opinion letter, as defined in § 1626.18 (a) (1), is requested, the procedure stated in § 1626.17 shall be followed.

§ 1626.19 Rule to be liberally construed.

(a) These rules and regulations shall be liberally construed to effectuate the purposes and provisions of this Act and any other acts administered by the Commission.

(b) Whenever the Commission receives a charge or obtains information relating to possible violations of one of the statutes which it administers and the charge or information reveals possible violations of one or more of the other statutes which it administers, the Commission will treat such charges or information in accordance with all such relevant statutes.

(c) Whenever a charge is filed under one statute and it is subsequently believed that the alleged discrimination constitutes an unlawful employment practice under another statute administered and enforced by the Commission, the charge may be so amended and timeliness determined from the date of filing of the original charge.

[FR Doc. 28-35588 Filed 12-30-82; 8:45 am]

BILLING CODE 6570-06-M

federal register

Monday
January 3, 1983

Part VI

Department of Energy

Office of Hearings and Appeals

Implementation of Special Refund Procedures

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE

ACTION: Notice of Implementation of Special Refund Procedures

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing Applications for Refund from funds obtained from Standard Oil Company (Indiana), commonly known as Amoco, in settlement of enforcement proceedings brought by the DOE's Office of Special Counsel.

DATES AND ADDRESSES: Applications for refund must be postmarked by May 1, 1983, and should be addressed to Amoco Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461. All applications should refer to Case No. BFF-0007.

FOR FURTHER INFORMATION CONTACT: Suggested formats for refund applications may be obtained by writing Mrs. Margaret A. Slattery, Public Docket Room, Office of Hearings and Appeals, Department of Energy, Room 1111, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20461. Other information may be obtained by contacting: Terry Johnson, Deputy Assistant Director, Roger J. Klurfeld, Assistant Director, Office of Hearings and Appeals, Department of Energy, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20461, (202) 633-8362.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the decision and order set out below. The decision and order establishes procedures to distribute funds obtained as a result of a 1980 consent order between Standard Oil Company (Indiana), commonly known as Amoco, one of the largest marketers of petroleum products in the United States, and the DOE. *See* 45 FR 26747 (1980). The consent order settled nearly all disputes between the DOE and the firm concerning Amoco's compliance with the DOE price and allocation regulations during the period 1973 through 1979. Under the terms of the consent order, Amoco deposited $72,000,408 into an escrow account. Interest has increased the amount available for distribution to over $100 million.

The Office of Hearings and Appeals previously issued a proposed decision and order which tentatively established a two-page refund procedure for each of six different "pools" of money which were established for purchasers of crude oil and five major petroleum product groups. The proposed decision and order discussing the distribution of funds obtained through the Amoco consent order was issued on August 9, 1982, and was published in the **Federal Register** on August 13, 1982. 47 FR 35317 (1982). Following issuance of the proposed decision, we received over 100 written comments from interested members of the public, and two public hearings were held, one in Chicago on September 22, and a second in Washington, D.C. on September 30.

The final decision and order set forth below reflects our analysis of comments received from interested parties. As we indicate in the decision, applications for refund from the escrow fund may now be filed. The specific requirements for filing an application for refund are set forth in the section entitled "How to Apply for a Refund." In addition, a suggested format for organizing the required information is set forth in the Appendix to the Decision. We will accept applications in any form from all persons who claim that they have been injured by Amoco's alleged regulatory violations during the period covered by the consent order. Applications for refund filed by trade associations on behalf of their members will also be accepted. Applications must be postmarked by May 1, 1983. No applications for refund should be filed by state governments at this time.

Dated: December 23, 1982.

George B. Breznay,

Director, Office of Hearing and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Petitioner: Office of Special Counsel for Compliance, Economic Regulatory Administration: In the Matter of Standard Oil Company (Indiana).

Date of filing: July 18, 1980.

Case Number: BFF-0007.

The procedural regulations of the Department of Energy permit the Economic Regulatory Administration's Office of Special Counsel (OSC) to request the Office of Hearings and Appeals to formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with those regulatory provisions, the OSC filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Standard Oil Company (Indiana). Under the terms of the consent order both the DOE and Standard, or Amoco as it is commonly known, agreed to a general settlement of outstanding DOE compliance matters. As a part of the settlement, DOE agreed to stipulate to dismissal of all pending administrative and judicial proceedings regarding Amoco's compliance with the DOE regulations, with certain enumerated exceptions, and Amoco agreed to make refunds to compensate for its alleged violations of the DOE regulatory programs during the period March 6, 1973 through December 31, 1979. Amoco has remitted $72,000,408 to the DOE, and those funds are now being held in an escrow account under the jurisdiction of the DOE pending instructions from the Office of Hearings and Appeals regarding their distribution. The escrow account is an interest-bearing account, and as of December 17, 1982, the Amoco funds have earned $28,545,581.70. Accordingly, as of December 17, 1982, $100,545,989.70 is available for distribution.

On August 9, 1982, we issued a Proposed Decision and Order setting forth the procedures which we had tentatively decided to use in distributing the Amoco settlement fund. The Proposed Decision was published in the **Federal Register** on August 13, 1982. *See* 47 FR 35317 (August 13, 1982). We established a 30-day period for the submission of public comments. We also held two hearings, one in Chicago on September 22 and the other in Washington, D.C., on September 30, at which interested parties could offer their views on our proposal. *See* September 22, 1982 and September 30, 1982 Transcripts of Proceedings held by the Office of Hearings and Appeals, Case No. BFF-0007 (hereinafter cited as Sept. 22 Transcript and Sept. 30 Transcript).

During the course of this proceeding we have received comments from nearly one hundred parties representing a diverse range of interests. Trade associations representing Amoco wholesalers and retailers have participated, as well as 30 State governments and various large consumers of Amoco products. Many of the comments were quite helpful, and this decision reflects several changes suggested by the commenters. However, although we repeatedly requested additional data that would be useful in revising the general scheme or the details of our proposal for the

distribution of these funds, *see, e.g.*, Sept. 30 Transcript at 6, and left the record open until October 13, 1982, in order to receive additional evidence, few commenters provided us with concrete statistical data which we had not already obtained through our own research efforts.(*1*) Consequently, although we have considered all of the comments which we received, the data base which underlies our determination is substantially similar to that discussed in the proposal which we issued on August 9.

In the present determination we shall briefly outline the background of this proceeding and summarize our August 9 proposal. Next we will discuss the comments which we received regarding the overall course of action which we tentatively adopted. Then we will examine the comments that addressed specific details of the proposed procedures. Finally, we shall set forth the refund procedures which we have decided to adopt.

I. Background

A. The Consent Order

Amoco is a major, integrated oil company whose wholly-owned subsidiaries produce, transport, sell, and refine crude oil and petroleum products. The firm was the fourth largest seller of petroleum products in the United States during the consent order period. Beginning in 1973 the Department of Energy's predecessor agencies undertook a comprehensive audit of Amoco's compliance with the federal petroleum price and allocation regulations. The audit continued until the proposed consent order was signed on February 14, 1980. *See* Consent Order, ¶¶ 301 and 304. Based on information obtained through the audit, the OSC believed that Amoco had violated a number of the regulatory provisions enforced by the agency. Several administrative actions were instituted against Amoco as a result of the audit. Additionally, Amoco and the DOE each filed at least one civil suit against the other on matters arising out of the audit. *See* Consent Order, ¶¶ 414–15.

Subsequently, Amoco and the DOE entered into the consent order involved in this proceeding. With a few specified exceptions, the consent order settles all pending and potential disputes between Amoco and the DOE regarding the firm's compliance with the petroleum regulations administered, by the agency during the period March 6, 1973 through December 31, 1979.(*2*)

In settlement of the DOE's claims against the firm, Amoco agreed to (1) deposit $71 million into an escrow account to be disbursed as directed by the DOE; (2) distribute $29 million in refunds directly to certain end-user purchasers of middle distillate products during the consent order period, and to add any funds remaining from the $29 million as of December 31, 1980 to the $71 million escrow account; (3) reduce its "banks" of unrecovered product cost increases for motor gasoline and propane by a total of $180 million; and (4) invest $410 million in energy-related projects as approved by the DOE. In exchange, the DOE agreed to terminate the Amoco audit and pending administrative and judicial claims against Amoco for violations allegedly occurring during the period March 6, 1973 through December 31, 1979.

On Febraury 25, 1980, the OSC published notice of the proposed Amoco consent order in the **Federal Register** as required by the DOE regulations at 10 CFR 205.199J(c). *See* 45 FR 12287 (1980). The OSC considered the numerous comments which it received concerning the proposed consent order and concluded that it should adopt the proposed order as a final consent order on April 21, 1980. *See* 45 FR 26747 (1980).

On July 18, 1980, the OSC filed the present Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals. In its petition, the OSC requested that the OHA develop procedures for the distribution of the $71 million fund created pursuant to paragraph 403 of the Consent Order. In an interlocutory order issued on August 21, 1980, OHA accepted jurisdiction over the matter. *See Office of Special Counsel*, 6 DOE ¶ 82,572 (1980). Our determination to accept jurisdiction over the case was based on the amount of money involved, the complexity of disbursing this sum, and the importance of providing adequate notice to persons who may have an interest in the funds. *ID.* at 85,220. Subsequently, an additional sum of $1,000,408, which remained undistributed under the other remedial provisions of the consent order, was added to the $71,000,000 fund in the escrow account for distribution under the special refund procedures to be established by the Office of Hearings and Appeals.

B. The Proposed Decision

On August 9, 1982, we issued a Proposed Decision and Order setting forth the special refund procedures which we had tentatively determined to adopt. In that Decision, we proposed to divide the Amoco settlement fund into six pools of money to correspond with the type of products sold by Amoco during the period covered by the consent order. The amount of money in each pool was based on the level of business activity in each category in relation to Amoco's overall petroleum business. First, crude oil sales revenues and non-crude oil sales revenues were determined. The overall pool was then split into two shares whose sizes correspond to the relative size of Amoco's sales revenues in the two areas. Then the non-crude share was further subdivided into five pools, one for each product category, based upon the relative volume of sales in each category of Amoco's overall sales volume of refined products.

A pool of $16.5 million plus interst was set aside for claims related to Amoco's sales of crude oil. Firms which purchased crude oil from Amoco would have the opportunity to file applications for refund from this pool. Participants in the Crude Oil Entitlements Program, 10 CFR 211.67, would also be eligible to file for a refund. Each refund applicant would be required to demonstrate a particularized injury that was not corrected by the DOE regulatory system. We proposed that if money remained after valid claims were paid, it be distributed to benefit consumers of refined petroleum products. We suggested that state governments be used as a conduit for this distribution, and that they be required to use the funds for energy-related projects.

A second pool of approximately $36.8 million plus interest was established to pay motor gasoline claims. Resellers, retailers, and consumers of Amoco motor gasoline would be permitted to file applications for refund for a portion of this pool. Instead of requiring that each firm or individual purchasing Amoco products during the relevant period provide detailed documentation to establish the extent of the injury which it sustained, we proposed to use certain rebuttable presumptions as to the degree of injury at each level of distribution caused by the alleged overcharges. The alleged overcharges would be presumed to have been spread evenly over each gallon of refined products sold (the refund was estimated at $0.000953 per gallon at the time the Proposed Decision was issued). For those gallons of motor gasoline which were resold after the initial sale by Amoco, presumptions were suggested to reflect the injury sustained at each level of distribution. Any claimant that believed it was entitled to more than the presumptive level of injury could file material to document that claim. We tentatively found that resellers had absorbed 45 percent of the injury, retailers had absorbed 34 percent, and

Notes appear at end of document.

consumers 21 percent of the injury associated with Amoco's alleged violations of the DOE regulatory program. An applicant that elects to take a refund under the presumptions would have to furnish only its name and address, proof of Amoco purchases, and the claimant's level in the distribution chain. The claimant's refund would be computed by reference to a formula which was set forth in the Proposed Decision. Since the average motorist would have difficulty documenting purchases made during the consent order period and, in any event, the average motorist who purchased Amoco motor gasoline would receive a refund of less than $1.00, we further proposed to distribute the consumers' share of the motor gasoline pool to the governments of the states in which Amoco sold motor gasoline for use in projects that would benefit motor gasoline consumers.

A third pool of approximately $7.4 million plus interest was tentatively set aside for purchases of Amoco's natural gas liquids (NGLs). In the first stage, firms that were direct purchasers, downstream purchasers, and consumers of natural gas liquids and products from Amoco would be permitted to file applications for refund. Unless the applicant is a regulated entity or agricultural cooperative which is required to pass on the refund received, it must show that it absorbed the effects of the alleged overcharges and was thereby injured. A second-level distribution could be made through first purchasers, disbursement to the state governments, or deposit into the U.S. Treasury.

The next largest pool of about $5 million plus interest would be apportioned to settle claims of home heating oil and diesel fuel customers. Many firms of this type have already received a refund directly from Amoco, and we stated that they will not be eligible to file applications for an additional refund for their middle distillate purchases. For qualifying applicants, we proposed to make refunds based on the volume of their purchases from Amoco during the relevant period. However, we tentatively determined that we could presume from available data that Amoco's consignees and independent resellers were generally able to pass through the full amount of the alleged overcharges to their customers. We therefore predicted that few firms in this class would be able to show injury, and that consequently there would be a large amount of money remaining after all valid claims were paid. We proposed that state governments submit plans for using the undistributed funds from this pool to benefit a class of persons who were likely to have been ultimate consumers of middle distillates.

The fifth pool of about $3.9 million plus interest was established to pay refunds to purchasers of residual fuel oil, lubricating oil and industrial grease. Persons who purchased these products from Amoco would be permitted to file claims. Since we did not have any information concerning potential claimants or the specific uses to which these products were put, we did not propose a second-stage distribution plan.

Finally, the Proposed Decision tentatively established a pool of approximately $2.3 million plus interest to be used to pay refunds to purchasers of aviation gasoline and jet fuel. We noted that the likely claimants for this portion of the settlement money are commercial airlines. We indicated that information in the record could be interpreted in two ways—to mean that the airlines should receive the entire pool, or to mean that the airlines passed on a significant amount of their increased fuel costs during the consent order period. We invited further comment on how the data should be interpreted. If money remains after all claims are considered, we proposed that the benefits of any further distribution of this refund pool should inure to airline passengers and general aviation.

II. Comments on the Overall Procedures

As described above, the August 9 proposal established a framework for the distribution of refunds to claimants in the first stage on a volumetric basis to direct and downstream purchasers of Amoco crude oil and refined products. It also suggested possible recipients of remaining funds once all valid claims had been paid. In most cases we proposed to distribute residual funds to state governments as representatives of ultimate consumers residing in the state. Many parties filed submissions challenging the underlying premises or overall framework of the proposed procedures. We shall discuss these comments first before addressing comments regarding our proposals for specific product pools.

A. First Stage Procedures

At the September 30 hearing, most parties urged immediate action to distribute the refund moneys. However, Representative Margaret Heckler testified and suggested that the Office of Hearings and Appeals should defer all action in this case until the Congress has acted on a bill she introduced, H.R. 5290, which provides for the distribution of unclaimed refund amounts. *See* Sept. 30 Transcript at 181–88. If H.R. 5290 were enacted into law, consent order funds obtained by the DOE would be subject to claims by purchasers from the consenting firm, and any remaining funds would fund a trust to assist low-income individuals with rising energy costs. Inasmuch as today's decision establishing a first-stage claims procedure is not inconsistent with the purpose of the proposed bill, it is neither necessary nor appropriate to delay issuing this decision.

One commenter, the State of New York, noted the proposal to distribute funds to purchasers of crude oil and refined petroleum products was inconsistent with a recent statement made by the former DOE attorney who had negotiated the Amoco consent order. In a March 24, 1982 hearing before a subcommittee of the House Committee on Government Operations, former Special Counsel Paul L. Bloom testified that

> [T]here was $100 million cash for middle distillates restitution out of a $285 million cash and gasoline bank elimination. The $100 million cash was for middle distillates because we were taking virtually the entire gasoline bank of the company as a compensation—and this was in late 1979—as restitution for the driving public, the gasoline consumers. Out of the $100 million it was agreed in advance with Amoco that $29 million, maximum, would be offered to directly identifiable lists of large-volume middle-distillate customers from the various refineries. . . . The balance, subtracting $29 million from $100 million, was $71 million. I filed a petition under subpart V of the Department's regulations, OHA regulations, invoking the jurisdiction of that office, which the head of that office approved. Under that petition the OHA assumed responsibility; I believe in the late spring or summer of 1980, for the distribution of that money to middle-distillate customers at all downstream levels of consumption below the large industrial customers.

March 24, 1982 Hearing before the Subcommittee on Environment, Energy and Natural Resources of the Committee on Government Operations of the United States House of Representatives, 97th Cong., 2d Sess., 5–6. In view of this statement, the State of New York suggested that the Office of Hearings and Appeals is obliged to explain the Proposed Decision's divergence from Mr. Bloom's interpretation of the consent order, or to revise the proposed procedures to conform with his statement.

We have considered Mr. Bloom's statement in light of the record in this proceeding. The general purpose of the consent order was to achieve some form

of restitution for all of Amoco's customers. No narrower purpose is evident. Neither the consent order nor the OSC's Petition for the Implementation of Special Refund procedures clearly mandates the disposition of these funds to only one class of claimant. In particular, we note that the documents invoking our jurisdiction over these funds—the original July 18, 1980 Petition for the Implementation of Special Refund Procedures and the March 17, 1981 supplemental petition adding to the escrow fund the remainder of the ¶ 404 funds—do not place any restrictions on their disbursement. This is significant. In cases where the OSC has intended that the OHA limit the payment of refunds to a particular class of customers, it has so stated in the petition. *See, e.g., Office of Special Counsel,* 10 DOE ¶ 85,039 (1982) (hereinafter cited as *Charter*). In *Charter* we found that the OSC had specified that the refund money was to be paid only to purchasers of No. 2-D diesel fuel, and we therefore limited claims to that class of claimants. Neither Amoco petition contains any such restrictions. Moreover, we have served a copy of the proposed decision on both parties to the consent order, Amoco and the OSC, and neither party has objected that the proposed distribution is contrary to the intent of the consent order. Finally, we note that under Mr. Bloom's construction of the consent order 100 percent of the settlement's cash would be allotted to products that constituted only 14 percent by volume of Amoco's sales. There is no evidence in the record to suggest that this lopsided and seemingly inequitable monetary recovery was intended for one class of claimants. Accordingly, we attribute little weight to Mr. Bloom's statement—which was made more than two years after the fact—in determining the class of eligible refund claimants, and we assume that his recollection may be flawed. All purchasers of Amoco crude oil and refined products, with certain minor exceptions, will therefore be eligible to file refund applications.

Several parties with specific complaints about Amoco's regulatory practices during the consent order period have contended that claimants with identifiable grievances, such as parties who filed a complaint against Amoco with the DOE or in federal district court, should be given priority treatment and should not be limited to a volumetric recovery.(*3*) According to these commenters, parties with a "provable claim" should not be subject to any Subpart V procedures.

The priority treatment which is suggested would be inconsistent with the purposes of Subpart V proceedings. Once a special refund proceeding has been convened, all interested persons stand on equal footing and their claims must be judged on their respective merits, unless the relevant consent order provides otherwise. We have previously discussed and rejected claims by parties who asserted that they should receive priority status in special refund proceedings. In *Office of Special Counsel,* 9 DOE ¶ 82,538 (1982) (hereinafter cited as *Tenneco*), we decline to give first priority to a firm which had pursued its complaint against the Tenneco Oil Company through DOE administrative channels prior to the signing of the underlying consent order. We found that the firm's theory that it deserved priority because it had a "provable claim" was inconsistent with the underlying consent order, which provided that the DOE did not find and Tenneco did not admit to any violation of the DOE regulations. The Amoco consent order likewise provides that "(E)xecution of this Consent Order constitutes neither an admission by Standard nor a finding by DOE or OSC that Standard has violate any federal petroleum price or allocation requirement." Consent Order, ¶ 408. Consequently, it is untrue, despite some commenters" claims to the contrary, that any party has been identified as an overcharged customer of Amoco or that the amount of the overcharge is readily ascertainable. *See, e.g.,* September 20, 1982 Comments from the Army and Air Force Exchange Service at 3. It is true that the OSC's investigation of a particular firm's complaint against Amoco may have led to the issuance of a Proposed Remedial Order. However, all alleged violations in charging documents of that type were settled by the consent order and do not create a right to recovery that would entitle the complainant to priority status.

It is important to remember that there has been no finding of overcharges by Amoco. Execution of the Amoco consent order was intended to end the DOE's inquiry into Amoco's compliance with federal energy regulations. The adoption of priority status based on a party's claim that it can somehow "prove" that Amoco violated the DOE regulations in sales to it would have the effect of reopening the DOE investigation into Amoco's compliance and would be inconsistent with the agency's express promise not to do so. *See* Consent Order, ¶ 409. Furthermore, other firms that were subject to the DOE regulations might be more reluctant to enter into future consent orders if they know that claims of possible overcharges could be litigated in the context of a Subpart V refund proceeding. This would frustrate the public's interest in expeditiously concluding matters which arose under the DOE price control program. Moreover, where the OSC has found that the claims of a particular firm or class of claimants should be given priority treatment, the consent order has provided for direct payment by the consenting party. *See* Amoco Consent Order, ¶ 404 (providing for refunds to certain large middle distillate consumers); *see also* Consent Order with Standard Oil Company of California, 46 FR 52221 (1981) (providing for payment of $10.5 million to Time Oil Company). Finally, the right of a firm to file a private enforcement action against Amoco under § 210 of the Economic Stabilization Act, 12 U.S.C. § 1904 note, has not been affected by the existence of the Amoco consent order. *Bulzan v. Atlantic Richfield Co.,* 620 F.2d 278 (Temp. Emer. CT. App. 1980); *U.S. Oil Co. v. DOE,* 510 F. Supp. 910 (E.D. Wis. 1981). Accordingly, our denial of priority treatment in this proceeding does not mean that a party may not seek full redress of its grievances in another forum. For these reasons, we will not give priority treatment to refund claims asserted by persons with "identifiable grievances" against Amoco.

In our August 9 proposal, we determined the portion of the settlement fund that would be allotted to crude oil claims by focusing on the relationship of Amoco's revenues from crude oil sales to all of its sales revenues. The 22.9 percent allotted to crude oil reflected the ratio of Amoco's revenues during the consent order period from domestic crude oil sales to Amoco's revenues from domestic sales of crude oil and refined products. Several commenters raised questions about our calculations, and clarification is in order. The revenue figures which we used to perform this computation were derived from Amoco's published annual reports and confidential, proprietary data submitted by Amoco. In our calculations we excluded all inter-affiliate transfers of crude oil and refined products and also adjusted the figures to take into account the stripper well property crude oil sales that were excluded from the scope of the consent order. These exclusions were proper.(*4*) First sales of Canadian NGLs into U.S. commerce were likewise excluded because we did not have separate revenue data for those transactions; however, these NGL sales apparently comprise less than 0.1 percent of Amoco's total sales and could

safely be ignored for these purposes. A major oversight which we discovered in reviewing our calculations was the failure to exclude revenues generated by the sales of certain petroleum products after those products had been exempted from DOE price and allocation controls. When we make the necessary adjustment to exclude decontrolled products, the ratio for this pool rises to 30.7 percent, or $30,867,618.84 including interest to December 17, 1982. After this adjustment, the amount in the refined products pool becomes $69,668,316, or 69.3 percent of the money available for distribution as of December 17, 1982. The respective portions of the refined products pool for each product group are as follows:

Product	Percent controlled sales	Amount of fund as of Dec. 17, 1982
Motor gasoline	66.27	$46,169,193
Middle distillates [1]	9.16	6,381,618
NGL's	13.35	9,300,720
Residual fuel oil and related products	7.08	4,932,517
Jet fuel and aviation gasoline	4.14	2,884,268

[1] Excludes volumes covered by ¶ 414 of the consent order.

We also considered, at the behest of several commenters, whether we should compare sales *volumes* of crude oil and refined products rather than *revenues*. The commenting parties noted that this change in methodology would make it consistent with the manner in which we allocated funds among the product pools. The suggested change in analysis would further increase the crude oil portion of the fund. After careful consideration we have concluded that no further increase in the crude oil pool is warranted. Apart from consistency for consistency's sake, we see no advantage to a volumetric division. Our aim in dividing the Amoco fund between crude oil and non-crude oil-related activities was to give proper emphasis to that portion of Amoco's business that generated the most income for the firm inasmuch as one consideration in this restitutionary process is the disgorgement of allegedly unlawful profits. *Citronelle-Mobile Gathering, Inc. v. Edwards*, 669 F.2d 717 (Temp. Emer. Ct. App. 1982). Neither the volumetric nor the revenue approach is more correct than the other; both have distinct disadvantages. After balancing the alternatives, we have concluded that the revenue analysis properly reflects the characteristics of Amoco's business during the consent order period and is the appropriate method to use in dividing the fund between the two major aspects of Amoco's business.

Several commenters suggested alternatives to our proposed method of allocating refund moneys to controlled refined products on a volumetric basis. Under the proposal, the per gallon refund amount for refined products would be determined by dividing the total amount of money in the five refund pools for refined products by the total number of price-controlled gallons of product sold by Amoco during the consent order period. The commenters maintained that the *pro rata* amount—$.000953 per gallon at the time the proposed Decision was issued—was too small and they suggested a number of alternative methods. Some parties suggested that we should examine the records compiled during the DOE's extensive audit of Amoco, which was terminated with the signing of the consent order, and base refund amounts on the findings of the auditors. Commenters who favored this position generally believed that the adoption of this change would be advantageous to them because it would result in the allocation of more money to certain product pools from which these commenters could apply for refunds, or to firms that had previously complained of Amoco's regulatory practices to the DOE. For example, Consumers Power Company, a Michigan utility that is a major purchaser of Amoco NGLs, has alleged that "earlier enforcement actions against Amoco reveal that sales by Amoco of natural gas liquids were responsible for a major portion of the alleged overcharges." Sept. 30 Transcript at 14. Other commenters suggested that we use as the numerator of the fraction for determining the per gallon refund amount the sum of $690 million, which was the total dollar amount of the different remedial provisions in the consent order, rather than the sum of $72 million plus interest, which is the total dollar amount of the funds currently held in escrow. *See* Sept. 30 Transcript at 172. This method would yield a volumetric recovery per gallon of product sold of $.008584. This method would obviously deplete the available fund much more quickly, and the commenters suggest that in the event that so many claims were filed under this alternate volumetric scheme that the funds were exhausted, then all claimants' refunds would be reduced on a *pro rata* basis. Still other parties contended that we should distribute all of the available money on a *pro rata* basis among all successful refund applicants. The advantages claimed for these three proposed alternatives were that each would more closely approximate the actual damages suffered by claimants, would distribute most or all of the available funds more quickly, and would thereby avoid the need for a second-stage procedure.

In considering the comments of those who suggested that we modify the proposed volumetric refund mechanism, we have noted that many of their arguments are based on the faulty premise that the DOE somehow determined as a matter of law that Amoco overcharged its customers in sales of covered products. As we have already stated, no Amoco overcharges have been established prior to the present special refund proceeding and none will be established during the course of this proceeding. It is therefore fallacious to use as a theoretical basis for calculating refund amounts any unproven assertions in preliminary DOE enforcement documents or any other unsubstantiated theory that Amoco "must have" violated DOE regulations at least to the extent of the $690 million in remedies which it agreed to undertake in the consent order. In addition, it is also incorrect to expect that all parties who were affected by Amoco's regulatory practices will either file applications for refund or waive their right to do so, and that the fund can therefore properly be distributed completely among those claimants who actually file applications for refund. If we were to do that, we would be ignoring the very real practical problems which prevent or deter applicants from filing claims, one of which is the threshold level of a $15.00 minimum claim which we have established. Moreover, in addition to the practical problems which prevent the universe of filed claims from being complete, distributing all of the Amoco refunds to persons who file claims would be inappropriate. The fact that claims to specific refunds may not be made does not mean that injuries to customers who did not file claims have not occurred. Rather, the absence of claims for the full amount of the settlement would tend to reflect the small size of these claims as well as the difficulty and expense of filing a claim. Refunding money to benefit adversely affected parties, even though their identities and the amounts which they should receive are not easily ascertainable, is the primary concern of Subpart V proceedings. We therefore reject the suggestion that we should limit recovery of these funds only to those claimants who file applications for refund.

On balance, attribution of injury to each gallon of refined products sold by Amoco seems the best available, general method of distributing the refund

moneys. It is uniform, places all applicants on an equal footing, and is relatively easy to administer. Applicants can readily compute the size of their potential refund and thereby make an informed choice on whether to file an application. This method also implicitly recognizes that computation of individual, particularized overcharges in individual transactions is impossible to establish in this proceeding and would be contrary to the purposes of the consent order.

Finally, we note that the recovery of a specified amount for each gallon of product purchased is, like the other presumptions we are employing in this case, subject to challenge by individuals who seek to establish that the presumption should not be applied in their cases. One notable example of an exception to this presumption would be a firm claiming injury due to Amoco's allocation practices. *See, e.g., Tenneco Oil Co./Research Fuels, Inc.*, 10 DOE ¶ 85,012 (1982), and the discussion below. We have therefore concluded that, notwithstanding the commenters' objections, the proposed volumetric distribution of refined product refunds best serves our purpose of accomplishing a wide distribution of these funds in an equitable and efficient manner. Consequently, we shall employ that method in the final procedures which we adopt.

One commenter suggested that a portion of the Amoco fund be used to pay claimants' attorney's fees incurred in seeking a refund. We will not adopt this suggestion. These procedures are simple, so that claimants should, if they so desire, be able to file refund applications without seeking professional assistance. In addition, it is this office's general practice to seek additional information from an applicant whose initial submission fails to include sufficient information for us to analyze it. Since we will not require that an applicant be represented by counsel, and it will be possible to file a complete claim without professional assistance, we shall not provide for attorney's fees to be paid out of the settlement fund in addition to the refund amount to be paid any successful applicant.

A number of potential claimants maintained that we should require Amoco to furnish each of its customers with notice of this proceeding and a list of the customer's purchases throughout the consent order period. Other firms who believed that they might be downstream purchasers of Amoco products added that Amoco should be required to furnish the DOE with a list of Amoco first purchasers to be published with this decision so that potential claimants could ascertain whether their supplier furnished them with Amoco refined products.

