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Wednesday
August 15, 1984

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Internal Revenue Service
International Trade Commission
Land Management Bureau

Air Carriers
Civil Aeronautics Board

Air Pollution Control
Environmental Protection Agency

Animal Diseases
Animal and Plant Health Inspection Service

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Freedom of Information
Postal Service

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Consumer Product Safety Commission

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Agricultural Marketing Service

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Selected Subjects

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

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Agricultural Marketing Service

Packaging and Containers
Consumer Product Safety Commission

Pesticides and Pests
Environmental Protection Agency

Quarantine
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Radio Broadcasting
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Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 84-333]

Witchweed Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the list of suppressive areas under the Witchweed Quarantine and Regulations by adding areas in 7 counties in North Carolina and 1 county in South Carolina to the list of suppressive areas; by deleting 2 entire counties and areas in 13 counties in North Carolina, and areas in 3 counties in South Carolina from the list of suppressive areas; and by making certain nonsubstantive, editorial changes. This action is necessary to prevent the artificial spread of witchweed and to delete unnecessary restrictions of the interstate movement of regulated articles.

EFFECTIVE DATE: August 15, 1984.

FOR FURTHER INFORMATION CONTACT: Paul F. Sand, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8295.

SUPPLEMENTARY INFORMATION:

Background

A document published in the Federal Register on April 25, 1984, (49 FR 17723-17733), set forth in an interim rule amending § 301.80-2a of the Witchweed Quarantine and Regulations (7 CFR 301.80 et seq., hereinafter known as Regulations). The document amended the quarantine and regulations by adding areas in 7 counties in North Carolina and 1 county in South Carolina to the list of suppressive areas, and by deleting 2 entire counties in North Carolina, areas in 13 counties in North Carolina, and areas in 3 counties in South Carolina from the list of suppressive areas. In addition, this document made certain other nonsubstantive, editorial changes.

The amendment became effective on the date of publication. The document provided that the amendment was necessary as an emergency measure in order to prevent the artificial spread of the witchweed and to delete unnecessary restrictions on the interstate movement of regulated articles.

Comments were solicited for 60 days after publication of the amendment. No comments were received in reponse to the amendment. The factual situations which were set forth in the document of April 25, 1984, still provide a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

The amendment has been issued in conformance with Executive Order 12291, and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that the amendment will have an annual effect on the economy of approximately $400; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action affects the interstate movement of regulated articles from specified areas in North Carolina and South Carolina. Based on information compiled by the Department, it has been determined that there are approximately 290,000 small entities that move regulated articles interstate from North Carolina and South Carolina, and many hundreds of thousands of small entities that move such articles interstate from other States. However, it has been determined that only 15 entities in North Carolina and South Carolina move regulated articles interstate from the areas affected by this action. Further, the overall economic impact from this action is estimated to be only about $400.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant pests, Quarantine, Transportation, Witchweed.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, the interim rule published at 49 FR 17723-17733 on April 25, 1984, is adopted as a final rule.

(Secs. 8, 9, 37 Stat. 318, as amended, sec. 106, 71 Stat. 33 (7 U.S.C. 161,) 162, 150ee); 7 CFR 2.17, 2.51, 371.2(c))

Done at Washington, D.C., this 8th day of August 1984.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 84-21408 Filed 8-14-84; 8:45 am]

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Food and Nutrition Service

7 CFR Parts 278 and 279

[Amdt. No. 257]

Food Stamp Program; Insured Financial Institutions, Retail Food Stores and Wholesale Food Concerns; Miscellaneous Amendments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule and correction.

SUMMARY: This Food Stamp Program rulemaking amends various provisions of the regulations governing insured financial institutions, retail food stores and wholesale food concerns participating in the program. These amendments are being published in response to violations and abuses

observed by the Food and Nutrition Service. They clarify distinctions between retail food stores and wholesale food concerns; specify additional conditions under which the authorizations of firms may be withdrawn; increase the accountability of insured financial institutions in the coupon redemption process; and expand the authority of the Food and Nutrition Service (FNS) to establish claims against violators. There are also some technical revisions intended to ensure greater consistency between statutory and regulatory provisions. A proposed rule including these issues was published on August 5, 1983. Comments were solicited from interested parties through November 3, 1983. This final action addresses significant issues raised by commenters. We are also correcting an erroneous amendatory instruction which appeared in a final rule entitled *Bonding of Authorized Firms*, published July 12, 1984.

DATE: This rule is effective September 14, 1984.

FOR FURTHER INFORMATION CONTACT: Thomas O'Connor, Supervisor, Issuance and Benefit Delivery Section, Program Design and Rulemaking Branch, Program Planning, Development and Support Division, Food and Nutrition Service, USDA, Alexandria, Virginia, 22302, (703) 756-3425.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291. The Department has reviewed this rule under Exectuve Order 12291 and Secretary's Memorandum No. 1512-1. The rule will not significantly raise costs or prices for consumers, industries, government agencies or geographic regions. There will not be 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. Therefore, the Department has classified the rule as "not major".

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act, Pub. L. 96-354. Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. Although a large number of small entities (retail food stores and insured financial institutions) will be affected, the economic impact on such entities will be negligible.

Recordkeeping Requirements

The reporting requirements contained in this rule (in s278.5(a)(2)) have been approved by the Office of Management and Budget (OMB). (OMB approval No. 0584-0085.)

Background

The Department published a proposed rule on August 5, 1983 (at 48 FR 35868) containing several amendments intended to curb violations and abuses of the program. Comments on the proposed rule were solicited from interested parties through November 3, 1983. A total of 21 comment letters were received regarding the proposed rule from State welfare agencies, retailer and wholesaler trade associations, commercial banks, commercial bankers' associations, and FNS Offices. This final action addresses significant issues raised by these commenters.

General Comments

Several commenters supported the proposed amendments, and one commenter stated that the regulations bring about such needed changes to reduce program abuse and improve food stamp accountability.

Authorization of Retail Food Stores

The proposed rule included a provision that a wholesale firm may be authorized as a retail food store only if it has significant retail food business. Two commenters objected to this provision on the grounds that certain retail firms could no longer be authorized to accept food stamps. Apparently these commenters were concerned about the two following types of firms which have both wholesale and retail outlets: (1) Retail firms owned by a firm which also owns warehousing (wholesale) facilities and (2) retail firms which join together as a cooperative association which owns warehousing facilities. While these commenters were concerned that these types of retailers might not be authorized, another commenter recognized that it is not the Department's intention to disqualify wholesalers having legitimate retail business. This commenter also supported judging wholesaler firms on a case-by-case basis in determining whether such firms should be authorized as retail food stores.

Other commenters objected to considering the ratio of a wholesale firm's retail food sales to its total sales as one factor in determining whether to authorize a wholesaler as a retailer.

Those commenters who expressed concern that retail outlets owned by wholesale firms would no longer be authorized appear to have misunderstood the intent of the proposed rule. It is not the intent of the Department to prevent the authorization of any firm which is clearly a retail food outlet, but, as stated in the August 5 preamble, to ensure that wholesale firms which sell little, if any, food at the retail level are not authorized as retailers. Authorizations of wholesale firms as retail food stores could create a potential for fraudulent redemptions by wholesalers. The Department acted to curtail or eliminate this and other sources of wholesaler fraud and abuse in its final rule published on December 29, 1981. The authorization of such firms without the added criteria of comparative retail/wholesale sales would circumvent the Department's policy that only those wholesalers needed for the effective and efficient operation of the program may be authorized.

The commenters' concerns that wholesaler owned retail firms could no longer be authorized also result partially from a misunderstanding of the Department's current authorization policy. Firms having multiple units or locations do not apply for and receive authorizations as one entity. Each separate unit of a firm must apply for authorization individually and separate authorizations are issued to individual outlets. Thus, in considering a firm's relative retail and wholesale sales, only the sales of the applicant unit would be considered. To eliminate confusion about the intent of this provision, the Department has in the final rule added language to clarify that authorization determinations are made for each individual unit of a firm. Under this provision, any firm which operates as a distinct retail food outlet and which meets the other criteria for the authorization of retail firms set forth in § 278.1 of the regulations will qualify and continue to qualify for authorization.

It should also be noted, as stated in the August 5, 1983, proposed rule, that the proportion of a firm's total retail food sales to its total sales is only one of the factors in determining whether a wholesale firm qualifies for authorization as a retailer. Other factors which FNS will consider include whether the firm holds itself out to the public as a retail food store and whether it actively seeks retail food trade. In considering a wholesaler for authorization as a retail firm, FNS will weigh all factors. For example, an

coupons presented for redemption at the Federal Reserve and provided that FNS could, at its discretion, return deposits not meeting specified cancellation requirements to the depositing institution for reprocessing. One commenter suggested that the Federal Reserve, not FNS, should decide whether deposits not meeting cancellation requirements should be returned to the depositing institution. The Department has looked again at this function in terms of whether FNS or the Federal Reserve should have responsibility for deciding whether to return such deposits. Inasmuch as this aspect of monitoring coupon deposits is a new effort, the Department believes that a period of time is needed for evaluation of several aspects of this function. During this time, the Department can determine how extensive the problem of deposits with improper cancellations is and the manpower involved in returning such deposits. The Department believes that it can best make these determinations if it initially retains the authority for returning deposits. Based on these considerations, as well at other pertinent factors, the Department may decide that it is appropriate for the Federal Reserve, rather than FNS, to perform this function. However, since this activity is an internal administrative procedure, the Department determined it is not necessary to specify in the rule who will be authorized to conduct this function.

Another commenter suggested that the Federal Reserve should return to depositing institutions, without credit, food coupon deposits not accompanied by properly completed Food Coupon Deposit Documents. The agreement between the Department and the Federal Reserve for handling coupon redemptions includes a procedure for the handling of such deposits. Under that procedure, the Federal Reserve will write on a blank Food Coupon Deposit Document the coupon total and the name and address and the check routing code of the originating financial institution. The Department believes that it would be impractical and more complicated to return such deposits than to follow the agreed procedure as long as all requirements other than those related to the Food Coupon Deposit Document are met. For these reasons and the risk of coupon deposits being lost if returned, the Department has decided not to require returning deposits not accompanied by properly completed Food Coupon Deposit Documents (§ 278.5(a)).

Liability for Losses of Redeemed Coupons in Transit

The August 5, 1983 publication would rescind FNS' liability for losses of coupons in transit to Federal Reserve Banks and for losses of coupons from financial institutions as a result of burglary or robbery. Several commenters objected to this proposal stating: (1) FNS should assume liability for losses which do not result from bank negligence; (2) financial institutions will have to self-insure food coupon deposits and will pass these increased costs on to depositing retail food stores in the form of increased service charges if FNS' liability is rescinded; and (3) financial institutions may refuse to accept food coupon deposits.

The Department does not believe that the absence of a financial institution's negligence alters the fact that the Department should not be liable for losses in transit. Even without bank negligence, lost coupon deposits could be found and redeemed subsequent to FNS reimbursement, resulting in double payment for the coupons.

Redeeming financial institutions may find that they wish to purchase insurance for food coupon shipments. However, as pointed out by one commenter, the value of such losses over the years has not been high and, thus, the degree of risk financial institutions will have to absorb or obtain insurance for should not be great. Accordingly, the Department does not expect that rescission of FNS liability should result in significant increases in charges levied against depositing retail food stores by financial institutions.

The Department believes that the benefits which accrue to financial institutions in accepting food coupon deposits far outweigh the risk of losses of coupons in transit. The Department does not believe that significant numbers of financial institutions will refuse to accept coupon deposits. Existing regulations should provide retailers with more than adequate numbers of redemption outlets.

Finally, in developing this rule, the Department considered Federal government policy in regard to liability for other Federal instruments lost in transit. We found that the United States Department of the Treasury generally accepts liability for items such as Social Security checks, Federal payroll checks and United States Savings bonds if the losses do not result from bank negligence and/or the lost item is not subsequently redeemed. Banks maintain records of transacted bonds and checks and, therefore, it can be determined whether lost instruments are later negotiated. Therefore, liability is tied to this ability to track these items. The Department believes that requiring banks to identify and record transacted food stamps in order to determine if they are redeemed later would be extremely burdensome and expensive. As stated in the August 5 proposal, financial institutions were reimbursed a total of $2.5 million for losses in transit during fiscal years 1975–81. Given this relatively small amount, the Department believes that banks would bear greater costs through maintaining records of transacted food stamps than through being liable for losses of coupons in transit.

On a related issue, one commenter suggested that FNS should permit insured financial institutions to cancel food coupons by perforation to assure that coupons are permanently cancelled and, thus, could not be redeemed more than once. The commenter believed this would eliminate the lost in transit problem. The Department has previously considered requiring that food coupons be cancelled by perforation. However, the banking industry has advised the Department that the equipment used to process food coupons would not accept perforated coupons. Therefore, it is not feasible to require cancellation of food coupons by perforation.

For the reasons outlined, the Department has decided to retain in the final rule the provision that FNS shall not be liable for losses of coupons in transit or by burglary or robbery. However, for purposes of clarity, the language in this amendment has been slightly revised in the final rule (§ 278.5(c)).

Establishment of Claims by FNS for Funds Lost Through Violations

There were few comments on the proposed amendment requiring FNS to establish and pursue claims against any person or firm which has accepted coupons in violation of the Act or regulations. While one commenter supported the proposal, another commenter believed that FNS would not be successful in collecting claims against firms or individuals not authorized to participate in the program. This commenter also believed that establishing claims against such parties would cause a loss to the government through bookkeeping and billing expenses. In developing the proposal included in the August 5 rule, the Department weighed the costs of asserting claims and billing costs against the amounts which might likely be collected and concluded that pursuing such claims would be cost-

applicant wholesale firm might have a significant retail food business but not in comparison with its wholesale sales. If such a firm holds itself out to the public as a retail food store through advertising or other means, the firm would normally be considered a retail food store for food stamp authorization purposes. To further clarify that determinations as to whether wholesale firms qualify as retail food stores will be based on a consideration of all criteria specified, the Department has added language to this effect to the final rule.

One commenter requested further explanation of how to determine whether a firm is a retail food store. This same commenter believed that a wholesale firm should have what can clearly be recognized as a retail outlet in order to be an authorized retailer. The Department agrees that wholesale firms authorized as retailers should clearly be retail outlets. However, as illustrated by the example above, and as stated in the preamble to the August 5 publication, determinations on individual firms will be made on a case-by-case basis by weighing all pertinent factors. Therefore, the Department does not believe it is practical or feasible to provide more specific criteria, such as specific retail sales volumes or percentages of sales for determining whether a wholesaler may be an authorized retail outlet. The Department believes that local FNS Field Offices are in the best position to make these determinations by evaluating the factors in this rule and has not included further specific criteria in this final rule (§ 278.1(b)(1)(iv)).

Withdrawal of Authorized Firms

The August 5, 1983, publication would permit FNS to withdraw the authorization of firms under the following additional conditions: (1) The firm refuses to accept correspondence from FNS or refuses to respond to inquiries from FNS, or (2) the firm cannot readily be located. All comments received on this proposal were favorable. Two of the commenters, however, recommended expanding the provision for withdrawing the authorization of firms.

One commenter suggested that the proposal be expanded to cover seasonal operations (e.g., produce stands). This commenter explained that some operations such as produce stands become authorized to accept food stamps and do business at one location for a season. However, in some cases they cannot be located when the next season begins and the local FNS Field Office cannot determine whether the operation is still in business. The Department believes that such firms may be withdrawn when they cannot be located. Therefore, the Department does not believe it necessary to specify in the final rule that seasonal operations are covered by the readily located provision.

Another commenter suggested that a provision be added to withdraw the authorization of a firm which fails to respond to the required update of its application for authorization (Form FNS-350). Section 278.1 specifically states that failure to update information on the application form, upon request, may result in withdrawal of a firm's authorization and no additional provision is needed in the regulations (§ 278.1(1)).

Acceptance and Redemption of Food Coupons by Authorized Firms

The August 5 publication proposed to amend § 278.2(d) to prohibit an authorized retail firm from engaging in any series of coupon transactions to provide the same customer an amount of cash change greater than the maximum 99 cents allowed in one transaction. Current regulations prohibit engaging in a series of transactions of less than one dollar. However, as stated in the preamble to the proposed rule, it has come to the Department's attention that larger transactions have been used to circumvent the limitation. One commenter suggested that the period of time (e.g., a day, a week) over which a series of small transactions is prohibited should be defined. The Department does not believe that is practical or desirable to specifically define a maximum period of time within which a customer may be attempting to accumulate excess cash change. The Department believes that allowing the retailer latitude to decide whether a customer is attempting to accumulate excess cash rather than would setting an arbitrary time period, affords a better opportunity for preventing such schemes. Therefore, the Department has decided not to specify in the final rule a period of time over which a series of transactions is prohibited (§ 278.2(d)).

Redemption of Coupons by Financial Institutions

The August 5, 1983, publication proposed to amend procedures used by insured financial institutions to redeem food stamps which they accepted from authorized firms. Current food stamp program regulations (§ 278.4(c)) require that retail food stores and wholesale food concerns execute and surrender a redemption certificate each time they redeem food coupons at insured financial institutions. Presently the Food and Nutrition Service does not require a redeeming financial institution to verify the amount of coupons being redeemed by recording its count on the redemption certificate. Currently, financial institutions forward the food coupons to the Federal Reserve Bank through normal banking channels. The Federal Reserve Bank credits the financial institution for coupons received, destroys the food coupons and charges FNS for the face value of food coupons received and destroyed. The Federal Reserve Banks send the redemption certificates directly to the FNS Computer Center in Minneapolis, Minnesota. The center tabulates the value of coupons shown on the redemption certificates and generates various reports.

The present system properly monitors the activities of authorized retail food stores. It does not, however, reconcile individual redemption certificates with the value of coupons reflected, nor does it provide data to verify Federal Reserve Bank charges for food coupons received and destroyed. In the past, the total dollar value of coupons redeemed has greatly exceeded the total amount shown on all redemption certificates for given periods of time.

The August 5 publication proposed to implement, program-wide, a new redemption procedure recently tested as a cooperative effort by FNS and the Federal Reserve Bank of Atlanta. The new procedure, as described in the proposed rule, includes several provisions for enhancing the quality of accountability of the redemption of coupons by financial institutions, including: (1) Verification of the amount of coupons being redeemed by requiring redeeming financial institutions to record their count of coupons on the food coupon redemption certificate; (2) use of the Food Coupon Deposit Document (cash letter) to identify the depositing financial institution, the value of the coupons being deposited, and the value of the redemption certificates sent with the transmittal; (3) forwarding food coupons, redemption certificates, and Food Coupon Deposit Documents together to Federal Reserve Banks.

Results of the test established that the new procedure clearly tightened the entire redemption process by providing a complete audit trail from the authorized firm, to the financial institution, to the Federal Reserve Bank. Additional results of the test show that the difference between the dollar value of coupons redeemed and the amount shown on the redemption certificate was greatly reduce. The proposed rule contained a provision that FNS monitor

effective. The Department has, therefore, retained in this final rule the provision requiring FNS to establish and pursue claims against any person or firm which has accepted coupons in violation of the Act or regulations (§ 278.7(a)).

Administrative Review of Claims by Authorized Firms Against FNS

The August 5 publication included an amendment to clarify that claims by firms against FNS are subject to administrative review, but that claims asserted against firms by FNS for violations of the Food Stamp Act or regulations are not. Although it has been the Department's policy that claims asserted against firms are not subject to administrative review, this policy had not been specified in the regulations.

In response to this proposal, the Department received a comment including several arguments in favor of allowing administrative review of claims asserted against firms. No comments were received in favor of the proposal. A commenter objecting to the proposal acknowledged, as was stated in the preamble to the August 5 publication, that the Food Stamp Act does not specifically require that such claims be subject to administrative review. This commenter argued, however, that in the interest of fairness, these claims should be subjected to administrative review. It was also pointed out that in some cases, claim determinations have been made inconsistently and that since claims involve mathematical calculations, they are subject to error. Finally, it was stated that failure to provide administrative reviews of claims could lead firms to seek unnecessary and lengthy judicial reviews.

The Department has considered the comments expressed in favor of allowing administrative review of claims asserted by FNS against firms and believes the points raised are well taken. In addition, the Department looked again at other factors involved in allowing such reviews, including the workload which the reviews might entail. The Department had originally believed that allowing reviews of these claims would significantly increase the workload for FNS by creating a whole new class of actions which would be reviewable. However, upon reconsideration, the Department has found that, through a minor modification of the review process, it can allow such reviews without doing so. In most cases, such claims will also involve an action disqualifying a firm from program participation for a specified period of time for violations. Instead of having two reviews of the same case, one on the claims action and one on the disqualification action, the Department has determined that both reviews in these cases can be conducted simultaneously. Also, since it is not likely there will be many claims that do not involve associated disqualification actions, review of these claims will not significantly increase the workload. Therefore, the final rule specifies that claims asserted by FNS against firms as well as those brought by firms against FNS shall be subject to administrative review.

As discussed above, this final rule provides that FNS shall establish and pursue claims against any person or firm which has accepted or redeemed coupons in violation of the Food Stamp Act or regulations. Previously the regulations provided that FNS may establish a claim only against an authorized firm. The Department has decided that in the interest of fairness, these claims as well as those against authorized firms should be subject to administrative review. Therefore, the regulations specify that all claims asserted against violators under § 278.7(a) shall be subject to administrative review. (§§ 278.7(e), and 279.3 (a)(3), and (a)(4)).

Implementation

Except as noted below, the provisions of this amendment shall be effective 30 days following the publication of this amendment as a final rule in the Federal Register. Implementation of § 278.5(a) requiring redeeming financial institutions to verify that coupon deposits are supported by redemption certificates will be phased in by Federal Reserve Bank districts in accordance with a schedule determined by the Federal Reserve Board. Redeeming financial institutions shall be required to adhere to current requirements for handling redemption certificates (at 7 CFR 278.5(a)) until their Federal Reserve District implements the procedures contained in this final rule.

In regard to the amendment rescinding FNS liability for losses of cancelled coupons in transit or by burglary or robbery, FNS shall not be liable for any loss occurring after the effective date of this rule.

Correction—At 49 FR 28391 Published July 12, 1984.

In § 279.7, amendatory instruction number 2 (appearing in column 3, page 28393) is incorrect. The reference to revise the "fourth" sentence in paragraph (a) should refer to the "second" sentence of paragraph (a). There is no fourth sentence. The amendatory instruction is being corrected.

List of Subjects

7 CFR Part 278

Administrative practice and procedure, Banks, banking, Claims, Food stamps, Groceries—retail, Groceries, General line—Wholesaler, Penalties.

7 CFR Part 279

Administrative practice and procedure, Food stamps, Groceries—retail, Groceries, General line—Wholesaler.