While this material could well be helpful, it is questionable whether the DOE could require Amoco to provide any of this information. Paragraph 411 of the consent order states that Amoco will not be subject to the information requests from the DOE for matters covered by the consent order. Furthermore, customer lists contain the type of information that is customarily held to be confidential, proprietary information, the publication of which would be likely to cause competitive harm to the firm involved. Even if the DOE were to obtain this material from Amoco, the lists would probably be exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(4) (unless Amoco waived the exemption, which is unlikely), and the DOE might be prohibited from disclosing it under the Trade Secrets Act, 18 U.S.C. 1905. *See, e.g., Collier, Shannon, Rill & Scott*, 9 DOE ¶80,105 (1981) (customer lists dating back to 1973 and 1974 are still withholdable because release could cause the firm competitive harm); *see also St. Petersburg Times, Inc.*, 1 DOE ¶80,201 (1978). We therefore do not intend to seek this information from Amoco.(*5*)

Some refiners who submitted comments complained that the proposal excluded them as eligible claimants for the product pools. They noted that the proposed decision mentioned only wholesalers, retailers, and consumers of Amoco products as probable refund applicants. We did not mean to exclude a refiner that purchased Amoco crude oil or refined products. We encourage all purchasers of Amoco crude oil or covered petroleum products to file applications. *See* 10 CFR 205.282(e); *Tenneco*, 9 DOE at 85,208.

One commenter urged that we make rebuttable the presumption that spot purchasers were not injured by Amoco's pricing practices because they presumably only purchased Amoco product when it was to their advantage to do so. The commenter contended that there may be spot purchasers who were unable to pass on the alleged overcharges. We agree with this comment, even though our experience in other refund proceedings supports the conclusion that spot purchasers are unlikely to have experienced injury. For example, in *Tenneco Oil Co./J.O. Cook, Inc.*, 9 DOE ¶82,581 (1982), the refund applicant admitted that it had sold its spot purchases of Tenneco product at cost plus a broker's fee and had thereby passed on the full effect of any alleged overcharges. We therefore found that the applicant had suffered no injury and we denied its refund application. While our experience justifies the use of this presumption, like all of the presumptions we have employed in this case the spot purchaser presumption is rebuttable. The presumption will be retained, and spot purchaser claimants should be aware that they should submit additional evidence sufficient to establish that they were unable to recover the product prices they paid to Amoco.

One commenter expressed concern that parties who operated as Amoco consignees during the consent order period might be permitted to recover refunds. According to information in the record, a majority of firms operating as wholesalers or jobbers of Amoco products during the latter part of the consent order period had been consignee agents during the early part of the period. These consignee agents established their prices at a set, per-gallon commission fee that was added to Amoco's wholesale price. That type of arrangement insured that a consignee did not absorb any alleged overcharges. It was therefore suggested that we adopt a presumption of non-injury similar to that adopted for spot purchasers. We agree that consignees should generally not receive refunds based upon the number of gallons they handled for Amoco, and we shall therefore adopt a rebuttable presumption that claims submitted by consignees should not be approved.(*6*) However, this presumption will be rebuttable because in unusual circumstances some consignees may be able to establish that their sales volumes, and their corresponding commission revenues, declined due to alleged uncompetitiveness of Amoco's prices.

A number of commenters expressed confusion about the statement in the proposed decision that excluded from eligibility Amoco's middle distillate customers who had already received refunds under ¶ 404 of the consent order. Some parties contended that they should be given an additional refund if their per gallon recovery under ¶ 404 was substantially less than the per gallon recovery generated by this proceeding. We need not address this issue because the per gallon recovery under ¶ 404 was in fact substantially higher than the figure which we are adopting for middle distillate claims in this proceeding. Other commenters maintained that even if they had already received refunds relating to their middle distillate

purchases, they should nevertheless be eligible to file claims for their purchases of other refined products. That was our intent, although it was not specifically articulated in the proposed decision. Accordingly, firms who have received ¶ 404 funds for their middle distillate purchases may file refund applications based upon their purchases of other covered products.

Several commenters endorsed our proposal to exempt purchasers of natural gas liquids (NGLs) for having to offer proof of injury if they are cooperatives or regulated firms who file a full explanation of the manner in which refunds will be passed through to their customers. Many of those parties suggested that regulated entities should also be exempt from the proof of injury requirement for refunds relating to other refined products. We agree, and we shall therefore extend an exemption from the general proof of injury requirement to regulated utilities or cooperatives who purchased any type of refined products from Amoco.

B. Second Stage Procedures

A substantial number of interested persons filed comments about our proposals for distribution of refunds in a second stage of this proceeding. In general we proposed that these funds be remitted to state governments to benefit the injured persons in their states by using the funds for energy-related projects. If the residual funds were very small, we suggested as an alternative that the funds be deposited into the U.S. Treasury. Setting aside for a later discussion the comments relating to particular types of second-stage distributions proposed for each of the six pools, we find that a majority of the commenters favored the general mechanism whereby states would act as conduits for the residual Amoco settlement moneys. This type of distribution would be relatively efficient, have a wide geographical impact in proportion to the level of injury actually sustained, and would have a sound restitutionary basis. However, a few commenters suggested that we substitute as the conduit for second-stage funds (i) an energy trust fund, (ii) regulated utilities, (iii) entitlement purchasers, or (iv) Amoco dealers. Those commenters who agreed that state governments could be used effectively for restitutionary purposes also suggested a variety of refinements to our proposal. Finally, there was virtually unanimous disapproval of our suggestion that any small residual funds be placed in the U.S. Treasury. We shall discuss each of these comments at this juncture since the specific second-stage procedures we adopt for each pool will be affected by these considerations.

The energy trust fund which several commenters proposed would give grants from the income and corpus of the Amoco funds to encourage alternative energy research and to assist low-income individuals with energy-related costs. While we agree that the idea of an energy trust has appeal insofar as its proponents envision the funding of projects to benefit persons who were likely injured by alleged overcharges, distribution of these funds to state governments is a more effective means to accomplish the restitutionary goals of the Amoco settlement. The residual crude oil funds will be apportioned among states in proportion to each state's share of national petroleum consumption and the products funds will be apportioned among the states according to sales of Amoco petroleum products within their respective borders. The states will have broad discretion in the use of these funds, consistent with the overall objective of restitution, and the funds will be utilized for energy-related projects which benefit all of their citizens. An energy trust fund could not accomplish some of these objectives at all and others not as efficiently, since substantial attention would have to be given to start-up and managerial issues.

With respect to the proposal that residual funds from all products pools be funnelled through regulated utilities, we have already indicated that these entities are attractive alternatives where the benefits of restitution would be passed on to those persons who were injured by the alleged overcharges. We have therefore proposed a second-stage distribution through utilities in cases involving NGLs. *See, e.g., Office of Enforcement,* 9 DOE ¶ 82,508 (1982). However, we prefer distribution to the states in cases involving other products because the states can distribute funds over wider areas and with more uniformity than selected utilities. In addition, the states have greater flexibility than do strictly regulated utility firms in fashioning programs targeted to benefit those parties who were most likely injured by Amoco's regulatory practices. Consequently, we continue to believe that regulated utilities should not be the primary vehicle for channelling second-stage refunds.

As for the suggestion that we use entitlements program participants (*viz.* refiners) or Amoco dealers as conduits for these residual funds, we reject both of those proposals. Whereas the operations of regulated utilities are overseen by state agencies, and states have a fiduciary responsibility to their citizens as well as political accountability, there are no corresponding checks and balances on the refiners or dealers. The suggestion that these entities would most likely pass through refunds to consumers in the form of decreased prices has only been advanced in the form of an expectation, not a pledge, and in any event it could not be enforced. The likelihood that the benefits of refunds would be passed on depends upon a number of factors including the continuation of current, highly competitive market conditions that might not exist at the time the second stage is implemented. In addition, the price-cutting which the groups suggest would occur would unfairly advantage certain classes of recipients over others and could create a disturbance in the marketplace that is contrary to the policy of non-interference in the deregulated petroleum market. For all of these reasons, we have concluded that in the present case state governments are generally the best-suited entities to use to effect restitution to injured parties.

A number of states and consumer representatives requested that we clarify or refine our proposal that state governments submit plans for use of the Amoco settlement funds in a manner that will benefit classes of affected purchasers. After careful consideration of these groups' comments, we have decided to adopt the following plan. After the first-stage applications for refund have been paid, we shall notify the relevant states of the availability of funds. All jurisdictions that were included in the "United States" as defined by § 3(7) of the Emergency Petroleum Allocation Act of 1973 (EPAA) will be eligible to receive funds. This includes the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. possessions and the territories of Guam, the Virgin Islands, American Samoa, and Northern Marianas. Attached to this Decision as Appendix B is a chart showing the percentage shares of national petroleum consumption for each governmental entity that will be eligible to file a claim for crude oil funds. With regard to the particular product pools, only states in which Amoco sold the product concerned will be eligible to participate. Each state's share will be proportional to the ratio which statewide sales of that Amoco product bears to national sales of the Amoco product. We have requested information from the Energy Information Administration that will show sales of Amoco products within

each state. This information will be made available to each state at the appropriate time. (7) Where a state's share of the residual funds for one pool is so small that it is impractical to distribute, that state may elect to aggregate it with its share of the remainder of other pools, so long as the programs proposed are broad enough to benefit members of the appropriate classes.

Each government that wishes to participate will be required to file a plan setting forth the project or projects it desires to fund with its share of the Amoco funds. The plan should include a brief explanation of each project, the amount of money to be spent, the approximate timetable for implementation, and the group or groups to be benefitted. Each state's plan should also be accompanied by a statement that each of the proposed projects is a new program or an enlargement of an existing program. Funds may not be used to replace state funds for activities already fully funded. Although we are sensitive to the concerns of low-income consumer representatives who sought a requirement that states hold a public hearing on their proposals prior to submitting them, we are reluctant to and shall not dictate to the states any particular procedure to be used in formulating their respective plans. Nevertheless, like all applications for refund, state plans will be available for inspection in the OHA Public Docket Room. We expect that the plans will be scrutinized carefully to insure effective uses are made of the Amoco funds. These plans should not be filed until we give notice to the state governments that we are accepting second-stage distribution plans.

We will review each state's plan to see whether it fulfills the general requirement that the projects undertaken should benefit those who were most likely affected by the transactions covered by the consent order. We decline to restrict any state's creative and best use of these funds by establishing a minimum percentage of funds that must be set aside of programs to benefit low-income consumers or alternative energy research. However, projects directed towards either of those uses would certainly be acceptable. We shall not issue an exclusive list of acceptable projects because we believe that each state should have great flexibility in formulating its plan. We have previously suggested as examples of suitable projects weatherization or conservation programs, highway, bridge and airport maintenance, and ridesharing programs. *See Office of Enforcement*, 9 DOE ¶ 82,521 at 85,138 (1982). In reviewing the states' plans, we shall seek further explanation for any administrative expenses that appear to be disproportionately high. If we find a state plan or portions of a plan unacceptable, the state will be permitted to amend its application. Upon approval, the funds will be transferred to the state. Upon completion of its programs, the state will be required to certify that it has spent all of the funds in the manner specified in its approved plan.

Finally, although many commenters urged that we eliminate as a possible alternative the deposit of residual funds into the U. S. Treasury, we believe that the option should be maintained. We have previously discussed at length the legal arguments that have been raised frequently in connection with this question in *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). *See also Terrace Mobil*, 9 DOE ¶ 83,045 (1982) at 86,332–34. However, it is premature to decide this issue now, even though it is unlikely that we will implement this option inasmuch as the large sums of money involved in this case will probably generate substantial residual funds that may be efficiently distributed by state governments.

III. Comments Regarding Crude Oil Claims Procedures

In our August 9 proposal, we determined that we should develop standards for the evaluation of applications for refund from parties whose claims are based upon purchases or rights to purchase crude oil which are different from the standards applied to purchases or rights to purchase refined products. We proposed that the portion of the settlement fund that is allocated to crude oil claims should first be distributed among firms that successfully establish in their refund applications that they suffered a particularized injury that was neither redressed by the regulatory system nor passed through to their customers. We noted that we had previously stated our belief that direct purchasers of miscertified crude oil were compensated by the operation of the entitlements program. We further indicated our belief that entitlements program participants were compensated for any increased costs as a result of an increase in competitive market prices. *See Office of Enforcement*, 9 DOE ¶ 82,521 (1982) (hereinafter cited as *Adams*).(8) We *Enforcement*, 9 DOE § 82,553 (1982) (hereinafter cited as *Adams*).[8] We suggested that in the second stage, residual funds would be apportioned among state governments along with and for the same purposes as the residual funds in other crude oil-related special refund cases such as *Alkek* and *Adams*. The funds would be apportioned among state governments to reflect the level of consumption of covered products in each state during the consent order period.

The parties who filed comments about this specific portion of the Proposed Decision did not challenge our preliminary analysis that, in general, any impact purchasers of Amoco crude oil might have felt from Amoco's alleged crude oil miscertification violations was dispersed among all refiners by the operation of the DOE's Crude Oil Entitlements Program, 10 CFR 211.67. Rather, refiners disputed our statement that they then passed on any increased costs of crude oil to their customers. *See Alkek*, 9 DOE at 85,133. Some refiners objected to what they believe to be an unreasonably high standard of proof for crude oil claimants, especially when compared to the streamlined presumptive levels of injury which we suggested in connection with refined products claims. The commenters maintain that, having acknowledged that any injury caused by Amoco's application of the crude oil price regulations would be felt most directly by participants in the Entitlements Program, we should adopt a standard of proof which would permit recovery by any Entitlements Program participant that could demonstrate that it had substantial banks of unrecouped product cost increases throughout the consent order period. These commenters contend that the existence of banks in and of itself clearly establishes that such firms were injured because they were unable to pass on the effects of the alleged overcharges.

As an initial matter, we disagree with the commenters that crude oil purchases by large refiners should be treated in exactly the same way as purchases of refined products by smaller entities and consumers. There is no question that the circumstances in each type of transaction are vastly different. The average crude oil buyer was much better equipped to protect itself from overcharges that the usual refined products buyer, who was probably a much smaller, less sophisticated entity and was most typically a consumer or retailer of Amoco products. Moreover, the refiner price rules offered considerable flexibility for refiners to pass through costs. Accordingly, different treatment could well be warranted. Nevertheless, we have in fact applied the same standard to both types of entities: the need to show

injury. The presumptions which we have proposed are designed to facilitate the processing of refund claims when in our judgment there is a substantial likelihood that a particular class of claimants was injured. The presumptions used in Subpart V special refund proceedings are based on a consideration of restitutionary objectives and the body of information and data which is available about the underlying transactions. In the present case, the OHA has collected and reviewed a very substantial amount of information concerning the refined petroleum products markets during the consent order period. On the basis of that material and our knowledge of the industry during this period, we are able to adopt presumptions about the injury which occurred at various levels in the distribution chain for certain products. In contrast, the material, we have reviewed to date in the crude oil area suggests that, because of market factors and cost-equalization-based DOE regulatory programs (especially the Entitlements Program), refiners were generally not injured as a result of alleged miscertifications of crude oil. *Id.* It is therefore entirely reasonable and appropriate to adopt limited presumptions of injury with respect to the refined products pools while at the same time requiring claimants seeking refunds from the crude oil pool to come forward with evidence that shows the nature and extent of their injury.

Regarding the level of proof to be required of crude oil claimants, the commenters argue that the mere existence of banks of unrecouped product costs on an industry-wide basis establishes that all Entitlements Program participants were injured. We do not agree. There are many reasons that may explain why an individual refiner's banks were very large, *e.g.*, increases in inventory, uses of incentives in the refiner price rules, and wholly fortuitous transactions occurring on May 15, 1973, which was the base date for determining prices under the DOE regulations. *See, e.g., Tenneco Oil Co./Chevron U.S.A. Inc.*, 10 DOE ¶ 85,014 (1982). Because of the operation of the DOE refiner price regulations, these factors will have a very significant effect in times such as the latter part of the consent order period, when crude oil inventories increased substantially, refinery utilization rates declined, and sales of covered products also declined significantly. Furthermore, the establishment of banks of unrecovered allowable costs was a very complex calculation with many opportunities for a refiner to include in its calculations of allowable costs for recovery purposes costs not actually incurred. Moreover, the banks of many refiners are currently being challenged by DOE Proposed Remedial Orders. *See, e.g., Crown Central Petroleum Corp.*, Case No. DRO-0111. Banks of unrecouped costs were strictly a creature of the DOE regulatory program, and we do not believe that the existence of banks in and of itself is sufficient to demonstrate that refiners as a group were unable to pass through costs associated with alleged crude oil miscertifications which are the subject of a DOE consent order. *See Pacific Service Stations Co. v. Mobil Oil Corp.*, No. CV79-2973 AAH (Temp. Emer. Ct. App. September 17, 1982).

Finally, our acceptance of the refiners' position would mean that neither marketers nor consumers would receive Amoco refunds. According to the refiners, we should assume that any overcharges that they incurred were still in their cost banks at the end of the Amoco consent order period and therefore that they should receive refunds up to the amount of banks available to cover them. Since the refiners' banks are quite sizable, this would mean the complete exhaustion of the Amoco consent order fund. This position contradicts common sense. Allocating the entire fund to refiners' claims would be particularly inequitable in light of evidence, which we shall discuss below, that marketers and consumers were forced to absorb price increases and were consequently injured during much of the consent order period. We therefore reject the refiners' claim to the entire fund.

While none of the commenters has yet offered sufficient evidence to convince us that our preliminary analysis of the likely impact of the alleged violations is incorrect when applied to the broad class of crude oil claimants, we are *not* adopting a presumption against payment of claims to participants in the Entitlements Program. Our preliminary analysis of the likelihood of injury is inapplicable to overcharge claims based on allegations of incorrect posted prices or to claims for crude oil purchases made before November 1974, when the Entitlements Program began. Consequently, we shall accept applications for refund seeking a portion of the Amoco crude oil moneys from all firms. Firms that purchased Amoco crude oil as well as other participants in the Entitlements Program may file applications. Applicants should seek to establish a particularized injury that was not redressed by the regulatory system. The analysis of those applications will comprise the first stage of the claims process for crude oil refunds. States will receive funds from the crude oil pool once the first stage has been completed. We have attached as Appendix B our computation of each state's respective second-stage share of any remaining funds. We shall follow the procedure outlined earlier for the states' submission of plans for programs benefitting state residents who were likely affected by the transaction covered by this section.

IV. Comments Regarding Proposed Motor Gasoline Claims Procedures

The most controversial section of the Proposed Decision was our proposal for handling refund applications from Amoco's motor gasoline customers through the use of presumptive levels of injury. To summarize briefly, our experience in previous special refund cases had shown that the use of presumptions enabled small firms who very likely experienced injury to qualify for refunds without their having to generate so much information to support their claim of injury that the expense of filing a refund application exceeded the refund expected. *See, e.g. Uban Oil Co.*, 9 DOE ¶ 82,541 (1982) (hereinafter cites as *Uban*). Where available, many applicants opted to use a presumption method instead of filing a more lengthy application. *See, e.g., Vickers Energy Corp./Howard's Service*, 10 DOE ¶ 85,035 (1982). Once we had ascertained the viability of our presumptions, we found that we were able to streamline the process of analyzing and paying refund claims. For example, in *Tenneco Oil Co./Thomas Fastiggi*, 9 DOE ¶ 82,582 (1982), we were able to issue a determination covering 23 refund applications less than one month after the deadline for filing applications has passed. Hence, we concluced that the use of presumptions in the Amoco proceeding would assist us in the efficient processing of the large volume of refund applications which we anticipated receiving. *See* 10 CFR 205.282(e). With the knowledge that Amoco motor gasoline was sold throughout the United States, we examined a broad range of information about the motor gasoline market during the consent order period in order to determine whether, using our lengthy and extensive experience concerning this market, any general assumptions could be made about the likelihood of injury to particular classes of claimants. After finding that Amoco's price changes for motor gasoline generally followed national trends during the consent order period and that the prices

Amoco charged for covered products during that period generally were around the national average, we analyzed data showing national average price movements for gasoline at different levels of the marketing chain. That data is presented in graphic form as Appendix A to this Decision. This information clearly indicated that motor gasoline marketers did not always raise their prices at the same time and by the same amounts as refiners raised their prices. Based on our observation of the change in profit margins realized at each level of distribution, we concluded that as Amoco's refinery prices increased, a portion of that increase was absorbed at the wholesale level, another portion was absorbed at the retail level, and the remaining portion of the increase was absorbed by ultimate consumers. We observed that retailers appeared to have absorbed, *i.e.*, did not pass on, price increases and therefore were injured in 18 of the 53 months of the period which we studied, or 34 percent of the time; that resellers absorbed cost increases in 24 of 53 months, or 45 percent of the time; and that consumers absorbed the remaining 21 percent of the increases. We therefore proposed that, where a refund applicant was willing to be subject to the applicable presumption, we would pay a refund to each motor gasoline claimant, depending upon the claimant's position in the distribution chain, for all volumes which it purchased, without any further showing that the claimant was injured by Amoco's alleged overcharges in sales of motor gasoline. We stated that the presumptions were rebuttable, so that claimants could offer additional evidence of injury which could form the basis for the approval of larger refunds. We also suggested that the trade associations could assist us in identifying eligible claimants and processing their applications. We noted that purchases by individual motorists would probably be unverifiable and so small as to make it inefficient to process claims by these consumers. We therefore proposed that state governments be given the consumer's unclaimed presumptive portion for use for projects that would generally benefit users of motor gasoline.

Our proposal to use presumptions that would eliminate the burden of otherwise establishing injury for thousands of refund applicants generated many comments, both approving and disapproving. Before discussing these comments it would be useful to place the proposed methodology into perspective. The suggested approach was based on the best statistical information which we were able to obtain for the period encompassed by the consent order. Contrary to the belief of a number of commentators, the DOE does not possess other useful statistical information (for example, data showing how often the average retailer was constrained by its maximum lawful selling price from raising its price to consumers), and virtually no additional data has been submitted to us by critics of our methodology. Moreover, despite our best efforts we were not able to locate additional data that commenters suggested existed somewhere. Our review of the information we did obtain drew heavily on the experience this office has gained over eight years of dealing with the petroleum industry. Despite some commenters' claims that "everyone knows" that consumers bore the brunt of increased petroleum prices, or that "it is common knowledge" that retailers absorbed all of the period's price increases, nothing in the record supports either of these propositions. The analysis which we used to arrive at the presumptions discussed above encompasses a lengthy period of time during which substantial changes took place in marketing practices and consuming habits of American motor gasoline purchasers. Based on the record and our experience, we are therefore confident in our conclusion that some measure of injury was borne at each level of distribution at various times during the Amoco consent order period.

As is the case in most equitable proceedings, there is no mathematically precise answer to the question of how large a share of the settlement fund each competing group of Amoco customers should receive. As we have repeatedly stated, neither the prior enforcement proceedings not the present special refund proceeding has established that Amoco violated the DOE regulations in any transaction with any individual and, accordingly, no party can be said to be entitled as a matter of law to a particular share of the refund money. The proposed methodology represents an attempt to identify and approximate those factors upon which a finding of injury could be based. This type of approach is aimed at assisting refund applicants who were likely injured to obtain a refund without having to furnish substantial amounts of information conerning their historical pricing practices throughout the seven-year consent order period.

We have reviewed the comments which we received and have revised our presumptions somewhat in light of the criticisms in those comments. Most of the comments supported the use of presumptions in this case because they will facilitate the filing of refund applications by small businesses who might not otherwise be willing to incur the time and expense of submitting a more detailed application, even though they were likely injured by Amoco's alleged violations. We have therefore concluded that although the presumptions should be revised somewhat, they should nevertheless be used to streamline the refund process. Accordingly, we have concluded that the presumptions should be adopted as revised. We again emphasize, however, that any applicant who objects to the use of presumptions may claim a larger refund by presenting additional evidence concerning its individual injury.

We will first address the few comments which criticize the use of presumptions as a means of distributing refund moneys. Some commenters argue that the proposed methodology is unlawful because refund money will be paid to parties who are not direct purchasers from Amoco. According to these firms, the antitrust cases of *Hanover Shoe v. United Shoe Machine Corp.*, 392 U.S. 431 (1968), and *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977), stand for the proposition that in distributing these refund moneys the agency may not consider whether direct purchasers may have passed on the effects of alleged overcharges. We have previously discussed this contention at length in *Office of Enforcement*, 9 DOE ¶ 82,508 (1981) (hereinafter cited as *Coline*). In that case we determined that we are not legally bound in special refund proceedings by the holdings which courts have adopted in private antitrust actions and, moreover, none of the policy considerations underlying the limitations adotped by the courts in those cases is applicable to special refund cases. *See Coline* at 85,051–52. The commenters in this proceeding have not raised any new arguments that support their position that they should receive the entire proceeds of the DOE's enforcement efforts. Consequently, we again reject this contention.

Some state governments suggested that the use of presumptions is unlawful because the OHA is required to prove that wholesalers and retailers did not pass on the alleged overcharges to consumers. These commenters urged that, in the absence of such proof, we must find that consumers absorbed all of the cost increases. They argued that such a finding is not inequitable inasmuch as distribution to a particular state will also benefit wholesalers and

retailers who are residents of the state. We cannot accept this position. The states have not cited any legal authority whatsoever in support of their claim that the absolute validity of all conclusions underlying the presumptions employed in this proceeding must be established first. In fact, the DOE procedural regulations expressly permit the use of presumptions in refund proceedings precisely because of the perplexing problems inherent in reconstructing pricing practices during past periods. In the present case, there is ample evidence to support the particular level of presumptions of injury established in this determination and those presumptions are reasonable. As the Temporary Emergency Court of Appeals has noted, "the problems of government are practical ones and may justify if they do not require, rough accommodations—illogical, it may be, and unscientific." *General Crude Oil Co. v. DOE,* 585 F.2d 508, 516 (Temp. Emer. Ct. App. 1978), *quoting Amtel, Inc. v. FEA,* 536 F.2d 1378, 1383 (Temp. Emer. Ct. App. 1976). We therefore reject the states' challenge to the use of presumptions in this case.

We shall next address the criticisms of the analytical technique which was used to arrive at the level of the proposed presumptions. As noted above, we used national average motor gasoline price data in performing our analysis. The Service Station Dealers of America (SSDA) has challenged as incorrect our statement that Amoco's prices were generally around the national average. *See* Sept. 30 Transcript at 32. It has introduced evidence showing that at certain times and at certain locations across the country Amoco's dealer tankwagon price was higher than three or four other major suppliers in the particular market. Sept. 30 Transcript at 36–38. The SSDA's evidence is not convincing. We have reexamined our comparison of Amoco's weighted average prices with the national weighted average prices and have found that no adjustment is required. If only selected data is used, one can show that in certain localities Amoco's prices were significantly higher than the national average. However, despite the few isolated examples cited by the SSDA, we have found that Amoco's national weighted average price for all grades of gasoline track the national average prices remarkably closely. Except for one quarter in 1979, when Amoco's prices were as much as four cents *below* national average prices, Amoco's prices did not deviate from the national average by more than two cents. The SSDA representatives stated that they had in the past challenged the Energy Information Administration's national average data as not being accurate, but they have neither convinced the EIA that its data is incorrect nor provided further information in this proceeding to support their position, despite our invitation to do so. *See* Sept. 30 Transcript at 51. Consequently, we reject the position advanced by the representatives of Amoco retailers with respect to this issue.

A number of commenters advanced another criticism of the proposed analysis. They expressed concern that the analysis underlying the choice of presumptions encompassed only the 54-month period from July 1975 through December 1979 rather than the entire 82-month period of the consent order. As we noted in the proposed Decision, the DOE and its predecessors did not have a systematic data collection system in place until July 1975. Before that date, the information of this type is fragmented and inconsistent. Although several commenters suggested that additional data were available, no commenting party has supplemented the record with reliable data for the pre-July 1975 period, despite our invitation to do so.

Another related issue concerns the extrapolation of the available data to the period prior to July 1975. In preparing the proposed Decision we assumed that market behavior would have produced the same measure of injury for the period for which we had no data because the missing 28-month period was characterized by similar market fluctuations as the 54-month period for which we did have data. This assumption was based on the following factors. During the initial part of the consent order period (*i.e.,* late 1973 and much of 1974), there were substantial supply disruptions and a rapid increase in prices. Gradually the market regained equilibrium. This period of relative stability, which includes the first third of the period which we have charted, continued until supplies of motor gasoline became tight in the fourth quarter of 1978. There was a substantial OPEC crude oil price increase in June 1979, and the market remained unstable until the latter part of 1980. We therefore believe that since the pattern of disruption followed by a gradual return to stability occurred both before and after July 1975, the use of the available data is appropriate to estimate the effects of the alleged overcharges over the entire consent order period.

Another criticism raised by several commenters was that double-counting may have occurred in some months in which both wholesalers' and retailers' margins were shrinking. Simply stated, these commenters argue that if both levels experienced declining margins during all of 1979, it was incorrect to count those twelve months each time we computed the number of months during the consent order period in which firms at each level of the disruption chain experienced injury. We agree that it was wrong to give both groups 100 percent credit for months in which both groups actually shared the burden of increasing prices. The correct method for accounting for this overlap is to ascribe only partial credit for these twelve months to each level, and we will make that adjustment in our final calculations.

We noted earlier that we would utilize a presumption that commission agents were not injured by alleged overcharges. It was suggested by a number of commenters that the period during which the majority of Amoco jobbers were commission agents should not be included as a time when jobbers were absorbing costs. It is not. The 24-month period from January 1978 through December 1979 was the period which we counted as a period of price absorption for jobbers. The record indicates that the conversion of Amoco commission agents to independent jobbers was substantially completed during 1976, well before the period that we counted as a time of probable injury for jobbers. As noted above, jobbers will generally not be eligible for a refund based upon purchases during the period in which they were commission agents. The consumers' refund shares for volumes purchased from commission agents will be accordingly adjusted, as discussed in the next paragraph.

Finally, numerous commenters challenged our assumption that the majority of Amoco motor gasoline was marketed through a three-level distribution system. According to information that has recently been added to the record, about half of Amoco's motor gasoline is distributed to consumers through dealers who purchase product directly from Amoco. In addition, about five percent of Amoco's motor gasoline sales during the consent order period were made directly to large consumer accounts. The commenters pointed out that under the method which we proposed, purchasers of motor gasoline that was not marketed through a three-level distribution system would not receive a full refund. They therefore suggested that where no jobber handled the product, the share of the volumetric refund amount allotted under the presumptions to the jobber

level should instead be allotted either to the dealer who first purchased the product from Amoco, or to the direct purchaser, if there was no intervening dealer. We agree with some of these points. Clearly members of the direct-purchase consumer group should receive 100 percent of the per gallon refund allotted to those volumes. However, there is no support in the record for the proposition that direct-purchase retailers should be entitled to the share of the refund that would otherwise be allocated to jobbers. We do not agree that the elimination of an additional middleman from our analysis of the market automatically means that Amoco's price increases were absorbed at the retailer level. The direct-purchase dealers have testified that the price which they paid Amoco was the dealer tankwagon (DTW) price, which is represented by the line in the middle of the graph in Appendix A. The method which we have used to determine when retail profit margins decreased, *viz.*, observing when the difference between the DTW and the retail prices decreased, remains unchanged if we eliminate the wholesale price line. Consequently, our analysis still indicates that, as discussed in greater detail below, retail margins were depressed only during certain limited periods. During the rest of the analyzed period retailers generally raised their prices to consumers as Amoco's price to them was raised. The appropriate adjustment, therefore, is to credit consumers who purchased motor gasoline from retailers directly supplied by Amoco with the share that would otherwise have been allocated to jobbers. While this will complicate the refund process where consumers are not certain whether and to what extent their supplier was directly supplied by Amoco, it is nevertheless appropriate. In addition, the direct-supply phenomenon seems to vary according to the geographic areas where Amoco products were sold. For example, most Amoco retailers in the Chicago area were directly supplied, whereas most retailers in the rural southeastern states were supplied by jobbers. Sept. 22 Transcript at 32; Sept. 30 Transcript at 45, 154. In preparing its application, a consumer should identify its supplier and, if it believes that its supplier is a direct-supplied Amoco dealer, it must state a basis for the belief. If its supplier is a direct-supplied reseller, the amount of the refund approved for the consumer will be increased by an appropriate amount.

B. Theoretical Criticisms of Proposed Methodology.

Many of the commenters contended that the analysis underlying the presumptions about the distributon of the alleged gasoline overcharges was theoretically flawed. While we did not claim that our analysis had scientific precision, most of the commenters' criticisms appeared to rest on that assumption. Consequently, many of the commenters simply restated the proposition, which we have already rejected above, that the presumptions could not be used unless their validity was conclusively established.

In addition, some parties' comments suggested that a better analysis could be made on the basis of other information. However, other, better information is simply not available—to us or to anyone else. Despite our best research efforts, we were unable to locate consistent, reliable, and meaningful supporting data from any source that would enable us to use any of the following suggested analyses: a comparison of the average profit margins earned by Amoco-branded dealers during the period with the national average profit margins earned by all dealers (*9*) a methodology attributing injury to a level of distribution when that level was restricted from raising its price by the application of its maximum lawful selling price (*10*); an analysis based on the assumption that consumers were injured to the extent that demand was inelastic (*11*) and an analysis using increases in refiner's profit margins to establish periods of likely injury. (*12*) Our listing of these proposed alternative methods should not suggest that we agree that any one of them is preferable to the analysis which we used. All are subject to the flaw that information which would permit their use is not available. In the interest of brevity, we shall not critically discuss these suggested alternative methods of analysis that are not adequately supported by reliable information. Other suggested methods are discussed below.

The retailers' representatives maintained that, contrary to our preliminary conclusions, consumers of Amoco motor gasoline as a class were never injured by Amoco's price increases and the alleged overcharges because they always had the ability to purchase motor gasoline from other sources if Amoco's prices were high. Because this choice existed, they contend, consumers presumably would have purchased Amoco motor gasoline only when the alternatives were higher priced, and therefore the consuming class suffered no injury. The retailers argue that, in contrast, they were contractually bound to purchase Amoco products even when the price increased above average market levels, and therefore they sustained the entire injury associated with Amoco's increasing prices.

We do not agree. As we have previously indicated, during the consent order period all refiners' prices were increasing at about the same time and in the same increments as Amoco's prices, so the notion of consumers' ability to avoid price increases is illusory. In fact, Amoco's prices were around the middle of the price range, and its sales volumes and market share remained relatively constant during this period, which confirms that Amoco customers apparently did not cease buying gasoline from Amoco branded retailers. We have received a large number of inquiries about this proceeding from consumers who have indicated a high degree of brand loyalty for Amoco products.

Moreover, pricing symmetry was apparent not only at the refiner level. The graph in Appendix A shows that frequently whenever refiners' prices went up by a certain increment, all intermediate suppliers' prices likewise went up by the same amount. We find this to be a clear indication that Amoco's price increases were often directly passed on to consumers and not absorbed by the intervening levels of distribution. Under these circumstances we have concluded that consumers were indeed injured whenever Amoco's price increases were passed on to them by all intermediate suppliers, even when Amoco's prices were not at the top of the range of prices. Having absorbed a substantial percentage of these alleged overcharges, consumers as a group should be permitted to receive their appropriate share of the refunds made in this restitutionary process.

The retailers' representatives also claim that the proposed methodology is faulty because it fails to take into account the fact that few retailers were able to charge their DOE-mandated maximum lawful selling price during the period of price regulations. They note that the margins reflected in the graph in Appendix A are consistently below those that the retailers claim were the average maximum lawful margins. The retailers contend that this conclusively establishes that only they were injured by price increases during the Amoco consent order period. Otherwise, they would have been recovering their allowable margin.

This argument obviously misperceives the purpose and effect of the DOE price

controls. The petroleum price regulations were not intended to guarantee a minimum profit for marketers. Instead, they were designed to limit price increases to actual cost increases and thus decrease economic dislocations caused by rapidly escalating crude oil prices. As a result, maximum lawful profit margins were established which varied from firm to firm, and increases above those levels required each firm's justification based upon increased costs. Although the profit margin limitation was initially based upon each firm's May 15, 1973 profit margin, subsequent revisions were made in increments that had no relationship to actual amount of justifiable cost increases as defined by the regulations that had been incurred by firms since the last increase was permitted.(*13*) The maximum allowable profit margin that was applicable during the final portion of the consent order period, 15.4 cents per gallon, was adopted to simplify the price regulations and was intended to provide retailers greater individual flexibility in setting prices. Accordingly, since the DOE price controls were designed to limit price increases, it is inappropriate to treat them as providing a government-guaranteed or recommended profit margin and to claim that a firm's failure to achieve its maximum lawful profit margin constitutes the type of injury that should be redressed in the special refund process. In view of the fact that the overall gasoline market was highly competitive during most of the consent order period, it is hardly surprising that marketers priced their product at less than the allowed maximum prices in order to sell what they judged to be the optimum volume needed to advance their respective market strategies. We therefore do not agree that an inability to achieve the maximum profits in and of itself constitutes an "injury" and, accordingly, we reject the retailers' claim that any analysis that gives them less than 100 percent of the motor gasoline pool is faulty.

Several state governments maintained that our use of declining margins to indicate cost absorption was faulty because declining profit margins do not conclusively establish that a marketer was unable to pass on price increases. They note that declining margins could have been caused in part by a change in marketing strategy from earlier low volume, full-service retail outlets to high volume, low margin, self-service outlets. The latter type of station typically sells gasoline at a lower per gallon profit margin in order to produce a higher sales volume. They also contend that during periods of shortage such as 1979, when our analysis indicates that marketers' margins were falling, marketers' operating costs would also have fallen due to decreased hours of operation, and that declining profit margins were therefore not *per se* injurious.

As we discussed earlier, our analysis is not intended to prove conclusively that a certain group was injured by a precisely measurable amount at any particular time. It is true that marketers' profit margins during the consent order period may have also been influenced by the factors cited by the states. Nevertheless, the presence of those factors does not negate the fact that a significant decline in profit margins at the same time that prices were increasing is indicative of probable injury attributable to a price "squeeze." The "missing" portion of the price increase that was not passed on had to be absorbed somewhere, and we conclude that it was absorbed at the jobber and retailer levels: Moreover, neither of the two factors cited by the commenters could have been responsible for the significant decrease in profit margins during 1979, as reflected in Appendix A.(*14*) We therefore reject the contention that motor gasoline marketers' declining profit margins do not provide substantial evidence that those jobbers and retailers were ablsorbing some of the alleged Amoco overcharges.

In summary, after considering all of the comments which criticized our proposed methodology for distributing the motor gasoline refund pool, we have determined that the methodology, with certain modifications, offers the best means for equitably distributing these funds among all of the potentially affected parties.

In view of the double-counting problem and the other comments which we received on our interpretation of the data set forth in Appendix A, we carefully reexamined the graph and other evidence that has been added to the record.(*15*) Upon close inspection, we again concluded that the only period during which resellers' margins were significantly affected was the two-year period January 1978 through December 1979. However, during all of 1979 retailers' margins were also greatly diminished. If we attribute one half cost absorption to each group for those twelve months and the jobbers receive full credit for all of 1978, we arrive at a ratio for months in which costs were absorbed of [(.5×12)+12] divided by 53, or 34 percent for the jobber level.(*16*)

In addition to the 12-month period during 1979 when retailers apparently absorbed part of the increasing prices, we noted that during the period between September 1976 through December 1977 retailers' margins decreased about 40 percent. This 15-month period encompasses a period of supply stability during which retail price competition was relatively fierce, as indicated by the sizeable decrease in the number of major branded retail outlets operating in that period.(*17*) Finally, we found that throughout this period Amoco's prices were more consistently higher than the national average prices than during any other portion of the consent order period which we examined. For these reasons we have concluded that this 15-month period should be added to the 12 months of shared injury during 1979 to yield the ratio of [(.5×12)+15] divided by 53, or 40 percent for retailers.

The preceding analysis of the price aborption by jobbers and retailers leads to the conclusion that consumers absorbed the remainder, or 26 percent, where the motor gasoline passed through these two levels before reaching the consumer. As we have already indicated, a consumer's share will be larger when the product it purchased passed through fewer levels of distribution.

We have concluded that we should adopt the proposed methodology with the modifications discussed above, *viz.* the adjustments for:

(i) Double-counted months; and

(ii) Direct-purchase dealers and consumers. These adjustments result in the following revised presumptions:

	Percent
Non-commission wholesalers	34
Retailers	40
Direct-retailer supplied consumers	60
Other retailer-supplied consumers	26
Jobber-supplied consumers	66
Direct-supplied consumers	100

C. Proposals to Modify the Administration of These Procedures

In addition to comments about the methodology which produced the presumptions that we will use to analyze gasoline refund applications, several parties made suggestions about the administration of these procedures. Several firms commented that it seemed unfair to limit recovery to the volumetric refund in cases where a firm had an allocation claim or a rent claim. Neither type of claimant will be so limited; the presumption system is designed only for applicants whose claims are based on alleged violations of the DOE price regulations.

Many persons who submitted comments requested that we set forth a simple format for applicants to use in filing a refund claim. We will accept applications for refund that contain the necessary information in any form which an applicant may wish to submit. However, in order to assist claimants, we will add as Appendix C to this Decision a suggested format that applicants for refunds based on motor gasoline and middle distillate purchases who wish to use the presumptions may use to organize the required information.

Most commenters assumed that we would process the claims based on presumptions first and feared that claimants would so deplete the fund that the money remaining might not be sufficient to pay other claimants. In addition, one commenter suggested that we should initially pay out at least the amount based on presumptions to *all* claimants, since that amount would represent their minimum recovery. This commenting party suggested that by adopting this practice we would avoid penalizing firms for arguing that they were injured to a greater extent than the presumptive level of injury. Our experience in previous refund proceedings strongly suggests that the total amount claimed by refund applicants will not exceed the available funds. For example, even in the *Vickers* case, after we gave direct mail notice to each member of the group of Vickers' customers who were eligible to receive refunds, less than one half the eligible participants filed claims. We will, however, monitor the total amount of the claims being filed in this proceeding and will take steps, if necessary, to prevent the early depletion of the fund. Because of the considerable additional effort, processing time and record-keeping involved, we will not accept the suggestion that some claimants should be paid refunds once for the presumptive amount and later for any further amounts they establish.

Several commenters suggested that our final decision should set forth the standards which would be used in evaluating claims for amounts greater than those allotted by the presumptions. We shall detail as completely as possible the information needed for each type of case in a latter section of this decision. In making the determination as to whether the alleged overcharges were passed on to a refund applicant's customers, we have used two different analytic methodologies in the past, one for firms who purchased most of their product from a single supplier, *eg.*, *Unruh's*, and another for firms with multiple suppliers, *e.g.*, Tenneco Oil Co./Racetrac Petroleum, Inc., 10 DOE ¶ 85,023 (1982) (hereinafter cited as *Racetrac*). In an *Unruh's* type of case we have generally examined a firm's price changes in light of its supplier's price changes, its profit margins and its volume of sales throughout the period in order to determine when the firm passed on price increases to its customers. In a *Racetrac* type of case we have compared the prices paid by the applicant to the consenting firm with the prices paid to the applicant's other suppliers. *See also Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982).

In the proposed decision, we stated that we might adopt a requirement that Amoco marketers who are members of a trade association file applications for refund through their association. We have concluded that this requirement should not be adopted. Some firms may not wish to use the services of their trade organization, particularly where the group charges a fee for its services, and we will not overrule individual preferences. However, we strongly encourage firms to utilize those trade associations who have expressed an interest in assisting their members in filing refund applications. One such group, the Amoco Brand Subcommittee of the National Oil Jobbers Council (NOJC Subcommittee), has filed a submission styled as an "Application for Certification of Branded Amoco Jobbers As a Class." Insofar as our approval of that application might be interpreted to mean that the organization will be treated as the exclusive representative of all Amoco-branded jobbers unless a jobber affirmatively elects to opt out of the class, *see* Rule 23(c)(2), Fed. Rules Civ. Proc., we decline to approve formal certification for the class. However, we do appreciate the lengths to which this group has gone to notify all potential jobber claimants and to offer their able assistance to us in refining our proposal. We expect and encourage this group to continue to represent all interested jobbers.

A group application filed by any organization should be filed after the association has collected the required information for each applicant's business, the identity of the applicant's supplier, the refund claimed, and a statement by the applicant that all information is true according to the applicant's best information. The information needed for each individual applicant is detailed in the section of this Decision entitled "How to Apply For a Refund." The association should assemble the necessary documentation to support the applications of its members and submit it in summary form after verification to the OHA. If approved, refund checks containing each member's appropriate share of the refund will be issued to the individuals on whose behalf the group application was filed.

The NOJC Subcommittee has also recommended in its comments that jobbers serve as conduits for the refund amounts to be apportioned to the jobbers' customers. The association suggests that we enlist jobbers to notify the retailers and end-users which they supplied during the consent order period of their eligibility for a refund and include those customers' applications along with their own. Under this suggested scheme, the jobbers' customers' refunds would be included in the jobbers' refund check. The jobbers would then distribute the refund, less a fee of $15 for each refund over $100 that was granted, to their customers by check or credit memoranda. The jobbers contend that this proposal would ensure the widest possible participation in this refund proceeding.

We appreciate the offer of assistance from the jobbers and we certainly seek to have the widest possible participation in the refund process. However, we believe we can achieve this goal through other means, and the jobbers' proposal has a number of undesirable features. The best control which we have on the proper disposition of these funds to the correct recipients is our authority to direct the DOE Controller to issue a check to a named individual. If we were to issue checks to jobbers on behalf of their customers, we would lose control of the process to that extent. This would not be in keeping with our responsibility to distribute these funds correctly. In addition, we could easily become entangled in litigation between the parties if the jobber retained the money as payment on a debt owed to it by the customer. Secondly, there would be a danger that some jobber customers might file separate claims on their own. It would be difficult for us to identify such claimants and prevent double payments if control over one part of the process rests with private entities. Finally, while we have no objection to the voluntary payment of a fee by a claimant to a person or firm as consideration for assistance in filing for a refund, the jobber's proposal in reality would amount to an involuntary levy on a class of claimants. We encourage jobbers to assist their customers in assembling the necessary information for filing a refund application and will accept group applications filed by jobbers on behalf of their customers.

However, we will direct the refund amounts which we approve to the jobber's customers, and any fee to be paid the jobber by the refund recipient must be based on a private contractual agreement between the parties.

Turning to the consumer class of claimants, we have received nearly one thousand inquiries from individual motorists about the standards to be applied to their applications for refund. Many of those who have contacted us stated that they did not have receipts showing the volumes of their purchases but they did have cancelled checks showing the dollar amount of their purchases. The DOE does not have information on the actual prices charged these individual consumers over the seven-year consent order period, or the percentage of the principal amount of these checks which was for motor gasoline purchases alone. Thus, we are unable to calculate their purchase volumes so as to compute a refund for them. However, consumers may estimate the Amoco selling price to calculate a gallonage purchase figure.

In connection with this discussion of consumer claims we must emphasize that due to the administrative costs incurred in processing each refund application, we will not approve a refund for an amount less than $15.00, the sum which we have determined to be the administrative cost of issuing a refund check. *Uban Oil Co.*, 9 DOE ¶ 82,541 (1982) at 85,225. For the reasons discussed below, we realize that a great many legitimate claims will be too small to be processed. However, we believe that it is essential that some minimum figure be established, and no one has suggested an alternative to the $15.00 level. In addition, there will be a restitutionary benefit from the Amoco refunds to individual consumers and motorists through the refunds paid to state governments. Consequently, Amoco customers whose claims would fall below the $15 level are not being ignored in this determination.

It is extremely unlikely that individual motorists made sufficient purchases to warrant a refund at or above the $15 minimum level because the per gallon refund is less than one-tenth of a cent. If a consumer purchased motor gasoline from a "direct-purchase" retailer, his or her purchases must exceed 20,090 gallons over the consent order period to qualify for the minimum $15.00 refund.(*18*) For a consumer who purchased fuel from a retailer who obtained its Amoco product from a jobber, the minimum purchase volume would be 64,823 gallons. Virtually all consumers purchased less than these quantities. According to information published by the Energy Information Administration, the average motorist consumed 4,845 gallons per car during the consent order period. Even if all of that motor gasoline was purchased from an Amoco direct-supplied dealer, that person would qualify for a refund of only $2.59. It is for this reason that we have proposed to distribute the refunds that would otherwise go to small consumers of Amoco motor gasoline to the states in the first stage. We have requested the EIA to generate data showing each state's respective share of Amoco's motor gasoline sales, and we will provide each state with that figure upon request. During the first stage, after deducting all volumes on which refunds were paid to large consumers within a state, a check will be issued to every state after its submission of an approved plan for using the funds for programs to benefit motor gasoline consumers.

V. Comments Concerning the Proposed Middle Distillate Refund Procedure

In discussing refund procedures to be used for claimants who were purchasers of middle distillates, we first suggested that we could reasonably presume that Amoco consignees were not required to absorb any overcharges. No commenter has challenged that proposed presumption. We next examined the available data to determine whether we could conclude, as we did for motor gasoline resellers, that independent middle distillate dealers generally absorbed a portion of Amoco's price increases during the consent order period. After reviewing data showing that average heating oil dealer margins during the period January 1974 through February 1976 remained fairly constant, we reached the preliminary conclusion that Amoco dealers were generally able to pass through price increases to their customers. This conclusion was further confirmed by our finding that Amoco's wholesale prices for middle distillates during the period for which we had data were generally below the average wholesale price for the industry. We therefore presumed that resellers of Amoco middle distillates generally were able to and usually did pass through Amoco's price increases entirely to consumers. We stated that this presumption, if adopted, would be rebuttable, and a reseller could show injury by establishing that (a) market conditions in its market area during the relevant time period put it at a competitive price disadvantage and (b) its profit margin or sales volume declined significantly during the relevant period. Since the record before us indicated that consumers bore most of the injury in middle distillate sales and that the majority of these consumers, both residential heating oil users and diesel vehicle owners, would not have purchased enough product during the 3½ years when middle distillates were under controls to qualify for the $15.00 minimum refund, we proposed to distribute the middle distillate fund to the states in which Amoco sold these products. Refunds would be paid based upon the amount of middle distillate purchased, and the same presumption would be used as was used in the motor gasoline area—namely, that the injury sustained was the same for each gallon of middle distillate purchased.

At the September 22 hearing a representative of independent truck stop owners contended that truck stops are quite different from heating oil dealerships and that our analysis of the No. 2 heating oil market should not be applied to diesel fuel marketers. He argued that even though diesel fuel is essentially the same product as heating oil, sellers of diesel fuel were unable to realize their maximum lawful selling prices during the period and, contrary to our preliminary findings concerning heating oil prices, information showed that Amoco's prices for diesel fuel were higher than the average price for that product. Consequently, he maintained that the claims of diesel fuel sellers should be analyzed separately from those of heating oil sellers and that diesel fuel sellers should receive 100 percent of the refund money which corresponds to their share of middle distillate sales.

We do not agree that No. 2 heating oil and diesel fuel sales should be analyzed according to separate criteria. As an initial matter, our preliminary finding concerning per gallon profit margins was not that Amoco's heating oil resellers obtained their maximum lawful profit margins, but rather that their profit margins remained relatively constant throughout the 26-month period. The truck-stop operators have not offered any evidence that sellers of Amoco diesel fuel were in a different position. As for their contention that failure to achieve maximum lawful profit margins constitutes an "injury" that should be redressed in the context of this proceeding, we have already discussed and rejected that contention in the context of our motor gasoline analysis. In the absence of convincing arguments and evidence to the contrary, we have concluded that since No. 2 heating oil and diesel fuel are identical products and therefore priced similarly because of their interchangeability we must use

the available data for heating oil prices to establish presumptions for all middle distillate sales.

Due to the diesel fuel sellers' strong representations that Amoco's wholesale middle distillate prices were higher, not lower, than the national average, we sought additional price information for periods earlier than we had previously examined. We found that our preliminary determination was erroneous and that Amoco's wholesale middle distillate prices were *higher* than the national average prices reported to the EIA in 10 of the 26 months from January 1974 through February 1976, or 38 percent of the time. Consequently, we must revise the presumptions for middle distillates that we proposed in our August 9 determination.

In several recent refund application cases we have compared the consenting firm's prices with those of the applicant's other suppliers in order to determine the months in which the applicant suffered competitive injury. *See, e.g., Racetrac.* We have also made price comparisons between the consenting firm's prices and the prices reported for a product in the EIA's publication "Monthly Petroleum Product Price Report", *e.g., Pennzoil Co./B&L Motor Freight Inc.,* 10 DOE ¶ 85,037 (1982), or in *Platt's Oil Price Handbook and Oilmanac, e.g., Tenneco Oil Co./ Mid-Continent Systems, Inc.,* 10 DOE ¶ 85,009 (1982). In all of these cases we have approved refunds to firms for each month in which their acquisition cost of product from the consenting firm exceeded the average market price at the same level of distribution. A similar analysis may be applied to the present case.(*19*) The data which we have obtained shows that retailers of Amoco middle distillate products experienced a competitive cost disadvantage during 10 of the 26 reported months. Consequently, we will adopt a rebuttable presumption that middle distillate resellers were injured during 38 percent of the period during which middle distillates were subject to DOE controls.(*20*) We find that the use of this presumption will significantly aid us in processing refund applications from middle distillate resellers who were likely injured by the alleged overcharges. Those refund applicants who wish to receive a refund under this presumption will have only to furnish us with their names, addresses, number of gallons of middle distillates purchased from Amoco during the period of controls, and an affirmation that the information is correct. Those applicants who wish to establish that the presumption is inapplicable to their particular cases must additionally furnish us with a list of their product acquisition cost from Amoco by month for the entire period.

Since we presume that 38 percent of the injury was absorbed by resellers, it follows that the remaining 62 percent was passed on to consumers. That portion of the middle distillate pool will therefore be distributed on a volumetric basis to ultimate consumers of middle distillates who file applications for refund. The $15.00 minimum refund policy will apply to these applications. We expect that a large portion of the consumer's share will remain unclaimed because a motorist or home-owner would have had to have consumed 27,184 gallons of middle distillate during the period March 1973 through June 1976 to reach that level. The portion remaining after all consumer applications have been analyzed in the first stage will be distributed to state governments that submit plans for the use of these funds for projects benefitting middle distillate consumers.

VI. Comments Regarding Proposed NGL Refund Procedures

Our proposed procedures for this type of claim elicited few comments. In addition to arguing that we should look to the underlying enforcement documents to set the per gallon recovery—an idea rejected above—one commenter did raise two factual concerns about the refund process for NGLs that should be addressed. First, we have concluded that purchasers of Canadian NGLs which Amoco sold into this country are eligible to file for a refund because those transactions were covered by the DOE price regulations. *See Citronelle-Mobile Gathering, Inc. v. Edwards, supra; A. Johnson & Co., Inc.,* 3 FEA ¶ 80,546 (1976). Secondly, we want to make it clear that all of Amoco's interaffiliate NGL sales were in fact excluded, as suggested by the commenter, from the volume used to arrive at the per-gallon refund amount. Consequently, no further adjustment to the calculation of the volumetric refund for NGLs is necessary.

Our experience in analyzing NGL refund applications using the procedures we suggested in our proposed decision has proven satisfactory, and we will therefore adopt the proposed procedures. Accordingly, firms that purchased Amoco NGLs will be permitted to file applications for refund in the first stage. Downstream purchasers as well as direct purchasers will be eligible to apply. Firms should submit a summary of their monthly banks of unrecouped product cost increases and evidence that they did not pass on the alleged overcharges to their customers. As noted above, regulated utilities and agricultural cooperatives will be exempted from these requirements, and those applications will be analyzed under the standards used in *Tenneco Oil Co./Farmland Industries, Inc.,* 9 DOE ¶ 82,597 (1982).

Regarding any second-stage distribution, we are unable to determine what the appropriate disposition of the remaining funds in this pool should be because we do not know at this time the size of the residual fund. In the proposed Dicision, we suggested that first purchasers might submit plans for the distribution of refunds to their downstream purchasers. However, very few such plans have been offered in previous NGL refund cases. We also suggested in the proposed decision that if the amount of the funds remaining was large, we might distribute it to states in which the NGLs were sold for use in energy programs to benefit NGL consumers. In the alternative, if only a relatively minor amount remained unclaimed we might deposit it in the U.S. Treasury. Several states have urged that even if each state's proportionate share is too small to efficiently administer, residual funds from other product pools should be aggregated. We agree that this idea has considerable merit so long as the funds are used to benefit those persons who were injured by the alleged overcharges. At this time, however, we do not need to decide this issue, and will reserve judgment on it until an analysis of first-stage claims has been made completed.

VII. Comments Concerning Proposed Refund Procedures for Claims Relating to Residual Fuel Oil and Related Products

In our proposed decision we suggested a two-stage refund procedure for claims relating to Amoco's sales of residual fuel oil, lubricating oil, and industrial grease that was similar to the procedure we adopted for NGL claimants. Firms which purchased or had a right to purchase these heavy petroleum products from Amoco, and downstream purchasers from those firms, would be entitled to file refund applications. A demonstration must be made that an applicant did not pass on the effects of the alleged overcharges. As for the second stage, we stated that we did not have sufficient information concerning the ultimate uses to which these products were put for us to propose a plan for the distribution of unclaimed funds and we therefore solicited comments on this issue.

We received few comments on this portion of our proposal. The NOJC Subcommittee contended that firms that purchased Quaker State motor oil from Amoco should be permitted to file refund applications with respect to those purchases because resellers were not allowed to obtain direct refunds under the terms of a consent order which the DOE entered into with Quaker State. *See* Notice of Consent Order with Quaker State Oil Co., 47 FR 38968 (September 3, 1982). In that consent order, Quaker State agreed to deposit $4.8 million into the U.S. Treasury in settlement of allegations that Quaker State had violated DOE price regulations. The NOJC Subcommittee's position apparently is that purchasers of Quaker State products should received some form of direct restitution and that to correct this situation the Amoco funds could be used. This would not be proper. The OSC determined that the appropriate form of restitution in the Quaker State case was the deposit of this money into the U.S. Treasury, which was intended to benefit all persons in the United States. That decision is not under review here, nor is it subject to review by this office. *See* 10 CFR 205.199J(a) *and* (b); *New York State Energy Office,* 9 DOE ¶ 82,601 (1982). We will therefore not provide for an additional benefit to be paid out of the Amoco fund to firms that purchased Quaker State motor oil from Amoco.

The other commenters who addressed this section of the proposal suggested that we designate state governments as recipients of any remaining funds. Noting that each state's share of this small pool was likely to be quite small by itself, these commenters suggested that we aggregate these funds with the second-stage NGL of middle distillate funds designated for use by the states in broad-based energy projects. We agree that this proposal has merit. However, we may obtain information during our analysis of the first stage applications that would suggest a better course of action. Therefore, we reserve judgment on this issue at the present time.

Having considered all of the comments on this portion of the proposed refund procedures, we will adopt the two-stage methodology proposed in our August 9 determination. We will set forth in a later section of this decision the information which first-stage refund applicants must file.

VIII. Comments Regarding Proposed Refund Procedures for Aviation Gasoline/Jet Fuel

For claims relating to purchases of Amoco aviation gasoline and jet fuel we also proposed a two-stage refund procedure. In the first stage, refund applications would be filed by firms who purchased or had a right to purchase these products during the period that they were subject to controls, *viz.* March 3, 1973, through February 28, 1979. Absent special circumstances, applicants would be required to demonstrate that they did not pass through the alleged overcharges to their customers. We noted that commercial airlines were likely applicants, and we examined industry-wide data which we had obtained from the Air Transport Association (ATA) with a view towards establishing a presumption as to the amount of injury absorbed by commercial airlines and the amount passed on to airline passengers. In the information which is submitted to us, the ATA listed industry-wide quarterly operating revenues, operating expenses, and fuel expenses, and it calculated for operating revenues and fuel expenses the change from the same quarter of the previous year. The association then allocated the amount of revenues available to cover increased fuel costs on the basis of the proportion of increased total costs which was due to increased fuel costs. Rather than assuming that in times where revenues fell short of expenses the industry would have paid for its non-fuel expenses first and would have paid as much of its fuel expenses as there was revenue left over to cover, the ATA assumed that the airlines paid a *pro rata* share of their fuel and non-fuel expenses. When there was insufficient revenues to cover the fuel expenses' *pro rata* share, the ATA called the deficiency a fuel expense recovery shortfall. Similarly, in quarters when sufficient revenues were generated to more than recover added fuel expenses, the ATA called the overrecovery a fuel recovery excess.