Accordingly, 7 CFR Parts 278 and 279 are amended as follows:

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

1. In § 278.1, a new paragraph (b)(1)(iv) is added, Paragraphs (l), (m), (n)(o) and (p) are redesignated as paragraphs (m), (n), (o), (p) and (q) respectively, and a new paragraph (l) is added. The additions read as follows:

§ 278.1 Approval or retail food stores and wholesale food concerns.

* * * * *

(b) Determination of authorization. * * *

(1) * * *

(iv) A firm whose primary business is the sale of food at the wholesale level may not be authorized as a retail firm unless it has a significant volume of retail food sales. In addition to criteria applicable to all retail firms, the FNS officer in charge shall consider all of the following factors in determining whether a wholesaler qualifies to be authorized as a retailer: the volume of the firm's retail food business in relation to the volume of its wholesale food business, whether the firm holds itself out to the public as a food retailer, and whether the firm actively seeks retail food trade. The absence or presence of any one of the factors listed in this paragraph will not necessarily determine whether a wholesale firm qualifies for authorization as a retail food store. In determining whether a wholesale firm qualifies for authorization as a retailer, FNS shall consider each unit of a multi-unit firm separately. A firm authorized under this paragraph may not accept coupons as a wholesale food concern.

* * * * *

(l) *Refusal to accept correspondence or to respond to inquiries.* FNS may withdraw the authorization of any firm which:

(1) Refuses to accept correspondence from FNS;

(2) Fails to respond to inquiries from FNS within a reasonable time; or

(3) Cannot be located by FNS with reasonable effort.

* * * * *

2. In § 278.2, paragraph (a) is revised, and paragraph (d) is amended by removing the phrase "of less than 1 dollar" appearing in the last sentence. The revision reads as follows:

§ 278.2 Participation of retail food stores.

(a) *Use of coupons.* Coupons may be accepted by an authorized retail food store only from eligible households or the households' authorized representative, and only in exchange for eligible food. Coupons may not be accepted in exchange for cash, except when cash is returned as change in a transaction in which coupons were accepted in payment for eligible food under pargraph (d) of this section. Coupons may not be accepted in payment of interest on loans or for any other nonfood use. An authorized retail food store may not accept coupons from another retail food store.

* * * * *

3. In § 278.5, paragraphs (a) and (c) are revised, paragraph (d) is removed, and paragraphs (e), (f) and (g) are redesignated as paragraphs (d), (e) and (f) respectively. The revisions read as follows:

§ 278.5 Participation of insured financial institutions.

(a) *Accepting coupons.* (1) Financial institutions that are insured by the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC) may redeem coupons only from authorized retail food stores, meal services, and wholesale food concerns in accordance with the rules contained in this Part and instructions of the Federal Reserve Banks. Coupons submitted to insured financial institutions for credit or cash must be properly endorsed in accordance with § 278.4 of this part and shall be accompanied by a properly completed and signed redemption certificate.

(2) An insured financial institution shall verify the amount of the coupons being redeemed by recording its count on the redemption certificate. The count may either be encoded to permit Magnetic Ink Character Recognition (MICR) or handwritten. However, financial institutions are encouraged to MICR encode the count. Redemption certificates accepted by insured financial institutions shall be forwarded, with the corresponding coupon deposits, to the Federal Reserve Bank along with the transmitting Food Coupon Deposit Document (Form FNS-521).

(3) Redeemed coupons must be indelibly cancelled on the face of the coupon by the first insured financial institution receiving them. If the cancellation on the coupon face does not show the depositing institution's name or its routing symbol transit number, this identifying information must appear on the straps affixed to each bundle of coupons of like denomination. Deposits not meeting these cancellation requirements may be returned to the depositing institution for reprocessing. A portion of a coupon consisting of less than three-fifths of a whole coupon may not be redeemed.

(4) Insured financial institutions which are members of the Federal Reserve System, insured nonmember clearing institutions, and insured nonmember institutions which have arranged with a Federal Reserve Bank to deposit coupons for credit to the account of a member institution on the books of a Federal Reserve Bank may forward coupons directly to the Federal Reserve Bank. Other insured financial institutions may forward cancelled coupons through ordinary collection channels.

* * * * *

(c) *FNS liability for losses.* FNS shall not be liable for the value of any coupons lost, stolen, or destroyed while in the custody of an insured financial institution or for the value of coupons lost, stolen, or destroyed while in transit from an insured financial institution to a Federal Reserve Bank.

* * * * *

4. In § 278.7, paragraphs (a) and (e) are revised to read as follows:

§ 278.7 Determination and disposition of claims—retail food stores and wholesale food concerns.

(a) *Claims against violators.* FNS may establish and pursue claims against firms or other entities which have accepted or redeemed coupons in violation of the Food Stamp Act or this Part regardless of whether the firms or entities are authorized to accept food stamps. If a firm fails to pay a claim, FNS may collect the claim by offsetting against amounts due the firm on redemption of other coupons or by deducting the amounts due from bonds posted by firms in compliance with the provisions of § 278.1(b)(4). FNS shall deny an application for authorization or reauthorization by a firm which has failed to pay a claim.

* * * * *

(e) *Denials of claims brought by authorized firms against FNS.* If a claim brought by a firm against FNS under this section is denied in whole or in part, notification of this action shall be sent to the firm by certified mail or personal service. If the firm is aggrieved by this action, it may seek administrative review as provided in § 278.8.

* * * * *

6. In § 278.9, the undesignated paragraph is designated as paragraph (a). A new paragraph (b) is added to read as follows:

§ 278.9 Implementation of amendments relating to the participation of retail food stores, wholesale food concerns, and insured financial institutions.

* * * * *

(b) *Amendment No. 257* With the exception of the provisions in § 278.5 requiring redeeming financial institutions to verify that coupons are supported by redemption certificates, the revisions to Part 278 shall be effective September 14, 1984. Redeeming financial institutions shall begin verifying coupon deposits as required by § 278.5 in accordance with the schedule determined by the Federal Reserve Board. Insured financial institutions shall adhere to preexisting requirements for handling redemption certificates (at 7 CFR 278.5(a)) until their Federal Reserve District implements the procedures contained in this final rule. FNS shall not be liable for any losses of coupons in transit to Federal Reserve Banks or as a result of a burglary or robbery of an insured financial institution which occur after September 14, 1984.

PART 279—ADMINISTRATIVE AND JUDICIAL REVIEW—FOOD RETAILERS AND FOOD WHOLESALERS

7 In § 279.3, paragraph (a)(3) is revised, paragraph (a)(4) is redesignated as paragraph (a)(5) and a new paragraph (a)(4) is added. The new and revised paragraphs read as follows:

§ 279.3 Authority and jurisdiction.

(a) *Jurisdiction.* * * *

(3) Denial of all or part of any claim asserted by a firm against FNS under § 278.7 (b), (c), or (d);

(4) Assertion of a claim under § 278.7(a); or

* * * * *

§ 279.7 [Corrected]

8. At 49 FR 28393 (column 3) published July 12, 1984, amendatory instruction number 2 is corrected to read "In § 279.7, the second sentence in paragraph (a) is revised to read as follows:"

9. In § 279.11, the undesignated paragraph is designated as paragraph (a). A new paragraph (b) is added to read as follows:

§ 279.11 Implementation of amendments relating to administrative and judicial review.

* * * * *

(b) *Amendment No. 257.* The program change to § 279.3(a)(4) shall be effective September 14, 1984.

(91 Stat., 958 (7 U.S.C. 2011–2029))

(Catalog of Federal Domestic Assistance Programs No. 10.551, Food Stamps)

Dated: August 8, 1984.

Robert E. Leard,

Administrator.

[FR Doc. 84–21593 Filed 8–14–84; 8:45 am]

BILLING CODE 3410–30–M

Agricultural Marketing Service

7 CFR Part 946

Irish Potatoes Grown in Washington; Amendment No. 4 to Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment to the handling regulation, § 946.336 sets more uniform tolerances for certain potatoes. The regulation requires fresh market shipments of potatoes grown in Washington to be inspected and meet minimum grade, size, maturity and pack requirements. The regulation promotes orderly marketing of such potatoes and keeps less desirable quality and sizes from being shipped to consumers.

EFFECTIVE DATE: August 15, 1984.

FOR FURTHER INFORMATION CONTACT: Kurt Kimmel, Vegetable Branch, F&V, AMS, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447–2036.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "nonmajor" rule. Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Marketing Agreement No. 113 and Order No. 946, both as amended, regulate the handling of Irish potatoes grown in the State of Washington. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The State of Washington Potato Committee, established under the order, is responsible for its local administration.

At its public meeting in Pasco, Washington, on June 6, 1984, the committee recommended that the handling regulation be amended to set more uniform size tolerances on certain potatoes. Long variety potatoes grown in the production area are required to be at least 2⅛ inches in diameter or 5 ounces in weight from July 15 through August 31 each season. Currently undersize tolerances for these size designations are as specified in the "U.S. Standards for Grades of Potatoes" (7 CFR 51.1540–51.1566). These standards state that at least 95 percent of the potatoes must be at least 5 ounces to be certified to be of that weight, and that at least 97 percent of the potatoes must be at least 2⅛ inches in diameter to be certified to be of that size. The committee recommended that a 3 percent undersize tolerance be set on both size designations. This will eliminate some confusion within the industry on the proper sizing and certification of such potatoes.

The committee further recommended that tolerances on 50-pound carton packs be left unchanged. This is because these packs are currently marketed within the foodservice sector of the industry and this pack is established and accepted within this market.

Findings: After considering all relevant matters, including the proposal in the notice, it is found that the following amendment will tend to effectuate the declared policy of the act.

It is further found that good cause exists for not postponing the effective date of this regulation until 30 days after its publication in the Federal Register (5 U.S.C. 553) in that (1) shipments of potatoes grown in the production area have begun, (2) to maximize benefits to producers this regulation should apply to as many shipments as possible during the marketing season, (3) notice was given in the July 10, 1984, Federal Register (49 FR 28070) allowing interested persons until July 25, 1984, in which to file comments and none was filed, and (4) compliance with this regulation, which is similar to regulations issued during previous seasons, requires no special preparation by handlers subject to it which cannot be completed by the effective date.

List of Subjects in 7 CFR Part 946

Marketing agreements and orders, Potatoes, Washington State.

Section 946.336 *Handling regulation* (46 FR 39116, 47 FR 33245, 47 FR 38493, and 48 FR 31851) is hereby amended by adding a new (a)(2)(iii) as follows:

§ 946.336 Handling regulation.

* * * * *

(a) *Minimum quality requirements.*

* * *

(2) *Size.* * * *

(iii) *Tolerances*—The tolerances for size contained in the U.S. Standards for Grades of Potatoes shall apply except that for long varieties of potatoes packaged in other than 50-pound cartons and which are packed to meet a minimum size of 5 ounces, a 3 percent tolerance for undersize shall apply.

* * * * *

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

Dated: August 10, 1984 to become effective August 15, 1984.

Thomas R. Clark,

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

[FR Doc. 84–21603 Filed 8–14–84; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 72

[Docket No. 84–064]

Texas (Splenetic) Fever in Cattle

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the Texas (splenetic) fever in cattle regulations by deleting all proprietary brands of toxaphene emulsion from the list of dips allowed by the Department for dipping cattle to rid them of ticks prior to their interstate movement. This rule is necessary because such brands of toxaphene emulsion are no longer approved by the Environmental Protection Agency for such use.

DATE: The effective date of this document is August 15, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. G.O. Schubert, VS, APHIS, USDA, Special Diseases Staff, Federal Building, Room 820, 6505 Belcrest Road, Hyattsville, Maryland 20782, 301–436–8438.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 72 regulate the interstate movement of certain cattle because of ticks which are vectors of splenetic or tick fever. Section 72.13(b) of the regulations sets forth

certain permitted dips and procedures for the dipping of certain cattle before they are moved interstate in order to ensure that they are not infected with ticks. The "permitted dips" are proprietary brands of specific pesticides at prescribed concentrations. On May 10, 1984, an interim rule was published in the Federal Register [49 FR 19798–19799] which amended § 72.13(b) by removing toxaphene emulsions from the list of "permitted dips." The interim rule was made effective upon publication.

Comments were solicited for 60 days following publication of the interim rule. No comments were received. The factual situation which was set forth in the document of May 10, 1984, still provides a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this action will not have a significant effect on the economy; will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The amendment merely reflects that toxaphene may no longer be used as a permitted dip for the treatment of cattle for fever ticks because of action taken by the EPA under FIFRA. No analysis of this action has been made under the Regulatory Flexibility Act because this action is required by law.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

List of Subjects in 9 CFR Part 72

Animal diseases, Animal pests, Cattle, Quarantine, Transportation, Texas fever, Splenetic fever, Ticks.

PART 72—TEXAS (SPLENETIC) FEVER IN CATTLE

Accordingly, the interim rule published at 49 FR 19798–19799 on May 10, 1984, is adopted as a final rule.

Authority: Secs. 1, 2, 32 Stat. 791–792, as amended; secs. 4–7, 23 Stat. 32; secs. 1–4, 33 Stat. 1264, 1265; 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126; 7 CFR 2.17, 2.51, and 371.2(d)

Done at Washington, D.C., this 9th day of August 1984.

D.F. Schwindaman,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84–21680 Filed 8–14–84; 8:45 am]

BILLING CODE 3410–34–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Loans to Members and Lines of Credit to Members; Correction

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Correction to Preamble of Final Rule.

SUMMARY: On Wednesday, August 1, 1984, the final rule entitled "Loans to Members and Lines of Credit to Members" was published in the Federal Register (49 FR 30683). A statement regarding Office of Management and Budget approval of information collection requirements in the regulation was inadvertantly left out of the preamble to the final rule. This correction is necessary so that the statement may be added. The effective date is also corrected to reflect this change.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, D.C., 20456.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Staff Attorney, Department of Legal Services, at the above address. Telephone: (202) 357–1030.

The following paragraph should be added after the paragraph entitled *Regulatory Flexibility Act* in the third column on page 30685 of the Federal Register dated August 1, 1984.

Paperwork Reduction Act

The final rule will be submitted to the Office of Management and Budget for approval of any information collection requirements that appear therein. Any information collection requirements in the final rule will not take effect until they have been cleared by the Office of Management and Budget. Comments regarding information collection requirements contained in the final rule should be forwarded directly to the OMB Desk Officer indicated below: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503. Attn: Judith McIntosh.

On page 49 FR 30683, the "EFFECTIVE DATE" is corrected to read as follows:

EFFECTIVE DATE: September 1, 1984, except for the information collection requirements contained in § 701.21(c)(2) and the last sentence of § 701.21(g)(4).

Dated: August 9, 1984.

Rosemary Brady

Secretary of the Board.

[FR Doc. 84–21625 Filed 8–14–84; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84–ASW–23]

Alteration of Control Zone; Little Rock AFB, AR

Correction

In FR Doc. 84–20524, appearing on page 31060, in the issue of Friday, August 3, 1984, in the second column, in the first paragraph under "Little Rock AFB, AR", in the eighth line "of 8" should read "to 8"

BILLING CODE 1505–01–M

CIVIL AERONAUTICS BOARD

14 CFR Part 255

[Regulation ER–1385; Economic Regulations Docket 41686]

Carrier-Owned Computer Reservations Systems

AGENCY: Civil Aeronautics Board.

ACTION: Final Rule.

SUMMARY: The CAB is adopting rules that deal with competitive abuses and consumer injury resulting from practices of those airlines that provide computer reservations services to other air carriers and travel agents. The rules prohibit specific practices, including discrimination in price and other terms of access for information distribution services; tying access to information distribution services to the purchase of other services or goods; ordering the display of information in computer reservations systems on the basis of carrier identity; and including provisions in agreements with travel agents that impede agent access to objective service information. The rules also require the dissemination of certain computer-generated information. The rule is at the Board's own initiative in response to a study requested by Congress.

DATES: Adopted: July 27, 1984. Effective: November 14, 1984.

In accordance with the Paperwork Reduction Act (44 U.S.C. 3507), the reporting provisions (§§ 255.4(b)(2); 255.4(c)(3); 255.5(c); and 255.8) that are included in this final rule have been or will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until an OMB control number has been obtained.

FOR FURTHER INFORMATION CONTACT: Robert D. Young (202) 673-6060, Samuel E. Whitehorn (202) 673-5450, Paul Samuel Smith (202) 673-5450, Barry L. Molar (202) 673-5205 or George S. Baranko (202) 673-6011, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUPPLEMENTARY INFORMATION: EDR-466C, 49 FR 11644, March 27, 1984, proposed general rules that would forbid air carriers owning computer reservation systems (CRS's) from using these systems to injure consumers and air transportation competition. We tentatively found that rules dealing with unjust discrimination in the terms of contract with other carriers are necessary. We also proposed rules that would prohibit the ordering of information in integrated displays on the basis of carrier identity. Under these rules, CRS vendors would be required to inform participating airlines of the criteria used in selecting connecting cities and ranking flights. In addition, we proposed rules that would forbid subscriber contract terms that impede travel agent access to other information services. Finally, we proposed rules requiring CRS carriers to disseminate to participating airlines information generated by CRS's.

Comments and reply comments have been filed by numerous parties. Consistent with our statement in EDR-466C that we would consider comments received after the comment dates, we will grant all motions for late filing. While the great majority of comments support some regulation of CRS vendor practices, many request that we modify the rules we have proposed. The comments of American Airlines, Inc.; Air Cal/Muse Air Crop./Jet America (the Muse Group); the American Society of Travel Agents, Inc. (ASTA); the Association of Retail Travel Agents, Ltd. (ARTA); Continental Air Lines, Inc., Delta Air Lines, Inc.; the Department of Justice (DOJ); Eastern Air Lines, Inc.; Frontier Airlines, Inc.; Jet Express, Inc.; Air Atlanta, Inc., Air Florida, Inc., Midway Airlines, Inc., Northeastern International Airways, Inc., Ozark Air Lines, Inc., Pacific Southwest Airlines, and Southwest Airlines Company (the Joint Carriers); KLM Royal Dutch Airlines; Newair Flight Inc., Northwest Airlines, Inc.; Omega World Travel, Inc.; Pan American World Airways, Inc.; People Express Airlines, Inc.; Republic Airlines, Inc.; Southwest Airlines Co., Trans World Airlines, Inc.; Tymshare, Inc.; USAir, Inc.; and Western Air Lines, Inc. fall into this category. In addition, the Aviation Consumer Action Project (ACAP); the Association of Data Processing Service Organizations, Inc. (ADAPSO); and the Regional Airline Association (RAA) have filed generally supportive comments. In their comments Heritage Travel, Inc.; Horizon Air; the Travel Agent's Computer Society (TACOS); and United Air Lines, Inc. indicate their opposition to CRS rules.

Most of the parties that submitted initial comments also submitted reply comments. In addition, reply comments were filed by Japan Air Lines Company, Ltd., Lufthansa German Airlines and Swissair/Swiss Air Transport Company, Ltd.

We have also received more than 110 letters from travel agents indicating their views. Almost without exception, the agents indicate that they cannot afford increases in their costs, which may occur as a result of our rules. Slightly less than a third of the agents go on to argue that because they can work around the bias in their CRS's, no rules should be adopted. Almost an identical number support our rule, but ask us to ensure that participating carriers pay their fair share of CRS costs. The remainder take no position on our rules, but ask us to ensure that agents do not unfairly bear their burden.

The several challenges to our basis and purposes for promulgating these rules, and our disposition of numerous requests for modification of those rules, are discussed below.

The changes from the rules proposed in EDR-466C we have decided to make are, for the most part, technical. They are designed to clarify our intention with respect to certain proposals. One major exception is our decision to propose that CRS vendors use a minimum of nine hubs in constructing connecting flight displays. We have recently adopted a Notice of Proposed Rulemaking in order that we may receive further comments on this issue. A second exception is our proposal to require the release of criteria for selection and display of information to any interested party, rather than just participating carriers and subscribers. Finally, with respect to our proposal to require the release of marketing data generated through CRS's, we are concerned that the release of such data to foreign carriers may give them an unfair advantage over U.S. flag carriers in international markets. We will shortly issue a second Notice of Proposed Rulemaking seeking comments on those two subjects.

With regard to other matters, we have decided to delete our proposal requiring CRS vendors to arbitrate fee disputes with participating carriers. The comments have convinced us that such a rule would probably not facilitate dispute resolution. We have also decided to adopt, essentially as proposed, a rule prohibiting CRS vendors from unjustly discriminating in the prices they charge for CRS access. However, in order to foreclose easy circumvention of that rule, and the bias rule as well, we are making clear our earlier intention that CRS vendors treat all carriers with which they have not signed contracts in a nondiscriminatory fashion. This will preclude CRS vendors from continuing discriminatory treatment and retaining bias in their systems by merely raising access charges to a level no carrier is willing to pay, and then adjusting their bias to suit the competitor.

We are also emphasizing our expectation that basic access charges will not vary from carrier to carrier except in unusual circumstances. While our rule permits cost-based price differences, the rule creates a rebuttable presumption that access charges will be equal.

With respect to the effect of our rule on existing participation contracts, we are clarifying our intent and understanding that they become void as of the effective date of our rule. Absent such a result the objectives of our regulations would not be obtained for several years. In any event, our rules constitute a significant change in circumstances that may make the contracts unenforceable by either of the parties under contract law.

General Challenges to Our Authority

Of the parties opposing any regulation of the CRS industry, only United offered significant legal or factual arguments for not adopting the proposed rules. We will first address its arguments that we lack the power to promulate these rules, before turning to its specific challenges to our legal and factual analysis.

I. Statutory Authority

Our powers to redress "unfair methods of competition" were designed to provide a means to protect competitive processes in the marketplace. Unfair competition may be any practice that destroys competition and establishes monopoly. *Pan American World Airways* v. *U.S.*, 371

U.S. 296, 307 (1963). There is no list of practices that violate its terms. Generally, practices that would violate provisions of other antitrust statutes may be found unlawful under this section. However, we may also prohibit practices which conflict with the basic policies of the Sherman and Clayton Acts even though such practices may not actually violate those laws. *See FTC* v. *Brown Shoe Co.*, 384 U.S. 316, 321 (1966). Section 411, like section 5, was meant to supplement other antitrust statutes by stopping in their incipiency those methods of competition which fall within the meaning of the word "unfair" Whatever the unfair practice or method employed, the sections were designed to bolster and strengthen antitrust enforcement. What is unfair is determined on the facts of each case and the impact of the practice on competition and monopoly. *Pan American, supra.* 371 U.S. at 307–08.