In analyzing the ATA data in our Proposed Decision, we noted that the airlines experienced a fuel expense recovery excess, *i.e.* they were able to pass through all increased fuel costs in 6 of 24 calendar quarters of the period, or 25 percent of the time. Alternatively, we observed that if we compared the total revenue allocated by the ATA for payment of fuel costs with the total revenue needed for complete recovery of fuel costs (revenue available plus shortfall), we could postulate that the airlines were able to pass through their increased fuel costs 72 percent of the time. Without drawing any conclusions, we solicited further comments on the appropriate level of proof for airline claimants. With regard to the second-stage procedures, we suggested that a group such as the National Association of State Aviation Officials (NASAO) might act as a conduit for these funds to ensure that the benefits would inure to purchasers of airline tickets and to general aviation.

The Air Transport Association filed comments suggesting that: (i) since we found in the Proposed Decision that Amoco's jet fuel prices were higher than the national average, we should conclude that all airlines that purchased that fuel were overcharged, and refund 100 percent of the funds to commercial airlines; (ii) the ATA information which we analyzed in the Proposed Decision demonstrates that air carriers did not pass through increased fuel costs; (iii) the OHA analysis of the ATA data was flawed because it used an apportioned figure in order to compute the revenues available to recover added fuel expenses and because the OHA double-counted those available revenues when it determined that airlines absorbed only 28 percent of total increased fuel costs during the period.

We do not agree with the ATA that the evidence in the record conclusively establishes that the airline absorbed all of Amoco's price increases. First, it is fallacious to assume that because Amoco's jet fuel prices were generally above the national average prices, Amoco was overcharging for its product. In computing any "average" industry price, there will always be prices above and below that average. It is important to remember that in this special refund proceeding no inquiry will be made regarding precisely when and to what extent overcharges occurred. In fact, we do not know nor is it the purpose of this proceeding to determine whether Amoco's pricing practices for its sales of jet fuel were unlawful. As noted earlier in this Decision, rather than focusing on Amoco's regulatory practices during the period we have allocated the settlement fund among the different product groups on the basis of the firm's sales volumes during the consent order period. Moreover, as we noted in the Proposed Decision, the ATA information indicated that in 6 of 24 calendar quarters of the period the airlines had a "fuel expense recovery excess," which indicated that they were able to pass through all increased fuel costs to customers during those periods. We therefore reject the ATA's contention that it had clearly demonstrated that no alleged overcharges were passed on to passengers and that the entire jet fuel pool should be distributed only to air carriers.

Finally, we have determined that the ATA's criticisms of the manner in which the proposed decision analyzed its data are without merit. The association maintains that we should not have adopted its method of apportioning revenues available to cover increased fuel costs based on the ratio between fuel and non-fuel costs during the period. The ATA argues that if it had instead allocated revenues to cover non-fuel expenses first there would have been no revenues remaining to cover fuel expenses. There is no logic in selecting one category of expenses in preference to others. As the ATA admitted in one of its submissions, "this would not have been an accurate portrayal of the situation. . . ." September 28, 1982 Comments by ATA at 7. In addition, we have reviewed our analysis and have found erroneous ATA's characterization as "double-counting" the method which we used to calculate the ratio of revenues available to cover fuel expenses to total actual fuel expenses. While it is true that the available revenues figure was a component of both the numerator and the denominator of the fraction which represented the percentage of fuel costs passed to consumers, it is always necessary in making such a comparison to include in the denominator all components of the whole. Thus, contrary to ATA's assertion, it is not double-counting to say, for example, that if $1 out of every $4 dollars spent by a business was spent for fuel, then ¼ of its money was spent for fuel, even though the $1 was a part of the $4 denominator.

We hesitate to adopt a presumption for this product pool. As we stated in the Proposed Decision, various conclusions could be reached from the data in the record. We, therefore, requested that commenters supply additional material upon which to base a presumption of injury. However, despite our requests, we have had insufficient input from commenters as to the proper conclusions to be drawn from the record. We have therefore concluded that no presumption in this area should be adopted, and refund applicants may address the tentative conclusions we reached in the Proposed Decision in their applications. In the alternative, applicants may argue that the industry average information in the record is inapplicable to their individual circumstances, or that other information indicates that they did not pass through its increased fuel costs to their customers. The uncertainties discussed above will have to be addressed and resolved in the context of deciding the refund applications when they are submitted by claimants.

With respect to the second stage of procedures applicable to this pool, we received comments from the NASAO and the Airline Owners and Pilots Association (AOPA) in which each group volunteered to administer the distribution of funds to benefit general aviation and flight safety. Since we do not yet know the amount, if any, of the residual funds, we are not prepared to accept either offer. We intend to seek detailed proposals from both organizations when analysis of the first-stage claims is completed.

IX. Procedures for Claims Relating to Alleged Allocation Violations

Claims for refunds based on alleged allocation violations are substantially different than those based on alleged overcharges. Allocation claims are based on the consenting firm's alleged failure to furnish product which it was obliged to supply to the claimant under the DOE allocation regulations, 10 CFR Part 211. An allocation claimant should have been aware of the alleged violation at the time when it occurred, and should have taken some contemporaneous action to mitigate the injury. In addition, the measure of injury from the alleged violation is different for an allocation claimant. In contrast to the *pro rata* volumetric refund share usually given in the case of an alleged price violation, allocation claimants have been awarded refunds in the nature of damages attributable to the monetary loss (if any) which was caused by the failure to deliver product. *See, e.g., Tenneco Oil Co./Research Fuels, Inc.*, 10 DOE ¶ 85,012 (1982). For these reasons we tentatively determined to adopt for allocation claimants the procedures which we implemented in the *Tenneco* special refund proceeding. *See generally Tenneco* at 85,202–03. As in the *Tenneco* case, we proposed that we would exclude from eligibility any allocation claimant which had not contemporaneously complained of Amoco's alleged allocation violation. We stated that an allocation claimant should submit sufficient information to demonstrate that its claim was not spurious, including the best available evidence of the injury which was sustained by the claimant. We held that the burden of establishing eligibility for a refund would rest on the claimant, and that successful claimants would be paid from the respective product pools which we have established.

The only submission which we received that mentioned these proposed procedures was in the nature of a preliminary application for refund. Our experience with these procedures in the *Tenneco* refund case has been satisfactory, and we will therefore adopt the proposed allocation claim procedures in total.

X. Procedures for Filing "Rent Claims"

Several commenters noted that we had not proposed any refund procedures for alleged violations of the regulations controlling the rent which Amoco was permitted to charge lessees of retail outlets. A number of these commenters contended that they were injured when Amoco changed their monthly rental fee from a cents-per-gallon figure to a flat monthly amount. The effect of this change was that lessee's rent were no longer tied to their sales volumes, and these firms allege that they subsequently suffered financial hardship when their sales volumes were restricted by the DOE allocation regulations.

We reiterate that any party alleging an injury as a result of Amoco's regulatory practices during the consent order period may file a claim in this refund proceeding. However, we note that the parties which have raised this issue refer to lease changes that occurred after April 30, 1974. The Temporary Emergency Court of Appeals has held that the DOE's authority to regulate rents directly ended with the expiration of the Economic Stabilization Act of 1970. *Shell Oil Co. v. FEA*, 527 F.2d 1243 (Temp. Emer, Ct. App. 1975). Consequently, a request for a refund based solely on a claim that the rent that Amoco charged after April 30, 1974, was likely to have violated the DOE price controls will not be successsful. Nevertheless, in *Marathon Oil Co. v. FEA*, 547 F.2d 1140 (Temp. Emer. Ct. App. 1976), the court stated that although the agency could not control rents directly, a change in rent charged could be an independent violation of the normal business practices rule set forth in 10 CFR 210.62. Accordingly, a claimant who desires a refund based upon the rent charged by Amoco must show that the increased rent charged by Amoco was likely to have violated § 210.62 of the DOE regulations.

XI. How To Apply for a Refund

Our experience with special refund procedures has taught us that many applicants are confused by the lengthy textual explanations of the refund procedures we have decided to adopt as final. We have drafted these procedures as simply as possible to avoid that problem. The information which refund applicants must supply is set forth below. In Appendix C we have set forth a suggested format that applicants may use to organize the required information. We will nevertheless accept all

applications that contain the necessary information. It is generally the policy of this office to seek additional information from applicants when an incomplete application had been filed but, of course, timely processing and payment of claims will be greatly enhanced it applicants are careful to supply all of the necessary data in their initial application.

A. All Applicants

1. Each application for refund should begin with the caption "Application for Amoco Refund" and the case number, BFF-0007. Applicants should print or type all information.

2. Each applicant should furnish its name, street or post office address, and its telephone number. If the applicant is a business firm, the applicant should furnish any and all other names under which it had operated during the period March 6, 1973 through December 31, 1979, or for whatever shorter period for which the claim is being filed.

3. The application for refund should contain the name and telephone number of the person who prepared the application. If the preparer was someone other than the applicant, the claimant may wish to furnish the name and telephone number of a "contact person" who is familiar with the facts set forth in the application. Unless otherwise specified, the refund check will be issued to the preparer.

4. Each application should set forth the name, address and telephone number of the supplier who sold the applicant the volumes of Amoco crude oil or product for which a claim is being filed. If the supplier was a reseller, the applicant should state whether the reseller was supplied directly by Amoco. If the item was purchased directly from Amoco, the applicant's customer identification number and its sales representative's name and telephone number should be included in the application. If the crude oil or refined product was not Amoco-branded, the applicant should explain the reasons why it believes that the purchased volumes were Amoco crude oil or product.

5. The application should include a list of purchase volumes, by month and by product, for all of the gallons for which a refund claim is being made. This volume number should include only volumes purchased while the particular product was subject to federal price and allocation controls during the consent order period, March 6, 1973 through December 31, 1979. Therefore, claims may be filed only for purchases made before the date of decontrol for a particular covered item. The covered items and their dates of decontrol are listed below:

Item	Decontrolled
Crude oil	Jan. 27, 1981.
Motor gasoline	Do.
Middle distillates	July 1, 1976.
NGL's	Jan. 27, 1981.
Butane and natural gasoline	Jan. 1, 1980.
Residual fuel oil and related products	July 1, 1975.
Aviation gas/jet fuel	Mar. 1, 1979.

The various grades of motor gasoline are one product. The information must be in *gallons,* not in how many dollars the applicant spent for motor gasoline during the period. No invoices need be submitted with the application; however, the applicant should keep its supporting material in a convenient place at least until it has received a refund. We may request copies of invoices or other more detailed supporting material in certain cases.

6. The application should state the total gallonage for which a refund is being requested. Refund applications for amounts less than $15.00 will *not* be processed. We will also dismiss all refund applications that, after we have computed the refund amount due the applicant, result in a refund of less than $15.00.

7. The applicant should report whether it is or has been involved as a party in DOE enforcement or private, § 210 actions. If these actions have terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. Of course, the applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its Application for Refund. *See* 10 CFR 205.9(d).

8. The application *must* contain a signed statement that the applicant swears (or affirms) that all of the information furnished in the application is true and accurate to the applicant's best knowledge, and that the signer understands that anyone who is convicted of providing false information to the federal government may be subject to a jail sentence, a fine, or both. 18 U.S.C. 1001.

9. A copy of the application will be made available for public inspection in our public Docket Room. If these is confidential information in an application, the claimant should submit the original application and *two* copies of a version with all confidential information deleted. If the application does not contain confidential information, the applicant should submit one copy in addition to the original.

10. Each application must be postmarked no later than May 1, 1983.

B. Motor Gasoline Claimants

The information which a motor gasoline claimant should submit in addition to that listed above will depend upon whether the applicant elects to have its application analyzed using the presumption applicable to it. The formula for calculating a refund using the presumption method is as follows:

Dollar amount of refund = claimant's purchase volumes x claimant's applicable distribution level percentage x volumetric amount ($.00089 as of Dec. 17, 1982)

The following chart lists the applicable distribution level percentages:

Level of distribution	Percentage
Wholesalers (noncommission only)	34
Retailers	40
Direct-retailer supplied consumers	60
Other retailer-supplied consumers	26
Jobber-supplied consumers	66
Direct-supplied consumers	100

By direct-retailer supplied we mean that the fuel was obtained from a retailer who was directly supplied by Amoco.

A motor gasoline claimant that elects to use these presumptions in filing an application for refund needs supply only the following information:

1. The information listed under "All Applicants."

2. A statement that the applicant elects to use the presumption method.

3. The claimant's applicable distribution level percentage, or a statement that the claimant is unable to determine its level of distribution.

An applicant for a motor gasoline refund that does not elect to take under the presumptions must demonstrate that it absorbed the alleged overcharges and was thereby injured. Applicants who fail to make that showing will in any case receive the presumption level. The information which the wholesaler or retailer applicant must supply for us to analyze its application is as follows:

1. The information listed under "All Applicants."

2. A statement that the applicant does *not* elect to use the presumption method.

3. The applicant's monthly, non-cumulative "banks" of unrecouped product costs.

4. If the applicant had only one supplier, the application should list by month the volume of product purchased and the prices at which the applicant purchased and sold the Amoco motor gasoline. For example: May 1975, purchased product at 34.4 cents per gallon and resold it at 38.0 cents per gallon.

5. If the claimant had more than one motor gasoline supplier, the application should include the names of those suppliers, the volumes purchased from each supplier during each month of the refund period, the monthly prices paid to each supplier and the price at which the product was sold.

6. The claimant should also state where the price information supplied for Item 4 or 5 came from (*e.g.*, books, invoices, etc.) and indicate where those records are located.

C. Middle Distillate Claims

Middle distillates were subject to price and allocation controls only during the period March 6, 1973 through June 30, 1976. Refund applications based upon volumes purchased after June 30, 1976 will be denied.

Again, the amount and type of information required of an applicant will depend upon whether it elects to use the presumption method. If a claimant elects to use the presumption method, its refund will be calculated according to the following formula:

Dollar amount of refund. = claimant's purchase volumes. × Claimant's applicable distribution level percentage. × volumetric amount ($.00089 as of 12/17/82)

The following chart lists the applicable distribution level percentages:

Level of distribution	Percentage
Non-commission resellers	38
Reseller-supplied consumers	62
Direct-supplied consumers	100

A middle distillate claimant that elects to use these presumptions in applying for a refund need supply only the following information:

1. The information listed under "All Applicants."

2. A statement that the applicant elects to use the presumption method.

3. The claimant's applicable distribution level percentage, or a statement that the applicant is unable to determine which distribution lebel percentage is applicable.

An applicant for a middle distillate refund that does not elect to use the presumption method must furnish information to demonstrate that it absorbed the alleged overcharges and did not pass them on to its customers. Applicants who fail to make that showing will, in any event, be paid the appropriate presumption refund. The information that such an applicant should provide is the same as that listed as Items 1 through 6 above for non-presumption motor gasoline clamaints.

C. NGL, Residual Fuel Oil, Lubricating Oil and Industrial Grease Claims

In addition to the information listed under "All Applicants", a claimant in this category must submit evidence to establish that they did not pass on the alleged injury to their customers. For example, a firm may submit market surveys to show that price increases to recover alleged overcharges were infeasible. Another method a claimant may use to establish that is absorbed the alleged overcharges is to submit the information listed as Items 1 through 6 for non-presumption-type motor gasoline claimants.

D. Jet Fuel/Aviation Gasoline Claims

The precise nature of the information that claimants in this category should provide in addition to the information listed under "All Applicants" will be left open. These claimants should furnish information sufficient to demonstrate that they were unable to pass through the alleged overcharges to their customers. These applicants should read carefully and respond to our analysis of the data concerning the commercial airlines industry in the present determination and in our proposed decision.

E. Allocation Claimants

Allocation claimants should furnish all of the information listed under "All Applicants" except for Item 5, since presumably each allocation claimant will contend that it was denied the opportunity to purchase volumes of allocable products to which it was entitled. Allocation claimants should under Item 5 furnish information as to the circumstances under which the alleged Amoco obligation to supply arose, the volumes not offered to the applicant, and the injury suffered by the applicant as a result (*e.g.*, profits due to inability to obtain substitute products, losses caused by purchasing higher-priced products, etc.). Allocation claimants *must* have previously and contemporaneously complained about the alleged allocation violation by filing a complaint with the DOE, a State agency, or a State or Federal court. This previous complaint should be described in the application.

F. Rent Claims

As noted above, the Temporary Emergency Court of Appeals has held that after April 30, 1974, the agency did not have the authority to directly control the rents charged the firms in the oil industry. The court has also held that notwithstanding this lack of authority, a change in the rent charged could be a violation of the normal business practices rule set forth in § 210.62 of the DOE regulations. Consequently, any applicant that claims a refund relating to rent increases after April 30, 1974 must submit information that will show that there is a likelihood that the change in rent charged violated the normal business practice rule. Each claimant should furnish copies of the prior lease and the allegedly unlawful lease, and explain why it believes that the new lease violated the provisions of § 210.62.

G. Group Claims

A group application filed by any organization should be filed after the association has collected the necessary information for each applicant. The group may, after verification, present in summary form the volume information required in Item 5. (*21*) Refunds approved will be paid by checks issued to individual members of the group.

H. State Government Claims

No State government claims except those based on direct purchases of Amoco products should be filed at this time. The Office of Hearings and Appeals will contact the State governments well in advance of the appropriate time for filing State proposals for distribution of refunds for the benefit of consumers.

XI. Conclusion

In the foregoing determination we have reviewed the refund procedures which we tentatively adopted in our August 9 decision in light of the written and oral comments which we received during the two-month comment period. We discussed all of the comments and made significant adjustments to our proposed methodology where warranted. We have concluded that we should adopt as final the first-stage procedures set forth in the present Decision and Order. We shall set as the deadline for filing Applications for Refund for a portion of the Amoco settlement fund May 1, 1983, a date

more than 90 days after the required **Federal Register** publication of this Decision and Order. *See* 10 CFR 205.283(b).

It Is Therefore Ordered That:

Applications for Refund from the funds provided by the Standard Oil Company (Indiana) shall be filed and processed in the manner set forth in the foregoing Decision.

Dated: December 23, 1982.

George B. Breznay,

Director, Office of Hearings and Appeals.

Notes

(*1*) At the September 30 hearing, we established October 8, 1982 as the deadline for final submissions in this proceeding. Sept. 30 Transcript at 188. We extended the deadline to October 13 when delivery of the hearing transcript to the OHA Public Docket Room was delayed. We have also included in our consideration comments received shortly after that date.

(*2*) The transactions excluded from coverage by the consent order involve crude oil producing properties whose classification as a stripper well property by Amoco has been challenged by the DOE on the grounds that injection wells may not be counted as "wells." *See geneally* Garrett Production Co., 8 DOE ¶ 83,034 (1981), for a description of this long-disputed question. On July 29, 1982, the Temporary Emergency Court of Appeals ruled in favor of the DOE on the injection well issue. Energy Reserves Group, Inc. v. DOE, No. 10–39 (Temp. Emer. Ct. App., July 29, 1982).

(*3*) The parties that have contended that they should be given priority status are the Army and Air Force Exchange Service, which has instituted a lawsuit against Amoco in federal district court alleging injury due to Amoco's discontinuation of a 3 cent per gallon discount; Tosco Corporation, which alleges that it has been injured in the amount of $12.2 million due to alleged abuses of the Crude Oil Entitlements Program by Amoco and other refiners; the Illinois Service Station Operators Association, which filed one of the complaints against Amoco that formed the basis for the OSC's audit of the firm; and Jax Car Wash, which alleges injury due to Amoco's substantial increase in the rent charged for operation of its service station.

(*4*) One commenter contended that Amoco's interaffiliate crude oil transfers should be included in our calculation of the appropriate division of the fund between crude oil and refined products. The commenter maintained that if Amoco miscertified any of the crude oil which it sold to its refining subsidiary, that transaction would affect Amoco's overall entitlements position. Even though the preceeding statement might be valid in theory, we believe that the use of a crude oil revenue figure which included interaffiliate sales would be misleading for purposes of allocating refunds between crude oil and refined products. A vertically-integrated oil company such as Amoco has a number of different profit centers (e.g., production, refining, and marketing). When an interaffiliate transfer of crude oil from the production division to the refining division occurs, the production division records the revenues from the sale, and the refining division accounts for the transaction by recording an expense item to reflect the cost of the crude oil obtained from its production affiliate. The amount of the transaction reflected in the accounts of the two divisions is eliminated in the process of consolidating the various intercompany accounts, since the production revenue figure is offset by the refining expense figure. The allocation of refunds between crude and refined products is based on the ratio of crude revenues to total revenues from all covered products. If the numerator were increased by the amount of interaffiliate crude revenues, the ratio would be distorted because the refined products revenue figure included in the denominator has already been reduced by the expense of interaffiliate crude transfers. Only if there had been tier miscertification violations on every barrel of crude oil sold by Amoco production to Amoco refining would it be logical to include interaffiliate crude revenues in the numerator, since the refined products revenue figure in the denominator would have included entitlement sales revenues which Amoco earned by refining the miscertified crude oil. Since we are dealing with a consent order, it is impossible to ascertain whether there were any price violations on the crude oil involved in intercompany transfers, and whether those alleged violations all involved miscertifications. In balancing these competing considerations, it is our opinion that the possible harm of including interaffiliate crude revenues outweighs any incremental benefits that might be gained by increasing the size of the crude oil refund pool to account for the very remote possibility that a tier miscertification occurred on every barrel of crude oil that was transferred from Amoco production to Amoco refining.

(*5*) Of course, Amoco may furnish voluntarily to its customers whatever information it wishes to provide.

(*6*) Most of Amoco's commission agents were converted to independent jobbers during 1976 when Amoco substantially changed its marketing strategy in some regions and sold its bulk plants to the agents who were operating them. There is no question that such an independent marketer is eligible to file a claim for the volumes it sold after it became independent.

(*7*) Some states suggested that the product pools be distributed on the same basis as the crude oil pool. We have decided not to do so because it would overcompensate consumers in states where Amoco sold few products, *e.g.*, California, at the expense of consumers in states where Amoco was a major supplier, *e.g.*, Illinois.

(*8*) The Entitlements Program, 10 CFR 211.67, was part of the comprehensive program administered by the DOE for the mandatory pricing and allocation of crude oil, residual fuel oil and refined petroleum products. The Entitlements Program was designed to alleviate certain disruptions and inequities in the United States petroleum industry originally attributable to the Arab oil embargo of 1973. During the latter half of 1973 significantly less foreign crude was available for domestic consumption than before and foreign crude oil prices quadrupled. In an effort to minimize the inflationary effect of foreign oil prices on the United States economy and encourage domestic production, the Federal Energy Office promulgated a regulatory program which provided for the control of prices for most crude oil produced in the United States. See 10 CFR 212.73 and 39 FR 1923 (1974). This program was embodied in the Mandatory Petroleum Price Regulations.

The price regulations set a ceiling price on "old" or "lower-tier" crude oil, *i.e.* domestic crude oil produced from a particular property where that production was equal to or less than the level of production from that property in the same month in 1972. In order to encourage increased domestic production, the regulations permitted "new" or "upper-tier" crude oil, that is, crude oil produced in excess of the 1972 level, to be sold at the free market price. Certain additional production, *inter alia*, newly discovered crude oil and production from stripper well properties, was also exempt from the price controls.

The price disparity between foreign crude and uncontrolled domestic crude oil, and controlled old oil had an unequal effect on refiners because some refiners had greater access to the cheap old oil than others. Firms which has little or no access to price-controlled old oil were forced to purchase uncontrolled domestic or similarly expensive foreign crude oil. As a result, many small, independent firms, with little or no access to price-controlled domestic reserves, experienced crude oil acquisition costs so high relative to the industry as a whole that those costs threatened to put them out of business.

To remedy these imbalances, the DOE established the Entitlements Program. 39 FR 31650 (1974); 39 FR 39740 (1974). Under the Entitlements Program, refiners with proportionally greater access to cheap old oil made cash payments, in the form of the purchase of entitlements, to refiners with less access to price-controlled oil. The program was designed to restore the competitive viability of the refining industry by generally equalizing among all domestic refiners the benefits associated with access to the lower-priced domestic crude oil.

(*9*) The purpose of this comparison is apparently to determine whether Amoco dealers suffered greater hardships from Amoco's alleged overcharges than other dealers suffered from other refiners' alleged overcharges. In any event, we have not date in the record concerning motor gasoline dealers' average profit margins.

(*10*) We have no concrete data showing when jobbers and retailers were restrained from increasing their prices by operation of the DOE price regulations. However, we note that both groups have alleged in this proceeding that they were seldom able to attain their maximum lawful selling prices throughout the consent order period. *See* Sept. 30 Transcript at 29, 31, and 160–61.

(*11*) The State of Minnesota submitted some figures concerning price elasticity of

demand, but they were taken from studies that either covered a variety of energy sources or covered only a portion of the consent order period. Hence, they have little utility in the present proceeding. Moreover, the graph in Appendix A seems to indicate that during 1979, when a motor gasoline supply shortage existed that would appear to fit the states' definition of a period of inelastic demand, marketers' margins shrank dramatically.

(*12*) The record contains no information concerning any major refiner's profit margins, and we are not certain what relevance they would have to the question of when injury to Amoco's customers most likely occurred.

(*13*) For example, in January 1974 the agency permitted a one-half cent increase, in March 1974 it permitted an additional two cents per gallon increase, and in April 1974 it added another one-half cent per gallon increase as increments that could be added to a firm's May 15, 1973 profit margin to the extent that a firm could justify these as covering increased non-product costs.

(*14*) In fact, the two factors cited by the consumer commenters have also been cited by the marketers as contribution to the injury which they claim to have experienced as a class. For instance, as more cut-rate, unbranded or branded service stations were introduced by refiners during the period, Amoco dealers were less able, due to this added competition, to recoup increased costs. In addition, while it is true that a retailer's variable costs per gallon sold would decline when supplies of gasoline were so short that his operating hours had to be curtailed, the DOE allocation system would have reduced the amount of gasoline available to some fraction of his base period sales volumes, and consequently his fixed costs per gallon sold would increase substantially.

(*15*) The graph which appears in Appendix A has been mechanically reproduced so that it may be printed in the **Federal Register**. The graph which we used for our analysis is much larger and easier to interpret.

(*16*) We split the shared months' injury in half according to the SSDA's suggestion that jobbers and retailers shared injury in that proportion when they were unable ot recover the entire amount of a refiner's price increases. *See* Sept. 30 Transcript at 23–24.

(*17*) For example, evidence in the record indicates that the number of branded retail outlet selling Amoco motor gasoline decreased from 27,545 in 1975 ot 23,492 in 1978. October 12, 1982 Supplementary Comments of the Controller of State of California at Appendix.

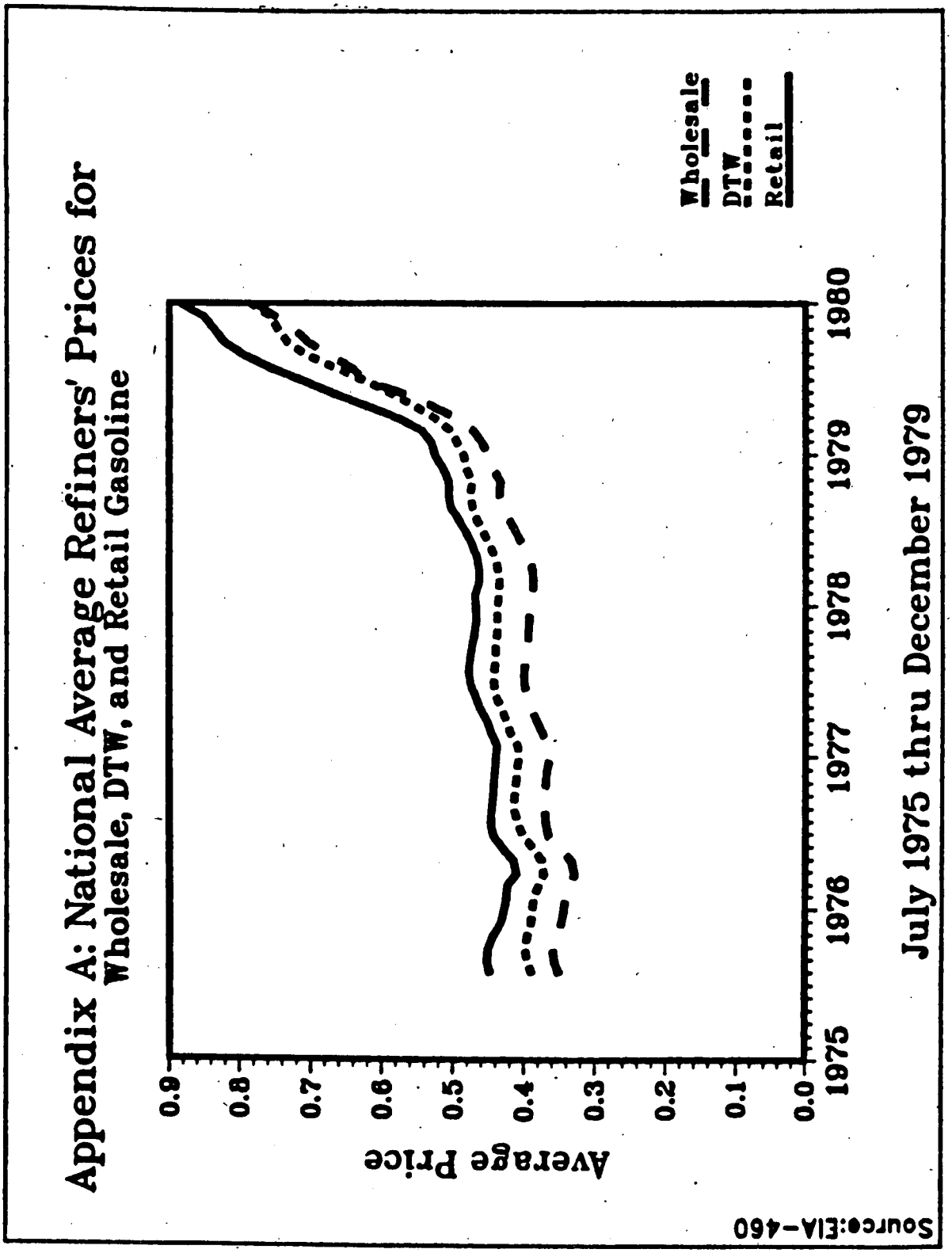
(*18*) We calculated this number by multiplying $.00089, the volumetric amount including interest to December 3, 1982, times 60 percent, the direct-retailer supplied consumer's percentage share, and dividing that number into $15.00, the minimum refund amount.