Our judgment of what is unfair must be informed not only by general antitrust principles, but also by the policy considerations underlying the Federal Aviation Act. *Pan American, supra.* 371 U.S. at 308. Section 102 of the Act, which sets out the policy factors to be considered in Board decisions, strongly supports our intervention in this case. It directs us to prevent "unfair, deceptive, predatory, or anticompetitive practices in air transportation, and [to avoid] (A) unreasonable industry concentration, excessive market domination, and monopoly power; and (B) other conditions; that would tend to allow one or more air carriers or foreign air carriers unreasonably to increase prices, reduce services, or exclude competition in air transportation." Section 102(a)(7), 49 U.S.C. 1302(a)(7).

United asserts that our objective in this proceeding is to eliminate the competitive advantage carriers operating CRS's have obtained over their air carrier competitors. Citing *E.I. DuPont de Nemours & Co.* v. *FTC*, 729 F.2d 128 (2nd Cir. 1984), it argues that such action is beyond the authority granted us in section 411 of the Federal Aviation Act, as amended. 49 U.S.C. 1381. In its view, we only have the authority to prohibit conduct that is "unfair." We cannot prohibit legitimate conduct simply because it has an impact on competition we do not like or with which we disagree.

United's characterization of our action is incorrect. Our rules do, in fact, focus on eliminating conduct antithetical to the antitrust laws. Among the several types of conduct we found to be unfair methods of competition were the following:

1. Discriminatory treatment of downline competitors by a competitor with upstream market power, *See LaPéyre* v. *FTC*, 366 F.2d 117 (5th Cir. 1966);
2. The use of market power in one market to induce the purchase of services in another, *Hirsh* v. *Martindale-Hubbell, Inc.*, 674 F.2d 1343 (9th Cir. 1982);
3. The use of market power in one market to gain an unwarranted competitive advantage in another, *Berkey Photo, Inc.* v. *Eastman Kodak Co.*, 360 F.2d 263 (2nd Cir. 1979);
4. The exclusive use of information gained by virtue of a competitor's upstream market position from the monopoly to disadvantage downstream competitors, *Second Computer Inquiry*, 77 FCC 2nd 384, 480–81 (1980); and
5. Inducing purchasers to accept exclusive contracts that are restrictive in character. *See FTC* v. *Motion Picture Advertising Service Co.*, 344 U.S. 392 (1953).

The *Dupont* case, where the court struck down FTC prohibitions on a group of independent practices by oligopolists which the FTC conceded were not collusive, predatory or individually objectionable under the antitrust laws, is clearly inapposite here.

Morever, our rules clearly do not eliminate the legitimate competitive advantages the CRS vendors have gained because of their innovations. For example, we are not regulating the amount that CRS vendors charge either carriers or travel agents. Similarly, they retain the right to decide how to treat non-paying carriers under our rules and are free to retain the benefits of enhancements for themselves. Further, we have adopted a very narrow information disclosure rule designed to deal with the particular problems created by CRS vendors' exclusive access to marketing information of other carriers. Nor have we attempted to dictate the manner in which information is displayed. In these, as well as other areas, we have taken the minimum action we believe is necessary to eliminate unfair conduct.

II. Adequacy of the Record

United also raises a second broad challenge to our proposed rules. It asserts that the record is inadequate to support the proposed rules. In its view our proposals are based upon untested factual assumptions, particularly regarding the shifting of revenues, load factors, and the setting of booking fees. It asserts that crucial facts are highly controversial and that the disputes about them can only be resolved by holding an oral evidentiary hearing. It also points out that the FTC would have to conduct such a hearing if it were to engage in a rulemaking of this kind.

It is well established that we have the discretion to proceed by general rule or by adjudication. *See SEC* v. *Chenery Corp.*, 332 U.S. 202–03 (1974); *American Airlines, Inc.* v. *CAB*, 359 F.2d 624 (D.C. Cir. 1966) cert. denied, 385 U.S. 843, *National Petroleum Refiners Association* v. *FTC*, 482 F.2d 672 (D.C. Cir. 1973). Having chosen to proceed by rulemaking, nothing in our governing statute or the Administrative Procedure Act requires that formal hearings be held. There is no provision in our statute comparable to the Magnuson-Moss Act, 14 USC 45, even though Congress must be aware that our standard practice has been to adopt rules through informal procedures.

United cannot be claiming that we have not gathered enough information on CRS practices, for, as it has made clear elsewhere, it believes the document production obligations we placed upon it were unduly burdensome. *See* Order 83–10–74, October 18, 1983, at 12–14. Rather, it objects to our rejection of its economic analysis and disputes the inferences we draw from the underlying facts. As will be detailed below, there is substantial evidence of record in support of our findings and conclusions, as well as ample reason to reject United's proposed economic analyses.

Challenges to Our Basis and Purpose

I. The Existence of Market Power

In the NPRM, we found, based on our review of the extensive record before us and on our familiarity with the air transport and travel agency systems, that CRS owners have a substantial degree of power over price and output in the CRS industry. Moreover, because they are competitors in the downstream air transportation industry, they have the ability and incentive to exercise that power in ways that may interfere with air transport competition. Upon careful analysis of the various challenges to those conclusions, we remain convinced that our findings in the NPRM accurately described the competitive dynamics of the CRS and air transportation industries.

A. Conduct

The essence of market power is the ability of individual competitors to raise prices or decrease output without fear of competitive response. The presence or absence of such power can be ascertained through a number of analytical methods, including examination of concentration in the

industry and assessment of its performance. Market power can also be detected much more directly—through evidence showing the actual use of such power. United's theoretical challenges to the NPRM's findings largely ignore the abundant, compelling evidence of the major vendors' pricing and output behavior. The documents in Docket 41663 and the evidence gathered and catalogued in DOJ's comments show example after example in which the major vendors have: dictated fees that were discriminatory, not based on cost, not affected by the prices charged by other vendors and unchanged by pleas that they were excessive, see DOJ 11/17/83 Comments at 108–144; forced other carriers to pay substantial net ticketing fees as a condition of CRS access *id.*, steadily increased the degree of bias in their system, with no adverse effect on their CRS market penetration, DOJ 11/17/83 Comments at 73–108; and reduced or withheld service on a selective basis to discipline air transportation competitors, DOJ 11/17/83 Comments at 112–113 and 144–158. Both the CRS vendors and their air carrier customers are acutely aware of the vendors' market power, and they act accordingly. *See* DOJ 11/17/83 Comments at 166–168.

United and American do not deny the conduct. Instead, they challenge our definition of the market, and proffer theoretical explanations of how their conduct may be consistent with a competitive market, and why it should not be found to be unfair. We will discuss the controversy over CRS behavior first.

United and American interpret our statement that the disparate prices charged other airlines can only be the result of market power to mean that differential pricing can never occur in a competitive market. Of course, that was not our point. Rather, our conclusion was that the pricing behavior we see in the CRS industry is clearly the result of market power. Our conclusions, therefore, are not meant as a rejection of the value of service pricing theory espoused by Professor Baumol. United 11/17/83 Comments. He is correct in noting that differential pricing does occur in apparently competitive industries like air transportation. However, in such industries, competition forces suppliers to take account of their own costs, the value of the service being offered and, most importantly, the prices charged by their competitors. Thus, when an air carrier offers discounts based on advance purchase and length of stay restrictions, its competitors are inevitably forced to offer a competitive response.

In the CRS industry, vendors take no account of the price charged by their competitors. Moreover, they virtually ignore their own costs in setting their prices. *See* evidence cited in DOJ 11/17/83 Comments at 108–144. Thus, it is not merely the fact of price differentials, but the additional facts that they are based on competitive considerations and that they are not disciplined by CRS competition, that demonstrate market power. The value of service pricing theory simply does not explain the behavior we see in the CRS industry.

One example that United cites of a competitive market in which differential pricing occurs is theater seats. That analogy is inapposite. Theaters are better categorized as operating in a monopolistic competitive environment rather than a purely competitive environment. At any given time, in any given city, there is generally only one theater that is offering a production of a particular play. Although the theater owner is clearly competing with other goods and services (and the overall price level is thereby somewhat constrained), the owner does have a degree of monopoly power—*i.e.*, some discretion over price. In addition, all theater patrons have the option to select the price and service level that best suits their needs.

United has suggested a number of "legitimate business reasons" that purportedly account for price differentials in its contracts with other airlines. Half of the factors listed, however, are inconsistent with either a competitive price or a value of service price, specifically the importance of the other airline to United's "overall business," the extent of the bias reduction purchased in the contract, and the negotiating power of the other airline vis-a-vis United. The suggestion that the bias reduction explains the disparity in prices could not be farther from the mark. As a general rule, co-hosts have the least bias against them *and* they pay the lowest prices. Similarly, the further suggestion that the date of contracts is a primary basis for price disparity is belied by the wide disparity in recent contract prices. *See* DOJ 11/17/83 Comments at 139–140. Furthermore, most of these contracts do not provide for non-monetary compensation that might justify different contract prices. Quite simply, there is little evidence to support United's assertion that it and other vendors have engaged in value of service pricing. The evidence we have unambiguously demonstrates that vendor pricing decisions are in actuality based upon the goal of manipulating downstream air transportation competition.

American asserts that because the production of CRS services clearly entails joint costs—*i.e.*, the benefits of CRS's to travel agents, participating carriers and ancillary service vendors are produced simultaneously, and costs and benefits cannot be explicitly assigned to one or the other class of purchasers—there is no linkage between price discrimination and market power. The weakness in this argument is that it does not justify discrimination within a class of purchasers—*i.e.*, participating carriers. While we share American's concern that it would be difficult to allocate cost between the various classes of purchasers, nothing in its argument undermines our conclusion that it is only able to discriminate among participating carriers because it has substantial market power in the CRS industry.

United and American also challenge our conclusion that CRS vendors' ability to bias indicates the existence of market power. In this regard, we reasoned that the increases in bias that have been occurring in the last two years are inconsistent with the preferences of the purchasers of CRS services—travel agents and other airlines—who would prefer unbiased systems and who would presumably be able to demand a product responsive to those preferences in a competitive market. United contends that its system does, in fact, give agents what they want, citing the fact that three travel agent associations have opposed our proposed rules. Their reliance on the comments of the American Automobile Association, Travel Trust International and TACOS is misplaced. The major travel agent trade associations (ARTA and ASTA) representing more than half of the approximately 24,000 travel agents in this country wish to see bias eliminated and their comments support our proposed rules. All of the travel agent pleadings, including the numerous letters we have received, have one theme in common—a concern that agents not be made to bear the cost of our rules. Virtually all that oppose our rules do so on the grounds that any benefits from our rule may be outweighed by this feared result. We are confident that travel agent costs will not rise significantly as a result of our rules.

With regard to the preferences of the airline purchasers of CRS services, United simply says that they are irrelevant. Such an attitude could not prevail in a competitive market, where competition would force vendors to

meet customer desires in order to stay in business.

American argues that bias does not constitute a restriction of output becuase unlike normal output restrictions, bias does not reduce the vendor's overall costs, and does not drive prices up by making the product more scarce. The fact that bias constitutes a restriction on the quality of the product rather than its quantity does not change its effect or significance. Bias still raises the price to air carriers by increasing the amount of air transport revenues lost to the host. Moreover, as one would expect in a non-competitive market the restrictions on information quality have not generated a meaningful competitive response. On the contrary, it appears that bias has been increasing rather than decreasing over the past few years.

B. Market Definition and Market Shares

Another basis for our conclusion that CRS vendors have monopoly power was our analysis of market share statistics that show a high level of concentration on both the regional and, given the unusual importance of incremental passengers for profitable air transport operations, the national level. United, and to some degree American as well, argue that our reliance on those statistics is misplaced because they are based on product and geographic markets that are defined too narrowly. They assert that the relevant product is "airline ticket distribution services," rather that CRS services and that the only relevant geographic market is national, rather than particular regions of the country.

The service CRS vendors sell is not the direct distribution of airline tickets to consumers. Rather, it is the distribution of information between travel agents and airlines. Travel agents must have access to a source of information on what services are available, at what fares, whether seats remain to be sold and whether reservations can be confirmed and tickets issued. Air carriers, at the same time, must communicate to their distribution outlets what services they are offering, at what fares, and whether seats are available. These are the relevant purchase transactions.

With this in mind, the suggestion that the relevant product is air transportation distribution services is easily dealt with. As we explained in the NPRM (pp. 22–23), air carriers currently have no realistic substitute for the travel agency distribution system, because of its efficiencies, coverage, and the fact that passengers perceive it as providing a different type of service than they can receive by contracting airlines directly. It is noteworthy that since we issued the NPRM, the Air Traffic Conference of America has published new data showing that travel agents now account for 80 percent of the sales of major and national carriers. There are no real substitutes for CRS's from the travel agent's perspective because the systems are so much more efficient than other methods of exchanging information. Finally, because the vast majority of travel agents use CRS's to the exclusion of other information sources, for a carrier to have meaningful access to travel agents, it has no alternative other than to have access to their CRS's (See NPRM at 8–11).

With respect to geographic markets, United insists that a national market is the only one relevant to our analysis. We agree that viewing the CRS market from a national perspective provides some insight. As explained below, however, we also believe that in many respects the market for CRS services is regional in nature.

DOJ's national market statistics show that SABRE agents account for 43 percent of all domestic travel agent revenues, while APOLLO agents account for another 27 percent. These shares are lower than those courts generally recognize as indicating monopoly power. Nevertheless, given the nature of competition in CRS and air transportation markets, the national shares suggests that the leading vendors have significant market power. Because of economics of aircraft size, the time sensitivity of a substantial portion of passengers, and the geographic dispersion of potential passengers for a given flight, ignoring a substantial fraction of travel agents can have a severe negative impact on the economic viability of a carriers' service. Thus, from the carrier's perspective, CRS's are in many respects not substitutes for one another. Access to SABRE agents does not render access to APOLLO agents unnecessary, and vice-versa. This fact, noted in the DOJ study as well as in the comments of a number of carriers, is most dramatically demonstrated by the vendor's pricing behavior. In setting carrier fees, vendors take little or no account of the fee levels charged by other vendors, and individual carriers frequently pay varying fees to different vendors. The willingness of purchasers to switch among competing suppliers on the basis of changes in price or service quality is the hallmark of competition.

However, there is abundant evidence that, from the perspective of travel agent and air carrier purchasers, as well as CRS suppliers, the area of effective CRS competition is far narrower than nationwide. The essence of the geographic market definition task is to determine whether an area confines relevant commercial activities. If CRS vendors are making pricing and output decisions protected from the need to take the practices of other CRS vendors into account, there is a distinct market. If the CRS vendors act to discipline one another, however, because they can readily enter each others' areas to sell, the market is defined too narrowly. Sullivan, Antitrust at 68 (1977). Nothing in *White & White, Inc.* v. *American Hospital Supply Corp.*, 723 F.2d 495 (6th Cir. 1983), on which United relies, is inconsistent with these principles.

The evidence in this proceeding strongly supports the conclusion that a CRS provider can effectively sell its system only in areas where it is a substantial provider of air transportation services, particularly the metropolitan areas surrounding its major hubs.

There is a strong correlation between CRS dominance and air transporation presence. In the Dallas/Ft. Worth area, where American has developed a significant hub, it had 280 travel agent subscribers, accounting for 88 percent of travel agent sales revenue. United, on the other hand, which provides no service to DFW, had only four agencies subscribing to APOLLO, accounting for only one percent of the sales revenue. Appendix A, Table 1, DOJ 11/17/83 Comments at 3. In Denver, where United has a major hub and American entered only recently, the figures were essentially reversed.

This correlation is explained by a number of factors, all of which confirm the relevance of regional markets to our analysis. Travel agents' need for the most accurate, reliable and up-to-date information on the carriers they book most, and their desire for a strong working relationship with those carriers, give CRS vendors substantial regional marketing advantages. NPRM at 18. Thus, for a Denver travel agent, Eastern's SODA system is a poor substitute for APOLLO because it offers inferior information on the carrier that agents book most.

From the supply side, the heavy reliance by vendors on incremental revenues dictates that their competition for agents is regional. To ensure that a prospective subscribe would benefit American, for example, that carrier has, until recently, set criteria for automation agents that include minimum yearly sales on American. Agents that did not meet the threshold, either because they were located in regions outside those where American flew or because they

were too small, could only obtain SABRE if another carrier covered the cost of automating the agency. *See* AA080999. Thus, even if Denver travel agents were willing to forego the superior information provided by APOLLO, American would have little incentive to compete for their business.

In areas where two CRS vendors provide substantial air transportation services, there is a greater degree of competition for travel agency subscribers, although, as is explained below, this competition does not redound to the benefit of air carrier consumers of CRS services. Large agents in these areas can benefit from the so-called conversion war. They may receive substantial cash inducements, in the form of free systems or incentive payments, to switch systems. In the year ending June 30, 1983, Chicago, New York and Los Angeles were major conversion battlegrounds. In the Dallas/Ft. Worth area, however, American lost no agents to other systems. Docket 41663, AA22-102.

American and United explain the correlation between air transport presence and CRS dominance as purely historical—that vendors simply focused their initial sales efforts in their own back yards. This explanation may have some validity in that it explains why cities like Boston are CRS strongholds for SABRE or APOLLO despite the fact that late CRS entrants, like Eastern and Delta, are the major carriers there, but it does not undercut a regional market definition. First, the historical incentives for vendors to focus on specific regions remain in place today. Second, because of long-term subscriber contracts, liqudated damage provisions, restrictions on multiple systems within individual agencies and the substantial disinclination of agents to switch systems (NPRM at 25-26), current regional dominance can be expected to erode only slowly, if at all. This is of concern because air carrier demand for CRS services is regional in nature as well.

While all air carriers draw some traffic from all over the country, some regions are more vital traffic sources to them than others. For example, for Frontier, whose hub and spoke route structure is focused at the Denver hub, Denver passengers constitue its most important traffic pool, passengers from the end-points of its spokes are next in importance, and passengers from points not in its route system are of lesser, but still significant, importance. Since access to travel agents is necessary to reach the majority of each traffic source, Frontier's need for CRS access varies regionally as well. For it, access to APOLLO is vital, not just because APOLLO agents nationally account for 31 percent of all domestic travel agent revenues, but more importantly because they account for a much higher proportion of traffic in many of the cities Frontier serves. The importance to Frontier of access to APOLLO agents is clearly shown by the results it achieved by attaining co-host status in APOLLO. It estimated that its improved display position in APOLLO resulted in a four percent increase in its system-wide revenues. FAS 569.

Because carrier demand for CRS services is essentially regional in nature, and because individual CRS's are in many ways complements, rather than substitutes for one another, CRS competition in some areas has not worked to the benefit of air carrier purchasers or CRS services. A carrier with a substantial number of flights serving an area has little choice but to purchase access to each CRS to which a major share of the travel agents in the region subscribe. If it is not listed on a major CRS in that area, a sizeable block of agents will be substantially less likely to book flights on that carrier. Not being listed on the CRS will force it to forego the chance to sell tickets to the customers of the agents booking a large portion of the revenues in a region it serves. Even in Chicago, where CRS competition may be the most intense, APOLLO is not an acceptable substitute for SABRE. While a listing on APOLLO gives a carrier access to agents who account for 42 percent of automated agency bookings, failure to be in SABRE denies the carrier access to agents who account for another 41 percent of such bookings. DOJ 11/17/83 comments at 44-45.

Recognizing this, CRS providers do not consider the practices of other CRS providers in their dealing with other air carriers. *See* sources cited in DOJ 11/17/83 Comments at 130-31. For the same reason, carriers have recognized that there is little benefit in being on a system whose subscribers are located in areas far removed from where they provide service. Docket 41663 EA-CON ER1-10-193-94.

In sum, all the factors normally employed in defining the geographic market suggest that a regional market definition is in many respects much more relevant to a competitive analysis than a national market. The CRS vendors perceive their sales area to be less than national and customarily have made little effort to sell or promote their services in areas where they are not substantial air transportation providers. Few sales are made outside a vendor's home region. Prices within a region are not responsive to changes in supply and demand elsewhere. Finally, other traders are significantly disadvantaged in trying to sell in other regions. *See* Sullivan, Antitrust at 68 (1977). While our markets may not exactly define the parameters of competition, as the *White & White* court recognized, that is not necessary. 793 F.2d, *supra*, at 503. What is required is that the geographic market be defined in a realistic way so that the economic power of the seller may be evaluated. We are confident, particularly because of the substantial evidence of record that CRS vendors themselves and their air carrier customers believe they hold market power, that our market definitions are appropriate.

C. Performance

United also challenges our conclusion that CRS vendors have earned excessive rates of return. It rejects our reliance on statements in the record and demands that we engage in a "thorough and competent analysis of profits." At the heart of its argument is the belief that our rulemaking is an attempt to find it in violation of the antitrust laws. It thus characterizes our action as essentially an adjudication for which a full evidentiary hearing is required. In this regard the case it relies upon for the proposition that a full economic analysis is required, *In re Kellog Company*, 99 F.T.C. 8 (1982), was an adjudication not a rulemaking proceeding. United continues to ignore the fact that this proceeding is designed to determine whether prospective action is necessary. It is not an effort to punish United or any other carrier for past actions or to assess whether violations of the antitrust laws have occurred. We have not addressed those questions and we need not resolve them in order to go forward with our proposed rules. *See National Petropoleum Refiner's Ass'n* v. *FTC*, 482 F.2d 672, 678 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 951.

The evidence of record is overwhelming to the effect that taking incremental revenues into account, the profits from CRS's are far in excess of costs. *See* NPRM at 27 and DOJ 11/17/83 Comments at 51-56 and 107-8. To counter this evidence, United asserts that we cannot rely upon the internal statements of corporate officials used in making their corporate decisions. Instead, United would have us rely upon the economic analysis of Professor Wecker.

Analysis of that study, however, indicates that it is of little probative

value. Professor Wecker's conclusion that APOLLO operates at a loss, on a stand alone basis, is based upon fee assumptions that do not take into account non-cash payments. For example, he sets Eastern's fee at 50 cents per booking without considering the value of gates transferred to United as a part of the contract. Docket 41663 EA-CON ER1-10-610. Negotiating documents, however, clearly indicate that the fee to Eastern would have been $1.00 without the gate transfers. The yearly difference in revenues from Eastern alone translate into an operating profit. Similar arrangements with Frontier and Republic were also excluded.

In addition, Professor Wecker based his conclusion that the increased passenger revenue accruing from bias was 13 percent on a comparison of agency revenues immediately before and within the first two months after conversion from one system to another. Internal documents of American indicate that the benefit of bias is much greater, AA22-104, and internal documents of both American and United conclude that it takes some time after conversion for the full effects of bias to be felt. AA22-104 and UA012208. Another obvious weakness in his study is his conclusion that 90 percent of the fares gained from incremental passengers must be apportioned to the cost of providing service, even though we have repeatedly found that the marginal cost of transporting additional passenger is extremely small. *See Domestic Passenger Fare Investigation, Phase 6B* at 43. In subsequent comments, he sought to bolster his assumption by presenting evidence that United's load factors have remained constant, despite the fact that it is carrying more passengers. Putting aside the fact that he used load factor data covering only a one year period, his supplemental analysis still does not save his 90 percent figure. Given the fact that airlines obtain additional flight segments primarily through improved asset utilization, the cost of adding additional flights is still far less than ninety percent of the passenger's fare.

United would argue that the value of Professor Wecker's profit analysis can only be determined in a hearing, with the opportunity for interested parties to engage in cross-examination. It is well-established that this is not necessary. *Vermont Yankee Nuclear Power Corp.* v. *National Resources Defense Council*, 435 U.S. 519 (1978); *Florida East Coast Railway* v. *U.S.*, 410 U.S. 224 (1973).

Nor do we believe that our findings concerning entry barriers are flawed by our failure to measure sunk costs in the CRS industry. United's contrary assertion appears to be based on Professor Baumol's theory of market contestability. However, despite his illuminating description of a "perfectly contestable" market, we do not believe that he has demonstrated the computer reservation system industry is contestable, let alone perfectly so. For example, the record demonstrates that carriers have invested substantial sums in developing software systems. Clearly these represent a sunk cost and therefore limit the contestability of the market. More fundamentally, the evidence in the record demonstrates that computer reservation systems depend on the system operator offering substantial air transportation services. Professor Baumol ignores this critical relationship. Small air carriers, as well as independent vendors, are not able to exploit the incremental revenues from bias and, absent our rule, would be deprived of an important revenue source from potential CRS operations. The lack of this revenue precludes the viability of hit-and-run entry.

II. Essential Facilities/Monopoly Leveraging

United objects to our use of the essential facility doctrine in this proceeding. In its view, the elements of that doctrine have not been established and cannot, therefore, be used to support our conclusions that CRS vendor conduct is unfair. Specifically, citing *Official Airlines Guide Co., Inc.* v. *FTC*, 630 F.2d 920, 926 (2nd Cir. 1980) and *Fulton* v. *Hecht*, 580 F.2d 1243, 1248 (5th Cir. 1978), United asserts that the doctrine only applies to concerted activity where the facility is owned jointly by a group of competitors. The doctrine does not apply where the facility is owned separately.

United misunderstands the findings of those cases. Neither court found that the doctrine cannot be applied to a facility owned by a single person. Neither forecloses application of the essential facility doctrine to an individually owned facility. In fact, the Supreme Court has applied the doctrine in such circumstances. In *Otter Tail Power Company* v. *U.S.*, 410 U.S. 366 (1973) the only firm with electric power lines was forced to transfer power over its lines for any retailer that wanted service, even one bent on replacing the company.

The proposition for which the *OAG* and *Hecht* cases may be properly cited is that the essential facility doctrine may not be applied where the facility is owned by a person or persons that do not compete with others wishing to gain access. If the monopolist does not compete in the enterprise of those seeking access, it has no inherent incentives to prefer one potential purchaser over another and is therefore apt to attempt to accommodate as many as possible. Even if it does not, under the *Colgate* doctrine, *U.S.* v. *Colgate & Co.*, 250 U.S. 300 (1919), absent any purpose to create or maintain a monopoly, the Sherman Act does not restrict the right of a trader to exercise his own independent discretion as to the parties with whom it will deal. Of course, that is not the situation presented here.

While we cited the essential facility cases as alternate bases for our proposed rules, we also find them instructive because they suggest that courts have been cognizant of similar types of harm and have moved to foreclose it under the Sherman Act. For example, the central concern of the Court in *U.S.* v. *Terminal Railroad Association*, 224 U.S. 383 (1927), was the ability of the members of the Terminal Railroad Association to use their monopoly to foreclose competition and to gain competitive advantages downstream. The court found that the terminal association had economic power. It then reasoned that while there would be no illegal restraint of trade if the trade association had "act[ed] as the impartial agent of every line which is under compulsion to use its instrumentalities," it had not acted impartially. In fact, it had denied entrance into the association for apparently competitive reasons, imposed arbitrary handling charges, and maintained a discriminatory billing system. However, if these "administrative conditions" were eliminated and "the obvious advantages" of the association were preserved, the association would be consistent with the statute and would benefit the public. 224 U.S. at 410-11. Consequently, to foreclose unfair uses of the facility, the Court imposed an obligation on the association to afford access to the facility on reasonable, non-discriminatory terms. Other essential facility cases are to the same effect. *See e.g., Gamco, Inc.* v. *Providence Fruit & Produce Building, Inc.*, 194 F.2d 484 (1952) and *Hecht* v. *Pro-Football, Inc.*, 570 F.2d 982 (D.C. Cir. 1977), *cert. denied*, 436 U.S. 956 (1978).

Parallels may also be drawn with the line of cases establishing the concept of monopoly leveraging. Derived from the more traditional section 2 Sherman Act offense of monopolization, the theory provides that a firm violates section 2 by using its monopoly power in one market

to gain an unwarranted competitive advantage in another. *Berkey Photo, Inc.*, v. *Eastman Kodak Co.*, 603 F.2d 263 (2nd Cir. 1979) and *M.A.P Oil Co., Inc.* v. *Texaco, Inc.*, 691 F.2d 1303, 1305–06 (9th Cir. 1982). In short, a firm can be found to have abused its monopoly even though it has not sought to maintain or expand its monopoly in the monopoly market, or to acquire monopoly power in the disputed markets. We are surely empowered to reach comparable conduct in the CRS industry, given our broad powers and responsibility under section 411.

III. Consumer Protection

In determining whether practices are "unfair and deceptive" under section 411, we may consider public values beyond those enshrined in the letter or encompassed in the spirit of the antitrust laws. We may be guided, as well, by pronouncements of public policy embodied in other statutes, the common law as well as common perceptions of what constitutes moral and ethical business conduct. *FTC* v. *Sperry & Hutchinson Co.*, 405 U.S. 233, 244 (1972).

A. Consumer Injury

In EDR–466C, we found that CRS bias injures consumers. Under section 411, conduct may be found unlawful because of its effects on consumers if (1) it causes substantial consumer injury, (2) that is not outweighed by any consumer or competitive benefits from the conduct, and (3) the injury cannot reasonably be avoided by consumers. We found that bias causes substantial consumer injury in that it deprives consumers of the opportunity to take advantage of lower fares and causes them to take less convenient flights. United disputes these conclusions. It asserts that as of November 1983, its fares are as low or lower than those of any of its competitors in 84 percent of the routes it served and that consumers are really very flexible in their travel options such that a wide variety of flights may be equally suitable to them.

United's arguments are not persuasive. Using its figures, bias creates a clear danger that consumers will not become aware of the lowest-fare service in one sixth of the markets it serves. Moreover, although virtually all carriers offer some discount fares in the markets they serve, those fares may have differing capacity controls and restrictions, and the flights on which they are offered may be at varying times of the day. Consumers seek the service/fare options most suitable to their needs. Even in the 84 percent of United's markets where United matches the lowest fare, there is no guarantee and little likelihood that its fare/service offerings will always match consumer needs and desires better than the offerings of other carriers, or indeed that its offerings will match those needs at all. As Frontier has shown (Frontier 11/17/83 Comments at 3–5 and Appendices B and C), schedule and availability displays can often act to limit a consumer's fare choices. If a flight is hidden in later displays, or perhaps not displayed at all, the CRS can create the impression that the low fare is not available on a convenient flight. As for the suggestion that consumers' travel plans are generally flexible so that being put on a later flight, or perhaps a less desirable connecting flight or less desirable equipment, is not a significant inconvenience, little needs to be said. The crucial point is that consumers are being denied the opportunity to select flights with full knowledge of fare and service offerings. Incremental revenue figures indicate the extent to which consumer choices are being distorted. While there is not a perfect one-to-one correlation between incremental revenues and the harm caused consumers, if only a small portion of the hundreds of millions of dollars of passenger revenue shifts caused by bias represented consumer injury in the form of lost time or higher fares, the injury would be substantial.

With respect to our conclusion that the consumer injury is not outweighed by any consumer or competitive benefits that bias produces, United asserts that we did not really consider the benefits that result from bias. Specifically, United claims that bias has the beneficial effects of lowering CRS prices to travel agents and encouraging investment and innovation in the CRS industry.

Our difficulty with United's asserted benefit is that it does not enure to consumers. We have no evidence to suggest that lower travel agent prices are passed on to consumers. Even if some benefits are passed on, bias results in substantial hidden charges to other airlines that consumers ultimately pay for in the form of higher fares and reduced air transportation competition. In addition, below-cost pricing to agents works to undermine, not enhance, CRS competition. Non-carrier vendors and CRS vendor carriers that cannot earn similar incremental revenues because of their smaller route systems are deterred from CRS entry because they cannot make up for the incremental revenue shortfall by charging realistic fees to subscribers.

With regard to encouraging investment and innovation, United's claim is that because it earns greater profits with bias than it would be able to earn without bias, it has greater incentive to invest and innovate when bias is present. One would expect the same to be true with any unfair practice. However, under our rules, United and other efficient CRS vendors should have no trouble earning respectable profits from their CRS operations, and it is the profit motive, not just the source of profits, that encourages investment and innovation. Moreover, as we have demonstrated, bias acts to inhibit CRS entry. Insofar as it does, investment and innovation in the CRS industry is less than we would expect to see without bias.

To demonstrate that any consumer injury can be avoided, United makes three arguments. First, it asserts that consumers can obtain information on preferencing from sources other than CRS vendors. While this may be true in a general sense, nothing in this record suggests that anyone has made, or has any incentive to make, any effort to explain bias to consumers, or to travel agents for that matter. Indeed, vendors change the degree and type of bias frequently, and are working to make it more subtle and more difficult to detect. Thus, even if consumers and agents are aware of bias in a general way, they cannot work around it if they do not know its details.

Second, United argues that consumers have the option of using unautomated agents or those automated with "unbiased" systems. It asserts that this is a real alternative because about 20–25 percent of all agents are unautomated. In reality, however, unautomated agents are not a feasible alternative. Such agents account for only 12 percent of yearly agent sales and appear to be concentrated in rural and suburban areas. Thus, to realize this option, consumers would have to seek out the smallest, least sophisticated agents, incurring further cost and time loss in order to avoid the possible inconvenience caused by bias. As for United's suggestion that Delta may offer an unbiased CRS alternative we need only note that in its comments to EDR–471 United recognizes that Delta does in fact bias its selection of connecting flights and it asks that we eliminate that bias. UA 4/26/84 comments on EDR–471, at 2.

Finally, United asserts that consumers will begin to demand impartial information from agents if it is important to them. If they do not, then bias is not a problem. Stripped to its simplest form,

United's argument is that the marketplace will correct any problems. For a number of reasons, including the complexity and quantity of information involved, the ability of CRS vendors to change bias without notice and modify its effects market-by-market, and the substantial cost of obtaining superior information, we conclude that the problem will not be overcome by consumer demand.

B. Consumer Deception

In response to our conclusion that bias constitutes a deceptive practice, United argues that it has made no direct or indirect representation on CRS quality to consumers. While United and other CRS vendors have made no direct representations to consumers, it is sufficient that the CRS providers are making representations to travel agents that will be relied upon in their dealings with consumers. In *Great Lakes Airlines* v. *United States Overseas Airlines,* 34 CAB 61 n.7, for example, we concluded that false statements in a trade publication used primarily by agents were sufficient to violate section 411 even though there was no representation made to the public. *See* also *Regina Corp.* v. *FTC,* 322 F.2d 765, 768 (3rd Cir. 1963) and *Hunt Pen Co.* v. *FTC,* 197 F.2d 273, 281 (3rd Cir. 1952). Delta, of course, claims that its system is unbiased and other vendors have made indirect representations by failing to disclose substantial increases in the level of their bias. *See* DOJ 11/17/83 Comments at 83 and 104.

In addition, consumers expect travel agents to offer impartial information. United and the other CRS vendors are parties to agreements establishing travel agents as a common, essentially neutral distribution system. United cannot now ignore the impression of neutrality it and the other members of the Air Traffic Conference of America endeavored to create over the last forty years. United's response is that consumers are not aware of the accreditation system and that the degree to which the public expects agents to offer impartial information is a matter of speculation. In fact, it is well established that the consuming public views travel agents as providing objective advice. *See* Initial Decision, Docket 36595, at 42–44. The fact that we allow carriers to pay incentives commissions to agents is in no way inconsistent with our findings here. Unlike bias, commissions do not restrict the information available to consumers, and all air carriers have the same ability to compete in that way.

Finally, United claims that if our deception theory has merit, the remedy is not to eliminate bias, but to require that it be disclosed. While disclosure may be the traditional remedy in deception cases, it is not feasible in this case. As we have elsewhere explained, consumers would not be able to readily obtain better information if the mere existence of bias were disclosed. Rather, its full nature and extent would have to be revealed. Given its complexity and the quantity of information involved, the only practical alternative is to require its elimination.

Requests for Modification of Our Rules

We now turn to the numerous requests that we modify our rules. As more fully explained below, we conclude that most proposed modifications are not warranted, many because they constitute greater intervention in CRS vendor prerogatives than we believe is necessary. We will make several technical changes, however, that clarify how our rules are to operate and eliminate unforeseen ways to circumvent them.

I. The Scope of Our Rules (§§ 255.2 and 255.3)

A. Non-airline CRS's

American, ASTA, DOJ, Northwest, RAA and TWA all argue that our bias rules should apply to non-airline systems. They assert that bias harms consumers and competition regardless of ownership of a CRS. They also fear that, if such systems were not covered, airline CRS owners could easily avoid our rules by selling their systems under arrangements giving them preferential display.

Tymshare counters that it is the prospect of incremental revenues from competitors in the air transport market that creates the current problems. Non-airline vendors cannot obtain incremental revenues and do not compete in downstream markets, hence their incentives are to produce the most complete and efficient information systems available. Their agent and airline customers will want the same. Finally, extending the proposed rule to apply to CRS's owned directly or indirectly by airlines would reduce the incentive to engage in sham spin-offs.

For essentially the reasons Tymshare has set forth, we will not apply our rules to non-airline CRS's. Our fundamental concern in this proceeding is the potential to use CRS power to destroy air transportation competition and to injure consumers. Non-airline CRS's do not have the same incentive or ability to engage in similar conduct. Nor has there been any evidence that such enterprises have or are likely to do so.

We will, however, adopt Tymshare's suggestion, which was also proposed by several other commenters, that we apply our rules to CRS's indirectly owned or controlled by airlines and their affiliates. We will accomplish that modification by adopting a definition of affiliate and including references to affiliates in the definitions of "system" and "system vendor." Absent such action CRS vendors could readily circumvent our rules through a relatively simple corporate reorganization.

B. "System" Definition

Our proposed rule would apply to CRS's that offer information on "schedules, fares, rules or availability" and provide "the ability to issue tickets." This definition restricts the application of our rule to the package of services CRS vendors generally offer. DOJ, American, Continental and JAL support the proposed definition because otherwise the rules would apply to systems which should not be regulated because they perform different roles in air transportation distribution. Delta, however, thinks that we should apply the definition to systems that either provide the listed types of information or provide the capability to make reservations or issue tickets. TWA suggests that we should focus on the ability to make reservations instead of the ability to issue tickets, because otherwise some small systems that lack only ticket issuing capabilities would not be covered.

We have decided to modify our definition by including within it the ability "to make reservations" as well as the ability to issue tickets. The key to CRS efficiency, and the factor that makes them indispensable to travel agents, is the capability they provide to agents and carriers to exchange information without the use of the telephone. The information essential for this purpose is fares, schedules, availability and the request for and confirmation of reservations. The end product of this process is the issuance of tickets, and the fact of that issuance must also be communicated. Our definition is consistent with our estimation of the features which make the CRS product unique. Lesser products—such as the electronic Official Airline Guide—or limited purpose systems that provide information only on the vendor are not effective substitutes. Moreover, air carriers have concluded that their service, fare and availability information must be displayed and agents must be able to write their tickets on the CRS if the they are to have effective access to the travel

agent distribution system. Only a few carriers, most notably Southwest and People Express, which have tailored their operations to reduce their reliance on agents, have been able to survive without the basic services we have described. For these reasons, it does not appear that vendors of such lesser products have the same abilities and incentives to engage in unfair practices as do vendors of the CRS product.

C. "Participating Carrier" Definition

Our proposed definition of "participating carrier" covers any carrier with an agreement "for display of its flight schedules, fares, and seat availability." Southwest currently has an agreement with system vendors for display of its schedules, but not its availability. It fears that the use of the word "and" in the definition would permit vendors to discriminate against it. USAir suggests substitution of "and/or" for that word. Continental has suggested that we expand the definition to include contracts for reservations and ticketing services. On a related point, several commenters have suggested that we require vendors to "unbundle" their services by allowing carriers to decide on the degree to which they will participate in the system.

We will modify the definition of "participating carrier" to include a carrier with an agreement for " display of its flight schedules, fares, or seat availability, or for the making of reservations or issuance of tickets, through a system." The purpose of this change is twofold. First, the specification on reservations and ticketing is added to make the definition more consistent with our definition of system. Second, we have replaced the word "and" with "or" to cover the unbundling problem. With the changed definition we read our rule as permitting, but not requiring, vendors to offer any combination of services to carriers that they wish. However, any combination that is offered to one carrier must be offered to all on nondiscriminatory terms. This result is consistent with our treatment of enhancements.

D. CRS Subscribers

Our rules only apply to systems offered to subscribers. The proposed definition of "subscriber" is limited to ticket agents with a CRS "agreement" holding themselves out "as a neutral source of information about or ticketing for" the airline industry 'in general." Several changes have been suggested. Several commenters objected to the reference to an agreement, arguing that freedom from bias should not depend on the existence of a CRS contract. We agree. The requirement that an agreement exist adds nothing to our rules and may create a loophole. We will delete references to an "agreement."

Most of the same commenters also assert that bias affects all who sell air transportation, and not just conference travel agents. ASTA, for example, claims that effectively limiting the rule to ATC/IATA travel agents gives vendors the incentive to use other retailers and so places conference agencies at a competitive disadvantage. Delta believes "in general" should be deleted because it would be confusing in the case of ticket outlets that (at some point) might represent some but not all airlines.

We will not apply our rules to new distribution channels that represent just one or a few carriers. Our order in the *Competitive Marketing Investigation*, Order 82-12-85, December 16, 1983, allows air carriers to appoint distributors, outside the travel agency system. Potentially, such outlets could serve the important function of disciplining travel agent practices. Where such outlets restrict themselves to the sale of one or a few carriers' services, the imposition of our CRS rules would be inappropriate. They would have been created for the very purpose of preferring certain carriers' services. So long as this fact is made known to the public, and other carriers are free to establish similar outlets, the use of biased CRS's in such outlets could not be found to harm competition or injured the public. Of course, if such outlets hold themselves out to be neutral distributors of air transportation services, our rules would apply to any systems they use.

We will, however, adopt Delta's suggestion that we delete the words "in general" from the definition. We agree that the words add nothing to the definition and may create confusion.

Several commenters also argue that the definition should be broadened to cover systems used in Scheduled Airline Ticket Offices (SATO's), Combined Airline Ticket Offices (CATO's) and Business Travel Departments (BTD's). It is asserted that customers of these outlets need protection just as much as travel agent customers do.

American and United, on the other hand, argue that SATO operations are already governed by contracts requiring neutral service to all participating carriers. As for corporate accounts, they are not "neutral." The BTD customers have arranged with specific carriers to obtain CRS equipment and are aware that the information displayed favors the host. This choice should remain available to businesses, who must be considered competent to decide their own transportation needs.

We will not expand the scope of our rules to include the systems used by SATOs, CATO's or BTDs. CRS's play a different role in such outlets than they do in travel agencies. SATO's and CATO's are under the direct control of local committees consisting of interested airlines serving the area in which the individual offices are located. Airlines injured by automation practices—including the use of highly biased internal displays—can use their power in those committees, and as participants in SATO and CATO agreements, to force the use of less biased systems. Carriers that do not offer reservations systems to travel agents sometimes place their own internal systems, *i.e.*, the systems used by their own reservations personnel, in SATO's. Including SATO's in our definition of subscriber would have the perverse effect of either forcing these carriers to incur the cost of developing unbiased systems for this limited purpose, or replacing their system with one offered by a CRS vendor. Finally, from a consumer perspective, the United States Government is, for all practical purposes, the sole customer of such offices and has the leverage to require impartial CRS's in them. In addition, the General Accounting Office has ruled that travel agencies may now compete with SATO's for government business, thus offering an unbiased alternative.

Similarly, corporations establishing BTD's negotiate at arm's length in their dealings with air carriers and all carriers are able to compete for their business. The CRS system to be used is one factor to be weighed in selecting the carrier to provide ticket stock and other services. The amount of bias in the CRS system could be another matter to be dealt with in the contract, along with settlement terms, security considerations, etc. In addition, corporations can always place their business through travel agents using unbiased systems. Consequently, we believe that corporations are generally capable of protecting their own interests.

II. The Bias Rules (§ 255.4)

A. Multi- and Direct-Access Systems

American, Eastern, JAL and TACOS urge clarification that the bias rules apply only to "primary" displays in multi- and direct-access systems. They argue that otherwise each participating

carrier would have to unbias its own "internal" display, rendering this type of CRS extremely unattractive. DOJ, on the other hand, considers this a "loophole" through which CRS hosts will make their own "secondary" display more attractive to agents than the primary. The Joint Carriers think this prospect would be less likely if we either required that users of primary screens have available all services or options open to secondary display users, or, as TWA suggests, allowed vendors to display only their own services on secondary screens. American and United simply deny that offering a biased display in addition to an unbiased one constitutes an unfair method of competition or consumer injury, so long as agents have access to objective information.

We will amend the rule to make clear our original intent that its requirements apply only to the primary displays in each airline CRS offered to a travel agent. Additional displays of airlines participating in multi- or direct-access systems, including those produced by the host, need not be unbiased. Our concern in this proceeding is to ensure that agents have access to impartial information through their CRS's. So long as each CRS includes a neutral display of all carrier offerings that is as useful to the agent as any other displays, this objective should be fulfilled. The additional ability of system users to refer to biased screens to improve their knowledge of one carrier's services does not undercut competition or the public interest. To close the loophole That DOJ fears, we will include a specific requirement that the primary display be as useful to the subscriber in terms of functions or enhancements offered, and the ease with which such functions or enhancements can be performed or implemented, as any secondary display maintained by the system vendor. We intend to apply this requirement with reference to our entention that Vendors not make primary displays so difficult or time-consuming to use that subscribers automatically turn to biased secondary displays to serve their clients. We do not intend by this requirement to force multi-or direct-access systems to offer so-called "last seat availability" for third-party carriers in their primary displays, but we do interpret it as requireing that their own availability information be at least as current in the primary display as it is in any secondary displays.