(*19*) In the cases cited in the text, we first examined the particular refund applicant's banks of unrecouped product cost increases prior to our comparison of its prices with those of its competitors. In those cases, we concluded that the nonexistance of cost banks would indicate that an applicant had passed on all its prices increases to its customers. In the present case the record indicates that, in general, firms selling middle distillates were not able to charge their maximum lawful selling price and thus were accruing banks of increased product cost. *See, e.g.*, Sept. 22 Transcript at 137; Exhibit III to Testimony on Noel Neu, National Associaiton of Truck Stop Operators.

(*20*) Inasmuch as we have concluded that we should presume a 38 percent level of injury, which is greater than the 33⅓ percent level urged by the NOJC Subcommittee, we will not discuss their contention that dealers should be presumed to have been injured because their profit margins dropped by one-half of a cent during one of the three winters for which we had data.

(*21*) This summary should include a statement by the official signing the group application that the association has reviewed schedules of monthly purchase volumes for each person it represents and that the summary figures presented reflect those schedules.

BILLING CODE 6450-01-M



BILLING CODE 6450-01-C

APPENDIX B.—PERCENTAGE SHARES OF REFINED PRODUCTS CONSUMPTION

Alabama	1.47
Alaska	0.39
Arizona	1.01
Arkansas	1.28
California	9.10
Colorado	1.10
Connecticut	1.67
Delaware	0.47
District of Columbia	0.26
Florida	4.40
Georgia	2.24
Hawaii	0.66
Idaho	0.41
Illinois	4.83
Indiana	2.69
Iowa	1.43
Kansas	1.19
Kentucky	1.27
Louisiana	2.23
Maine	0.76
Maryland	1.87
Massachusetts	3.45
Michigan	3.46
Minnesota	1.85
Mississippi	1.29
Missouri	1.96
Montana	0.44
Nebraska	0.78
Nevada	0.37
New Hampshire	0.47
New Jersey	3.76
New Mexico	0.62
New York	7.89
North Carolina	2.22
North Dakota	0.37
Ohio	3.66
Oklahoma	1.35
Oregon	0.98
Pennsylvania	4.62
Rhode Island	0.42
South Carolina	1.21
South Dakota	0.39
Tennessee	1.62
Texas	6.62
Utah	0.58
Vermont	0.24
Virginia	2.56
Washington	1.51
West Virginia	0.56
Wisconsin	1.83

APPENDIX B.—PERCENTAGE SHARES OF REFINED PRODUCTS CONSUMPTION—Continued

Wyoming	0.39
American Samoa	0.02
Guam	0.13
Northern Mariana Islands [1]	0.01
Puerto Rico	1.09
Virgin Islands	0.55

[1] Estimated. Complete data on consumption in all sectors was not available.

Appendix C.—Suggested Format for Application for Refund; Instructions

You may elect to obtain a refund by using either the presumption or the non-presumption method of calculating injury. If you choose to use the presumption method, please complete the attached suggested format. Schedules showing your monthly purchases of gasoline and middle distillates should be attached. "Name of Applicant" is the firm or individual which actually purchased the Amoco product. "Contact person" is the person that is able to provide additional or clarifying information. Refund checks will be made payable and sent to the contact person, unless you indicate otherwise. Check the "Level in the Distribution Chain" that best describes the nature of your business or, if you are a consumer, the way you obtained Amoco product. If you are unsure of your level, attach a statement describing your activities. "Total gallonage" is the number of gallons of Amoco gasoline you purchased between March 6, 1973 and December 31, 1979, and the number of gallons of Amoco middle distillates you purchased between March 6, 1973, and June 30, 1976.

If you wish to show that you were injured to a greater extent than the presumption level of injury, you need to submit significantly more detailed information. First, provide the type of information indicated on the suggested format. In addition, please provide a schedule of your firm's monthly non-cumulative "bank" of unrecouped product costs for the entire period of March 1973 through December 1979. If you stopped calculating a "bank" during that period, tell us when you did so. For the entire period for which you seek a refund, provide a schedule of your monthly volumes purchased, the price you paid for this product, and the price at which the product was sold. Do this for each of your suppliers. Please state where this information came from (*e.g.*, invoices, books, etc.) and indicate the address where those records are now located. This information must be submitted separately for gasoline and middle distillates. Remember that middle distillates were decontrolled on July 1, 1976, and refunds will be based on product purchased before that date. Finally, your application must include the following certification: "I swear (or affirm) that the information contained in this application and attached materials is true and accurate to the best of my knowledge. I understand that anyone who is convicted of providing false information to the federal government may be subject to a jail sentence, a fine, or both pursuant to 18 U.S.C. § 1001."

All submissions must be made on 8½ X 11 paper only. All applications will be available for public inspection. If you believe that information you submit is confidential you must indicate the confidential information, state a reason why that information is confidential, and submit two copies of your application from which confidential information has been deleted.

BILLING CODE 6450-01-M

Application for Amoco Refund--BFF-0007

1. Name of Applicant: _____
Principal Business Location: _____
_____
_____
Telephone: ( ) _____

2. Contact Person: _____
Address: _____
_____
_____
Telephone: ( ) _____

3. Level in Distribution Chain:

Motor Gasoline:

_____ Wholesaler
_____ Retailer
_____ Consumer directly supplied by Amoco
_____ Consumer supplied by retailer directly supplied by Amoco
_____ Consumer supplied by wholesaler
_____ Consumer supplied by retailer not directly supplied by Amoco
_____ Unknown (attach statement)

Distillate:

_____ Reseller
_____ Consumer supplied by reseller
_____ Consumer directly supplied by Amoco

4. Total gallonage for which a refund is requested:
Motor Gasoline _____ Middle Distillates _____

5. Attach to this application schedules showing your purchases of motor gasoline and middle distillates on a monthly basis for the period for which you claim a refund.

6. Name of Supplier: _____
Address: _____
_____
_____
Telephone: ( ) _____

7. Name of Amoco sales representative: _____
Address: _____
_____
_____
Telephone: ( ) _____

8. Amoco customer ID number: _____

9. If you are a reseller, were you at any time between 1973 and 1979 a consignee agent? _____ Yes _____ No. If yes, when were you a consignee agent? From _____ to _____.

10. Was the product you bought Amoco-branded? _____ Yes _____ No. If not, attach an explanation why you believe the product came from Amoco.

11. Have you ever been involved in a DOE enforcement or private Section 210 legal action? _____ Yes _____ No. If yes, attach a copy of any final order issued or, if the action is ongoing, a statement briefly describing the action and its current status.

I hereby elect to use the presumption method of calculating injury and my refund. I swear (or affirm) that the information contained in this application and attached schedules is true and accurate to the best of my knowledge. I understand that anyone who is convicted of providing false information to the federal government may be subject to a jail sentence, a fine, or both pursuant to 18 U.S.C. § 1001.

_____ Date

_____ Signature of Applicant

_____ Title

[FR Doc. 82-35409 Filed 12-29-82; 10:03 am]
BILLING CODE 6450-01-C

Federal Register

Monday
January 3, 1983

Part VII

Federal Home Loan Bank Board

Delegation of Authority Regarding Holding Company Acquisition and Debt; Organization, Merger, and Acquisition of Interim Savings and Loan Associations and Interim Savings Banks; and Processing of Applications; Final Rules

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 584

[No. 82-786]

Delegation of Authority Regarding Holding Company Acquisition and Debt

December 8, 1982.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is adopting regulations which delegate to its Principal Supervisory Agents the following actions: (1) Approval of acquisitions of insured institutions where the assets of both acquiring and acquired institutions do not exceed $1,000,000,000, provided certain competitive and other criteria are met; (2) approval of applications by savings and loan holding companies to substitute debt for debt which has previously been approved; (3) approval of applications to incur debt up to the greater of $1,000,000 or 50 percent of the consolidated net worth of the applicant holding company, provided the applicant holding company agrees to limit the dividends of the acquired institution to 50 percent of its net income; and (4) waiver, on supervisory grounds or in *de minimis* acquisitions, of the conditions that an applicant holding company limit dividends it receives from the acquired institution and guarantee the insured institution's reserve requirements.

EFFECTIVE DATE: December 31, 1982.

FOR FURTHER INFORMATION CONTACT: Laura Patriarca, Attorney, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552 (202) 377-6454.

SUPPLEMENTARY INFORMATION: On November 12, 1981, the Board, as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), amended its regulations governing savings and loan holding companies ("Holding Company Regulations") (12 CFR Parts 583-589) to delegate to the Board's Principal Supervisory Agents, among other things, the authority to approve certain acquisitions of institutions the accounts of which are insured by FSLIC, in order to expedite the processing of routine holding company applications. 46 FR 57027. On August 26, 1982, by Board Resolution No. 82-579, the Board proposed to further amend those regulations to permit delegated approvals of acquisitions of and by larger institutions, and to revise the competitive-criteria acquisitions must meet to be approved under delegated authority in order to conform with those criteria proposed the same day for automatic approvals of mergers. 47 FR 39836. The proposed amendments would also have permitted a Principal Supervisory Agent to waive the condition that an applicant holding company maintain an acquired institution's net worth at the statutorily required minimum in cases where the acquisition represents less than five percent of the acquiring company's holdings in insured institutions or on supervisory grounds. The same grounds would permit a Principal Supervisory Agent to waive the requirement that an applicant holding company must agree not to receive dividends from the acquired institution in excess of 50 percent of its net income. Finally, the proposed amendment would have permitted Principal Supervisory Agents to approve applications for holding companies to substitute debt for debt previously approved and to approve new debt up to the greater of $1,000,000 or 50 percent of the applicant holding company's consolidated net worth, subject to a restriction on the payment of dividends by the subsidiary insured institution to 50 percent of its net income. Except for the proposed anticompetitive criteria discussed below, the Board has determined to adopt the amendments as proposed. (Note that the regulation refers to "Supervisory Agents" in conformity with § 583.5 of the Board's Regulations for Savings and Loan Holding Companies which defines the term to mean the President of a Federal Home Loan Bank.)

Summary of Comments

The Board received a total of 10 public comments in response to its proposal. The commenters included three federal savings and loan associations, five state-chartered savings and loan associations, and two savings and loan trade associations. All of the commenters supported the proposed amendments, although several suggested different or additional amendments regarding certain aspects of the proposal. The comments are reviewed in detail below.

Antitrust Considerations for Holding Company Acquisitions

Pursuant to the regulations as amended on November 12, 1981, an acquisition could be approved under delegated authority if it met criteria formulated in terms of the amounts of residential mortgage loans and savings accounts held by institution(s) to be acquired and by subsidiary insured institution(s) of the acquiring company. In counties where both sets of institutions had offices prior to the acquisition, neither mortgage loans nor savings deposits could exceed 10 percent or 15 percent if the Supervisory Agent obtained the concurrence of the Office of General Counsel that the acquisition was not in violation of the federal antitrust laws. In counties in which only the institution(s) to be acquired had offices prior to the acquisition, neither mortgage loans nor savings deposits could exceed 12 percent unless the Office of General Counsel similarly concurred, in which case a 15-percent cap applied. Delegated approvals were confined to those acquisitions involving institution(s) to be acquired of less than $100 million in assets and subsidiary insured institution(s) of the acquiring company of less than $500 million.

Under the proposed delegation, an entirely new set of criteria, based on deposits held by the involved institutions, would have applied. In addition, the proposal would have required referral to Washington only of applications in which the assets of both the insured institution(s) of the acquiring company and the institution(s) to be acquired exceed $1 billion. Three commenters suggested that the Board delegate approval of acquisitions involving institutions with assets of up to $2 or $3 billion. The Board continues to believe, however, that it is appropriate to require Washington review of acquisitions of or by large institutions and, accordingly, has determined to adopt the amendments as proposed.

Under the proposal, if the Department of Justice issued an advisory opinion asserting that the proposed acquisition would have a substantially adverse effect upon competition, the acquisition could not be approved under delegated authority. The Board has decided to delete this criterion and to adopt the Herfindahl-Hirschman Index, as discussed in companion Board Resolution No. 82-785 adopted today, pertaining to merger processing.

The proposal would have required a Principal Supervisory Agent to analyze an acquisition in accordance with antitrust standards set out in an acquisition table and would have established separate criteria for potential-competition acquisitions. (The acquisition table was substantially the same as the one adopted today and will not be reproduced here.) As discussed in companion Board Resolution No. 82-785, the Board has determined to revise its

antitrust criteria, including the criteria applicable to potential-competition acquisitions.

Under the revised antitrust standards as adopted, acquisition applications will be approved under delegated authority if:

(1) The aggregate assets of the institution(s) to be acquired or the aggregate assets of the subsidiary insured institution(s) of the acquiring company are less than $1 billion; and

(2) The subsidiary insured institution(s) of the acquiring company and of the institution(s) to be acquired would have, together, less than 25 percent of the total deposits held by depository institutions in the relevant geographic area where before the acquisition there were five or fewer depository institutions, and the aggregate share of total deposits would not constitute one of the three largest shares of total deposits and would increase by less than five percent.

(3) The subsidiary insured institution(s) of the acquiring company and of the institution(s) to be acquired would have, together, less than 30 percent of the total deposits held by depository institutions in the relevant geographic area where before the acquisition there were six to 11 depository institutions, and the aggregate share of total deposits would not constitute one of the two largest shares of total deposits and would increase by less than 10 percent.

(4) The subsidiary insured institution(s) of the acquiring company and of the institution(s) to be acquired would have, together, less than 35 percent of the total deposits held by depository institutions in the relevant geographic area where before the acquisition there were 12 or more depository institutions, and the aggregate share of total deposits would not constitute one of the two largest shares of total deposits and would increase by less than 15 percent.

(5) The Herfindahl-Hirschman Index ("HHI")[1] in the relevant geographic area was less than 1800 before the acquisition, and the increase in the HHI caused by the acquisition is less than 50.

(6) In an acquisition involving potential competition, the Supervisory Agent determines that the subsidiary insured institution(s) of the acquiring company is not one of three or fewer potential entrants into the relevant geographic area.

The following table summarizes the thresholds above which Board review of a proposed acquisition would be required under differing market structures.

THRESHOLDS OF MARKET STRUCTURE CRITERIA REQUIRING BOARD REVIEW

Delegated Approval if— [2]

The combined deposit rank of the subsidiary insured institution(s) of the acquiring company and of the insured institution(s) to be acquired is—	And the number of competitors in the relevant geographic area before the acquisition is—	And the combined share of deposits of the subsidiary insured institution(s) of the acquiring company and of the insured institution(s) to be acquired in a direct competition acquisition is—	And the increase in the share of deposits is—
At least 4th	5 or fewer	Less than 25 percent	Less than 5 percent
At least 3rd	6 to 11	Less than 30 percent	Less than 10 percent
At least 3rd	12 or more	Less than 35 percent	Less than 15 percent

[2] No acquisition may be approved under delegated authority where the HHI in the relevant geographic area exceeds 1800 before the acquisition and as a result of the acquisition the increase in the HHI is 50 or more, or where both the subsidiary insured institution(s) of the acquiring company and the insured institution(s) to be acquired have assets of $1,000,000,000 or more.

Community Reinvestment Act

Under the previous delegation of authority, no subsidiary insured institution of the acquiring company could have received a less than satisfactory rating with respect to its compliance with the Community Reinvestment Act for an acquisition to be approved by the Principal Supervisory Agent. This requirement has been modified to permit delegated approval if the deficiency is in the process of being resolved to the satisfaction of the Principal Supervisory Agent. In addition, no serious, uncorrected deficiencies may exist with respect to the Board's nondiscrimination regulations for an acquisition to be approved under delegated authority.

Delegation of Debt-Approval Authority

The final amendment modifies the previous delegation of authority to the Board's Principal Supervisory Agents (*see* Board Resolution No. 80–202, dated March 26, 1980) to approve applications to incur debt. As previously provided, applications to incur debt up to the greater of $1 million or five percent of the consolidated net worth of the holding company could be approved by the Principal Supervisory Agent. That authority has now been increased to the greater of $1 million or 50 percent of the consolidated net worth of the holding company and the Principal Supervisory Agent is authorized to impose a condition limiting dividends paid by the acquired insured institution to 50 percent of the institution's net income. One commenter suggested removing any limit on the amount of debt a Principal Supervisory Agent may approve. The Board continues to believe, however, that large debt applications should receive Washington review and has determined, accordingly, to adopt the debt-approval delegation as proposed.

The final amendment also authorizes the Board's Principal Supervisory Agents to approve applications to substitute debt for debt already approved. The Board originally delegated this authority pursuant to Board Resolution No. 80–202, dated March 26, 1980, but has determined to incorporate it into this regulation for clarity.

Delegation of Authority To Waive Conditions on Certain Acquisitions by Savings and Loan Holding Companies

The amendment also modifies two of the conditions under which Principal Supervisory Agents may approve acquisitions pursuant to the authority delegated by Board Resolution No. 81–677, November 21, 1981 (46 FR 57027). Those conditions require that the acquiring company agree to limit dividends from the acquired insured institution to 50 percent of net income and to maintain the net worth of the insured subsidiary at the level required of institutions insured for 20 years or longer. The amendment authorizes the Principal Supervisory Agent to waive either or both of these conditions for supervisory reasons or where the assets of the acquired institution will constitute less than five percent of the acquiring company's assets in insured institutions. One commenter suggested permitting Principal Supervisory Agents to waive net-worth and dividend restrictions for all first-time acquisitions without regard to the size of the insured institution to be acquired. However, the Board is revising this delegation to make clear that the *de minimis* acquisition exception is available only to savings and loan holding companies that have not been required to restrict the dividends or guarantee the net worth of the subsidiary insured institutions they control. The Board believes it

[1] The HHI is an index of market concentration, and is the sum of the squares of all market shares of all depository institutions in the relevant geographic area. Thus, if a relevant geographic area has three depository institutions with total deposit shares of 50, 30, and 20 percent, respectively, the HHI is 3800 (50 squared (2500) plus 30 squared (900) plus 20 squared (400)).

appropriate to require Washington review of any waiver request from a company acquiring its first insured institution or from a savings and loan holding company that is subject to net-worth and dividend-restriction conditions at the time it applies to acquire another subsidiary insured institution.

Regulatory Flexibility Act Certification

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (September 19, 1980), the Chairman certifies that the amendments will not have a significant impact on a substantial number of small entities. The regulations provide for delegated approval of certain acquisition applications in the least burdensome and most efficient manner and generally give subject institutions greater flexibility. The Board believes that the amendments will benefit small institutions by reducing paperwork and delay but will not have a significant economic impact on institutions.

Because it is in the public interest to reduce unnecessary delay in application processing and to allow managerial decisions to be planned on a calendar-year basis, the Board has determined that the full 30-day delay of effective date following publication of the regulations pursuant to 12 CFR 508.11 and 15 U.S.C. § 553(d) is unnecessary. The amendments will take effect on December 31, 1982, and will apply to all applications filed and deemed complete on or after that date.

Accordingly, the Board hereby amends Part 584, Subchapter F, Chapter V of Title 12, *Code of Federal Regulations*, as set forth below.

List of Subjects in 12 CFR Part 584

Acquisitions, Delegation of authority, Holding companies, Savings and loan associations, Savings and loan holding companies.

SUBCHAPTER F—REGULATIONS FOR SAVINGS AND LOAN HOLDING COMPANIES

PART 584—REGULATED ACTIVITIES

1. Revise paragraphs (g)(1) (iii), (iv), (vi), (2) and (3) of § 584.4, as follows (for the convenience of the user, the introductory text of paragraph (g)(1) is reprinted without charge):

§ 584.4 Acquisitions.

* * * * *

(g) *Approval by the Supervisory Agent.*

(1) Any acquisition that may be approved under this section by the Corporation may be approved by a Supervisory Agent, provided that all of the following conditions are met:

* * * * *

(iii) The company will service its debt without receiving dividends from the acquired insured subsidiary in excess of 50 percent of the subsidiary's net income per year on a cumulative basis, and the company agrees in writing that it will not receive dividends from the acquired subsidiary in excess of that amount, unless waived by the Supervisory Agent (*a*) on supervisory grounds; (*b*) in cases where the assets of the institutions to be acquired will constitute less than five percent of the assets of the insured subsidiary institution(s) of the acquiring company for acquisitions by savings and loan holding companies that have not agreed to restrict the dividends received from, or guarantee the net worth of, its subsidiary insured institution(s);

(iv) The company agrees in writing that it will ensure that the subsidiary insured institution meets the minimum statutory reserve and net-worth requirements applicable to institutions insured for 20 years or more, as set out in § 563.13 of this Chapter, and, where necessary, will refuse additional equity capital in a form satisfactory to the Supervisory Agent and sufficient to effect compliance with the requirements, unless waived—(*a*) on supervisory grounds; (*b*) in cases where the assets of the institutions to be acquired will constitute less than five percent of the assets of the insured subsidiary institution(s) of the acquiring company for acquisitions by savings and loan holding companies that have not agreed to restrict the dividends received from, or guarantee the net worth of, its subsidiary insured institution(s);

* * * * *

(vi) No subsidiary insured institution of the acquiring company (other than an institution that is neither insured by the Corporation nor chartered by the Board) has received on its most recent examination a rating of less than satisfactory with regard to its compliance with the Community Reinvestment Act and the regulations issued thereunder or is seriously deficient with respect to the Board's nondiscrimination regulations, unless the rating or other deficiencies have been or are being resolved to the satisfaction of the Supervisory Agent;

* * * * *

(2) Where the acquisition comes within paragraph (a) (1) or (2) of this section or the acquisition would be of two or more insured institutions under paragraph (b) of this section, the following conditions must also be met:

(i) The Supervisory Agent determines that the acquisition will serve the convenience and needs of the local community of every insured institution to be acquired;

(ii) The aggregate assets of the institution(s) to be acquired or the aggregate assets of the subsidiary insured institution(s) of the acquiring company are less than $1 billion;

(iii) The subsidiary insured institution(s) of the acquiring company and of the institution(s) to be acquired would have, together, less than 25 percent of the total deposits held by depository institutions in the relevant geographic area where before the acquisition there were five or fewer depository institutions and the aggregate share of total deposits would not institute one of the three largest shares of total deposits and would increase by less than five percent;

(iv) The subsidiary insured institution(s) of the acquiring company and of the institution(s) to be acquired would have, together, less than 30 percent of the total deposits held by depository institutions in the relevant geographic area where before the acquisition there were 6 to 11 depository institutions and the aggregate share of total deposits would not constitute one of the two largest shares of total deposits and would increase by less than 10 percent;

(v) The subsidiary insured institution(s) of the acquiring company and of the institution(s) to be acquired would have, together, less than 35 percent of the total deposits held by depository institutions in the relevant geographic area where before the acquisition there were 12 or more depository institutions and the aggregate share of total deposits would not constitute one of the two largest shares of total deposits and would increase by less than 15 percent;

(vi) The Herfindahl-Hirschman Index in the relevant geographic area was less than 1800 before the acquisition, and the increase in the Herfindahl-Hirschman Index caused by the acquisition is less than 50;

(vii) In an acquisition involving potential competition, the Supervisory Agent determines that the subsidiary insured institution(s) of the acquiring company does not constitute one of three or fewer potential entrants into the relevant geographic area.

(3) For purposes of paragraph (g)(2) of this section, the following provisions apply:

(i) "Total deposits" includes all demand, savings, and time deposit accounts.

(ii) "Depository institution" includes savings and loan associations, building and loan associations, homestead associations, cooperative banks, savings banks, commercial banks, and credit unions.

(iii) A "relevant geographic area" is used as a proxy for the "relevant geographic market," the area within which the competitive effects of an acquisition may be evaluated. The relevant geographic area shall be delineated as follows:

(*a*) A county or similar political subdivision, an area smaller than a county, or an aggregation of counties within which the subsidiary insured institution(s) of the acquiring company and the insured institution to be acquired compete (the "home county").

(*b*) *The commuting test.* If, when using the area delineated in preceding subparagraph (*a*), the acquisition does not meet the market share and concentration criteria set forth in subparagraphs (2)(ii) through (vii) of this paragraph (g), the relevant geographic area shall be expanded to include an analysis of surrounding areas where the workforce comes in and goes out of the home county on a regular basis.

(*1*) In a Standard Metropolitan Statistical Area ('SMSA"), the relevant geographic area will include any county to which 20 percent of the home county's workforce commutes and any county from which 20 percent of the workforce commutes to the home county. [These calculations may be obtained from the Census, Table p–2, Social Characteristics of the Population.]

(*2*) In a non-SMSA, the relevant geographic area will include any county to which 20 percent of the home county's workforce commutes and any other county in which depositors have access to depository institutions that are located approximately the same distance from their homes as are the depository institutions in the home county. [Data on households are available from the Census.]

(*c*) *The advertising test.* If, when using the area delineated in preceding subparagraph (*a*) and (*b*), the acquisition does not meet the market share and concentration criteria set forth in subparagraphs (2) (ii) through (vii) of this paragraph (g), the relevant geographic area shall be further expanded to include counties where competition between institutions is demonstrated by newspaper advertising. Where the volume of sales of a newspaper originating in a county other than the county of the institution to be acquired equals 50 percent of the households of the county of the association to be acquired, the county from which the newspaper originates will be included in the analysis if the insured institution to be acquired advertises regularly in that newspaper. [Data on households are available from the Census; data on sales are available from newspaper circulation offices.]

2. Add paragraph (f) to § 584.6 as follows:

§584.6 Holding company indebtedness.

* * * * *

(f) *Approval by the Supervisory Agent.*

(1) Applications to substitute debt for debt which has been approved previously pursuant to this section may be approved by the Supervisory Agent, provided that the substituted debt would not impose an unreasonable or inprudent financial burden on the applicant or be injurious to the operation of any subsidiary insured institution.

(2) Applications to incur debt up to the greater of $1,000,000 or 50 percent of the consolidated net worth of the applicant holding company may be approved by the Supervisory Agent, provided that the proposed debt would not impose an unreasonable or imprudent financial burden on the applicant or be injurious to the operation of any subsidiary insured institution. The Supervisory Agent may condition the approval of such an application upon the agreement by the savings and loan holding company to limit the dividends of the acquired institution to 50 percent of its net income.

(Pub. L. No. 90–255 (12 U.S.C. 1730a *et seq.*); Reorg. Plan No. 3 of 1947; 3 C.F.R., 1943–1948 comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc 82–35584 Filed 12–30–82; 8:45]

BILLING CODE 6720–01–M

---

12 CFR Parts 541, 543, 545, 546, 552, 562, and 563

[No. 82–788]

Organization, Merger, and Acquisition of Interim Savings and Loan Associations and Interim Savings Banks

Date: December 8, 1982.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is adopting amendments to its regulations governing charter, merger, and holding company applications to facilitate (1) the reorganization of a federally chartered or state-chartered stock association into a holding company form of ownership or (2) the acquisition of an insured institution by a savings and loan holding company. The changes are intended to eliminate duplicative and unnecessary procedures in processing applications filed pursuant to a plan of reorganization that involves a nonoperating or "interim" savings and loan association or savings bank. The Board has also decided to modify certain requirements for combinations involving federally chartered stock associations ("Charter S associations") and interim associations and to eliminate a procedural restriction applicable to all combinations involving Charter S associations.

In addition, pursuant to the Garn-St Germain Depository Institutions Act of 1982, which authorizes the Board, among other things, to charter stock associations and mutual and stock savings banks, the Board is taking this opportunity to indicate its intention to issue, where appropriate, *de novo* stock charters for interim associations and *de novo* stock or mutual charters for interim savings banks for the purposes of facilitating the reorganization of a stock association into holding company form or the acquisition of an insured institution by a savings and loan holding company. In further implementation of the 1982 Act, the Board has determined to delete the requirement that persons organizing a federal association must be local residents of the community the institution will serve.

EFFECTIVE DATE: December 31, 1982.

FOR FURTHER INFORMATION PLEASE CONTACT: Laura Patriarca, Attorney, Office of General Counsel, (202) 377–6454, at 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

Background

On April 15, 1982, the Board promulgated regulations authorizing the chartering of nonoperating federal associations and providing for the insurance of accounts of nonoperating state-chartered institutions, for the purpose of facilitating corporate reorganizations. Because the Board perceived an immediate need to gain experience in processing and monitoring applications involving interim associations, the amendments were adopted as a temporary final rule and a 60-day public comment period was provided. See Bd. Res. No. 82–269; 47 FR

17797, published April 26, 1982. Five comments were received from federal associations and a trade association, and two applications were filed pursuant to the amendments. After reviewing the comments and applications, the Board has determined to retain the regulations substantially as adopted, with some minor modifications as discussed below.

Ordinarily, the formation of a holding company is accomplished when the prospective holding company acquires the stock of the target association through an exchange or tender offer. Similarly, the acquisition by an existing savings and loan holding company of another insured institution involves an exchange or tender offer for all of the stock of the target institution. This is often a less than satisfactory means of proceeding, especially when 100 percent control is desired. An alternative method involves the chartering of a nonoperating "phantom" or interim institution in order to merge it with the association to be acquired. For example, where an association desires to form a savings and loan holding company, an interim institution could be chartered and merged with the association and all of the stock of the association resulting from the merger would be acquired by a company formed to become a savings and loan holding company. Where an existing savings and loan holding company seeks to acquire an insured institution, it could charter an interim institution and merge it with the target institution, subject to the approval of the target institution's shareholders. This method of reorganization or acquisition is attractive because it ensures that, upon approval of the merger by the insured institution's shareholders, the holding company will acquire 100 percent of the shares of the existing institution, a goal which is often difficult to attain through an exchange or tender offer.

The Board believes that the regulations as amended will facilitate the acquisition of stock associations or stock savings banks, whether federally chartered or state-chartered, through a merger with an interim association or an interim savings bank or through any other transaction the Board may approve.

Ratification of Temporary Rules

1. *Reorganization and formation of a holding company using an interim institution*

A stock savings and loan association or shareholders of a stock savings and loan association may reorganize into a holding company structure by taking the following actions:

(1) Form a corporation to become the sole depositor or shareholder in a newly chartered interim federal mutual, federal stock, state mutual, or state stock savings and loan association.

(2) Charter an interim Federal savings and loan association or savings bank, in either stock or mutual form, the only deposit or stock of which is wholly owned by a newly formed corporation.* Alternatively, charter a state stock association, in either mutual or stock form, the only deposit or stock of which is wholly owned by a newly formed corporation.

(3) Merge the interim association with the existing stock association under a plan of merger whereby all outstanding voting shares of the existing stock association convert to like shares of the corporation, thereby causing the newly formed corporation to acquire all of the outstanding voting shares of the association resulting from the merger.