B. Elimination of Carrier Identity Factors

Almost all parties endorsed elimination of carrier identity factors in ordering displays. A good many urged that a rule also require the service factors employed by each vendor be applied consistently to all markets as well as to all carriers. Otherwise, they argue that ostensibly neutral criteria (e.g., multi-class service, wide-body aircraft, etc.) could be selected for each market that would favor the CRS vendor.

We agree. Our intent is that display criteria be applied uniformly to all markets and to all carriers, and the rule will be amended to make that clear. Absent such a requirement, CRS vendors could vary their display criteria market-by-market to maximize the sales on their flights and continue the very harm this rulemaking was meant to address.

We will not permit CRS owners to use different factors for display of international services at this time. While a different set of criteria may be appropriate for international air transportation, as KLM suggests, there is not enough evidence yet to justify a departure from our general rules that might afford an opportunity for reintroducing carrier preference. We will remain flexible on this point, however, and will consider different treatment for foreign air transportation if circumstances warrant.

Many parties believe it would be desirable for us to adopt a general proscription against even indirect use of carrier identity factors. They urge the inclusion of the words "directly or indirectly" in § 255.4(b), arguing that without at least a broad "backstop" against CRS bias, the general rules proposed in the NPRM will fail and specific, detailed regulation will be necessary.

We will include this suggestion in our rule. It makes it clear that we will intervene to eliminate display criteria which appear to be neutral but in fact are contrary to the spirit and purpose of our rules.

We requested comments in the NPRM on the need for prohibiting vendors from using certain criteria, such as hub size, in selecting connect points. Although a number of commenters supported that idea, we will not adopt it at this time. As we have noted in EDR-471A, we are extremely reluctant to become involved in substituting our judgment for that of the vendors, especially where there is no clear need to do so. We believe that several of the modifications we are making or proposing substantially reduce vendors' abilities to evade our rule. We have made it clear that vendors may not achieve bias by indirection and that they must apply their criteria even-handedly to all markets. In addition, we have proposed a requirement that they be capable of building connections over at least nine hubs. With those changes, we believe it unnecessary to develop a catalogue of prohibited hub selection criteria.

A number of parties ask us to prohibit discrimination as to airports serving the same city, to prevent favoring those used by vendors at the expense of others. American, however, submits that all major CRS's now allow agents to inquire about service to and from cities as well as airports. So long as the information is readily available to users, forced integration of city/airport displays would be inappropriate and inconsistent with the policies generally underlying the proposed rules, according to American.

We see no need to add a specific requirement in this area. We read the requirement that vendors "order" their displays in an unbiased fashion as including a requirement that they select flights for display in such a fashion. Thus, our rule would require vendors to use objective criteria in deciding which airports will be searched when the subscriber uses any given city or airport code in his or her request.

We will also deny Frontier's request that we require the display of combined air-ground services on CRS's. Its request is beyond the scope of this proceeding, and would amount to affirmative regulation of display criteria, which would be inconsistent with our approach to display bias. Moreover, we have no evidence that the failure to list air-ground services is a significant competitive problem.

Finally, we will deny American's request that we require other CRS vendors to integrate the displays of their direct and connecting flights. Our reasons for not taking this action were carefully articulated in EDR-466C (NPRM at 32-33) and American has offered no evidence persuading us to change those views.

C. Disclosure of Display Criteria

Sections 255.4(b)(2) and 255.4(c)(3) provide that display selection criteria be disclosed to participating airlines and subscribers. Several parties ask for clarification of these rules. Continental and KLM note that the rules apply only to current criteria. They do not create an affirmative obligation to disclose changes in the criteria used. Continental asks that we require CRS vendors to notify participating carriers and subscribers prior to any changes in criteria or in weighing factors. Absent such a requirement, the burden would fall on other carriers and subscribers to detect any changes in criteria.

Our use of the phrase "disclose upon request . . . current criteria" was intended to relieve vendors from the possible burden of disseminating information to parties with no desire or need for such information while at the same time facilitating the enforcement of the bias rules by insuring that interested parties have accurate and current information on the vendor's display criteria. As we read that language, the question of whether the disclosure obligation is continuing will depend on the terms of the request. If a participating carrier wishes to be informed of changes without the need to make separate requests, all it need do is phrase its original request to include subsequent changes. We therefore see no need to change our original formulation, although we will amend § 255.4(c)(3) to parallel the language contained in § 255.(b)(2). With respect to timing, we will not specify when criteria or format changes must be disclosed, other than that they must be known in advance of or simultaneously with implementation. This obligation only extends to participating carriers and subscribers who ask that the criteria, formats or procedures be made known to them.

Since issuing the NPRM, we have come to a tentative conclusion that the effectiveness of the disclosure requirement would be greatly enhanced if interested members of the general public had access to information on display criteria. Because that issue has not been raised to date, we will issue a separate Notice of Proposed Rulemaking to obtain comments on that proposal before including it in the rule.

D. Information Loading

The proposed rule requires vendors to "apply the same standards of care and timeliness" to loading the information of participants as they do with their own information. Furthermore, any "special loading capability" is treated like a service enhancement; it must be made available to all participants if offered to any. DOJ, Continental and the Joint Carriers believe this allows host airlines to evade the anti-bias rules by simply not offering direct updating or comparably quick procedures to others. However, American thinks the rule may require that direct updating be available to all participants and asks for clarification that it does not. ASTA favors the rule as written. United considers that it would have to delay loading its own information until it could offer the same loading frequency to all participants. Delta, DOJ, and the Joint Carriers deem it sufficient if hosts offer the same frequency to others, rather than require that all be updated on the exact same basis.

Our reason for proposing and adopting a rule on information loading is to ensure that vendors do not allow competitive considerations to affect the care or timeliness with which they load other carriers' information. Our objective was not to require absolute equality between non-vendors and vendors in loading procedures or frequency. Indeed, we recognize that integration of vendors' internal and external systems, and the cost of direct links and the development of direct loading procedures may make it difficult to load other carriers' information in the same way or at the same time as the vendor's own information is loaded. We believe that our rule as proposed accommodates these opposing concerns. As we interpret it, it would allow vendors to decide when and how they would accept information for loading. However, once the vendor's CRS department has received information on other carriers, it must be loaded as quickly and as carefully as the vendor's own information is loaded. We believe this standard will be adequate to protect competition and consumers.

For the same reasons, we will not force CRS owners to offer other carriers direct computer-to-computer links. If offered to one participating carrier, however, it must be offered to all on non-discriminatory terms. To clear up an ambiguity in this area, we will delete the parenthetical in § 255.4(d). The language "direct updating" contained in that parenthetical suggests that direct updating is a basic feature of CRS's. This was clearly not our intention.

E. Miscellaneous Matters

Frontier asks us to adopt rules that would prohibit CRS vendors from programming their systems to automatically name themselves as ticketing carriers whenever they appear on the flight itinerary. Because the ticketing carrier holds the passenger's money until the ticket is actually used, it gains the benefit of the use of the money—the credit float.

We are unwilling to adopt rules in this area at this time. So long as the carrier receiving the credit float is one of the several providing transportation, the practice is in compliance with our prior decisions on the subject. *See* Orders 83-4-135 and 83-7-55. Moreover, the several carriers providing transportation would seem to have initially equal claims to the credit float. The agent's decision to steer it to one or the other carrier is a complex one involving many factors, such as the amount of transportation provided by the respective carriers, consumer preferences and so forth. These factors apparently have induced agents to override such autovalidation programs. American has reported that SABRE agents negate its autovalidation program on half of the tickets they issue.

Finally, we will make a technical change suggested by USAir that will clarify our rules. In § 255.4(b)(1) we will subsitute the words "display of information" for "flight information"

III. Carrier Access Fees (§ 255.5(a))

In EDR-466C we proposed to prohibit unjust discrimination in fees charged to participating carriers. The rule would allow vendors to charge different fees to carriers based on differences in the cost of serving them. § 255.5(a). However, we also requested comments on whether we should adopt an equal fee rule in lieu of a prohibition on unjust discrimination.

The positions of the various parties run the entire spectrum of possible action on CRS pricing. United and DOJ urge us to adopt no pricing rules whatsoever. User carriers generally support some action on reasonableness of fees while vendors generally support a non-discrimination approach. At the other extreme, some parties suggest that participating carriers be afforded access to CRS's free of charge.

A. No Pricing Rule

United and DOJ urge us not to adopt a pricing rule. United's position derives primarily from its arguments that Board intervention is unnecessary and unlawful. These arguments have already been addressed.

DOJ, in contrast, agrees with us that the current CRS pricing structure is the result of market power and is adversely affecting airline competition. It argues, however, that our intervention in CRS pricing may produce inefficiencies that outweigh the benefits of such a rule. DOJ suggests that we focus, for the time being, on eliminating bias and requiring vendor participation in other systems.

DOJ believes that a pricing rule should meet four criteria: it should not allow reintroduction of bias; it should not inhibit CRS competition; it should inhibit the vendors' ability to exercise market power against downstream rivals; and it should inhibit vendors from charging excessive fees. DOJ fears that our rule, particularly because of its treatment of carriers that refuse to pay non-discriminatory fees, would allow the re-introduction of bias. DOJ foresees vendors asking prohibitive but non-discriminatory fees. When carriers refuse to pay these fees, the CRS

vendors then are free to bias against them in their displays.

DOJ's preferred option of no pricing rule has engendered substantial opposition. It is generally described as emphasizing theoretical market distortions of a pricing rule over distortions that exist and will continue as a result of vendor market power. (Muse Group, Western, USAir, and Frontier)

The Muse Group argues that the lack of a price rule will lead to the same evils that DOJ claims result from bias. Vendors could use their market power to set excessive fees to carriers, continue to charge below cost fees to agents and thus protect themselves from competitive entry in the CRS market. In addition, excess fees would raise air carrier costs, as does bias. Competition in air transportation would continue to be distorted. The Muse group also claims that elimination of price regulation would allow vendors to reintroduce bias by charging excessive fees. Carriers that could not afford the fees might be subjected to the most extreme form of bias, elimination from CRS's entirely.

There is some merit to DOJ's arguments. We are sensitive to the risks of distortion inherent in government regulation of prices. Those risks were among the reasons that we declined to propose a reasonableness requirement in EDR-466C. DOJ's position, however, does not give sufficient weight to the market distortions that will persist if we take no action. The record demonstrates that some vendors currently charge differential prices based on considerations of air transportation competition. If we were simply to eliminate bias, and vendor market power did not dissipate in the short run, they could continue to do so. Indeed, with the loss of incremental revenues, their incentives and ability to discriminate based on competition might increase. Thus, carrier ownership of CRS's would continue to affect air transportation competition adversely. However, given the detriments of government regulation noted above, we will refrain from intervening too greatly into market pricing decisions in the first instance. Rather, the unjust discrimination rule, as discussed more fully below is the minimal intervention which should cure the problems of existing pricing practices, *i.e.*, vendor prices to individual carriers that are based on air transportation competition. Of course, should our approach prove ineffective, it may be necessary to reconsider our role in regulating prices at a later date.

B. Reasonable Fees

Continental, Frontier, the Joint Carriers, the Muse Group, Newair, Northwest, Pan American, RAA, Republic and USAir argue that a rule against discriminatory fees alone will not be sufficient to control abuse of market power in setting fees. Most urge us to adopt a reasonable fee requirement.

All these commenters argue that market power can be exercised by charging excessive prices as well as by price discrimination. If our rule does not preclude excessive CRS fees, then vendors will have the incentive and the ability to recover lost incremental revenues by charging additional booking fees. Excess fees will have the same deleterious effect on air transportation competition as does bias. It will raise the cost of doing business for vendors' competitors, and thus insulate vendors from competition.

While the carriers in this group share a concern that a discrimination rule will not preclude excessive fees, there is some divergence on proposed solutions. Pan American, the Joint Carriers, the Muse Group, Northwest, Republic, and USAir support a reasonableness requirement. None would have us attempt to set fees at this stage. Continental suggest that it would be sufficient for us to state our concern over fee levels and institute a separate rulemaking to consider more effective solutions to pricing problems.

United, American and Delta oppose a reasonableness rule, arguing that enforcement would lead to complex administrative problems. In their view, the Board would inevitably have to determine exactly what level is reasonable. American states that the failure of supporters to suggest an appropriate cost allocation in the first instance shows how difficult this task would be.

In proposing and adopting only a price discrimination rule, we are not finding that vendors should have unfettered freedom to charge their air transportation competitors excessive fees. We need not determine the limits of that freedom here. Rather, we anticipate that the bargaining power of some participating carriers, combined with a non-discrimination requirement, will generally hold fees close to reasonable levels. The evidence and comments submitted by proponents of a reasonableness rule have not convinced us otherwise. Many carriers rely on United's plans to charge regional and commuter carriers $2 or $3 for booking or cohost status as evidence of vendors' plans to charge excessive fees. Assuming that such fees would be excessive, United's ability to charge regional carriers these fees does not demonstrate its ability to charge major carriers the same fees. If it does not, the discrimination rule should protect the regional carriers. United has indicated that some carriers are important enough to agents to give those carriers substantial bargaining power, and DOJ has also noted its view that a properly constructed rule would permit us to rely on bargaining power of larger CRS customers to hold all fees to reasonable levels. Morever, although we noted in EDR-466C that some evidence suggests that fees in the $1 to $1.50 range would adequately compensate vendors, this evidence is by no means conclusive. The cost study submitted by Republic is too cursory to qualify as conclusive evidence that fees of $2 are excessive.

A reasonableness requirement also has serious drawbacks that should be considered only after less intrusive alternatives are explored. Such a requirement would not be self executing, so any complaint brought under the rule would require a ratemaking proceeding before a violation could be established. Any such proceeding would likely be time-consuming and expensive for the parties. The delay involved would simply perpetuate any injury while the proceeding was being completed. In contrast, with the clarifications that we are making, the discrimination rule should permit prompt resolution of disputes. Moreover, as we noted in the NPRM, to the extent that competition exists in the CRS market, regulation of fee levels could produce distortions in the market. NPRM at 49.

C. Zero Fee Proposals

Another proposal which has prompted substantial comment is an alternative proposed by DOJ. DOJ suggests that, if we adopt a pricing rule, we require CRS vendors to offer basic services to air carriers for nothing, *i.e.*, a "zero fee." Basic services would include unbiased display of schedules, fares and availability, and reservations and ticketing capability. Vendors would recover the expenses of their systems from charges to travel agents and non-air carrier participants, and by charging carriers for services offered in addition to the basic services.

RAA and the Joint Carriers support the proposal and New Air independently requested a similar rule. Supporters claim it would guarantee that carriers do not pay excessive fees without the need for government oversight, including the difficulties of rate regulation. While vendors would

increase agent charges to cover their costs, in their view charges to agents would not become excessive. CRS vendors would receive only a reasonable return on their investment rather than monopoly profits because competition for agent subscribers is greater than for carrier participants.

American and United object to the zero fee proposal. They claim that the rule would necessitate a dramatic increase in fees to agents. They predict that smaller agents would no longer be able to afford automation. Consumers would then turn to the larger automated agents. This is turn would lead to increased concentration in the travel agent industry. American also predicts that carriers would have to pay higher agent commissions. Because larger carriers would be better able to pay them, concentration in the air transportation industry would also increase.

The zero fee proposal has some attractive features. The travel agent side of the CRS market appears to function somewhat more competitively than the air carrier side. Although, as we have noted, agents in particular regions have strong preferences for systems provided by carriers serving their area, they do have a greater ability to substitute one system for another than do air carriers. If travel agent fees became the primary source of revenues for vendors, one might expect that overall fees would be held closer to a competitive level, and that non-carrier vendors could compete on a much more even basis. While such a rule would likely result in a substantial increase in agent fees, agents may be able to recoup those cost increases through increased carrier commissions.

Nevertheless, the zero fee proposal also has serious drawbacks. User carriers derive substantial benefits from CRS's. Thus, the zero fee proposal would foreclose vendors from receiving any payment from a major group that derives a benefit from their product would appear to be somewhat unfair and illogical. Such action could also produce inefficiencies by encouraging excessive use of the systems by those receiving the "free ride." While a zero fee rule would reduce the procedural burdens and administrative entanglements that might result from other types of pricing rules, such a rule would nonetheless constitute a substantial intrusion into the operations of the CRS market. In addition, the precise effects of a zero fee rule are difficult to predict, but it is reasonable to assume that it would have a fundamental impact on both the air transportation and CRS industries. It could also have precisely the kind of distorting effects that DOJ seeks to avoid with its preferred alternative of no pricing rule.

Weighing these considerations, we conclude that it is preferable to adopt the kind of pricing rule that is consistent with our general approach to the CRS problem. Our rules are designed to produce the minimum intervention necessary to prevent the abuses we detect, and to give vendors maximum flexibility to operate their systems so long as they do not exercise market power to harm competition or consumers. Therefore, we will not adopt a zero fee rule, but opt instead for an unjust discrimination rule as discussed below.

Although we have decided against the various proposals for additional pricing rules, we recognize that pricing issues are perhaps the most difficult issues confronting us. We are aware of the possibility that market power may allow vendors to charge excessive fees and of the potential adverse consequences for air transportation competition of such fees. Our failure to take further action now should not be viewed as an irreversible conclusion that further price regulation is not in fact necessary. We expect to monitor the situation and to adopt additional pricing rules should the need arise. We would expect our successor to do the same.

D. Unjust Discrimination vs. Equal Fees

On the choice between the unjust discrimination standard and the strict equality alternative proposed in EDR-466C, KLM, Continental, Western, the Joint Carriers, and TWA more or less support an unjust discrimination rule. They generally argue that vendors should be allowed to recognize cost differences and to avoid cross subsidization. At the same time, many recognize the potential for abuse, and suggest a variety of measures to strengthen the rule. Continental and Western would have the rule specifically impose the burden of demonstrating cost differences on the vendor; *i.e.*, there would be a rebuttable presumption in favor of equal fees. Delta, Frontier and the Muse Group prefer equal fees, but believe a presumption is necessary if we adopt an unjust discrimination standard. Western and the Joint Carriers suggest that the rule require vendors to disclose their fees, in order to facilitate monitoring and self-help remedies by carriers. TWA would require vendors to establish and publish participation criteria for various levels of service, with a uniform fee set for each level.

Delta, Frontier, the Muse Group, and American all support the proposed alternative of requiring equal fees for equal services. Although DOJ prefers no pricing rules, it argues that an equal fee rule would be more effective than an unjust discrimination rule. Proponents of equal fees argue that an unjust discrimination rule allows too much opportunity for abuse. Cost differences will be fabricated, and deciding when cost differences are justified will be time-consuming if possible at all. Even if vendors do not attempt to abuse an unjust discrimination rule, the equal fee rule would be much easier to enforce because it would avoid the need to undertake ratemaking-type determinations.

In addition, these commenters claim that our desire to preserve the vendors' ability to base prices on costs is largely based on speculation. They claim that for any level of service, the cost of providing the CRS will not vary substantially from carrier to carrier. So long as fees can be set for different levels of service, there will be little risk of cross subsidization or loss of incentive to reduce vendors' cost under an equal fee rule.

We have decided to adopt the unjust discrimination standard, subject to certain clarifications to improve its effectiveness. We have repeatedly stressed our desire to limit our intervention to deal effectively with the evils we see without creating more problems or inefficiencies. Permitting producers to consider cost differences in their fee structures promotes efficiency. On the other hand, precluding vendors from taking cost differences into account could introduce economic inefficiencies into the CRS industry. Incentives to lower costs might be reduced and cross subsidization might occur. Moreover, a rule of strict equality would be to impose a greater requirement than is normally imposed under the strictest standards of utility ratemaking.

If we were to adopt an equal fee rule, we would be ignoring these considerations, and we would be departing from policies that we have consistently applied since deregulation. We are aware of the risks entailed in the unjust discrimination rule, and we are making some modifications to strengthen the rule. However, we do not believe that these risks justify departing from traditional notions of discrimination at this time. Of course, should the rule prove ineffective, we are prepared to consider further regulation.

A number of commenters have suggested refinements to the discrimination rule which would make

enforcement easier, and would reduce risks of evasion. We are incorporating some of these suggestions into the final rule.

At the outset, we wish to clarify that the unjust discrimination rule does not permit fee differences based on value of service. To permit fee differences on that basis would perpetuate the existing discriminatory fee structure. The rule does not, however, preclude a vendor from establishing different prices for different levels of CRS services. Rather vendors simply cannot charge different prices to two carriers for the same services based on alleged differences in the value of services to those carriers.

In our discussion of the discrimination rule in EDR-466C, we stated that there would be a presumption of equality. We have decided to incorporate the presumption into the text of the rule itself and to explicitly impose the burden of justifying cost differences on vendors. Courts have on occasion imposed similar requirements, *See U.S.* v. *American Telephone & Telegraph Co.*, 524 F.Supp. 1336, 1360 (D.D.C. 1981) and it should reduce the risk of manipulation. Vendors will be required to demonstrate that cost differences actually exist before creating price differentials. In addition, the presumption alleviates the problem of costing data being in the hands of vendors and inaccessible to participating carriers. Vendors will be required to produce the data in order to make their case.

Our rule does not specifically prohibit CRS vendors from affording non-paying and paying carriers essentially the same treatment. Thus, for example, a vendor may change its policy on treatment of non-paying carriers after having signed a number of carriers to participation contracts. The early participants might find, then, that they could have obtained substantially the same services by opting for non-paying carrier status. This results in de facto price discrimination. Carriers should be cognizant of this fact during their negotiations with CRS vendors. They may want to preserve their right to switch to non-participating carrier status in the event CRS vendors afford those carriers similar services on more favorable terms. For example, carriers could negotiate provisions permitting unilateral termination on 60 days notice in such circumstances.

We will also adopt the disclosure requirement suggested by some of the commentors. Upon request, vendors will have to disclose the fees paid by any carrier for the CRS services. Where an agreement includes a barter element, vendors would also have to disclose the goods or services traded and their estimated cash value. This rule will greatly facilitate enforcement of the discrimination rule because it will allow participating carriers in the first instance to determine if they are paying fees which differ from those paid by other carriers. The schedules themselves will not, of course, establish conclusively that a violation has taken place. Vendors will still have the opportunity to demonstrate cost differences which justify the fee differentials.

E. Indirect Discrimination

DOJ and Tymshare have pointed out an apparent loophole in our rule against discriminatory fees. They foresee the possibility that vendors may be able to discriminate among air carriers by charging discriminatory prices to agents. For example, a vendor could impose per-booking charges on agents and vary them according to the identity of the carrier booked. We obviously do not intend to allow vendors to achieve by indirect practices that we prohibit directly. We will therefore include a provision in section 255.6 prohibiting vendors from conditioning prices to subscribers on the identity of carriers whose flights are sold by subscriber.

F. Reciprocal Fees for Vendors

American urges that an exception be made from the non-discrimination requirement for CRS vendors' charges to each other. It claims that the failure to provide such an exception could have perverse results. It maintains that, as a general proposition, no system vendor will pay more to another vendor than that vendor pays to it. American proposes that reciprocal fee agreements between vendors be exempt from the fee rule so long as the fee is set at least as high as the level that one vendor charges to other carriers.

The Joint Carriers, Delta, Western, TWA and DOJ oppose American's reciprocity proposal. Generally, they claim that it would undermine whatever power a price discrimination rule would have in controlling fee levels.

We will not adopt American's reciprocity proposal. We note that, although American casts its proposal as an effort to preserve pricing freedom for smaller vendors, two of the three smaller CRS carriers oppose reciprocal fees. Such a provision could be manipulated by CRS vendors to punish or reward other vendors based on the extent of their air transportation competition because it would allow a vendor to discriminate in prices between other vendors. As such, some of the evils that our rule was intended to correct would continue. Reciprocal fees could undermine some of the checks and balances contained in our rule by eliminating CRS vendor bargaining power as a constraint on fees charged by other vendors. CRS vendors tend to be the largest carriers, and their inclusion in a system is likely to be important to agents. They may therefore have greater leverage than most non-vendor carriers in their dealings with other CRS vendors. With a reciprocity provision, fees that they pay would not be considered in determining whether the fees to other carriers are discriminatory.

Finally, we reject American's premise—that one vendor will not pay more for a second vendor's service than the second vendor pays for its service. When one vendor buys CRS services from another, it is buying information distribution services to agents who are on the other carrier's system. These services are distinct from the services offered by the first vendor because its system covers a different set of agents. Since the services are not identical, it does not follow that vendors would insist on reciprocal prices.

IV Contracts-With Carriers (§ 255.5 (b) and (c))

A. Tying Arrangements

In EDR-466C, we proposed to prohibit the tying of the purchase or sale of any goods or services to participation in a CRS. We found that CRS carriers had used their substantial power in the CRS industry to force other carriers to pay for tickets they were writing for other carriers.

United argues that by requiring a CRS participant to enter into a net ticketing arrangement as a precondition of CRS access it has neither engaged in an "unfair competitive practice" nor has it violated the letter or spirit of the antitrust laws. In this regard, it reiterates its earlier arguments (1) that it does not possess sufficient economic power to coerce other carriers to accept burdensome contract terms; (2) that interline ticketing is not a separate product; and (3) that there is no anticompetitive effect in the tied product because there is no competition for United's ticketing services.

United's arguments are not persuasive. The record clearly established that the major CRS vendors have used or threatened to use their power in the CRS industry to coerce other airlines to pay net ticketing fees. Moreover, as we explained in the NPRM, CRS services are distinguishable from interline ticketing services. NPRM at 50. Finally, it is sufficient that the

arrangement appreciably restrains competition. "Such appreciable restraint exists whenever the seller can exert some power over some of the buyers in the market, even if his power is not complete over them" *Fortner Enterprises, Inc.* v. *United States Steel Corp.*, 394 U.S. 495, 503–04 (1969).

United also suggests that its contracts do not cause significant economic harm. It characterizes the NPRM as finding that carriers are being forced to purchase services they do not want. In its view, if this were true, overall carrier fees would be the same as they are now. Participating carriers would be willing to pay the price they are currently paying for CRS services and ticketing services for CRS services alone, with the second product being a throw-in. In such circumstances there is no harm to the marketplace.

While United has misstated our conclusion—we found that interline fees charged participating carriers exceeded the amount carriers would be willing to pay absent the tying of interline ticketing services to CRS access—that fact does not dispose of United's argument. Rather, the weakness in United's argument is that it ignores other types of harm with which courts are concerned. Tying arrangements are not of concern only where there is a loss of economic efficiency. Other adverse effects of tying arrangements include their use as a device to effect price discrimination and as a means to force other products on a customer so as to extract more easily from him a monopoly return on one unique product in the line. *Moore* v. *James H. Matthews & Co.*, 550 F.2d 1207, 1213 (9th Cir., 1977). *See also*, 394 U.S. *supra*, at 512–14 (dissenting opinion, White, J.).

Moreover, regardless of whether requiring carriers to sign net ticketing agreements as a precondition to CRS access constitutes a tying arrangement, a rule is necessary to make our pricing rule effective. As we explained in EDR-466C, without the tying rule, vendors could use their market power to perpetuate a discriminatory pricing structure by requiring carriers to pay for other goods or services and by establishing discriminatory fees for those services.

Some supporters of our rule have suggested that the tying rule must be modified in order to ensure that barter transactions are not used to circumvent our discrimination rule.

The Joint Carriers suggest that CRS vendors will offer favored carriers goods or services at attractive prices as a part of their CRS contracts in order to achieve the same effect as price discrimination would have on competitors. ASTA shares this concern for "sweetheart deals." While the Joint Carriers acknowledge that voluntary bartering should be permitted, they urge us to require that any barter proposal include a voluntary cash option and that the cash equivalent value should be stated for the bartered goods or services. They also suggest that we prohibit discrimination in the exchange of goods and services outside the CRS contract.

American opposes this latter suggestion. It claims that there are simply too many services that one carrier can offer to another to regulate effectively. More importantly, the rule would unfairly penalize vendors in negotiating for separate services.

We will not adopt the Joint Carriers' last suggestion. "Sweetheart deals" could be made without any explicit reference to CRS services. To preclude such evasion effectively, a rule on contracts for other goods or services would, in effect, have to regulate all exchanges of non-CRS services by vendors with other carriers. Given the extent to which all carriers exchange services with each other, such regulation would put vendors at a severe competitive disadvantage to other carriers. Of course, our tying rule would prohibit a vendor from forcing a barter transaction on a participant. The participant must be able to choose between the cash fee and the barter transaction. In addition, our fee disclosure rule will require vendors to disclose the estimated cash value of any goods or services exchanged for CRS services.

B. Arbitration

Response to our proposal to require arbitration of fee disputes was mixed. Continental, USAir, Western, Northwest, and Republic support the concept. They generally agree that it would improve enforcement of any pricing rule, and be more efficient than Board resolution of disputes. Republic argues that an arbitration rule would be fully analogous to the imposition of arbitration under merger and acquisition Labor Protective Provisions (LPP's). In both cases, according to Republic, the delegation is based on the Board's recognition that it cannot effectively handle all disputes which might arise.

DOJ, American, United and Delta oppose arbitration. Their objections are based, for the most part, on their opposition to the unjust discrimination rule. In addition, DOJ fears that arbitration may add to the costs of participation in CRS's and cause vendors to adopt strategies which themselves distort the market. Delta and American believe that arbitrators may get sidetracked by improper inquiries into the reasonableness of rates, and fear that arbitrators deciding individual cases may produce inconsistent decisions or decisions that require a vendor to alter the price of all contracts without the benefit of any coordination. American also suggests that the Board is capable of moving quickly on a charge of discriminatory pricing. It asserts that its experience with arbitration under merger LPP's proves that arbitration does not guarantee to provide prompt resolution of disputes.

These carriers also challenge our legal authority to impose an arbitration provision. Unlike labor relations, where we have no inherent expertise, we do have expertise in commercial ratemaking. United notes that LPP arbitration is imposed under section 408 of the Act, which authorizes us to impose reasonable conditions on our approval. United argues that section 411 contains no such authority.

We have decided not to adopt the arbitration provision at this time. This decision is not based on doubts about our legal authority to do so. On the contrary, we believe that we do have the legal authority and that our LPP experience provides a relevant analogy. Our decision to impose arbitration requirements when LPP disputes arise was based on our likely inability to resolve disputes quickly.

We proposed to require arbitration because we believed that it would provide a faster and less expensive means of resolving fee disputes. Based on the comments and our modification to the pricing rule, we are no longer certain of that conclusion.

As the commenters have pointed out, arbitration can be complex, time consuming, and expensive. We proposed arbitration as a possible alternative to protracted hearings in order to vindicate claims about discriminatory fees. The modifications to our fee discrimination rule outlined above should greatly reduce the need for hearings in this area. The vast majority of fare and rate complaints that we received when we regulated carrier pricing were resolved based on written submissions. We anticipate that this may also be true under our pricing rule, where disputes will be more narrowly drawn. In addition, even with arbitration, carriers would have had the right to appeal arbitrators' decisions to us. Such appeals are regularly filed with us in the LPP area. The appeal process would have undermined the time savings associated with arbitration.

Therefore, we will not include the arbitration requirement in the final rule. Of course, carriers are free to include arbitration provisions in their CRS agreements as a voluntary matter.

C. Validity of Contracts

Since our proposed rules require the removal of bias and the elimination of discriminatory fees, they will obviously have a major effect on existing contracts between vendors and carriers. A substantial number of comments address the question of precisely what that effect will or should be. Some carriers claim that we should declare all such contracts null and void (American, the Muse Group, Continental and United). American interprets the rule as abrogating existing contracts but requests that we declare all contracts void to avoid confusion. United notes that our silence on this issue could spur lawsuits and prove to be quite expensive. United also states that if contracts are not void it assumes it could offer a price equal to an existing contract to a few carriers and offer higher prices to others without violating the rule, but yet avoiding its intent. The Muse Group argues that we can not permit existing contracts to continue as even those contracts with lower fees disadvantage other carriers.

Frontier and Republic ask that we not interfere with their contracts. They claim that their contracts include non-monetary payments to CRS vendors, such as equipment or the settlement of a lawsuit that kept their fees low. They would lose the benefit of these payments if their contracts are voided. American and United respond that carriers will receive credit for any prepaid "funds" either in negotiations or the courts.

All current contracts must be abrogated, not just those that participating carriers dislike. Carriers can not have the protection of the rules and also retain the special benefits in their particular contracts. Our rules declare that the central provisions of existing CRS vendor-participant contracts are contrary to public policy. As a result of our rules, the product offered, and the bargain between the parties, will be substantially changed. In addition to the price provisions, other basic elements affected include cohost bias provisions, and the net ticketing provisions.

Our conclusion that the rule renders contracts between vendors and participating carriers unenforceable is consistent with numerous decisions recognizing that actions by the government can affect existing contracts. *See e.g. Louisville & Nashville R.R. Co.* v. *Mottley*, 219 U.S. 467, 484–5 (1911); *Nebbia* v. *New York*, 291 U.S. 502, 523 (1934). Contracts in violation of a valid federal regulation are unenforceable. *See e.g., Quinn* v. *Gulf & Western Corp.*, 644 F.2d 89 (2nd Cir. 1981); *Citronelle-Mobile Gathering, Inc.* v. *Gulf Oil Corp.*, 420 F.Supp. 162 (S.D. Ala. 1976). If this were not so, parties could by contract circumvent any regulation or statute. *Cf.*, 219 U.S., *supra*, at 485–6. The courts have also rejected arguments, like Republic's, that government action denied a party to a contract due process by setting aside a contract because it violated a statute. 291 U.S., *supra*, at 537–38. Finally we clearly have the authority to take action that results in the voiding of contracts in order to carry out our responsibilities under the Act. *Kent* v. *CAB*, 204 F.2d 263 (2d Cir. 1954).

The cases Republic cites, where courts have given one party the option to void contracts, are not controlling. Where, as here, we are not dealing with an individual contract but many, affecting a whole industry, different considerations apply. As American has pointed out, permitting some contracts to continue would make our rules ineffective and impossible to implement within a reasonable period.

Concerning the ability of carriers to recover prepaid "non-cash payments", we agree with American and United that in those instances where the problem exists, carriers should be able to recoup unearned fees either through negotiation or the courts.

V Contracts With Subscribers (§ 255.6)

The major disputes concerning this section involve the length of contracts between vendors and travel agents, the scope of liquidated damage clauses, and the validity of contracts.

ASTA, ARTA, Newair and the Joint Carriers assert that the five year provision (§ 255.6(a)) is too long. American responds that it originally suggested that its contracts were for five years not for competitive reasons but to take maximum advantage of the tax code regulations. It notes that contracts for lesser periods obviously could be, and are, entered into.

We will adopt the proposal to limit the term of subscriber contracts to a maximum of five years. While we are sympathetic to the views of ASTA, ARTA and the other parties seeking shorter contracts, we believe we should as much as possible limit our intervention in the CRS industry and constrain our role to protecting air transportation competition. We will intervene to eliminate only those contract terms clearly designed to prevent travel agents from switching systems. We have found no other business justification for the lengthy contracts. American has, however, raised a significant business purpose in maintaining subscriber contracts with five-year terms. Consequently, although restricting-subscriber contracts to very short terms may make the CRS industry somewhat more competitive, we will not take action to restrict subscriber contracts to less than five years. Subscribers and CRS vendors are, of course, free to negotiate contracts of shorter duration and we hope that a shorter term does become the industry standard.

We will not grandfather all subscriber contracts entered into before March 1, 1984, as Delta has proposed. Our rule would not affect the great majority of subscriber contracts, regardless of when entered into, as most, according to the information we have, are of less than five years' duration and do not contain the restrictive clauses we have found objectionable. While we believe our rule renders those specific provisions unenforceable, they are generally ancillary provisions, not crucial to the bargain between the parties. As such, vendors and subscribers may well decide to abide by their contracts' remaining terms.

The Joint Carriers and Tymshare both suggest that burdensome liquidated damages clauses should be struck down. Tymshare claims that such clauses, even if unenforceable under applicable state law, have a chilling effect. It proposes that such clauses be limited to a maximum of six months' rental payments or 80 percent of remaining payments, whichever is lesser.

In the NPRM we indicated that we were concerned that liquidated damage clauses requiring substantial payments could inhibit entry into the CRS industry, especially when combined with lengthy contract terms. While the issue remains troubling, we believe our reasons for not taking action remain sound. First, it would be very difficult to devise a liquidated damages formula suitable for all subscriber contracts, given the variety of contracts currently used. As a result, courts are better equipped to address liquidated damages provisions because they can tailor a decree to the particular circumstances. Second, we have moved to adopt rules keeping travel agent contracts to reasonable terms. Finally, our prohibition on exclusivity clauses should open up the market and permit agents to have more than one system. We are concerned, however, about the potential for abuse of liquidated

damages clauses, and will monitor practices in this area. If abuses occur, we will consider the need to take further action.

Tymshare asks that we prohibit discrimination among subscribers. This change would preclude vendors from offering volume discounts to agents to induce use of a particular CRS. It therefore asks that we foreclose both direct and indirect actions that could impair a subscriber's choice of systems.

We will not adopt Tymshare's proposal. We do not intend by this rule to limit CRS competition for agent subscribers. Our rules are not designed to eliminate marketing advantages or to benefit particular vendors. So long as vendors do not tie air transport commissions to the use of a particular system, they remain free to try to induce agents to use their systems. We see no need to interject rules in this area at this time.

VI. Service Enhancements (§ 255.7)

The controversy surrounding service enhancements concerns the extent to which vendors must share them with other carriers. The proposed rule allows vendors to retain exclusive use of enhancements but once an enhancement is made available to one carrier, it must be made available to all.

United attacks our legal and factual basis for imposing any enchancement rule. It argues that selective use and distribution of enhancements is not an unfair competitive practice as the antitrust laws do not require a vendor to assist competitors. In addition, enhancements do not affect the information supplied to travel agents and thus do not harm them or consumers. Further, competition among CRS vendors will force them to offer enhancements to meet the demands of the marketplace and thus regulation is not necessary. United also asserts that the rule will be difficult and time consuming to enforce as the Board will become mired in a multitude of complex disputes such as who gets enhancements first and at what price.

United's arguments are not persuasive. As we explained above, the discriminatory use of market power to affect down-line competition is clearly inconsistent with the antitrust laws. It is not a defense to say that enhancement practices do not have as great an effect on down-line competition as pricing practices. The conduct is nevertheless inconsistent with statutory standards of permissible business conduct and has a substantial adverse effect on competition.

United, however, makes a valid point in arguing that it offers enhancements for a variety of legitimate factors such as increasing the saleability of its system. As long as the order in which enhancements are offered to participants is not a function of the extent to which an airline competes with the vendor, we see no problem in staggered distribution. We will not, therefore, establish enhancement availability procedures as the Joint Carriers suggest.

Northwest, Pan American, Frontier and Continental claim that vendors should not be allowed to retain exclusive use of enhancements. Northwest argues that exclusivity will reward advantages gained prior to deregulation and they should not be continued. Continental asserts that we cannot allow vendors to keep enhancements, especially if the systems are neutral, as it would retain discrimination in favor of vendors.

These arguments fail to recognize the limited objective of our enhancement rule. It is not designed to give all airlines the benefits CRS vendors enjoy because of their ownership of CRS's. Rather, this rulemaking is designed to eliminate conduct that we consider to be unfair.

VII. Marketing Data (§ 255.8)

A. Distribution Requirements

We have received a number of suggestions for clarifying our proposed rule on the distribution of marketing data generated by CRS vendors. A number of commenters believe that we should dictate to the CRS vendors the information they must generate, rather than leaving it to their discretion. Some continue to argue that the information is proprietary to each agent and participating carrier, and so should not be available to anyone else (including the host) without consent. Others assert that data on the host should not be covered, while still others counter that it must be included lest the vendor's advantage continue. Timing of the release of reports has also been raised—reports distributed too late, some claim, are worthless. One carrier argues that the information would be available to the host in a non-print form which would fall outside the scope of the rule but would still be valuable. It wants access to all marketing programs of CRS owners/operators.

Our rule, as adopted and originally proposed, requires system vendors to supply any marketing sales and booking data they elect to generate, in printed or non-printed form, on non-discriminatory terms to participating carriers. This does not mean that vendors must share their analysis of data, so long as all the data underlying the analysis is available to others in a usable form. Our information rule does contemplate that CRS vendors will generate the same information on all carriers, including themselves. Otherwise CRS carriers could generate and use information on all carriers, while the information distributed to other carriers would be incomplete and of little value especially when the vendor carrier has all of the data and can act on it. We expect vendors to produce the reports and mail them to carriers desiring them at the same time that the reports are generated and distributed internally. Our involvement beyond that is not necessary and could prove counter-productive.

With respect to foreign carriers, § 255.9(b) as proposed would permit vendors to refuse to share data with those carriers operating a biased system abroad. U.S. flag airlines ask that we go further and provide that the data not go to foreign participants in U.S. CRS's unless comparable information on those carriers is made available. Their concern is that, absent reciprocity, our rule will have the perverse effect of giving foreign carriers a significant marketing advantage. We cannot conclude that their fears are unwarranted. Consequently, in a notice of proposed rulemaking to be issued shortly, we will seek further comments on this issue. We plan to resolve it before the rule goes into effect.

B. Fees for Enhancements and Marketing Data

Frontier, the Joint Carriers, Western and Republic urge us to require that fees for service enhancements or marketing data be reasonable or cost based. They argue that without such a requirement, vendors could continue to deny access to these aspects of CRS's by charging a prohibitively high price. As in the case of basic participation fees, they argue that competition in the CRS industry is insufficient to prevent vendors from evading the rule in this fashion.

KLM and American argue that we should merely adopt the non-discrimination requirement we have proposed. American asserts that vendors should be allowed to set fees for enhancements and marketing data on a value of service basis. A cost based fee would in essence amount to subsidization of participating carriers because it would be giving them the services at a price below the value of the information to them.

We have declined to specify that access fees be reasonable, and by the same token we decline to take a similar step here. As stated elsewhere, we are not attempting to prohibit vendors from

making a profit from their innovation or to limit their behavior any more than is necessary. However, the purpose of the rule is to ensure that carriers are not denied access to enhancements and marketing data for competitive reasons. If vendors have established fees for these services which are so high as to effectively preclude their purchase by participating carriers, we would consider that a violation of the rule.

VIII. Exemptions (§ 255.9)

A. Treatment of Non-participating carriers

EDR-466C contained a provision designed to prevent what has been described as the free rider problem, *i.e.* a participating carrier that refuses to pay a non-discriminatory fee, but nonetheless expects to get full access to systems. In § 255.9(a), we proposed that vendors' obligations under the rule would not apply to carriers that refused to enter into agreements conforming to the rule. In discussing this provision, we indicated that vendors would be free to drop such carriers from their systems completely, to bias displays against such carriers, or to give them equal treatment with paying carriers. We observed that in choosing the latter option, vendors would not be exempt from the non-discrimination rule.

A number of parties have commented on this provision. Continental merely requests clarification on what happens if a vendor continues to give full service to a free rider. It argues that all carriers should get full service on the same terms as the non-paying carrier. Frontier and Republic praise the rule as a deterrent to free riders, but they request that the rule not be construed as applying to carriers who insist on price terms negotiated in existing contracts.

Delta, DOJ, and Frontier have raised more fundamental concerns. They fear that giving vendors the option of biasing displays against non-paying carriers could seriously undermine the antibias rules. The danger is that vendors would request exorbitant, but non-discriminatory fees with the expectation that other carriers would not pay. Vendors would then be able to continue to bias their systems.

The Muse Group and Western foresee a related problem. They fear that the rule would perpetuate price discrimination against disfavored carriers. As the Muse Group explains it, favored carriers would be able to negotiate for minimal bias and pay zero fees. Western is simply concerned that the rule would permit vendors to offer full service to favored carriers at a zero price.

DOJ discussed three possible solutions. In addition to the zero fee option discussed above, it proposed as one alternative that vendors be given the choice of either removing all non-paying carriers from their systems or offering services to all carriers for no charge. Under DOJ's second alternative, the vendors would have the choice of dropping a carrier or keeping it on the system for free. If it did the latter, it would not be held to have violated the non-discrimination rule. DOJ acknowledges that either alternative has advantages and disadvantages. The first rule would ensure that smaller carriers benefited from the bargaining power of larger carriers. On the other hand, it could give vendors the ability to stifle entry if they refuse to pay smaller CRS operators. Those operators would be forced to sell their systems without the vendors' flights, or to collect no fees from any carrier. While the second alternative solves this problem, it may deprive smaller carriers of the protection of larger carriers' bargaining power.

Delta has also proposed a modification. Delta would have us require vendors to limit services to non-paying carriers to the display of schedule and fare information without reservations and ticketing capability. This approach would avoid the risk of reintroducing bias into displays, because the information would have to be displayed in an unbiased manner. In addition, it would guarantee that non-paying carriers received a lesser level of service, while assuring that at least the basic information about their services was available to travel agents and their customers through CRS's. The mandatory nature would also prevent vendors from using the discretion inherent in our original proposal to evade the new rules.