2. *Acquisition using an interim institution*

An existing savings and loan holding company may acquire an existing insured institution by taking the following actions:

(1) Charter an interim Federal savings and loan association or savings bank, in either stock or mutual form, the only deposit or stock of which is wholly owned by a newly formed corporation.* Alternatively, charter a state stock association, in either mutual or stock form, the only deposit or stock of which is wholly owned by a newly formed corporation.

(2) Merge the interim association with the existing stock association under a plan of merger whereby all the outstanding voting shares of the existing stock association convert to shares of the holding company, thereby causing the holding company to acquire all of the outstanding voting stock of the association resulting from the merger.

Board approval must be obtained for the charter, merger, holding company acquisition, and insurance of accounts, as appropriate, pursuant to 12 CFR Parts 543, 546, 552, 563, 571, and 583–589. In determining whether to approve such applications, the Board will consider the proposed transaction in its entirety. The Board will evaluate, as appropriate, the purpose and effect of the overall transaction in light of whether the existing institution's management, or other officials acting on behalf of the institution, are of good character and responsibility, and whether the community need for, and the probability of success of, such an institution justifies the reorganization without unduly injuring other properly conducted existing thrift and home financing institutions. In addition, the approval of the appropriate state authority is necessary for transactions involving state-chartered institutions.

3. *Procedures*

A reorganizing association proposing to organize an interim federal association for the purpose of creating a holding company must file an application for permission to organize pursuant to 12 CFR 543.2. Section 543.2(h) exempts applicants for an interim federal charter from the procedures under that Part which ordinarily require publication of notice and opportunity for oral argument, provided those procedures are required upon filing the related merger and holding company applications.

In most instances, the notice and comment periods will be required by § 584.4(g) of the Regulations for Holding Companies, 12 CFR 584.4(g), upon the filing of an H-(e)(1) application for permission to acquire control of an insured institution. However, a reorganizing association which qualifies for an exemption from prior FSLIC approval of an acquisition pursuant to 12 CFR 584.4 will be required to adhere to the notice and comment procedures under 12 CFR 546.2(d), 552.13(h)(5), or 563.22(b), as applicable, in connection with a merger application.

Under paragraph (h) of § 543.2, the Board will grant approval of the issuance of the charter on the condition that the related merger and holding company applications are approved. After issuance of the charter, applicants must also comply with the completion-of-organization requirements of 12 CFR 543.6, including the requirements that the interim association must qualify as a member of a Federal Home Loan Bank pursuant to 12 CFR 523.1 and meet the requirements necessary to obtain insurance of accounts.

4. *Combinations involving Charter S associations*

The regulations governing mergers of mutual savings and loan associations at 12 CFR Parts 546 and 563, as well as the Board's policy statement on mergers, 12 CFR 571.5, were not changed in connection with the adoption of the Board's temporary rules, except for eliminating duplicative notice and comment periods as described above. However, § 552.13 of the Rules and Regulations for the Federal Savings and Loan System, 12 CFR 552.13, governing

* Under the temporary rule, only interim Federal mutual savings and loan associations may be chartered. Today's amendments permit the chartering of interim Federal stock savings and loan associations, as well as stock or mutual Federal savings banks.

mergers involving federal stock (Charter S) associations, permits the merger of an interim mutual institution into a stock institution. Prior to April 22, 1982, paragraph (C)(1) of that section required that in any combination in which any constituent is a mutual association, the resulting association must be mutually held, except in supervisory merger-conversion cases. As a nonoperating institution, an interim mutual association will have negligible assets; and because the charter is issued only to provide a reorganization vehicle, no significant ownership rights in the interim association can be jeopardized by its merger into a stock institution. Indeed, the merger is the sole reason for the existence of the mutual charter. The Board therefore believes it appropriate to continue to allow stock associations to survive mergers involving interim institutions.

[Today, in a separate action, the Board is further amending § 552.13(c)(1) to permit mergers involving Charter S associations and Federal associations insured by the Federal Deposit Insurance Corporation reflecting changes to the Home Owners' Loan Act, 12 U.S.C. 1462 *et seq.*, made by the Garn-St Germain Depository Institutions Act of 1982. The Board is also amending § 552.13(c)(1) to provide an additional exception to the rule that a mutual association must survive its merger with a Charter S association. This amendment incorporates into § 552.13(c)(1) amendments to §§ 563b.9 and 563b.10 of the Rules and Regulations for Insurance of Accounts (12 CFR 563b.9, 563b.10). *See* Board Res. No. 82-390; 47 FR 24252 (June 4, 1982), which authorizes, on a test-case basis, the filing of applications for the nonsupervisory merger of insured mutual institutions into insured stock institutions. (*See* Board Res. No. 82-791; 47 FR 56985.)]

5. *Minimum capitalization and dispersion of ownership*

Board policy requires that an organizing federal mutual association obtain a minimum of $1-2 million in pledged savings depending upon the population size of the association's service area. The Board imposes similar requirements on applicants for insurance of accounts with respect to the amount of capitalization. [Section 552.13(c)(1) is being further amended today (*see* Board Res. No. 82-791) to permit mergers involving federal associations insured by the Federal Deposit Insurance Corporation and will not be restated here.]

However, minimum capitalization of an interim federal association is not necessary because the newly chartered entity will not operate until after it merges with a fully capitalized association. Accordingly, paragraph (h) of 12 CFR 543.2 does not condition approval of an interim federal association's charter application on meeting any minimum requirement with respect to capitalization. The regulation also exempts interim state institutions seeking insurance of accounts from the usual capital requirements.

6. *Technical holding company status of the reorganizing stock association*

Where an existing institution is using an interim institution as a means of facilitating the formation of a holding company, the existing institution arguably becomes a holding company by virtue of its control of the interim institution. (The same argument would apply to a service corporation or other subsidiary formed to hold the interim institution.) However, because the relationships between the existing institution undergoing the reorganization, its service corporation, and the interim institution are established only to permit the existing institution to reorganize into a holding company form of ownership, the Board requires only a single holding company application to be filed for permission to acquire control of the resulting association.

7. *Preapproval of the activity of investing in the accounts of or owning the stock of an interim institution*

A Charter S association that decides to use a service corporation in connection with its reorganization need not apply for permission for the service corporation to purchase the stock of or invest in the accounts of an interim institution. The Board therefore amended its list of preapproved service corporation activities to include such investments for the limited purpose of facilitating the reorganization of a stock association into a holding company form of ownership.

8. *Approval of the acquisition of a recently converted association in connection with an interim institution merger*

Paragraph 563b.3(i) of the Rules and Regulations for Insurance of Accounts (12 CFR 563b.3(i)) prohibits the acquisition of more than 10 percent of any class of an equity security of an association which has converted to stock form pursuant to 12 CFR 563b.3 within one year of completion of the conversion process, without prior FSLIC approval. Any recently converted association desiring to reorganize into a holding company structure through a merger with an interim association may apply for Board approval in conjunction with its holding company application.

New Amendments

1. *Amendment of definitions*

As previously adopted, § 541.8-1 of the Rules and Regulations for the Federal Savings and Loan System (to be codified at 12 CFR 541.8-1) defines "interim Federal association" to mean a nonoperating savings and loan association chartered by the Board to facilitate a merger or any other transaction the Board may approve, which will result in the acquisition of a stock association by a newly formed or existing savings and loan holding company. This section has been modified by removing the phrase "savings and loan" to conform with another amendment adopted today which broadens the definition of "Federal association" at § 541.8 to include savings banks. *See* Board Res. No. 82-791, 47 FR 56985 (December 22, 1982). Together, the amendments reflect the Board's intention to issue interim charters for savings banks. The definitions of "association," "mutual association," "stock association," and "insured institution" at §§ 546.1, 552.13(b)(6)-(7), 561.1, and 583.6 of the Board's regulations governing mergers and holding company acquisitions (12 CFR 546.1, 552.13(b)(6)-(7), 561.1, 583.6) were amended in April explicitly to include interim federal associations and, where appropriate, interim state-chartered associations. However, the comprehensive revisions to the Board's regulations adopted today (*see* Board Res. No. 82-791) amend the definitions of "association" and "insured institution" at §§ 546.1 and 583.6, respectively (12 CFR 546.1 and 583.6) and need not be restated here. Because of certain of these revisions, the Board is revising the definitions of "mutual association" and "stock association" at §§ 552.13(b)(6)-(7) by removing references to interim associations which have now been rendered unnecessary. Similarly, the definition of "insured institution" at § 561.1 is amended by Board Resolution No. 82-791 and will not be restated here.

2. *Shareholder approval*

For combinations involving federally chartered stock associations (Charter S associations), an affirmative vote of two-thirds of the outstanding voting stock has been required for approval of the combination agreement, except when the Charter S association is the surviving or resulting association and three other conditions, set out at 12 CFR 552.13(i)(3), have been met. One commenter expressed the view that stockholder approval of Charter S combinations involving interim

associations should not be required and suggested a hearing in lieu of a stockholder vote. Another commenter suggested reducing the proportionate number of affirmative votes required to approve a combination.

The Board continues to believe that shareholders must be given an opportunity to approve or disapprove a merger. However, in cases involving the formation of a new holding company, the Board, upon reconsideration, has determined to reduce the affirmative vote requirement from 66⅔% to 50% plus 1 affirmative vote for combinations involving an interim federal or state association as part of the reorganization of a Charter S association. The Board is taking this action because the ownership interests of shareholders of an association reorganizing into a holding company form of ownership do not undergo material substantive change. In addition, the Board notes that any shareholder of a Charter S association combining under § 552.13 has dissenter and appraisal rights under § 552.14. For cases in which an existing holding company acquires control of a Charter S association through a merger with an interim institution, 66⅔% of the Charter S shareholders must vote in favor of the merger.

In addition, the Board is taking this opportunity to eliminate the requirement, for all combinations involving Charter S associations, that Board approval of the combination agreement be obtained before holding a shareholders meeting or soliciting proxies for the purpose of voting on a combination. This procedure ensures that an applicant association would have to bear the expense of soliciting proxies only once because it allowed for the inclusion in the proxy soliciting materials of any conditions the Board may have imposed upon approval of the application. Applicant associations may now decide whether they wish to bear the risk of a second proxy solicitation if the Board imposes material conditions to a merger application approved after the mailing of proxy soliciting materials. The Board is eliminating this requirement because it believes that this is a business decision.

3. *Issuance of charters to interim stock associations and interim stock savings banks and mutual savings banks*

The Garn-St Germain Depository Institutions Act of 1982 authorizes the Board to organize federal stock savings and loan associations and federal mutual or stock savings banks on a *de novo* basis. Regulations are being developed to implement that authority. (In fact, the Board is adopting today regulations concerning *de novo* mutual savings bank charters and conversion of existing institutions to other available charters. *See* Board Resolution No. 82-791.) However, with respect to interim federal associations, the Board wishes to take this opportunity to indicate that it intends to issue *de novo* stock charters for interim federal ("interim Charter S") associations and for interim federal savings banks, as well as *de novo* charters for interim federal mutual savings banks. By organizing an interim Charter S association, a stock association wishing to reorganize into holding company form would have the option of merging into the interim stock association or the interim stock savings bank. Similarly, a savings and loan holding company wishing to acquire another insured institution could charter an interim federal stock association or savings bank into which the target institution could be merged. (Examples of the uses of interim institutions described above apply to all interim institutions, including interim stock and mutual savings banks.) Where a mutually owned interim institution is chartered by the Board or a state authority, the existing stock association will be the surviving institution. However, if an interim state stock association, an interim Charter S association, or an interim federal stock savings bank is utilized in the transaction, the interim institution may be the survivor. The availability of a stock form of institution as an interim association will provide greater flexibility to institutions wishing to reorganize and to holding companies wishing to acquire 100% of the shares of an insured institution.

4. *Individuals need not reside in local community to apply for federal charter*

One commenter questioned whether it is necessary for applicants for a charter for an interim association to be local residents. In light of the amendments to section 5(a) of the Home Owners' Loan Act, 12 U.S.C. 1464, which deleted the descriptive term "local" in directing the Board to issue charters for federal mutual savings banks and to give primary consideration to the best practices thrift institutions *in the United States*, the Board is revising § 543.2(b) of the Rules and Regulations for the Federal Savings and Loan System (12 CFR 543.2(b)) by eliminating the requirement that applicants seeking permission to organize a federal association reside in the local community.

Regulatory Flexibility Act Certification

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (September 19, 1980), the Chairman certifies that the amendments will not have a significant economic impact on a substantial number of small entities. The amendments are essentially technical in nature and will improve the ability of federal associations to perform services for the public. The Board believes that associations reorganizing or savings and loan holding companies acquiring an insured institution will benefit from the amendments by attaining an advantageous corporate form more efficiently than is available without the amendments.

The Board finds that notice and public procedure pursuant to 5 U.S.C. 553(b) and 12 CFR 508.11, with respect to the amendments, are unnecessary because they relieve restriction and it is in the public interest to immediately make available to insured institutions the opportunity to reorganize with greater flexibility. The Board also finds the 30-day delay of the effective date following publication of such amendments as prescribed in 5 U.S.C. 553(d) and 12 CFR 508.14 is unnecessary for the same reasons.

List of Subjects in 12 CFR Parts 541, 543, 545, 546, 552, 562, and 563

Federal Home Loan Bank Board, Holding companies, Savings and loan associations.

Accordingly, the Board hereby amends Parts 541, 543, 545, 546, and 552 of Subchapter C and Parts 562 and 563 of Subchapter D Chapter V of Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 541—DEFINITIONS

1. Sections 541.8-1 is revised and §§ 541.8-2 and 541.8-3 are restated without change for the reader's convenience as follows:

§ 541.8-1 Interim Federal association.

An association chartered by the Board under section 5 of the Act to facilitate the acquisition of 100 percent of the voting shares of an existing Federal stock association or other insured stock institution by a newly formed company or an existing savings and loan holding company or to facilitate any other transaction the Board may approve.

§ 541.8-2 Interim state institution.

An insured instituion, other than a Federal association, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, to facilitate the acquistion

of 100 percent of the voting shares of an existing Federal stock association or other insured stock institution by a newly formed company or an existing savings and local holding company or to facilitate any other transaction the Board may approve.

§ 541.8-3 Insured institution.

An insured institution as defined in § 561.1 of this Chapter.

PART 543—INCORPORATION, ORGANIZATION, AND CONVERSION

2. Amend § 543.2 by revising the second sentence of paragraph (b) and revising paragraph (h), as follows:

§ 543.2 Application for permission to organize.

* * * * *

(b) *Form; supporting information* * * * An application and all required supporting information shall be executed by at least seven persons (the "applicants") and submitted to the Supervisory Agent. * * *

* * * * *

(h) *Alternative procedures for interim Federal associations.*

(1) The procedures prescribed by paragraphs (d)-(g) of this section shall not be required with respect to applications for permission to organize an interim Federal association except that decisions on all such applications will be made by the Board and except as may be required by Parts 546, 563, or 584 of this Chapter. (2) Preliminary approval of an application for permission to organize an interim Federal association shall be conditioned on Board approval of an application to merge the interim Federal association and an existing insured stock institution or on Board approval of any other transaction. After organization has been completed pursuant to § 543.6(d) of this Part, final approval may be granted in conjunction with Board approval of an application filed pursuant to § 584.4 or acquiescence in a filing under § 584.4-1. In evaluating the information provided in accordance with the requirements of paragraph (b) of this section, the Board will consider the purpose for which the association will be organized, the form of any proposed transactions involving the organizing association, the effect of the transactions on existing institutions involved in the transactions, and the effect of the transactions on the community and on other properly conducted existing thrift institutions.

3. Revise paragraph (d) of § 543.6 as follows:

§ 543.6 Completion of organization.

* * * * *

(d) *Failure to complete.* Organization of a Federal association is completed when the organization meeting and the first meeting of its directors have been held, permanent officers have been bonded, the association holds the cash required to be paid on subscriptions to its capital, if required, and any additional requirement imposed by the Board has been met. If organization is not so completed within six months after issuance of a charter, or within such additional period as the Board may for good cause grant, and in the case of an interim Federal association, if a merger, or other transaction facilitated by the existence of an interim institution, has not been approved, the charter shall become void and all cash collected on subscriptions shall thereupon be returned.

PART 545—OPERATIONS

4. Paragraph (c)(23) of § 545.9-1 is revised as follows:

§ 545.9-1 Service corporations.

* * * * *

(c) *Permitted activities.*

* * * * *

(23) Investing in the capital stock or in the accounts of an interim Federal association or an interim state institution that has been chartered solely for the purpose of becoming a constituent in a merger that will result in the acquisition of a stock association by a savings and loan holding company or by a company which will, after the acquisition, be a savings and loan holding company;

* * * * *

PART 546—MERGER, DISSOLUTION, REORGANIZATION, AND CONVERSION

5. Paragraph (d)(3) of § 546.2 is restated without change for the reader's convenience:

§ 546.2 Procedure; effective date.

(d) * * *

* * * * *

(3) This paragraph (d) does not apply to mergers involving an interim Federal association or an interim state institution if the resulting institution is immediately acquired under § 584.4 of this Chapter.

PART 552—STOCK ASSOCIATIONS

6. Amend § 552.13 by revising paragraphs (b) (6) and (7), (h)(5), and (i), as follows:

§ 552.13 Combinations involving Charter S associations.

* * * * *

(b) *Definitions.* The following definitions apply to §§ 552.13 and 552.14 of this Part:

* * * * *

(6) *Mutual association.* Any association organized in a form not requiring nonwithdrawable stock under Federal or state law.

(7) *Stock association.* Any association organized in a form requiring nonwithdrawable stock.

* * * * *

(h) *Notice.*

* * * * *

(5) *Procedure.* Processing of an application under this section shall follow the procedures set forth in this paragraph (h) and in §§ 543.2(e) and 543.2(f) of this Subchapter unless, in the case of mergers involving an interim Federal association or an interim state institution, the merging institution is immediately acquired under § 584.4, in which case § 584.4(h)(1) of this Chapter shall apply.

* * * * *

(i) *Aproval by stockholders.*

(1) *General rule.* Except as otherwise provided in this section, an affirmative vote of two-thirds of the outstanding voting stock shall be required for approval of the combination agreement. If any class of shares is entitled to vote as a class pursuant to § 552.4 of this Part, an affirmative vote of a majority of the shares of each voting class and two-thirds of the total voting shares shall be required. The required votes shall be taken at a meeting of the association.

(2) *General exception.* Stockholders of the resulting association need not authorize a combination agreement if: (i) It does not involve an interim Federal association or an interim state institution; (ii) the association's charter is not changed; (iii) each share of stock outstanding immediately prior to the effective date of the combination is to be an identical outstanding share or a treasury share of the resulting association after such effective date; and (iv) either (A) no shares of voting stock of the resulting association and no securities convertible into such stock are to be issued or delivered under the plan of combination or (B) the authorized unissued shares or the treasury shares of voting stock of the resulting association to be issued or delivered under the plan of combination, plus those initially issuable upon conversion of any securities to be issued or deliverd under such plan, do not exceed 15% of the total shares of voting stock of such association outstanding immediately prior to the effective date of the combination.

(3) *Exceptions for certain combinations involving an interim institution.* Stockholders of a Charter S association need not authorize by a two-thirds affirmative vote combinations involving an interim Federal association or an interim state institution where a company acquires the resulting Charter S association pursuant to § 584.4(b) of this Chapter. In those cases, an affirmative vote of 50 percent of the shares of the outstanding voting stock of the Charter S association plus one affirmative vote shall be required. If any class of shares is entitled to vote as a class pursuant to § 552.4 of this Part, an affirmative vote of 50 percent of the shares of each voting class plus one affirmative vote shall be required. The required votes shall be taken at a meeting of the association.

* * * * *

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 562—APPLICATION FOR INSURANCE OF ACCOUNTS

9. Section 562.4 is revised as follows:

§ 562.4 Processing of application.

Processing of an application under this Part shall follow the procedures set forth in § 543.2 (d), (e), and (f) of this Chapter, except that an interim state institution need not follow such procedures except as required by Parts 546, 563, or 584 of this Chapter.

10. Paragraph (b) of § 562.6 is revised as follows;

§ 562.6 Exceptions to foregoing procedure.

* * * * *

(b) *Procedure not applicable to Federal savings and loan associations or interim Federal associations.* The procedure prescribed by the foregoing sections of this Part 562 shall not be applicable to an application for insurance of accounts by a Federal savings and loan association or an interim Federal association.

PART 563—OPERATIONS

11. Revise paragraph (c) to § 563.22, as follows:

§ 563.22 Merger, consolidation, or purchase of bulk assets.

* * * * *

(c) The requirements of paragraph (b) of this section do not apply to any merger, consolidation, or purchase of bulk assets involving an interim Federal association or an interim state institution if the resulting institution is immediately acquired in accordance with the procedures set forth in § 584.4(g) of this Chapter.

* * * * *

(Sec. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); Sec. 401, 402, 403, 404, 405, 406, 407, 48 Stat. 1255, 1256, 1257, 1259, 1260, as amended (12 U.S.C. 1724, 1725, 1726, 1728, 1729, 1730); Sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947; 3 CFR 1943–1948 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 82-35585 Filed 12-30-82; 8:45 am]

BILLING CODE 6720-01-M

---

12 CFR Parts 543, 545, 546, 552, and 563

[No. 82-785]

Processing of Applications

Date: December 8, 1982.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is adopting a streamlined approach for processing all applications subject to public notice and protest procedures. Under the new application processing system, public notice requirements for all unprotested applications could be completed within 30 calendar days. In addition, the Board is adopting a three-tiered system of review for merger applications which makes use of revised antitrust criteria and an automatic-approval procedure for substantially unprotested applications for new branches, change of office location and redesignation of offices ("branch applications").

Under the new application processing system, the majority of merger and branch applications will be deemed to be approved 30 calendar days after the applicant is notified in writing that the application is complete. Those merger and branch applications which do not meet the automatic-approval criteria will require either the specific approval of the Board's Principal Supervisory Agent or will be referred to the Board for its consideration. These procedures are intended to reduce unnecessary delay in application processing and corporate reorganizations which require agency approval.

EFFECTIVE DATE: December 31, 1982.

FOR FURTHER INFORMATION CONTACT: Gayle L. Radley (202-377-6961), Attorney, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: All mergers involving federal savings and loan associations or institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC") are subject to Board approval. Sections 543.2, 546.2, 545.14 (d) and (e), 545.15, and 552.13 of the Rules and Regulations for the Federal Savings and Loan System (12 CFR 543.2, 546.2, 545.14 (d) and (e), 545.15 and 552.13) prescribe the rules for applications and mergers of federal savings and loan associations. Section 563.22 of the Rules and Regulations for Insurance of Accounts (12 CFR 563.22) prescribes similar rules applicable to mergers of institutions the accounts of which are insured by the FSLIC.

Background

In specified circumstances, Board approval of mergers may be given by the Board's Principal Supervisory Agency (*i.e.*, the president of the Federal Home Loan Bank of which the resulting association in the proposed merger is a member) pursuant to delegated authority. The current delegation regulations result primarily from Board Resolution No. 80-446 (July 24, 1980; 45 FR 50553 (1980)).

During the past two years, the board significantly increased the Principal Supervisory Agent's delegation of merger approval authority. *See* Board Resolutions Nos. 81-18 (January 30, 1981; 46 FR 9917 (1981)), 81-90 (March 3, 1981; 46 FR 14727 (1981)), 81-403 (July 22, 1981; 46 FR 37628 (1981)), 82-103 (February 18, 1982; 47 FR 8152 (1982)); 82-270 (April 15, 1982; 47 FR 17801 (1982)), 82-408 (June 25, 1982; 47 FR 26807 (1982)).

In Board Resolution No.82-270-A (April 15, 1982; 47 FR 17999), the Board proposed for public comment regulations regarding processing of applications, which were intended to streamline the review of all applications subject to public notice and protest procedures, including merger applications. Those regulations were re-proposed for public comment in Board Resolution No. 82-578 (August 26, 1982; 47 FR 39836).

Summary of Comments

The Board received 17 public comment letters in response to its first proposal. These comments were fully discussed in Board Resolution No. 82-578. *See* 47 FR 39836. The Board received 10 public comment letters in response to Board resolution No. 82-578 (the "proposal"). Four of the letters

commended the Board on its proposal. Three suggested expanding the relevant product market to include money market mutual funds; this recommendation is addressed below. Two of the commenters addressed the issue of making branch applications subject to the 30-day automatic-approval process. Another comenter requested that the new branch application processing system apply in states in which a working agreement is in effect between the state regulator and the Board. In response, the Board wishes to emphasize that these agreements remain fully effective notwithstanding the new application processing system unless and until the state and the Board arrive at a new agreement.

One commenter spoke in favor of streamlining the branch application process and suggested that language be included in the preamble which would discourage protests to proposed branches by competing financial institutions. After submitting this proposal for public comment, however, the Board proposed a new regulation on Branch Office Approvals which would eliminate the current "undue injury" criterion used by competitors as a basis for protesting a proposed branch office. *See* Board Resolution No. 82–669 (September 30, 1982; 47 FR 44333). The Board is, therefore, deferring this isue pending further consideration of the Branch Office Approval proposal.

The final commenter addressed the antitrust issues. The Board's response and analysis is set forth below.

Notice and Protest

To expedite the processing of applications subject to notice and protest procedures, the Board is reducing the time requirements for public notice and protest. These procedures apply to applications for Federal charters, branch offices, mergers, insurance of accounts, and holding company acquisitions. Currently, even an unprotested application may take up to 53 days to process. Under the new application processing system, the maximum processing time for an unprotested application will be 27 days. The following changes will reduce the time frame so that substantially unprotested applications may be approved within 30 calendar days:

(1) Under existing procedures, once the Principal Supervisory Agent advises an applicant to publish the required newspaper notice, the applicant has 15 days to publish. The Board is reducing the time period to 10 days.

(2) Currently, an applicant must publish notice twice on the same day of two consecutive weeks. The Board will now require only one publication. The Board wishes to note that interested persons or organizations may request the Supervisory Agents to send them notice of all applications.

(3) Under the current regulations, the public has 10 days after publication to submit comments. An additional 20-day extension of time may be granted if requested in writing during the 10-day comment period. In addition, protestants have 10 days after the close of the comment period to request oral argument on the merits of an application. The new time limitations will reduce the additional comment time which may be requested to 7 days and will require protestants to make a request for oral argument within the initial 10-day period.

(4) At present, no guidelines exist as to what constitutes a substantial protest. The Board is therefore amending the regulations to clarify that a protest will be considered "substantial" where it is based on one of the regulatory criteria for denying an application. The bases for denying an application are set out in each regulation subject to notice and protest procedures. Only protests consistent with the regulatory denial criteria which are determined by the Supervisory Agent to be substantial will be considered.

(5) Under current procedures, applicants have 15 days after the close of the comment period to rebut a protest. The Board is reducing the rebuttal period to 10 days.

Finally, to provide consistency in the Board's application procedures, the Board is amending section 563b.4 of the Rules and Regulations for Insurance of Accounts (12 CFR 563b.4), pertaining to conversions, to reduce the comment period from 20 days to 10 days.

Antitrust Considerations for Mergers

After reviewing the public comments, the Board has determined to revise further the antitrust cirteria which has been proposed as part of the three-tiered review process for merger applications.

As originally proposed in Board Resolution No. 82–270–A, a merger could not be approved under the three-tiered review process for merger applications if: (1) As a result of the merger, the resulting association would have acquired sufficient deposits to give it the largest share of total deposits in any county or similar political subdivision in which it competed; (2) after the merger, the resulting association would have had greater total deposits than any other depository institution with which it significantly and directly competed; (3) after the merger, the resulting association would have significantly and directly competed with fewer than eight depository institutions and fewer than two of those institutions would have had more total deposits than the resulting association; or (4) both the acquiring association and a merging association would have had assets of $1 billion or greater. The proposal's revised antitrust standards set up a merger table substantially the same as the one adopted today. *See* FR 39836.

Under the revised antitrust standards the Board is adopting today, merger applications will be automatically approved 30 calendar days after the Supervisory Agent notifies the applicant that the application is complete unless:

(1) The resulting association would be one of the 3 largest depository institutions competing in the relevant geographic area where before the merger there were 5 or fewer depository institutions, and the resulting association would have 25 percent or more of the total deposits held by depository institutions in the relevant geographic area, and the share of total deposits would have increased by 5 percent or more;

(2) The resulting association would be one of the 2 largest depository institutions competing in the relevant geographic area where before the merger there were 6 to 11 depository institutions, and the resulting association would have 30 percent or more of the total deposits held by depository institutions in the relevant geographic area, and the share of total deposits would have increased by 10 percent or more;

(3) The resulting association would be one of the 2 largest depository institutions competing in the relevant geographic area where before the merger there were 12 or more depository institutions, and the resulting association would have 35 percent or more of the total deposits held by depository institutions in the relevant geographic area, and the share of total deposits would have increased by 15 percent or more;

(4) The Herfindahl-Hirschman Index (HHI) [1] in the relevant geographic area was more than 1800 before the merger, and the increase in the HHI caused by the merger would be 50 or more;

[1] The Herfindahl-Hirschman Index (HHI) is an index of market concentration, and is the sum of the squares of all market shares of all depository institutions in the relevant geographic area. Thus, if a relevant geographic area has three depository institutions with total deposit shares of 50, 30, and 20 percent, respectively, the HHI is 3800: 50 squared (2500) plus 30 squared (900) plus 20 squared (400).

(5) In a merger involving potential competition, the Principal Supervisory Agent determines that the acquiring association is one of 3 or fewer potential entrants into the relevant geographic area; or

(6) Both the acquiring and an acquired association have assets of $1 billion or more.

The following table summarizes the thresholds of market structure criteria in the relevant geographic area above which Board review of the proposed merger is required.

THRESHOLDS OF MARKET STRUCTURE CRITERIA REQUIRING BOARD REVIEW

Eligible for automatic approval unless[2]—

The deposit rank of the resulting association among depository institutions is—	The number of competitors in the relevant geographic area before the merger is—	The resulting association's share of total deposits in a direct competition merger is—	And the increase in the share of total deposits is—
1 to 3	5 or fewer	25 percent or more	5 percent or more.
1 or 2	6 to 11	30 percent or more	10 percent or more.
1 or 2	12 or more	35 percent or more	15 percent or more.

[2] No merger will be approved automatically where the HHI in the relevant geographic area exceeds 1,800 before the merger, and as a result of the merger the HHI would increase by 50 or more, or where both the acquiring and an acquired association have assets of $1 billion or more.