Western and the Muse Group similarly argue we must require vendors to penalize non-paying carriers in some fashion other than bias. The Muse Group suggests that we combine DOJ's mandatory deletion option with its suggested requirement that vendors make their availability data available to other CRS operators. This combination would preclude "sweetheart deals" but also assure that vendors do not use refusal to negotiate a non-discriminatory price to inhibit CRS competition.

United specifically opposed forced termination as an option. It argues that such an option would provide too much power to larger participating carriers, who United cannot afford to remove. Elimination of the bias option would have similar results according to United.

We have decided to adopt the non-participating carrier rule that we proposed, subject to certain clarifications. A CRS vendor will have the option of totally excluding non-paying carriers, limiting the information of those carriers it displays (perhaps schedules but not availability) or including all their information but with a measure of bias. Of course, CRS vendors will also have the option of affording non-paying carriers full service without bias. If it does so, however, other carriers will be entitled to the same treatment and the CRS vendor will have, in essence, imposed a zero fee requirement upon itself.

In some measure, our willingness to tolerate bias against non-paying carriers would appear to be inconsistent with our conclusion that bias injures air transportation competition and consumers. However, upon more careful analysis the inconsistency disappears. So long as we permit CRS vendors to charge other carriers for CRS access, as we concluded they must be free to do, the question arises as to what is permissible treatment of non-paying carriers. All of the options we could afford CRS vendors include some type of bias. Complete exclusion is in many ways the ultimate form of bias. By eliminating the non-payers information from the system, it dramatically reduces the chances that the carrier's services will be sold, and substanially impedes the carriers ability to compete in the air transportation industry. Similarly, it is more harmful to consumer because agents from whom they purchase air transportation will not have an efficient source of information on their schedules and fares.

Moreover, prohibiting bias as a response to non-payment may give the large CRS carriers the power to force a Hobson's Choice on smaller and new entrant CRS vendors. If the large carrier refused to pay, the small vendor would either have to provide full service to that carrier (and all other non-payers) for free or exclude the large CRS carrier thus making its system much less attractive to agents. Consequently, permitting CRS vendors to bias against non-paying carriers will cause less competitive injury and harm to consumers than any alternative.

While we recognize the concerns of certain commenters that this approach may serve as a vehicle for re-introduction of significant bias and discriminatory fees, we do not believe it will have that result. Vendors have substantial incentives to set fees at reasonable levels. While incremental passengers have been the most

important revenue source for vendors in the past, fees from participating carriers have become an important supplement. We do not believe that vendors will be willing to forgo that revenue source totally in favor of incremental revenues or that a system with only high fees and significant bias could survive in competition with systems that conform to our rules.

The clarifications that we are making will reduce the risk that our free rider provision will become a major loophole while still providing flexibility to vendors. As written, our proposed rule arguably would have allowed vendors to establish varying degrees of bias for different carriers, and also to charge a lower, but positive fee for biased display. If this were true, the free rider rule would indeed have served as a vehicle for reintroduction of bias, and for continued discrimination in fees. Of course we never intended that result.

Thus, the rule will make clear that if a vendor wishes to provide lesser services to non-paying carriers, it cannot do so by biasing a display and charging a lower price. If it chooses to use bias, it can collect no fees from the free rider. This does not, however, preclude a vendor from offering unbundled services. For example, a vendor could offer unbiased display of schedule and fare information for a lower uniform fee than for full ticketing and reservation services. Under no circumstances, however, can biased displays be treated as a lesser service for which a lower price can be charged.

Secondly, the vendor must establish a uniform policy toward non-paying carriers. If it grants full service to one free rider, it must grant it to all. If it deletes one free rider from its system entirely, it must delete all. If it elects to bias against free riders, it must adopt a uniform level of bias which is applied to all free riders equally. In addition, under the disclosure rules, which benefit subscribers as well as participating carriers, it must disclose the details of free rider bias in describing its display formats.

These two requirements should substantially reduce the risk that the free rider rule will preserve the current system of bias and discriminatory fees. Vendors will not be able to sell varying degrees of preference. Carriers will be eligible to receive unbiased display for a non-discriminatory price or they may get a uniform level of bias at no fee. Likewise, vendors cannot use the free rider provision to maintain favored treatment for some carriers. Whatever means a vendor chooses to handle any one free rider at a given point in time, it must apply to all. Vendors will not, however, be entirely deprived of the flexibility of using bias for non-paying carriers.

Of course, should our assessment prove wrong, and the exemption result in substantial bias being retained in CRS's, a reevaluation of the non-participating carrier exemption may be required. Such a review might simply result in an elimination of the bias rule, or it may require a more fundamental adjustment in our pricing rule. Adoption of the zero fee rule, for example, would eliminate the need to provide for treatment of non-participating carriers altogether, and hence would avoid the drawbacks of either of the alternatives that we have considered.

B. Foreign Carrier Participation

The proposed rule's effect on foreign air transportation sparked debate on a number of points. Proposed § 255.9(b) exempts CRS vendors from the rules with respect to those foreign airlines whose CRS's do not display flights of U.S. carriers "equally" with their own. JAL, Lufthansa, Swissair and KLM urge us either to eliminate this section or, at most, to adopt it as proposed. They oppose any direct application of the rules to foreign carriers because this would be illegal, unnecessary, or inappropriate. They assert that the International Air Transport Competition Act provides the forum—via complaint procedures and governmental discussions—suited to claims of discrimination or unequal access.

U.S. flag carriers, on the other hand, generally argue that the section needs strengthening. They claim that to allow U.S. vendors leeway to respond to bias against foreign carriers is merely to continue the status quo: the hosts will arrange to receive preferential treatment in foreign CRS's in return for the same (or lack of unfavorable bias) in their own systems. The bias in those foreign systems against other U.S. carriers will continue, to the advantage of major U.S. vendors, unless all U.S. systems must bias against any foreign airline whose CRS discriminates against any U.S. carrier. The history of U.S. carrier claims against unfair treatment abroad, they say, shows the failings of the IATCA alternative.

Except for one minor revision, we are adopting the foreign air carrier provision as proposed. We do not intend, by this proceeding, to turn carrier owned CRS's into a weapon to redress the complaints of other U.S. carriers against foreign carriers. As we have repeatedly indicated, our purpose is to foreclose specific conduct we have found to be unfair. Moreover, we are not convinced that the complaint procedure established under IATAC and the bilateral negotiations process are inadequate to resolve such disputes.

We will, however, make it clear that the protections of our rules do not apply when a foreign air carrier indirectly operates—i.e., through an affiliate or through an entity that commonly controls the airline and the CRS operation—a CRS outside the U.S. that does not display the flights of all U.S. carriers equally with the flights of the foreign carrier.

IX. Review and Termination (§ 255.10)

No party has objected to our proposed review and termination section. We therefore will adopt section 255.10 as proposed. These rules will be reviewed within 5 years of their effective date, with a termination date of December 31, 1990 unless extended by our successor after its review of the rules.

Effective Date of Rule

In EDR-468C, we proposed that if we adopted CRS rules, there would be a 90-day transition period to enable vendors to renegotiate contracts and reprogram their systems. Three carriers—United, Eastern, and KLM—assert that the period is too short. Eastern suggests that it needs additional time and that the amount of time is affected by any decision on connecting flights. KLM asks for 120 days. United seeks 240 days to reprogram, renegotiate contracts with over 500 carriers and some travel agents, decide what types of reports it will divulge and program its system to accomplish that. TACOS too seeks additional time: 60 days for carriers to file a compliance plan; 30 days for Board review; and another 60 days for implementation. American only suggests that to meet the 90-day goal, we must address the contract issue. The Muse Group, on the other hand, asserts that 30 days is adequate as the vendors have had substantial advance notice of the probability of Board action.

We have decided to make our rules effective ninety days after their publication in the Federal Register, as we proposed. Admittedly, it will be a short transition period. However, we do not believe it is unrealistic. As United acknowledges, it is capable of eliminating bias from its system within ninety days. *See* United 4/26/84 comments at 63–64. It asserts, however, that such a "quick fix" will leave the preferencing logic in a dormant state and somehow increase the risk of error when information is input into the system. In its view, four to nine months is needed to properly reprogram its system. The weakness in this argument,

of course, is that several of the various CRS's currently have dormant logic in their systems without adverse effects. In fact, we believe APOLLO is one of those systems. In this regard none of the other CRS vendors apparently believe themselves unable to eliminate bias from their systems in ninety days. Eastern's request for additional time only relates to the possible need to increase the number of connect points in its system.

Nor does the fact that CRS carriers will have to renegotiate contracts with as many as 500 carriers justify a longer period. As we have repeatedly indicated, one of the primary objectives of our rules is to ensure non-discriminatory treatment of participating carriers. As a result, there should be very little variance in carrier contracts. Ninety days should be adequate to work out a standard contract with other carriers.

The suggestion that United needs more than ninety days to choose what reports it wants to generate is unfounded. The rule imposes a continuing obligation on CRS vendors. Whenever they choose to generate data or reports from their CRS's, it must be made available. Consequently, if United chooses to generate a new report two years from now it is covered. Similarly, CRS vendors can discontinue reports whenever they choose. The fact that United may want to generate reports in a different format some time in the future is not good cause for retaining exclusive use of reports in the current format for the next 240 days. We have already addressed the question of the impact of our rule on subscriber contracts—we conclude that our rules will not require modification of those agreements beyond the provisions specifically prohibited. Finally, in view of the fact that we are not requiring a CRS owner to load other carriers' information as frequently as it does its own, we need not address United's argument that it needs more time to devise a program to accomplish that result.

Divestiture and Applicability of the Antitrust Laws

ACAP, Continental and Tymshare again raise the issue of divestiture. ACAP suggests that we should consider divestiture a viable option if the rules prove ineffective. Continental asks that we initiate a second inquiry into divestiture and claims it could prevent CRS vendors from abusing their competitive advantage. Tymshare simply wants us to reconsider the issue. In addition, ADAPSCO argues that the entities should be maximally separated to avoid cross-market power.

The Joint Carriers reply that ADAPSCO's "Chinese Wall" is necessary but also recognize why we did not pursue such a remedy. They ask that we explicitly state the reasons for our reluctance to provide such relief; that we not short circuit the ability of carriers to seek such relief; and that we state that our rules are not a substitute for the antitrust laws. Delta and USAir also ask that we state that our rules do not displace the antitrust laws.

By EDR-466C, at 41, we determined that at this point divestiture was not appropriate for a variety of reasons. First, it appeared to be greater intervention than is necessary to accomplish our objectives. We concluded that general rules would eliminate unfair conduct while still encouraging innovation and greater efficiency of the CRS industry. Second, divestiture would require adjudicatory-type procedures that would take years to resolve and which would severely constrain our ability to deal effectively with CRS problems that exist today and would continue during such a proceeding. Third, we concluded that vertical integration into the CRS industry by air carriers may produce efficiencies not otherwise attainable. Of course, divestiture would eliminate such efficiencies. We believe, however, that divestiture may be worth considering if our rules prove ineffective and the facts warrant such action.

We also consider Frontier's contingent discussion authority proposal premature at this time. In essence, Frontier's proposal is a request for a declaratory order stating that we would authorize discussion authority in certain circumstances. Such a declaratory order is inappropriate and unnecessary at this time as we have the power to authorize such discussions at any time under section 412. Moreover, as we noted in EDR-466C, such discussion authority may itself raise serious competitive questions. Our consistent policy has been not to authorize such discussions absent a clear showing of need and without some opportunity to assess the potential competitive effects of such authority in the context of a specific request. *See, e.g.* Order 83-2-17, February 7, 1983. For these reasons, we will not include discussion authority in the rule.

We have decided, however, to include in the rule a provision that states that the rule does not serve to preempt private rights under the antitrust laws. It was never our intention that the CRS rules would have that effect. However conscientious we may be, it is simply impossible to predict all practices in which vendors might engage, and to adopt a general rule which is guaranteed to cover all possible circumstances. Under these circumstances, retention of private rights of action under laws other than section 411 provides an important supplement to our rules in preventing abuses of market power. To avoid any questions on the matter we will include a provision on preemption in the final rule.

Paperwork Reduction Act

The collection-of-information requirement in § 255.5(c) of this proposal are subject to the Paperwork Reduction Act, Pub. L. 96-511, 44 U.S.C. Chapter 35. This requirement has been submitted to the Office of Management and Budget (OMB) for review and comment. Persons may submit comments on the collection-of-information requirement to OMB and to the Board. Comments sent to OMB should be addressed to: Office of Information and Regulatory Affairs, ATTN: Desk Officer for Civil Aeronautics Board, Office of Management and Budget, Washington, D.C. 20503.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act, Pub. L. 96-354, is designed to ensure that agencies consider flexible approaches to the regulation of small businesses and other small entities. It requires regulatory flexibility analyses for rules that will have a significant economic impact on a substantial number of small entities.

The analysis describes the need, objectives, legal basis for, and flexible alternatives to the agency's action. These requirements are met by the discussion above. In addition, the analysis must include a description of the small entities that the rule would affect, the reporting, recordkeeping, or other compliance requirements of the rule, and any other Federal rules that may duplicate, overlap, or conflict with it.

We find that this rule may have a significant economic effect on a substantial number of small entities such as airlines operating aircraft with less than 60 seats, travels agents, and new, low-cost airlines.

The rule will have an overall beneficial economic impact on a substantial number of small air carriers. First, they will benefit by the prohibition on display bias. Currently, these carriers are not system vendors and do not enjoy the benefits of build-in display preference. Under the new rules, their

flights will be displayed strictly on the basis of service criteria, thus improving their display and allowing these carriers to compete more effectively.

The prohibition of tying arrangements will also benefit small aircraft operators. Currently, vendors force small airlines to sign interline ticket agreements as a condition for access to the system. Under the new rule, this cost would be eliminated.

The general availability of service enhancements also may improve the quality of service offered to travel agents for all carriers, including those using small aircraft. Under the rule, if a system vendor has the technical capability to provide service enhancements to other carriers, it must allow any participating carrier access to that service. This change will provide small aircraft operators the opportunity to compete with larger, more established airlines on new service elements.

New low-cost airlines should receive significant benefits from this rule too. Presently, new entrants are among the greatest competitive threats to the established airlines that own the systems. As a group, they currently pay the highest fees for access to the system. Under the new rules, these entrants will pay the same fees as everyone else, which may result in substantial cost savings. Similarly, flights by new entrants tend to be displayed inconspicuously. The prohibition against bias should result in more favorable displays, which in turn should increase sales and lower the cost per seat. Finally, the elimination of interline ticket fees should also help lower carrier costs.

Finally, the rule will allow small airlines to obtain booking and other information that was previously unavailable. For example, a small carrier will be able to analyze booking information to develop markets or change flight schedules.

Under the rule some small carriers may have to pay higher fees. Currently, few small aircraft operators directly compete with the system vendors. Many of them pay little or no fees for display. Under the new rule, fees must be non-discriminatory, with a rebuttable presumption in favor of equal fees. Indirect subsidy will no longer be allowed.

The Travel Agents Computer Society (TACOS) asserts that travel agency costs will increase substantially and that the increase will not be offset by gains brought about by a less-biased CRS. TACOS reasons that the bargaining power of travel agents will be reduced by vendors, because of less bias, will have less incentive to sell their systems. CRS technological advances will be slowed for the same reason. Moreover, TACOS asserts that cumbersome bureaucratic entanglements are inevitable as the industry adjusts to regulation. Finally, it notes that cost savings realized by carriers will not be passed on to travel agents.

In EDR-466, we indicated that a significant number of travel agents would be affected by this rule. Of the approximately 24,000 travel agents, 75-80 percent use automated reservations systems. The Board estimates that over three quarters of them would be considered small entities for the purposes of the Regulatory Flexibility Act.

We recognize the possibility that this rule may result in higher fees for travel agents. However, we are not persuaded by TACOS' arguments that the change will be substantial as contracts may be unchanged, and other benefits will result.

The elimination of bias should increase efficiency and lower agency costs, since personnel will no longer be required to take time to overcome bias. Even if agents currently do not expend time or resources to overcome bias, an unbiased system will allow them to provide better services to clients, thus encouraging further business.

Despite TACOS' assertions, bargaining power of agents should change for the better as a result of the rule. True, vendors will not be able to receive incremental revenues anymore, but each should remain active participants in the distribution system. Competitive interplay between the vendors may, in fact, be heightened by the rule as each seeks to increase its "halo" or good will with agents through the sale of CRS's. In addition, the contract rules will enable agents to take advantage of CRS competition to achieve lower costs. Further, under a regime of individual carrier commission rates, travel agents will have greater opportunity to recoup through increased commissions any cost increases associated from the rules. In effect, carriers that now have higher costs because of bias will have an incentive to share with agents their cost savings resulting from the rule. Finally, to the extent that service enhancements are available and used by other carriers, travel agents using computerized reservation systems will be able to offer better service than they do now.

The rule does not contain any direct reporting, recordkeeping, or other compliance requirements. System vendors must disclose to interested subscribers and participating carriers what criteria were used in determining the order of display and the construction of connecting flights. In addition, the vendors must make available any marketing data generated by their system. The vendors are not required, however, to provide this information to the Board.

There are no other Federal rules that duplicate, overlap, or conflict with this proposed rule.

Copies of this document can be obtained from the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428, (202) 673-5432, by referring to the "ER" number at the top of the document.

Regulatory Impact Analysis and Review

No party commented upon the tentative regulatory impact analysis contained in our notice of proposed rulemaking, EDR-466C. The changes made in the final rule from those proposed in the notice of proposed rulemaking will not change the analysis made in the preliminary Regulatory Impact Analysis.

List of Subjects in 14 CFR Part 255

Advertising, Air carriers, Air transportation-foreign, Antitrust, Consumer protection, Essential air service, Travel agents.

Chairman McKinnon and Member Smith concurred. Vice Chairman McConnell concurred and dissented and indicated there would be a statement to follow. Member Schaffer concurred in part and dissented in part and filed a concurring in part and dissenting in part statement which is stated below. Member Morales concurred and dissented and indicated there would be a statement to follow. On July 30, 1984, Member Morales filed a concurring and dissenting statement which is stated below. On July 31, 1984, Vice Chairman McConnell filed a concurring and dissenting statement which is filed below.

Statements of Members

SCHAFFER, MEMBER, CONCURRING IN PART, DISSENTING IN PART:

This rule represents a significant step to insure that consumers have available the degree of information necessary to make an informed choice among competing airlines. The bias that now dominates the major systems, as well as the potential for a small number of system owners to limit access to competing airlines, is inimical to both the letter and the spirit of deregulation.

I would, however, have provided for a system of arbitration of disputes between carriers and vendors over access fees. I believe that arbitration would provide a relatively inexpensive and expenditious means of resolving disputes. It may well be true, as the majority suggests, that the presumption in favor of equal fees will substantially reduce the number of potential

conflicts on the fee issue. However, those disputes which do arise will be required by our rule to be resolved by what is likely to be an involved and extended process before an administrative law judge. In proposing arbitration in its NPRM, the Board devised an innovative and creative solution to dispute resolution which had the potential to benefit all parties. I regret that the majority has decided not to finalize its arbitration proposal.

Gloria Schaffer

MORALES, MEMBER, CONCURRING & DISSENTING:

I concur with the majority of the Board's rule because it is the appropriate and measured response necessary to remedy the serious competitive deficiencies in the present CRS industry.

It has been nearly two years since the Board learned that vendor carriers were (1) ordering fare and scheduling information and (2) charging fees for access to their systems based on the degree to which the participating carrier competed with the vendor in the air transportation market. Both practices were adequately addressed in the rule and quite properly prohibited.

However, I must dissent in the strongest terms from the imagined solution to the imagined problem of non-participating carriers, or "free riders." The exemption for non-paying carriers, which allows the re-introduction of bias, threatens to undermine, if not overwhelm, one of the major pillars of our rule, the prohibition of bias. This very real threat is not worth the price of whatever may result from this hypothetical problem.

First, this problem, if it even exists, relates to only a couple of scenarios out of the hundreds of transactions involved in this rule. Moreover, the reasons the Board should not attempt to resolve the perceived free-rider problem by allowing bias are the same reasons that caused the Board to prohibit bias in the other 99% of the CRS industry's circumstances. Perhaps a review of the adverse effects of bias will emphasize the necessity for totally banning it from the CRS industry.

Carrier vendors bias displays to gain incremental revenues from their competitors. Non-airline vendors are effectively barred from entering the market because they cannot afford to develop a new system and sell it to travel agents at a price competitive with the biased airline CRS's already in place. The only reason airline vendors are able to offer their systems so cheaply to travel agents is that they are receiving incremental revenues as a direct result of bias. These incremental revenues, which subsidize the huge capital expense involved in developing a system, enable the vendor to offer artificially low fees to the travel agent. The cost of an airline vendor system is being borne by travel agents and carriers in the form of fees. In addition, participating carriers are paying a second time in the form of lost passengers or, more precisely, lost passenger revenue resulting from bias. No one can even begin to calculate the amount of this second charge.

The Board has come out firmly against bias in the main portion of the rule in order to (1) allow carriers a fair opportunity to compete in air transportation and (2) force the system to support itself "upfront" through fees to the beneficiaries of the system—participating carriers and travel agents.

Therefore, the first effect of banning bias will be an immediate and, in some cases, significant infusion of passenger revenue to participating carriers because, basically, they will have their full market restored. Only then will we be able to determine the true cost of bias in lost revenue from stifled competition.

The second effect will be to give non-airline vendors a fair opportunity to enter the CRS industry. Until we have some non-airline CRS's in the industry, we will not have a true disciplining force on carrier vendors who, by their own view (and, admittedly, not a wholly unreasonable one), are simply maximizing the return on their investment and chasing an attainable profit.

Allowing vendors to bias against non-paying carriers may well eradicate these beneficial effects.

In addition to allowing the re-introduction of bias, the majority has seen fit to "rattle the regulatory sabre" with discussions of zero fees and divestiture. What is not appreciated is that, by not being true to their fundamental principles against *any* and *all* bias, the majority may pre-ordain the need for more severe regulatory intervention. The *incentive* of airline vendors to *retain* the exorbitant amount of funds gained from incremental revenues (a direct result of bias) may well allow the exception for bias to swallow the rule.

I firmly believe that if we attack all the entry barriers we can truly control (and there are probably none that we control better than bias and its resultant depressing effect on travel agent fees), the market just may cure itself in the next couple of years. A little competition in the form of just one strong non-airline CRS, can create the marketplace true deregulators seek.

Under the majority rule, with its paradoxical soft spot to an otherwise strong anti-bias rule, the next two years of industry experience with our moderate, temporary, and eminently reasonable regulation may well be wasted. It is simply too great a price to pay.