The Relevant Geographic Area

For the purpose of the antitrust review which the Supervisory Agent will conduct under these application processing regulations, a "relevant geographic area" will be used as a proxy for the "relevant geographic market," (*i.e.*, "section of the country" referred to in Section 7 of the Clayton Act, 15 U.S.C. 18 ("Clayton Act")). Using a market proxy as a means of evaluating the structural consequences of a merger has been sanctioned by the courts for the practical reason that market proxies provide a reasonable framework within which levels of concentration may be measured. *United States* v. *Phillipsburg National Bank*, 399 U.S. 350 (1970). Accordingly, the Board has determined that for the administrative purposes of its analysis under the antitrust laws, the relevant geographic area is that geographic area within which the competitive effects of a merger may be evaluated.

After reviewing the comment letters and for reasons explained below, the Board has determined to refine further the manner in which the relevant geographic area is determined. For the purpose of this antitrust review, a county or similar political subdivision will generally be the smallest relevant geographic area. The Principal Supervisory Agency may, therefore, designate a county as a proxy for the relevant geographic area, and if the merger satisfies the market structure criteria set out above, may permit the merger to be approved automatically. In the delineation of a proxy, counties will usually be aggregated to form a relevant geographic area which will enable the competitive analysis mandated by the Clayton Act. Where circumstances warrant, *i.e.*, in mergers in remote areas of the country, the Principal Supervisory Agency may designate an area smaller than a county as the relevant geographic area. To the extent that a county or smaller area is coextensive with the geographic market, such an area will not be a proxy, but will rather be the actual relevant geographic market.

Where a proposed merger in a single county or smaller area does not meet the market share and concentration criteria, the relevant geographic area will be a combination of counties or political subdivisions in which the Principal Supervisory Agent believes the merging associations compete directly and significantly. To make this threshold determination, the Principal Supervisory Agent will first examine the commuting patterns of the depositors of the merging associations. If, on the basis of the commuting test, the proposed merger satisfies all criteria, there is no need to examine the relevant geographic area further. Under the commuting test, the relevant geographic area will include the county where the acquired association is located, any county from which 20 percent of the work force regularly commutes into the county of the acquired association, and any county to which 20 percent of the work force regularly commutes from the acquired association's county. These calculations may be readily made using the Census Tracts, Table P-2, Social Characteristics of the Population.[3]

If the market share and concentration criteria are not satisfied, the Principal Supervisory Agent may further include in a relevant geographic area additional counties where competition between associations is demonstrated by the advertisements of the merging associations appearing in a major newspaper. Where the volume of sales of a newspaper originating in a county other than the county of the acquired association equals 50 percent of the households of the county of the acquired association, the county from which the newspaper originates will also be included in the relevant geographic area.[4]

Thus, for purposes of this antitrust review, the relevant geographic area may be a county, an area smaller than a county, or an aggregation of counties within which the merging associations compete. Merging associations should, in their merger applications, delineate the area which they consider to be the relevant geographic area, and where necessary provide commuting and advertising data to substantiate such a delineation. The data should be sufficient to indicate that direct and significant competition occurs between depository institutions in the delineated geographic area.

Public Comment Letters on the Proposed Relevant Geographic Area

The Board received comments which pointed out some of the shortcomings of using a county as a proxy for the relevant geographic market. Boundaries of a county may not accurately correspond to the boundaries that separate competing associations, since such boundaries usually reflect historical political considerations, rather than current economic realities. The commenter recommended that in addition to using a county, the Board should adopt another source of predefined geographic areas which has taken into account a variety of factors relevant to a determination of an appropriate relevant geographic market such as the Ranally Metro Areas ("RMAs") contained in the Rand McNally & Company's *Commercial Atlas & Marketing Guides*.

Recognizing the inherent difficulties in selecting a set of factors that may be used to make a qualitative judgment about competition, the Board believes

[3] The data to be used for the commuting test is available only for Standard Statistical Metropolitan Areas ("SMSAs"). Where there is no delineated SMSA, the Supervisory Agent should include all counties from which it appears reasonable that approximately 20 percent of all workers regularly commute into the county of the acquired association. The Supervisory Agent will also include all counties where depositors have access to depository institutions located approximately the same distance from their homes as they have to ones located in the county of the acquired association. In such cases, the Supervisory Agent should also apply the advertising test.

[4] Data on households are readily available from the Census; data on sales are available from newspaper circulation offices.

there is merit in using an alternative market proxy. However, the Board is concerned that RMAs are not constructed to delineate particular geographic markets for depository institutions, and thus, may not be relevant to the geographic markets of depository institutions. The Board, therefore, has decided to adopt the alternative criteria, set out above, which include economic and demographic factors most relevant to depository institutions.

Given the wide dissemination of comprehensive and accurate information regarding the prices and services which depository institutions provide, the low economic barriers to entry, rapid technological change, and the widespread deregulation of financial institutions, the Board believes that commuting and advertising tests utilize the major economic and demographic criteria necessary to determine the geographic area. These two computationally straightforward tests were adopted because the Board believes they will best facilitate the most accurate determination of the size and shape of the area of direct an significant competition.

The Product Market

The Board proposed that the "total deposits" of depository institutions, which include all demand, savings, and time deposit accounts, be used as a reasonable, meaningful proxy for the relevant product market. Since deposits are considered to be a reasonable, meaningful proxy for a product market when analyzing the competitive effects of a merger between commercial banks, *U.S. v. Phillipsburg Nat. Bank,* 399 U.S. 350 (1970), the Board considers deposits to be an equally good proxy to use in evaluating a merger of savings and loan associations. While there have been some commercial bank products and services that savings and loan associations have not, in the past, been able to offer, there are virtually no products or services that a savings and loan association can offer that a commercial bank cannot. For this reason and for others set forth below, the Board firmly believes savings and loan associations and commercial banks to be direct competitors and that no fair competitive analysis could be complete without taking into account that competition.

On October 15, 1982, President Reagan signed into law the Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97–320, 96 Stat. 1469 (1982) (the Garn-St Germain Act), an enactment of great significance to the savings and loan industry. This Act authorizes federal savings and loan associations to offer an expanded range of commercial bank lending and related investment activities, including corporate checking. In *U.S. v. Philadelphia Nat. Bank,* 374 U.S. 321 (1963), the Court defined "commercial banking" as a distinct line of commerce. At that time, the Court noted that some "[c]ommercial banking products or services are so distinctive that they are entirely free of effective competition from products or services of other financial institutions. The checking account is in this category." *Id.,* at 356. Section 312 of the Garn-St Germain Act now authorizes federal associations to offer such commercial banking products as individual, business, and corporate demand deposit accounts. Section 325 gives federal savings and loan associations the power to make commercial, corporate, business or agricultural loans. Thus, with federal associations' new power to offer corporate checking and expanded commercial loan authority, the distinction between the line of commerce of commercial banking and the product market of federal savings and loan associations evaporates.

The Board is aware that the use of any proxy in defining a relevant product market for depository institutions is not the best means, nor the most inclusive way, to measure market power. For example, although they are clearly in direct competition with most traditional depository institutions, the Board has not included money market mutual funds in its definition of depository institution nor in the calculation of deposit market shares and concentration levels set out in the merger table above. The Board's reasons were set forth in the proposal and will not be repeated here. The Board's definition of depository institution is administratively limited to depository institutions which have both the capability of taking deposits and making loans. This self-imposed and narrowed definition is adopted even though Congress, in recognition of the competitive realities of the market place, included a provision in the Garn-St Germain Act which directed the Depository Institutions Deregulation Committee to adopt a new deposit instrument which would enable banks and savings and loan associations to better compete with money market mutual funds.[5] The Board's approach is, thus, substantially more restrictive than necessary and deliberately excludes some direct and significant competitors.[6] The Board, however, wishes to ensure that a merger, otherwise approvable under delegated authority, will not have a significant adverse effect on competition. The Board's use of total deposits as a proxy for product market is also administratively reasonable when viewed in the context of the qualitative, but unquantifiable, elements of competition, the financial state of the industry, the fragmented nature of the financial institutions industry, the large number of mergers processed by the Board, the absence of any prior cases involving alleged Clayton Act ramifications arising from savings and loan association mergers, and the need for administrative processes which reflect practical cost-benefit analyses.

The Board realizes that qualitative factors which affect competition are as important as, and possibly more important than, the quantitative measurements of market structure. In the market in which depository institutions compete, competition revolves around how well and in what manner an institution can offer, package, and service its product, and how conveniently this all can be done. Such qualitative factors includes, but are not limited to, conduct and performance indicia of actual competition in the relevant geographic market, *i.e.,* the types of products and services offered, the manner in which they are offered and the price at which they are available to the customer. *See United States v. First National State Bancorporation,* 499 F. Supp. 793, 804–05 (D.N.J. 1980). Moreover, electronic and technological developments, interstate expansion of depository institutions, significantly broadened statutory and regulatory authority of depository institutions, and the encroachment by nondepository institutions into the domain previously reserved to traditional financial institutions have the combined effect of enlarging the market for financial services and have made it imperative that new and realistic means of evaluating competition be developed. The Board is not, however, delegating the authority to conduct such an analytical review to the Principal Supervisory Agents. Although restricting their review to purely

[5] The Garn-St Germain Act further bolsters the Board's contention that banks and other financial institutions directly compete with federal savings and loan associations: "[C]ompetition for deposits has become increasingly fierce and expensive, due in large part to the rapid and enormous expansion of money market mutual funds." S. Rep. No. 536, 97th Cong., 2d Sess. 13 (1982).

[6] The definition of "depository institution"excludes not only money market mutual funds but also mortgage banks, commercial finance companies and other lenders which compete for loans but which do not take deposits.

structural considerations will likely result in the Board's review of mergers which pose no threat to competition, the Board considers this prudent in order to avoid approval of mergers which may have adverse competitive effects.

Public Comment Letters on the Proposed Product Market

The definition of the product market and the allocation of market shares in the proposal elicited concern that the proposed market share threshold was too high and could allow the automatic approval of anticompetitive mergers. The Board was urged to lower the market share criteria and to incorporate the HHI as a standard with which to measure market concentration.

The Board agrees in part, and is, therefore, adopting the use of the HHI. The United States Department of Justice (Department) has indicated that it is more likely than not to challenge a merger where the HHI is more than 1800 before the merger and as a result of the merger will rise between 50 and 100 points. The Board has determined to review any merger where the HHI, including all depository institutions, is 1800 before the merger and as a result of the merger will rise by 50 points or more. The Board has adopted this threshold primarily because the relevant product market excludes bona fide competitors whose market shares cannot be accurately calculated, *i.e.*, money market mutual funds, mortgage banks, commercial finance companies, and lenders that compete for loans but do not take deposits, and because the relevant geographic area will generally be smaller than the actual geographic market.

Another commenter maintained that the use of total deposits as a proxy for the relevant product market does not accurately reflect the relative market positions of commercial banks and savings and loan associations because savings and loan associations are not able to offer as broad a range of financial services as commercial banks. As was stated above, however, because savings and loan associations may now offer the same range of depository services as commercial banks, and because of the increased liability powers given to savings and loan associations by the Garn-St Germain Act, this comment is no longer relevant.[7] The definition of the relevant product market must, therefore, fairly and realistically include the accounts of commercial banks with which savings and loan associations compete.

The proposal defined the "largest depository institution" as an institution, including its affiliates and subsidiaries, that has the greatest amount of total deposits, whether those deposits are derived from offices within the relevant geographic area or not. In order to determine rank for purposes of the Board's table set out above, the definition of the "largest depository institution" has been modified in this final regulation to include only the deposits of an institution, its holding company and affiliates, and subsidiaries, located in the relevant geographic area.

Potential Competition

The market structure criteria set out in the proposal distinguished between mergers between associations which directly and significantly compete and mergers involving potential competition. According to the theory of potential competition, the existence of a potential entrant can have a favorable effect on competition. Thus, the merger of a potential entrant with an existing competitor in the market could arguably eliminate the restraining influence of potential competition.

Whether the theory of potential competition can be practically applied to mergers of depository institutions has not yet been shown. In the last 19 years, numerous potential-competition cases have been brought to enjoin bank mergers.[8] In each of those cases, however, the courts found that antitrust violations based on the theory of potential competition had not been proven.

In rendering such decisions, the courts were unwilling to rely on static, quantitative representations of market structure and speculative estimates of future entry into the market in deciding whether potential competition had been adversely and substantially affected, given the regulated nature of banking and demonstrated evidence of market competition.

On the assumption that the theory of potential competition does apply to mergers of depository institutions,[9] the Board is adopting a limited but legally sufficient potential competition analysis. If the Principal Supervisory Agent concludes that the association is one of only 3 or fewer potential entrants into the relevant geographic area, the merger application must be referred to Washington for Board review.

Public Comment Letters on the Theory of Potential Competition

One commenter asserted that the market share criteria for potential competition mergers had been set too high. The commenter also noted that the proposed guidelines burdened the Principal Supervisory Agents with difficult factual determinations and recommended that the only criterion which should be examined is the existence of a few potential competitors, one of which is the acquiring association. The Board agrees and has amended the regulation accordingly to eliminate the market share criteria for potential competition and to substitute the limited test set out above.

Other comments

It was suggested that the Board adopt specific standards in connection with the Principal Supervisory Agent's approval of a merger of a "failing association." That commenter suggested that the Principal Supervisory Agent make an affirmative effort to ascertain whether there are other merger partners with which a merger would be less anticompetitive, and then weigh competitive considerations in deciding between alternative merger proposals.

The Board takes this opportunity to direct the Principal Supervisory Agents, in considering whether to approve the merger of a "failing association" which might be otherwise anticompetitive, to make reasonable efforts to ascertain whether other merger partners are available with which a merger would be less anticompetitive.

If another merger partner is available and willing to acquire the failing

[7] Commercial banks and savings and loan associations compete to provide a distinct cluster of products and services: *i.e.*, various type of credit such as unsecured personal and business loans, mortgage loans, secured loans, automobile and consumer goods installment loans, tuition financing, credit cards and overdraft protection, trust services, and accepting demand deposits from individuals and corporate customers. The advantage which commercial banks enjoyed previously by virture of their ability to obtain the bulk of their working capital from demand deposit accounts without the need to pay interest has been eroded by the enactment of the Garn-St Germain Act.

[8] *United States v. Crocker-Anglo National Bank*, 277 F. Supp. 133 (N.D. Cal. 1967); *United States v. Marine Bancorporation, Inc.*, 418 U.S. 602 (1974); *United States v. Connecticut Nat'l Bank*, 418 U.S. 656 (1974); *United States v. Deposit Guarantee Nat'l Bank of Jackson*, 373 F. Supp. 1230 (S.D. Miss. 1974); *United States v. United Virginia Bankshares, Inc.*, 347 F. Supp. 891 (E.D. Va. 1972); *United States v. First Nat'l Bancorporation, Inc.*, 329 F. Supp. 1003 (D. Colo. 1971), *afff'd per curiam*, 410 U.S. 577 (1973); *United States v. Idaho First Nat'l Bank*, 315 F. Supp. 261 (D. Idaho 1970); *United States v. First Nat'l Bank of Maryland*, 310 F. Supp. 157 (D. Md. 1970); *United States v. First Nat'l Band of Jackson*, 301 F. Supp. 1161 (S.D. Miss. 1969); *United States v. First National State Bancorporation*, 499 F. Supp. 793 (D.N.J. 1980); *United States v. Zions Utah Bancorporation*, Civ. No. C-79-0769A (D. Utah, filed August 21, 1980).

[9] *United States v. Marine Bancorporation, Inc.*, 418 U.S. 602 (1974).

association on an unassisted basis, the Principal Supervisory Agent is directed to consider that proposed merger as an alternative.

Finally, it was recommended that the Board issue a statement about the interrelationship between the Board's proposed 30-day automatic approval period and the 30-day statutory period required for certain savings and loan association merger applications under the Hart-Scott-Rodino Antitrust Improvement Act of 1976 (15 U.S.C. 18a(c)(8) (1976)). The Board agrees and takes this opportunity to state that one of the prerequisites for a merger application being deemed complete is the proper filing with the Department and the Federal Trade Commission of a Hart-Scott-Rodino pre-merger notification when required.

Three-Tiered Processing

Under this new application processing system, merger applications will be channeled through a three-tiered review process. The majority of merger applications will be deemed to be approved automatically by the Board 30 calendar days after the Supervisory Agent sends written notice to the applicant that the application is complete, unless the Supervisory Agent notifies the applicant that a substantial, timely protest to the application has been failed, or that for any other reason the application must receive specific approval.

At the first tier of the review process, merger applications will be deemed to be approved automatically by the Board 30 calendar days after the Supervisory Agent sends written notice to the applicant that the application is complete, unless:

(1) The resulting association requests that supervisory forbearances be granted;

(2) The Principal Supervisory Agent recommends imposing nonstandard conditions prior to approving the merger;

(3) The application has been substantially protested;

(4) The Principal Supervisory Agent raises objections to the merger;

(5) The Board's antitrust criteria are not met;

(6) The association that will be the resulting association in the merger has a composite Community Reinvestment Act rating of less than satisfactory, or is otherwise seriously deficient with respect to the Board's nondiscrimination regulations and the deficiencies have not been resolved to the satisfaction of the Principal Supervisory Agent;

(7) The resulting association's net worth would not at least equal the amount required for that association under 12 CFR 563.12(b). Where goodwill has been included in the resulting association's assets, the applicant must submit an opinion of a certified public accountant, satisfactory to the Principal Supervisory Agent, that its use and value are appropriate under, and accounted for by, generally accepted accounting principles. For purposes of this paragraph, in calculating whether the net worth of the resulting association will at least equal the amount required under § 563.13(b), the Principal Supervisory Agent may exclude scheduled items which will be acquired in the merger and the amount of either: (i) The net-worth deficiency or (ii) the liabilities, including averaged liabilities, of the acquired association at the date of merger;

(8) The merger involves any agreement with the Corporation;

(9) The merger would result in the conversion of a mutual association to a stock association;

(10) The Principal Supervisory Agent determines that the financial condition of the resulting association would not satisfy minimum financial standards as determined from time to time by the Board's Office of Examinations and Supervision;

(11) The merger of an association which has a class of voting securities registered with the Board under the Securities Exchange Act of 1934 (15 U.S.C. 78a–78jj);

(12) The merger application involves unusual circumstances or policy questions.

Examples of the types of mergers which should be referred to the Board under this paragraph include, but are not limited to, situations involving an interstate merger of a federal association, the interstate acquisition of the branches of an association, the merger of an interim association, the merger of an association with an entity which is not a thrift institution, or any merger which the Principal Supervisory Agent believes raises unusual policy issues. Where there is an interstate merger or interstate acquisition of branches, an application presents an unusual circumstance only if, as a result of such a merger or acquisition, an association would establish its initial presence in the affected jurisdiction.

At the second tier of the review process, the Principal Supervisory Agent may specifically approve mergers not eligible for 30-day automatic approval under delegated authority, if the reason for ineligibility is the necessity for agreeing to supervisory forbearances or the imposition of nonstandard conditions. The Principal Supervisory Agent may also take affirmative action within the 30-day automatic approval period to approve any application which would qualify for automatic approval.

In addition, the Principal Supervisory Agent may specifically approve those mergers described in paragraph (5) if the Principal Supervisory Agent first makes a determination that but for the merger, one party to the merger would not satisfy minimum financial standards as determined from time to time by the Board's Office of Examinations and Supervision (*i.e.*, it is a failing association).

At the final tier of the review process, all mergers which are not eligible for 30-day automatic approval or which may not be specifically approved by the Principal Supervisory Agent under delegated authority must be referred to Washington for Board approval.

The Board wishes to emphasize at this time that, in reviewing a proposed merger to determine whether it may be either automatically or specifically approved, the Principal Supervisory Agent must determine that any unacceptable policies or procedures of the merging associations with respect to satisfactory compliance with the Community Reinvestment Act will not be continued by the resulting association.

Automatic Approval of Applications for New Branches, Change of Office Location and Redesignation of Offices

The Board is adopting processing amendments to 12 CFR 545.14 and 545.15 similar to the merger processing amendments to provide that applications for new branches, change of office location, and redesignation of offices without substantial protest will be deemed to be approved automatically 30 days after the Supervisory Agent sends notice to the applicant that the application is complete, unless the Principal Supervisory Agent takes objection during the 30-day period.

Clarifying Amendments

The Board proposed amending 12 CFR 552.13 in Board Resolution No. 82–578 to clarify that the Board delegated to the Principal Supervisory Agent limited authority to approve merger applications involving Charter S associations consistent with delegated authority to approve mergers pursuant to 12 CFR 546.2 and 563.22. The Board is adopting this amendment as proposed and ratifies all mergers involving Charter S associations which might have been previously approved under

delegated authority. *See* Board Resolution No. 82-270 (April 15, 1982; 47 FR 17801) and 82-578 (August 26, 1982; 47 FR 39836).

Regulatory Flexibility Act Certification

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (September 19, 1980), the Chairman certifies that the amendments will not have a significant impact on a substantial number of small entities. The regulations provide for application processing in the least burdensome and most efficient manner and generally give subject institutions greater flexibility in corporate reorganization. The Board believes that the amendments will benefit small institutions by reducing paperwork and delay but will not have a significant economic impact on institutions.

Because it is in the public interest to reduce unnecessary delay in application processing and to allow managerial decisions to be planned on a calendar-year basis, the Board has determined that the full 30-day delay of effective date following publication of the regulations pursuant to 12 CFR 508.11 and 15 U.S.C. § 553(d) is unnecessary. The amendments will therefore take effect on December 31, 1982, and will apply to all applications filed and deemed complete on or after that date.

List of Subjects in 12 CFR Parts 543, 545, 546, 552, and 563

Mergers, savings and loan associations, applications.

Note.—This Resolution No. 82-785 (FR Doc. 82-35586) corrects certain minor errors in the preceding Resolution No. 82-788 (FR Doc. 82-35585): The Federal Home Loan Bank Board requests the Office of the Federal Register to treat this document, Resolution No. 82-785, as controlling for purposes of the 1983 Code of Federal Regulations.

Accordingly, the Board hereby amends Parts 543, 545, 546, and 552 of Subchapter C and Part 563 of Subchapter D, Chapter V of Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 543—INCORPORATION, ORGANIZATION, AND CONVERSION

1. Amend § 543.2 by revising the last sentence of paragraph (b) and revising paragraphs (d)(1), the introductory text of paragraph (e) and paragraphs (e) (1), (2) and (3); and (f), as follows:

§ 543.2 Application for permission to organize.

* * * * *

(b) *Form; supporting information.* * * * An application shall be deemed filed when four copies are delivered to the Supervisory Agent; the Supervisory Agent shall notify the applicant in writing that the application is complete and direct the applicant to publish notice pursuant to paragraph (d) of this section when the Supervisory Agent determines that all information required under this paragraph has been submitted.

* * * * *

(d) *Public notice and inspection.* (1) The applicant shall publish notice within 10 days after being notified by the Supervisory Agent that the application is complete. Notice shall be published in a newspaper printed in the English language and having a general circulation in the community in which the home office of the new association is to be located. If the Supervisory Agent determines that the primary language of a significant number of adult residents of the community is a language other than English, the Supervisory Agent may require that notice also be given simultaneously in the appropriate language(s).

* * * * *

(e) *Protest.* Communications and answers to protests shall be submitted only as provided in this paragraph or as requested by the Supervisory Agent or the Board.

(1) Within 10 days of the date of publication of notice of application (or 17 days after such date if an extension is requested in writing within the 10-day period), anyone may file a communication in favor or protest of the application by furnishing four copies to the Supervisory Agent. If the applicant or any person who has filed a substantial protest pursuant to this paragraph wishes to have oral argument heard on the merits of an application, a request for oral argument must me made within this period.

(2) Within 10 days after the filing of a protest, the Principal Supervisory Agent shall advise the protestant and the applicant, in writing, whether the protest is considered "substantial." A protest will be considered substantial only in those instances where the reason for the protest is consistent with one of the regulatory bases set forth in each regulation for denying the application (excluding supervisory considerations).

(3) The applicant may file an answer to any protest until 10 days after the last date for filing of communications by furnishing four copies to the Supervisory Agent.

* * * * *

(f) *Oral argument.* (1) *General.* Oral argument on the merits of an application shall be heard if (i) the applicant or anyone who has filed a substantial protest has seasonably requested it pursuant to paragraph (e) of this section; or (ii) the Supervisory Agent, after reviewing the application and other pertinent information, considers oral argument desirable. The Supervisory Agent shall mail notice of the time (which shall be not less than 10 days after such mailing) and place of oral argument to the applicant and to all persons who filed communications. In the case of protests pertaining to Part 563e of this Chapter, the Supervisory Agent shall ensure that the time and place of any oral argument is reasonably convenient to the protestants.

(2) *Procedure.* The Supervisory Agent, or any other person designated by the Board, may hear and determine all matters relating to the conduct of oral argument. Arguments may be made in person or by authorized representatives and unless otherwise permitted by the Supervisory Agent shall be based only on written information previously filed regarding the application. A reasonable time of at least one hour shall be allowed to each side for oral argument. A transcript of the oral argument shall be made and included in the application file.

* * * * *

PART 545—OPERATIONS

2. Revise § 545.14 by revising paragraph (d), removing paragraphs (e), (f), and (g) and redesignating paragraphs (h), (i), (j), (k), (l), and (m) as new (e), (f), (g), (h), (i), and (j), respectively, and revising new paragraph (e)(2), as follows:

§ 545.14 Branch offices.

* * * * *

(d) *Processing of application.* Processing of an application under this Part shall follow the procedures set forth in § 543.2 (d), (e), and (f) of this Subchapter except that the applicant shall publish the required newspaper notice of application in the applicant's home office community and in the community to be served by the proposed branch office.

(e) *Approval by the Board or the Principal Supervisory Agent.* * *.*

* * * * *

(2) The Principal Supervisory Agent may approve, on behalf of the Board, an application for permission to establish a branch office if no substantial protest based on undue injury or Part 563e of this Chapter has been filed. Such

application shall be deemed to be approved by the Board 30 days after notification that the application is complete, unless the applicant is otherwise notified by the Principal Supervisory Agent that objection has been taken on grounds set forth in subparagraph (1) of this paragraph (e).

(f) *Approval of temporary or permanent location.* * * *

(g) *Offices not requiring prior written approval.* * * *

(h) *Application for and maintenance of branch office after conversion, consolidation, purchase of bulk assets, or merger.* * * *

(i) *Exclusive agreements prohibited.* * * *

(j) *Effective date; effect on existing applications.* * * *

3. Revise paragraph (b) and remove paragraph (c) of § 545.15, as follows:

§ 545.15 Change of office location and redesignation of offices.

* * * * *

(b) *Processing of application.* Processing and approval of an application for a change of office location or redesignation of a home or branch office shall follow the procedures set forth in § 545.14 (c), (d), (e), and (f) of this Part except that the applicant shall publish the required newspaper notice of application in (1) the applicant's home office community, (2) the community to be served by the new office, (3) the community where the office is to be closed or the home office is to be redesignated as a branch, and the applicant shall post notice of the application for 17 days from the date of publication in a prominent location in the office to be closed or redesignated.

PART 546—MERGER, DISSOLUTION, REORGANIZATION, AND CONVERSION

4. Amend § 546.2 by revising paragraphs (d) and (h) and by adding paragraph (i), as follows:

§ 546.2 Procedure; effective date.

* * * * *

(d)(1) Processing of an application under this section shall follow the procedures set forth in § 543.2 of this Subchapter, except that: (i) The required newspaper publication of notice of application shall be made in the communities in which the home offices of the merging and resulting associations are located; (ii) applicants may also mail such notice to the voting members of each association within the time specified in § 543.2(d); and (iii) five copies of the application shall be filed.

(2) This paragraph (d) shall not apply to any merger authorized by the Board to be instituted for supervisory reasons.

(3) This paragraph (d) does not apply to mergers involving an interim Federal association or an interim state institution if the resulting institution is immediately acquired under § 584.4 of this Chapter.

(4) In approving a merger under paragraph (h) and (i) of this section, the Principal Supervisory Agent may approve maintenance of an office of the merging association as a facility of the resulting association.

* * * * *

(h)(1) Merger applications filed in accordance with the procedures set out in § 543.2 of this Subchapter shall be deemed to be approved automatically by the Board 30 calendar days after the Principal Supervisory Agent sends written notice to the applicant that the application is complete, unless:

(i) The resulting association requests the granting of supervisory forbearances pursuant to paragraph (i)(3) of this section;

(ii) The Principal Supervisory Agent recommends the imposition of nonstandard conditions prior to approving the merger;

(iii) The application has been substantially protested;

(iv) The Principal Supervisory Agent raises objections to the merger;

(v) The resulting association would be one of the 3 largest depository institutions competing in the relevant geographic area where before the merger there were 5 or fewer depository institutions, the resulting association would have 25 percent or more of the total deposits held by depository institutions in the relevant geographic area, and the share of total deposits would have increased by 5 percent or more;

(vi) The resulting association would be one of the 2 largest depository institutions competing in the relevant geographic area where before the merger there were 6 to 11 depository institutions, the resulting association would have 30 percent or more of the total deposits held by depository institutions in the relevant geographic area, and the share of total deposits would have increased by 10 percent or more;

(vii) The resulting association would be one of the 2 largest depository institutions competing in the relevant geographic area where before the merger there were 12 or more depository institutions, the resulting association would have 35 percent or more of the total deposits held by depository institutions in the relevant geographic area, and the share of total deposits would have increased by 15 percent or more;

(viii) The Herfindahl-Hirschman Index (HHI) in the relevant geographic area was more than 1800 before the merger, and the increase in the HHI caused by the merger would be 50 or more;

(ix) In a merger involving potential competition, the Principal Supervisory Agent determines that the acquiring association is one of 3 or fewer potential entrants into the relevant geographic area;

(x) Both the acquiring and an acquired association have assets of $1 billion or more;

(xi) The association that will be the resulting association (other than an association that is neither insured by Federal Savings and Loan Insurance Corporation nor chartered by the Board) in the merger has a composite Community Reinvestment Act rating of less than satisfactory, or is otherwise seriously deficient with respect to the Board's nondiscrimination regulations and the deficiencies have not been resolved to the satisfaction of the Principal Supervisory Agent;

(xii) The resulting association's (other than an association that is neither insured by the Federal Savings and Loan Insurance Corporation nor chartered by the Board) net worth would not at least equal the amount required for that association under § 563.13(b) of this Chapter. Where goodwill has been included in the resulting association's assets, the applicant must submit an opinion of a certified public accountant, satisfactory to the Principal Supervisory Agent, that its use and value are appropriate under, and accounted for, by generally accepted accounting principles. For purposes of this subparagraph (xii), in calculating whether the net worth of the resulting association will at least equal the amount required under § 563.13(b), the Principal Supervisory Agent may exclude scheduled items which will be acquired in the merger and the amount of either: (A) the net-worth deficiency or (B) the liabilities, including averaged liabilities, of the acquired association at the date of merger;

(xiii) The merger involves any agreement with the Federal Savings and Loan Insurance Corporation;

(xiv) The merger would result in the conversion of a mutual association to a stock association;

(xv) The Principal Supervisory Agent determines that the financial condition of the resulting association would not satisfy minimum financial standards as

determined from time to time by the Board's Office of Examinations and Supervision;

(xvi) The merger includes an association which has a class of voting securities registered with the Board under the Securities Exchange Act of 1934 (15 U.S.C. 78a-78jj); or

(xvii) The merger application involves unusual circumstances or policy questions.

(2) With regard to subparagraphs (1)(v) through (x) of this paragraph (h), the following provisions apply.

(i) "Depository institution" includes savings and loan associations, building and loan associations, homestead associations, cooperative banks, savings banks, commercial banks, and credit unions. The "largest depository institutions" are those whose percentage of total deposits in the relevant geographic area ranks one, two, or three. "Total deposits" includes all demand, savings, and time deposit accounts.

(ii) A "relevant geographic area" is used as a proxy for the "relevant geographic market," the area within which the competitive effects of a merger may be evaluated. The relevant geographic area shall be delineated as follows:

(*a*) A county or similar political subdivision, an area smaller than a county, or an aggregation of counties within which the merging associations compete (the "home county").

(*b*) *The commuting test.* If, when using the area delineated in preceding subparagraph (*a*), the merger does not meet the market share and concentration criteria set forth in subparagraphs (1)(v) through (x) of this paragraph (h), the relevant geographic area shall be expanded to include an analysis of surrounding areas where the workforce comes in and goes out of the home county on a regular basis.

(*1*) In a Standard Metropolitan Statistical Area ("SMSA"), the relevant geographic area will include any county to which 20 percent of the home county's workforce commutes and any county from which 20 percent of the workforce commutes to the home county. [These calculations may be obtained from the Census, Table P-2, Social Characteristics of the Population.]

(*2*) In a non-SMSA, the relevant geographic area will include any county to which 20 percent of the home county's workforce commutes and any other county in which depositors have access to depository institutions that are located approximately the same distance from their homes as are the depository institutions in the home county. [Data on households are available from the Census.]

(*c*) *The advertising test.* If, when using the area delineated in preceding paragraphs (h)(2)(ii) (*a*) and (*b*), the merger does not meet the market share and concentration criteria set forth in subparagraphs (1)(v) through (x) of this paragraph (h), the relevant geographic area shall be further expanded to include counties where competition between institutions is demonstrated by newspaper advertising. Where the volume of sales of a newspaper originating in a county other than the county of the institution to be acquired equals 50 percent of the households of the county of the association to be acquired, the county from which the newspaper originates will be included in the analysis if the association to be acquired advertises regularly in that newspaper. [Data on households are available from the Census; data on sales are available from newspaper circulation offices.]

(i) Board approval of mergers that may not occur automatically under paragraph (h) of this section, including those which entail modifications of the plan of merger, consolidation, or purchase of assets, may be given by the Board's Principal Supervisory Agent in those cases where paragraph (h) does not apply because:

(1) The Principal Supervisory Agent has recommended the imposition of nonstandard conditions prior to approving the merger;

(2) The Principal Supervisory Agent, notwithstanding the applicability of paragraphs (h)(1)(v) through (x) of this section, has determined that but for the merger, the merging association would not satisfy minimum financial standards as determined from time to time by the Board's Office of Examinations and Supervision (*i.e.*, it is a failing association); or

(3) The Principal Supervisory Agent has granted any of the following forbearances with respect to supervisory action:

(i) For purposes of the resulting association's satisfaction of the net-worth calculation of § 563.13(b), the Principal Supervisory Agent may exclude, for up to a five-year period, operating losses on acquired assets, capital losses sustained by the resulting association upon disposition of acquired assets, acquired scheduled items, and the amount of either (*a*) the net-worth deficiency at the date of merger, or (*b*) liabilities, including averaged liabilities, of the acquired association;

(ii) For purposes of calculating the liquidity requirements of §§ 523.11(a) and 523.12 of this Chapter, the Principal Supervisory Agent may exclude, for up to one year, any liquidity deficiency which the acquired association has and, also for one year, any aggregate net withdrawals from the acquired association;

(iii) For purposes of calculating the resulting association's investments under § 545.10(a) of this Subchapter, the Principal Supervisory Agent may exclude the building investments of the acquired association;

(iv) For the purpose of calculating any holding company net-worth maintenance requirement, the Principal Supervisory Agent may exclude, for up to a five-year period, the assets and liabilities balances of the acquired association; and

(v) For purposes of calculating the eligibility of the resulting association under §§ 545.9(h)(1), 545.9-1(d) (2) and (4), and 563.8(e)(1) of this Chapter, the Principal Supervisory Agent may, for a five-year period, compute net worth in accordance with subparagraph (3)(i) of this paragraph (i) and may, for a five-year period, exclude from scheduled items those scheduled items acquired in the merger;

For purposes of this paragraph (i)(3), the Principal Supervisory Agent may agree to forbear from taking supervisory action if the acquiring association can demonstrate, by projections or otherwise, that its net worth will be adversely affected by the merger within a five-year period. The Principal Supervisory Agent may approve, with the concurrence of the Director of the Board's Office of Examinations and Supervision, the renewal of any supervisory forbearances, for up to five additional years, where the association can demonstrate the need for extended supervisory forbearances, a record of substantial corrective action and the extent of noncompliance caused by the acquisition of the acquired association. The Principal Supervisory Agent may approve an application for insurance of accounts and Bank membership filed by an uninsured association merging into a Federal association. The authority to approve mergers under this paragraph (i) is discretionary with the Principal Supervisory Agent. It is expected that when a merger subject to these delegations raises significant issues of law or policy for which the Board has not established a formal position, the Principal Supervisory Agent will refer that merger application to the Board for its consideration.

PART 552—STOCK ASSOCIATIONS

5. Amend § 552.13 by deleting paragraphs (h) (1) and (2) and redesignating paragraphs (e), (f), (g), and (h), (3), (4), (5), and (6), (i), (j), (k), (l), and (m) as new paragraphs (f), (g), (h), and (i) (1), (2), (3), and (4), (j), (k), (l), (m), and (n), respectively, revise new paragraphs (i) (1) and (3) and add a new paragraph (e), as follows:

§ 552.13 Combinations involving Charter S associations.

* * * * *

e. *Approval by the Board's Principal Supervisory Agent.* The specific approval of the Board (including recommending modifications of the plan of merger, consolidation, or purchase of bulk assets) required by paragraph (d) of this section may be given by the Board's Principal Supervisory Agent in accordance with the conditions set forth in § 546.2(i) of this Subchapter.

(f) *Approval of board of directors.* * * *

(g) *Combination agreement.* * * *

(h) *Application for Board approval.* * * *

(i) *Notice.*

(1) *Notice to stockholders.* In addition to publication, Charter S associations shall mail notice of the filing of applications to stockholders within 10 days of filing. The contents of the notice shall include the information prescribed by § 543.2 of this Subchapter.

(2) *Republication.* * * *

(3) *Procedure; processing of application.* Processing of an application under this section shall follow the procedures set forth in § 543.2.

(4) *Supervisory exception.* * * *

(j) *Approval by stockholders.* * * *

(k) *Disclosure.* * * *

(l) *Articles of combination.* * * *

(m) *Effective date.* * * *

(n) *Mergers and consolidations: transfer of assets and liabilities to resulting association.* * * *

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

6. Revise §563.22, as follows:

§ 563.22 Merger, consolidation, or purchase of bulk assets.

(a) No insured institution (which, for the purposes of this section, shall not include a Federal institution the deposits of which are insured by the Federal Deposit Insurance Corporation) may at any time increase its accounts of an insurable type as a part of any merger or consolidation with another institution or through the purchase of bulk assets without application to and approval by the Corporation. Application for such approval shall be upon forms prescribed by the Corporation and such other information shall be furnished as the Corporation may require. An applicant shall also comply with section 7A of the Clayton Act (15 U.S.C. §18A) and regulations issued thereunder (16 CFR Parts 801, 802, and 803).

(b) Processing of an application under this section shall follow the procedures set forth in §543.2 of this Chapter, except that (1) the required newspaper publication of notice of application shall be made in the communities in which the home offices of the merging and resulting institutions are located; and (2) applicants may additionally mail such notice of the voting members of each institution within the time specified in §543.2(d).

(c) Paragraph (b) of this section does not apply to any merger, consolidation, or purchase of bulk assets (1) authorized by the Corporation to be instituted for supervisory reasons, or (2) involving an interim Federal association or an interim state institution if the resulting institution is immediately acquired in accordance with the procedures set forth in §584.4 of this Chapter.

(d)(1) Merger applications filed in accordance with the procedures set out in §543.2 shall be deemed to be approved automatically by the Corporation 30 calendar days after the Principal Supervisory Agent sends written notice to the applicant that the application is complete, unless:

(i) The resulting institution requests the granting of supervisory forbearances pursuant to paragraph (e)(3) of this section;

(ii) The Principal Supervisory Agent recommends the imposition of nonstandard conditions prior to approving the merger;

(iii) The application has been substantially protested;

(iv) The Principal Supervisory Agent raises objections to the merger;

(v) The resulting institution would be one of the 3 largest depository institutions competing in the relevant geographic area where before the merger there were 5 or fewer depository institutions, the resulting institution would have 25 percent or more of the total deposits held by depository institutions in the relevant geographic area, and the share of total deposits would have increased by 5 percent or more;

(vi) The resulting institution would be one of the 2 largest depository institutions competing in the relevant geographic area where before the merger there were 6 to 11 depository institutions, the resulting institution would have 30 percent or more of the total deposits held by depository institutions in the relevant geographic area, and the share of total deposits would have increased by 10 percent or more;

(vii) The resulting institution would be one of the 2 largest depository institutions competing in the relevant geographic area where before the merger there were 12 or more depository institutions, the resulting institution would have 35 percent or more of the total deposits held by depository institutions in the relevant geographic area, and the share of total deposits would have increased by 15 percent or more;

(viii) The Herfindahl-Hirschman Index (HHI) in the relevant geographic area was more than 1800 before the merger, and the increase in the HHI caused by the merger would be 50 or more;

(ix) In a merger involving potential competition, the Principal Supervisory Agent determines that the acquiring institution is one of 3 or fewer potential entrants into the relevant geographic area;

(x) Both the acquiring and an acquired institution have assets of $1 billion or more;

(xi) The institution that will be the resulting institution in the merger has a composite Community Reinvestment Act rating of less than satisfactory, or is otherwise seriously deficient with respect to the Board's nondiscrimination regulations and the deficiencies have not been resolved to the satisfaction of the Principal Supervisory Agent;

(xii) The resulting institution's net worth would not at least equal the amount required for the institution under § 563.13(b) of this Subchapter. Where goodwill has been included in the resulting institution's assets, the applicant must submit an opinion of a certified public accountant, satisfactory to the Principal Supervisory Agent, that its use and value are appropriate under, and accounted for, by generally accepted accounting principles. For purposes of this subparagraph (xii), in calculating whether the net worth of the resulting institution will at least equal the amount required under § 563.13(b), the Principal Supervisory Agent may exclude scheduled items which will be acquired in the merger and the amount of either: (A) The net-worth deficiency or (B) the liabilities, including averaged liabilities, of the acquired institution at the date of merger;

(xiii) The merger involves any agreement with the Corporation;

(xiv) The merger would result in the conversion of a mutual institution to a stock institution;

(xv) The Principal Supervisory Agent determines that the financial condition of the resulting institution would not satisfy minimum financial standards as determined from time to time by the Board's Office of Examinations and Supervision;

(xvi) The merger includes an institution which has a class of voting securities registered with the Board under the Securities and Exchange Act of 1934 (15 U.S.C. §§ 78a–78jj); or

(xvii) The merger application involves unusual circumstances or policy questions.

(2) With regard to subparagraphs (1)(v) through (x) of this paragraph (d), the following provisions apply.

(i) "Depository institution" includes savings and loan associations, building and loan associations, homestead associations, cooperative banks, savings banks, commercial banks, and credit unions. The "largest depository institutions" are those whose percentage of total deposits in the relevant geographic area ranks one, two, or three. "Total deposits" includes all demand, savings, and time deposit accounts.

(ii) A "relevant geographic area" is used as a proxy for the "relevant geographic market," the area within which the competitive effects of a merger may be evaluated. The relevant geographic area shall be delineated as follows:

(*a*) A county or similar political subdivision, an area smaller than a county, or an aggregation of counties within which the merging institutions compete (the "home county");

(*b*) *The commuting test.* If, when using the area delineated in preceding paragraph (d)(2)(ii)(*a*), the merger does not meet the market share and concentration criteria set forth in subparagraphs (1) (v) through (x) of this paragraph (d), the relevant geographic area shall be expanded to include an analysis of surrounding areas where the work force comes in and goes out of the home county on a regular basis.

(*1*) In a Standard Metropolitan Statistical Area ("SMSA"), the relevant geographic area will include any county to which 20 percent of the home county's work force commutes and any county from which 20 percent of the work force commutes to the home county. [These calculations may be obtained from the Census, Table P–2, Social Characteristics of the Population.]

(*2*) In a non-SMSA, the relevant geographic area will include any county to which 20 percent of the home county's workforce commutes and any other county in which depositors have access to depository institutions that are located approximately the same distance from their homes as are the depository institutions in the home county. [Data on households are available from the Census.]

(*c*) *The advertising test.* If, when using the area delineated in preceding paragraphs (d)(2)(ii) (*a*) and (*b*), the merger does not meet the market share and concentration criteria set forth in subparagraph (1)(v) through (x) of this paragraph (d), the relevant geographic area shall be further expanded to include counties where competition between institutions is demonstrated by newspaper advertising. Where the volume of sales of a newspaper originating in a county other than the county of the institution to be acquired equals 50 percent of the households of the county of the institution to be acquired, the county from which the newspaper originates will be included in the analysis if the institution to be acquired advertises regularly in that newspaper. [Data on households are available from the Census; data on sales are available from newspaper circulation offices.]

(e) Corporation approval of mergers that may not occur automatically under paragraph (d) of this section, including those which entail modifications of the plan of merger, consolidation, or purchase of assets, may be given by the Board's Principal Supervisory Agent (as defined in § 541.8 of this Chapter) in those cases where paragraph (d) does not apply because:

(1) The Principal Supervisory Agent has recommended the imposition of nonstandard conditions prior to approving the merger;

(2) The Principal Supervisory Agent, notwithstanding the applicability of paragraphs (d)(1)(v) through (x) of this section, had determined that but for the merger, the merging institution would not satisfy minimum financial standards as determined from time to time by the Board's Office of Examinations and Supervision (*i.e.*, it is a failing institution); or

(3) The Principal Supervisory Agent has granted any of the following forbearances with respect to supervisory action:

(i) For purposes of the resulting institution's satisfaction of the net-worth calculation of § 563.13(b) of this Part, the Principal Supervisory Agent may exclude, for up to a five-year period, operating losses on acquired assets, capital losses sustained by the resulting institution upon disposition of acquired assets, acquired scheduled items, and the amount of either (*a*) the net-worth deficiency at the date of merger, or (*b*) liabilities, including averaged liabilities, of the acquired institution;

(ii) For purposes of calculating the liquidity requirements of §§ 523.11(a) and 523.12 of this Chapter, the Principal Supervisory Agent may exclude, for up to one year, any liquidity deficiency which the acquired institution has and, also for one year, any aggregate net withdrawals from the acquired institution;

(iii) For purposes of calculating the resulting institution's investments under § 545.10(a) of this Chapter, the Principal Supervisory Agent may exclude the building investments of the acquired institution;

(iv) For the purpose of calculating any holding company net-worth maintenance requirement, the Principal Supervisory Agent may exclude, for up to a five-year period, the assets and liabilities balances of the acquired institution; and

(v) For purposes of calculating the eligibility of the resulting institution under §§ 545.9(h)(1), 545.9–1(d)(2) and (4), and 563.8(e)(1) of this Chapter, the Principal Supervisory Agent may, for a five-year period, compute net worth in accordance with subparagraph (3)(i) of this paragraph (e) and may, for a five-year period, exclude from scheduled items those scheduled items acquired in the merger;

For purposes of this paragraph (e)(3), the Principal Supervisory Agent may agree to forbear from taking supervisory action if the acquiring institution can demonstrate, by projections or otherwise, that its net worth will be adversely affected by the merger within a five-year period. The Principal Supervisory Agent may approve, with the concurrence of the Director of the Board's Office of Examinations and Supervision, the renewal of any supervisory forbearances, for up to five additional years, where the institution can demonstrate the need for extended supervisory forbearances, a record of substantial corrective action and the extent of noncompliance caused by the acquisition of the acquired institution.

The authority to approve mergers under this paragraph (e) is discretionary with the Principal Supervisory Agent. It is expected that when a merger subject to these delegations raises significant issues of law or policy for which the Corporation has not established a formal position, the Principal Supervisory Agent will refer that merger application to the Corporation for its consideration.

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

§ 563b.4 [Amended]

1. Amend § 563b.4(b)(1) by substituting the number "10" for the number "20" in the second paragraph of the Notice set forth in that subparagraph.

(Section 5 of the Home Owners' Loan Act, 48 Stat. 132 (12 U.S.C. 1464); secs. 402, 403, and 407 of the National Housing Act, 12 U.S.C. 1725, 1726, & 1730; Reorg. Plan No. 3 of 1947, 12 FR 4981; 3 CFR 1071 (1943–48 Comp.))

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 83-35586 Filed 12-30-83; 8:45 am]

BILLING CODE 6720-01-M

Reader Aids

Federal Register
Vol. 48, No. 1
Monday, January 3, 1983

INFORMATION AND ASSISTANCE

PUBLICATIONS

Code of Federal Regulations	
CFR Unit	202-523-3419
	523-3517
General information, index, and finding aids	523-5227
Incorporation by reference	523-4534
Printing schedules and pricing information	523-3419
Federal Register	
Corrections	523-5237
Daily Issue Unit	523-5237
General information, index, and finding aids	523-5227
Privacy Act	523-5237
Public Inspection Desk	523-5215
Scheduling of documents	523-3187
Laws	
Indexes	523-5282
Law numbers and dates	523-5282
	523-5266
Slip law orders (GPO)	275-3030
Presidential Documents	
Executive orders and proclamations	523-5233
Public Papers of the President	523-5235
Weekly Compilation of Presidential Documents	523-5235
United States Government Manual	523-5230

SERVICES

Agency services	523-5237
Automation	523-3408
Library	523-4986
Magnetic tapes of FR issues and CFR volumes (GPO)	275-2867
Public Inspection Desk	523-5215
Special Projects	523-4534
Subscription orders (GPO)	783-3238
Subscription problems (GPO)	275-3054
TTY for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-190 3

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. This is a voluntary program. See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JANUARY 1983

This table is for determining dates in documents which give advance notice of compliance, impose time limits on public response, or announce meetings.

Agencies using this table in planning publication of their documents must allow sufficient time for printing production.

In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or a holiday, the next Federal business day is used. (see 1 CFR 18.17)

A new table will be published in the first issue of each month.

All January, February, and March dates are in 1983.

Dates of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
January 3	January 18	February 2	February 17	March 4	April 4
January 4	January 19	February 3	February 18	March 7	April 4
January 5	January 20	February 4	February 22	March 7	April 5
January 6	January 21	February 7	February 22	March 7	April 6
January 7	January 24	February 7	February 22	March 8	April 7
January 10	January 25	February 9	February 24	March 11	April 11
January 11	January 26	February 10	February 25	March 14	April 11
January 12	January 27	February 11	February 28	March 14	April 12
January 13	January 28	February 14	February 28	March 14	April 13
January 14	January 31	February 14	February 28	March 15	April 14
January 17	February 1	February 16	March 3	March 18	April 18
January 18	February 2	February 17	March 4	March 21	April 18
January 19	February 3	February 18	March 7	March 21	April 19
January 20	February 4	February 22	March 7	March 21	April 20
January 21	February 7	February 22	March 7	March 22	April 21
January 24	February 8	February 23	March 10	March 25	April 25
January 25	February 9	February 24	March 11	March 28	April 25
January 26	February 10	February 25	March 14	March 28	April 26
January 27	February 11	February 28	March 14	March 28	April 27
January 28	February 14	February 28	March 14	March 29	April 28
January 31	February 15	March 2	March 17	April 1	May 2

CFR CHECKLIST; 1982 ISSUANCES

This checklist, prepared by the Office of the Federal Register, is published in the first issue of each month. It is arranged in the order of CFR titles, and shows the revision date and price of the volumes of the Code of Federal Regulations issued to date for 1982. New units issued during the month are announced on the back cover of the daily **Federal Register** as they become available.

For a checklist of current CFR volumes comprising a complete CFR set, see the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $615 domestic, $153.75 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

CFR Unit (Rev. as of Jan. 1, 1982):

Title	Price
1-2	$5.50
3	7.00
4	7.50
5 Parts:	
1-1199	8.00
1200-end	6.00
7 Parts:	
0-45	8.50
46-51	7.50
52	8.50
53-209	8.50
210-299	8.00
300-399	6.50
400-699	7.50
700-899	7.50
900-999	9.50
1000-1059	7.50
1060-1119	7.50
1120-1199	6.50
1200-1499	7.50
1500-1899	6.50
1900-1944	8.50
1945-end	8.00
8	6.00
9 Parts:	
1-199	7.50
200-end	7.50
10 Parts:	
0-199	8.50
200-399	7.50
400-499	8.00
500-end	8.00
12 Parts:	
1-199	6.50
200-299	14.00
300-499	7.00
500-end	8.50
13	8.00
14 Parts:	
1-59	8.00
60-139	8.00
140-199	6.50
200-1199	8.50
1200-end	6.50
15 Parts:	
0-299	6.50
300-399	7.50
400-end	7.50
16 Parts:	
0-149	7.00
150-999	7.00
1000-end	7.50
CFR Index	9.50

CFR Unit (Rev. as of Apr. 1, 1982):

Title	Price
17 Parts:	
0-239	8.50
240-end	8.00
18 Parts:	
1-149	8.00
150-399	8.50
400-end	7.50
19	9.50
20 Parts:	
1-399	6.50
400-499	8.00
500-end	8.50
21 Parts:	
1-99	7.00
100-169	7.50
170-199	7.50
200-299	5.50
300-499	8.50
500-599	8.00
600-799	6.00
800-1299	7.00
1300-end	5.50
22	9.00
23	7.50
24 Parts:	
0-199	7.00
200-499	8.50
500-799	7.00
800-1699	7.50
1700-end	7.00
25	8.50
26 Parts:	
1 (§§ 1.0-1.169)	9.00
1 (§§ 1.170-1.300)	7.50
1 (§§ 1.301-1.400)	7.00
1 (§§ 1.401-1.500)	7.50
1 (§§ 1.501-1.640)	7.50
1 (§§ 1.641-1.850)	7.50
1 (§§ 1.851-1.1200)	8.50
1 (§§ 1.1201-end)	9.00
2-29	7.50
30-39	7.00
40-299	8.50
300-499	7.00
600-end	5.50
27 Parts:	
1-199	7.50
200-end	7.50

CFR Unit (Rev. as of July 1, 1982):

Title	Price
28	8.00
29 Parts:	
0-99	9.00
100-499	6.00
500-899	8.50
900-1899	6.50
1900-1910	9.00
1911-1919	6.00
30 Parts	
0-199	8.00
31 Parts:	
0-199	7.00
32 Parts:	
1-39, Vol. I (rev. 9/1/82)	9.00
1-39, Vol. II (rev. 9/1/82)	11.00
1-39, Vol. III (rev. 9/1/82)	10.00
700-799	8.50
800-999	8.00
1000-end	7.00
34 Parts:	
400-end	8.50
35	6.50
37	7.00
38 Parts:	
0-17	8.00
18-end	7.00
39	7.00
40 Parts:	
0-51	8.50
53-80	8.50
81-99	8.50
100-149	7.50
150-189	7.50
190-399	7.50
400-424	8.00
425-end	7.50
41 Chapters:	
(1-11 to App.)	7.50
3-6	8.50
7	5.50
8	5.50
9	8.00
19-100	8.00
102-end	7.00

CFR Unit (Rev. as of Oct. 1, 1982):

Title	Price
46 Parts:	
110-139	5.00

MICROFICHE EDITION OF THE CFR:

The CFR is now available on microfiche from the Superintendent of documents, Government Printing Office, Washington, D.C. 20402, at the following prices:

1981

Complete set (one-time mailing):
$155.00 (domestic).

1982

Subscription (mailed as issued):
$250.00 (domestic).
Individual copies—$2.25 each (domestic).

CFR ISSUANCES

Complete Listing of 1982 Editions and Projected January 1983 Editions

This list restates the complete publication plans for the 1982 editions and projects the publication plans for the January, 1983 quarter. A projected schedule that will include the April, 1983 quarter will appear in the first **Federal Register** issue of April, 1983, immediately after the CFR checklist.

The 1982 edition of the CFR consists of 180 volumes. Titles in the January and April 1982 quarters are presently available at the Government Printing Office. All titles in the July and October 1982 quarters are not available at this time. In the July and October list appearing below, the asterisk (*) indicates the 1982 issuances that are not available.

For pricing information on available 1982 volumes consult the CFR checklist in this **Federal Register.**

Pricing information is not available on projected issuances. Individual announcements of the actual release of volumes will continue to be printed in the **Federal Register** and will provide the price and ordering information. The monthly CFR checklist or the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR volumes actually printed.

Normally, CFR volumes are revised according to the following schedule:

Titles 1-16—January 1
Titles 17-27—April 1
Titles 28-41—July 1
Titles 42-50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

Titles revised as of January 1, 1982:

Title

CFR Index
1-2
3 (Compilation)
4
5 Parts:
1-1199
1200-end
6 [Reserved]
7 Parts:
0-45
46-51
52
53-209
210-299
300-399
400-699
700-899
900-999
1000-1059
1060-1119
1120-1199
1200-1499
1500-1899
1900-1944
1945-end
8
9 Parts:
1-199
200-end
10 Parts:
0-199
200-399
400-499
500-end
11 (Cover only)
12 Parts:
1-199
200-299
300-499
500-end
13
14 Parts:
1-59
60-139
140-199
200-1199
1200-end
15 Parts:
0-299
300-399
400-end
16 Parts:
0-149
150-999
1000-end

Titles revised as of April 1, 1982:

Title

17 Parts:
0-239
240-end
18 Parts:
1-149
150-399
400-end
19
20 Parts:
1-399
400-499
500-end
21 Parts:
1-99
100-169
170-199
200-299
300-499
500-599
600-799
800-1299
1300-end
1308 Table (Cover only)
22
23
24 Parts:
0-199
200-499
500-799
800-1699
1700-end
25
26 Parts:
1(§§ 1.0-1-1.169)
1(§§ 1.170-1.300)
1(§§ 1.301-1.400)
1(§§ 1.401-1.500)
1(§§ 1.501-1.640)
1(§§ 1.641-1.850)
1(§§ 1.851-1.1200)
1(§§ 1.1201-end)
2-29
30-39
40-299
300-499
500-599 (Cover only)
600-end
27 Parts:
1-199
200-end

Titles revised as of July 1, 1982:

Title

28
29 Parts:
0-99
100-499
500-899
900-1899
1900-1910
1911-1919
1920-end
30 Parts:
0-199
200-end*
31 Parts:
0-199
200-end
32 Parts:
1-39, Vol. I (Revised as of September 1, 1982)
1-39, Vol. II (Revised as of September 1, 1982)
1-39, Vol. III (Revised as of September 1, 1982)
40-399*
400-699
700-799
800-999
1000-end
33 Parts:
1-199
200-end
34 Parts:
1-399
400-end
35
36 Parts:
1-199
200-end
37
38 Parts:
0-17
18-end
39

* Indicates volume is still in production and not ready for distribution.

Title

40 Parts:
0-51
52
53-80
81-99
100-149
150-189
190-399
400-424
425-end
41 Parts:
Chap. 1 (1-1 to 1-10)
Chap. 1 (1-11 to App.)-2
Chap. 3-6
Chap. 7
Chap. 8
Chap. 9
Chap. 10-17
Chap. 18 Vol. I (Revised as of December 31, 1982)
Chap. 18 Vol. II (Revised as of December 31, 1982)
Chap. 18 Vol. III (Revised as of December 31, 1982)
Chap. 19-100
Chap. 101*
Chap. 102-end

Titles revised as of October 1, 1982:

Title

42 Parts:
1-60
61-399
400-end*
43 Parts:
1-999*
1000-3999*
4000-end*
44*
45 Parts:
1-199
200-499*
500-1199*
1200-end*
46 Parts:
1-29*
30-40*
41-69*
70-89
90-109*
110-139
140-155*
156-165*
166-199*
200-399*
400-end*
47 Parts:
0-19*
20-69*
70-79*
80-end*
48 [Reserved]
49 Parts:
1-99*
100-177*
178-199*
200-399*
400-999*
1000-1199 (Revised as of November 1, 1982)*
1200-1299*
1300-end
50 Parts:
1-199*
200-end*

* Indicates volume is still in production and not ready for distribution.

Projected January 1, 1983 editions:

Title

CFR Index
1-2
3 (Compilation)
4
5 Parts:
1-1199
1200-end
6 [Reserved]
7 Parts:
0-45
46-51
52
53-209
210-299
300-399
400-699
700-899
900-999
1000-1059
1060-1119
1120-1199
1200-1499
1500-1899
1900-1944
1945-end
8

Title

9 Parts:
1-199
200-end
10 Parts:
0-199
200-399
400-499
500-end
11 (To be announced)
12 Parts:
1-199
200-299
300-499
500-end
13
14 Parts:
1-59
60-139
140-199
200-1199
1200-end
15 Parts:
0-299
300-399
400-end
16 Parts:
0-149
150-999
1000-end

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing December 28, 1982