Diane K. Morales

McCONNELL, VICE CHAIRMAN, CONCURRING AND DISSENTING:

I concur with the Board's rule insofar as it seeks to eliminate air carrier bias from the computer displays used by travel agents. Access to accurate, reliable and current flight information is basic to the success of our deregulated airline industry.

This rule marks the CAB's effort to ensure that unfair methods of competition are not used to enhance carrier vendors' traffic. To that extent I endorse the CRS Rule. However, in my view, the Board majority became overzealous in its regulation of the fees CRS vendors charge carriers listed on their systems.

I believe as the Department of Justice urged that fee regulation is not necessary at this time. I would institute the anti-bias restrictions now, deferring any action with regard to the prices charged by vendors to the nonvendor carriers.

The user fee portion of the rule adopted by the majority reopens the regulatory abyss decried by deregulation and potentially leaves inordinate competitive power in the hands of the CRS vendors. If the Board regulates user fees, the Department of Justice's zero fee alternative offers a firmer step toward solving and underlying abuses in the CRS structure (as described in the preamble).

The most unfortunate product of the Board majority's effort to regulate fees is that they allow an exception to the anti-bias rule. In my opinion, this exception encourages inflated fees. Vendors will have an incentive to charge high fees, since if a carrier refuses to pay, the vendor may bias the display against that carrier.

Bias is the only CRS abuse against which the Board should take positive action at this time.

Barbara E. McConnell

Accordingly, the Civil Aeronautics Board amends 14 CFR Chapter II by adding a new Part 255, Carrier-Owned Computer Reservation Systems, to read:

PART 255—CARRIER-OWNED COMPUTER RESERVATION SYSTEMS

Sec.
255.1 Purpose.
255.2 Applicability.
255.3 Definitions.
255.4 Display of information.
255.5 Contracts with participating carriers.
255.6 Contracts with subscribers.
255.7 Service enhancements.
255.8 Marketing information.
255.9 Exceptions.
255.10 Review and termination.

Authority: Secs. 102, 204, 404, 411, 419, 1102 Pub. L. 85-726 as amended, 72 Stat. 740, 743, 760, 769, 797; 92 Stat. 1732; 49 U.S.C. 1302, 1324, 1374, 1381, 1389, 1502.

§ 255.1 Purpose.

(a) The purpose of this part is to set forth requirements for operation by air carriers of computer reservation systems used by subscribers so as to prevent unfair, deceptive, predatory, and anticompetitive practices in air transportation.

(b) Nothing in this part operates to exempt any person from the operation of the antitrust laws set forth in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12).

§ 255.2 Applicability.

This rule applies to air carriers and foreign air carriers that own, control or operate computerized reservations systems for subscribers in the United States, and the sale in the United States of interstate, overseas, and foreign passenger air transportation through such systems.

§ 255.3 Definitions.

"Affiliate" means any person owned by, controlled by, or under common control with a carrier.

"Availability" means information provided in display with respect to the seats a carrier holds out as available for sale on a particular flight.

"Carrier" means any air carrier, any foreign air carrier, and any commuter air carrier, as defined in 49 U.S.C. 1301(3), 49 U.S.C. 1301(22), and 14 CFR 298.2(f), respectively that are engaged directly in the operation of aircraft in passenger air transportation.

"Discriminate", "discrimination," and "discriminatory" mean, respectively, to discriminate unjustly, unjust discrimination, and unjustly discriminatory.

"Display" means the system's presentation of carrier schedules, fares, rules or availability to a subscriber by means of a computer terminal.

"Participating carrier" means a carrier that has an agreement with a system vendor for display of its flight schedules, fares, or seat availability, or for the making of reservations or issuance of tickets through a system.

"Primary display" means any display presented by a system vendor to comply with § 255.4.

"Service enhancement" means any product or service offered to subscribers or passengers in conjunction with a system other than the display of information on schedules, fares, rules, and availability, and the ability to make reservations or to issue tickets for air transportation.

"Subscriber" means a ticket agent, as defined in 49 U.S.C. 1301(40) of the Act, that holds itself out as a neutral source of information about, or tickets for, the air transportation industry and that uses a system.

"System" means a computerized airline reservation system offered by a carrier or its affiliate to subscribers for use in the United States that contains information about schedules, fares, rules or availability of other carriers and that provides subscribers with the ability to make reservations and to issue tickets.

"System vendor" means a carrier or its affilates that owns, controls or operates a system.

§ 255.4 Display of information.

(a) All systems shall provide a primary display or primary displays that include the schedules, fares, rules and availability of all carriers in accordance with the provisions of this section. Primary displays shall be at least as useful for subscribers, in terms of functions or enhancements offered, and the ease with which such functions or enhancements can be performed or implemented, as any other displays maintained by the system vendor.

(b) In ordering the information contained in a primary display, system vendors shall not use any factors directly or indirectly relating to carrier identity.

(1) System vendors may order the display of information on the basis of any service criteria that do not reflect carrier identity and that are consistently applied to all carriers, including the system vendor, and to all markets.

(2) System vendors shall provide upon request to all subscribers and participating carriers the current criteria used in ordering flights for the primary displays and the weight given to each criterion.

(c) System vendors shall not use any factors directly or indirectly relating to carrier identity in constructing the primary displays of connecting flights.

(1) System vendors may select the connecting points to be used in the construction of connection flights for each city pair on the basis of any service criteria that do not reflect carrier identity and that are applied consistently to all carriers, including the system vendor, and to all markets.

(2) System vendors may select connecting flights for inclusion ("edit") on the basis of service criteria that do not reflect carrier identity and that are applied consistently to all carriers, including the system vendor.

(3) System vendors shall provide upon request to all subscribers and participating carriers current information on:

(i) All connecting points used for each market;

(ii) All criteria used to select connecting points;

(iii) All criteria used to "edit" connecting flights; and

(iv) The weight given to each criterion in (c)(3) (ii) and (iii) above.

(d) Upon receipt of information from any carrier, system vendors shall apply the same standards of care and timeliness to loading information concerning participating carriers as it applies to the loading of its own information.

(1) If a system vendor provides special loading capability to any other carrier, it shall offer the same capability to all participating carriers in a non-discriminatory fashion as soon as technically feasible.

(2) Each system vendor shall provide upon request to all participating carriers all current data base update procedures and data formats.

§ 255.5 Contracts with participating carriers.

(a) No system vendor shall discriminate among participating carriers in the fees for participation in its system, or for system related services. Differing fees to participating carriers for the same or similar levels of service shall be presumed to be discriminatory.

(b) No system vendor shall condition participation in its system on the purchase or sale of any other goods or services.

(c) System vendors shall provide upon request to carriers current information on their fee levels and fee arrangements with other participating carriers.

§ 255.6 Contracts with subscribers.

(a) No subscriber contract shall have a term in excess of five years.

(b) No system vendor shall directly or indirectly prohibit a subscriber from obtaining or using any other system.

(c) No system vendor shall require use of its system, by the subscriber in any sale of its air transportation services.

(d) No system vendor shall require that a travel agent use its system as a condition for the receipt of any commission for the sale of its air transportation services.

(e) No system vendor shall charge prices to subscribers conditioned in whole or in part on the identity of carriers whose flights are sold by the subscriber.

§ 255.7 Service enhancements.

In the event that a system vendor offers a service enhancement to any participating carrier, it shall offer it to all participating carriers on non-discriminatory terms.

§ 255.8 Marketing information.

Each system vendor shall make available to all participating carriers on non-discriminatory terms all marketing, booking and sales data that it elects to generate from its system.

§ 255.9 Exceptions.

(a) The obligations of a system vendor under § 255.4 shall not apply with respect to a carrier that refuses to enter into a contract that complies with this part or fails to pay a non-discriminatory fee. A system vendor shall apply its policy concerning treatment of non-paying carriers on a uniform basis to all such carriers, and shall not receive payment from any carrier for system-related services unless such payments are made pursuant to a contract complying with this part.

(b) The obligations of a system vendor under this part shall not apply to any

foreign air carrier that operates or whose affiliate operates an airline computer reservation system for travel agents outside the United States that does not display the flights of all United States carriers equally with the flights of the foreign carrier.

§ 255.10 Review and termination.

(a) The Federal agency administering this rule shall conduct a review within 5 years after its effective date.

(b) Unless extended on the basis of the review specified above, this rule shall terminate on December 31, 1990.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-21731 Filed 8-14-84; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 389

[Regulation OR-216; Organization Regulations Amdt. No. 35]

Fees and Charges for Special Services; Elimination of Fee Refund Offset Procedures

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB eliminates the offset procedures in its refund mechanism for past filing fees overpaid by the airlines. The Court of Appeals (D.C. Cir.) has ruled that the offset procedure in the CAB rules, which is based on cumulative fees paid in each calendar year, is invalid. The rule eliminates that procedure, thus replacing it with one based only on the individual fee paid.

DATES: Adopted: August 2, 1984. Effective: August 8, 1984.

FOR FURTHER INFORMATION CONTACT: Richard B. Dyson, Associate General Counsel, Rules and Legislation Division, Office of the General Counsel, (202) 673-5442, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUPPLEMENTARY INFORMATION: In 1983, the Board's revised filing fees became effective (OR-204, 48 FR 635, January 6, 1983). The Air Transport Association appealed those rules and fee changes to the U.S. Court of Appeals for the D.C. Circuit. On April 20, 1984, the Court upheld the Board with respect to all changes but one. (*Air Transport Association of America* v. *CAB*, No. 83-1174.) In order to facilitate refunds, the Board had set a procedure whereby a claim for refund would be offset against any fee undercharges (under the revised fee schedule) based on a cumulative accounting for the calendar year in which paid. The Court decided that such an offset mechanism using a cumulative basis would be a retroative fee increase and could not be used.

In this rule, the Board is eliminating that part of the refund provision found invalid. Over the past 18 months, the Board has refunded approximately $86,200. No amounts have been offset. There have been few technical problems with the rest of the Board's refund procedure. The Board is thus keeping the remaining requirements: amount paid, date paid, and category of service. The Board believes that this information is a minimum burden on the claimants and the least data needed to process the claims efficiently. Refunds will be paid on fees paid since April 28, 1977, the date upon which their legality was first challenged. The amounts of overcharge will be determined by using the revised fee schedule for the date paid as set forth in Docket 30586. Categories of fees paid will be matched as closely as possible to the revised schedule. The Board's Comptroller will continue to have delegated authority to act on refund requests explaining the calculation.

Because this is a rule of agency organization and procedure, and because the provision being eliminated has been found invalid, the Board finds that public procedure and comment are unnecessary. The Board also finds good cause to make this rule effective upon publication in the Federal Register, so as to eliminate an invalid provision from our rules, thus preventing public confusion.

List of Subjects in 14 CFR Part 389

Administrative practice and procedure, Reporting and recordkeeping requirements.

PART 389—[AMENDED]

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 389, *Fees and Charges for Special Services*, as follows:

1. The authority for Part 389 is:

Authority: Secs. 204, 1002, Pub. L. 85-726, as amended, 72 Stat. 743, 797; 49 U.S.C. 1324, 1502. Act of August 31, 1951, ch. 376, 65 Stat. 268; 31 U.S.C. 483a.

2. Paragraph (b) of § 389.27 is revised to read:

§ 389.27 Refund of fee.

* * * * *

(b) Any person may file an application for refund of a fee paid since April 28, 1977, on the grounds that such fee exceeded the Board's cost in providing the service. The application shall be filed with the Board's Comptroller and shall contain: the amount paid, the date paid, and the category of service.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-21735 Filed 8-14-84; 8:45 am]

BILLING CODE 6320-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Federal Hazardous Substances Act Exemption for Unlabeled Containers; Final Revocation

AGENCY: Consumer Product Safety Commission.

ACTION: Revocation of exemption.

SUMMARY: The Commission is revoking an exemption provision that covers the shipment of unlabeled containers from a packaging firm to a labeling firm. The Commission believes that the exemption is unnecessary because it is not aware of any such shipments. In addition, such a shipment would not violate the provisions of the applicable statute, the Federal Hazardous Substances Act.

DATES: The revocation will be effective on September 14, 1984.

FOR FURTHER INFORMATION CONTACT: Charles Jacobson, Directorate for Administrative Litigation and Compliance, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6400.

SUPPLEMENTARY INFORMATION:

A. Introduction

Under the Federal Hazardous Substances Act (FHSA), the Consumer Product Safety Commission enforces statutory provisions and regulations that prohibit the movement in interstate commerce of certain products that are not labeled as prescribed ("misbranded hazardous substances"). 15 U.S.C. 1261(p) and 1263. An existing FHSA regulation exempts from these labeling requirements products that are being shipped from one establishment where they are packaged to a different establishment where they will be properly labeled. 16 CFR 1500.84.

In order to qualify for the exemption, the firms that are shipping and receiving the as-yet-unlabeled hazardous substances must have a written agreement between them. Since the agreement must be kept by the firms for two years after shipment, and since copies of the agreement must be made

available to the Commission upon request, these exemption provisions fall within the Paperwork Reduction Act. 44 U.S.C. 3501 *et seq.* The Commission is prohibited from enforcing these provisions unless they have been "cleared" by the Office of Management and Budget. However, the Commission has decided that the entire exemption is unnecessary. Therefore, rather than requesting OMB clearance for the provision, the Commission is revoking the exemption.

B. Background

In December 1965 the Food and Drug Administration, the agency that then administered and enforced the FHSA (before its amendment in 1966, the Federal Hazardous Substances Labeling Act), issued the exemption for unlabeled containers described in *Introduction.* 30 FR 16200–01 (Dec. 29, 1965); 21 CFR 191.64. The preamble to this exemption stated (it its entirely).

After consideration of inquiries and representatives received from regulated industry, and other relevant information, the Commissioner of Food and Drugs has concluded that within the conditions set forth below it is not necessary for the adequate protection of the public health and safety for a packing firm to label filled containers of household articles subject to the Federal Hazardous Substances Labeling Act prior to shipment to a distributor firm if such articles are properly labeled by the distributor firm prior to retail distribution.

In 1973, when the Commission took over administration and enforcement of the FHSA, it reissued this exemption provision, in essentially identical form. 38 FR 27012 (Sept. 27, 1973); 16 CFR 1500.84.

C. Proposed Revocation

On March 5, 1984 the Commission proposed to revoke the exemption (49 FR 8007), for the reasons discussed in section D below. The Commission did not receive any public comments on this proposal.

D. Discussion

When the Commission proposed to revoke the exemption provision of 16 CFR 1500.84, it had two reasons for believing that exemption to be unnecessary. In the absence of any public comments or other available information to the contrary, the Commission still believes the two reasons to be valid:

1. The Commission has no evidence that the exemption has ever been used. While unlabeled foods or drugs might well be packaged in one establishment and then shipped to another establishment for labeling, we do not believe that this is an industry practice for any hazardous substances that are regulated under the FHSA. Rather, the Commission's understanding is that all hazardous substances are labeled at the packaging establishment.

2. Even if a firm did ship a packaged hazardous substance to a different establishment for labeling, the Commission nevertheless believes that the exemption is unnecessary. The FHSA prohibits movement in interstate commerce of misbranded hazardous substances, and such substances—by definition—must be "* * * intended, or packaged in a form suitable, for use in the household or by children * * *" 15 U.S.C. 1261(p). If any unlabled hazardous substance were being shipped to an establishment for the purpose of being labeled, it would be unlikely to fall within this definition. In its unlabeled state, it would not be suitable for use in a household or by children. In addition, it would not be intended to be used by ultimate consumers because it is intended, rather, to be labeled first. In short, the Commission would not enforce the FHSA against any products that the exemption is designed to protect, and no exemption is necessary.

Aside from the substantive reasons for revocation of the exemption provision, there are two additional matters:

1. *Impact on small businesses.* The Regulatory Flexibility Act (RFA) 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. 5 U.S.C. 603. The RFA also 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. 5 U.S.C. 605(b).

In proposing the revocation, the Commission found that it would not, if issued on a final basis, affect any small entities because no business (including any small business) was acting within its provisions. No entities other than businesses would be affected. Therefore, the Commission certified that the revocation would not have a significant economic impact on a substantial number of small entities. 49 FR 8007

2. *Environmental considerations.* The Commission found the proposed revocation to fall generally within the categories of Commission actions described in 16 CFR 1021.5(c) that have little or no potential for affecting the human environment. In addition, the Commission concluded that there were no significant effects associated with the proposal. For both reasons—which are true of the final revocation, as well—neither an environmental assessment nor an environmental impact statement is required.

Therefore, pursuant to provisions of the Administrative Procedure Act (5 U.S.C. 553) and the Federal Hazardous Substances Act (secs. 3(c), 10(a), 74 Stat. 374, 15 U.S.C. 1262, 1269, as amended), section 1500.84 of Title 16, Chapter II, Subchapter C of the Code of Federal Regulations is revoked, removed, and reserved.

Effective date: The revocation will be effective an September 14, 1984.

Authority: 5 U.S.C. 553; 15 U.S.C. 1262, 1269.

List of Subjects in 16 CFR Part 1500

Consumer protection, Labeling, Exemptions.

Dated: August 10, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 84-21740 Filed 8-14-84; 8:45 am]
BILLING CODE 6355-01-M

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16 CFR Part 1700

Amendment to Child-Resistant Packaging Requirements; Diphenhydramine Base

AGENCY: Consumer Product Safety Commission.

ACTION: Final amendment.

SUMMARY: In February 1984 the Commission issued a final regulation, under the Poison Prevention Packaging Act of 1970, to require child-resistant packaging for any preparation that contains more than 75 mg diphenhydramine hydrochloride in a single package and that is in a dosage form intended for oral administration. The Commission is now amending that regulation to broaden its scope, by requiring child-resistant packaging for preparations containing more than 66 mg diphenhydramine base in any oral dosage form.

DATE: The amendment will be effective on February 11, 1985.

FOR FURTHER INFORMATION CONTACT: Charles M. Jacobson, Division of Regulatory Management, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, D.C. 20207; (301) 492-6400.

SUPPLEMENTARY INFORMATION:

A. Background

The Poison Prevention Packaging Act of 1970 (the "PPPA"), 15 U.S.C. 1471–1476, authorizes the Commission to establish standards for the "special packaging" of any household substance if (1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for such substance. Special packaging, also referred to as "child-resistant packaging," is defined as packaging that is (1) designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) not difficult for normal adults to use properly. (It does not mean, however, packaging which all such children cannot open, or obtain a toxic or harmful amount from, within a reasonable time.) Under the PPPA, effectiveness standards have been established for special packaging (16 CFR 1700.15), as has a procedure for evaluating the effectiveness (§ 1700.20). Regulations have been issued requiring special packaging for a number of household products (§ 1700.14).

One category of products that is required to be in child-resistant packaging is any drug for human use that is in a dosage form intended for oral administration and that is required by federal law to be dispensed only by or upon an oral or written prescription of a practitioner licensed by law to administer such drug (16 CFR 1700.14(a)(10)). The Food and Drug Administration (FDA) determines whether a prescription shall be required for the dispensing of a particular drug. This determination involves factors including the potential toxicity of a drug. While the Commission similarly considers this toxicity factor in its special packaging determination, it also considers as a major factor the availability of a drug's package to young children.

When the FDA releases an oral drug from the prescription category, the drug is no longer required to be in child-resistant packaging by reason of being an oral prescription drug subject to § 1700.14(a)(10). Therefore, when the FDA takes such action, the Commission considers whether child-resistant packaging is nevertheless needed to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance.

The FDA recently released certain antihistamine drugs from the requirement that they be dispensed only by prescription, thereby allowing those drugs to be sold for over-the-counter (OTC) uses. [21] [1] One of these antihistamines is diphenhydramine hydrochloride, also referred to as diphenhydramine, which has been known to cause death and serious illness in children as the result of accidental overdose. Currently, the FDA has given final approval for the use of diphenhydramine in OTC antitussive (cough) preparations. [32] In addition, FDA's OTC Advisory Panel has recommended that the FDA release diphenhydramine for use in OTC sleep-aids. [33] In April 1982 the FDA announced an enforcement policy to permit the interim OTC marketing of such sleep-aids, pending a final agency determination on the Panel's recommendation. [33] The future use of diphenhydramine in other OTC products is thought to be likely. These uses include preparations for the relief of symptoms of rhinitis, common colds, and hay fever.

Following the FDA actions, the Commission proposed a rule, in July 1983, to require special packaging for any preparation that contains more than 75 mg diphenhydramine hydrochloride in a single package and in a dosage form intended for oral administration. 48 FR 31664 (July 11, 1983 [30] On February 15, 1984 the Commission published that special packaging rule in final form, to become effective on August 13, 1984. 49 FR 5737 49 FR 5737 (Feb. 15, 1984) [34].

On the same day, the Commission proposed to amend that final special packaging rule for diphenhydramine hydrochloride. 49 FR 5768 (Feb. 15, 1984) [35] The proposal was to broaden the scope of the rule by applying it to preparations containing more than 66 mg. diphenhydramine base in any oral dosage form. The Commission received no public comments on this proposal, and has no new information concerning it. Therefore, the Commission believes that the proposed amendment should be issued in final form. The supporting reasons are the same ones that supported the proposal, and they are essentially restated in sections B, C, D, and E below.

The language of the final amendment has been changed slightly from that used in the proposal. The words "the equivalent of" have been added to clarify the requirement.

B. Toxic Effects of Diphenhydramine

The most commonly observed adversed effects associated with therapeutic use of antihistamines include drowsiness, dry mouth, and gastrointestinal complaints such as nausea, vomiting, and diarrhea. For adults, the most common signs of toxicity from overdosage of antihistamines appear to be the result of central nervous system depressive effects. [4, 6] If sufficiently high doses are taken, symptoms of drowsiness, dizziness, and loss of coordination can be followed by cardio-respiratory depression and death.

By contrast, children appear to be more sensitive to the central nervous system stimulatory effects of antihistamines. The primary symptoms of overdosage in children are hallucinations, delirium, tremors, high fever, and convulsions. [4, 6] Terminally, a depressive phase ensues, leading to coma, cardio-respiratory collapse, and death. The major life-threatening consequences of overdosage in children have been effectively controlled in cases where the patient was able to obtain the proper treatment in a medical facility; however, rapid access to a medical facility is necessary. Normal first aid procedures may prove ineffective, since diphenhydramine can produce a strong antiemetic effect. [4]

C. Ingestion and Injury Data

Both the medical literature and the available ingestion data indicate a relatively low incidence of serious injury associated with accidental ingestion of OTC antihistamines by children under age five; however, some prescription antihistamines have caused serious injury and even death to young children. It is possible that the inherently lower toxicity of some of the OTC antihistamines, as well as their reduced dosage levels, accounts for the low incidence of injuries involving OTC antihistamines. Of the antihistamines that were previously prescription drugs but are now approved for certain OTC uses, diphenhydramine has caused a number of childhood injuries and deaths.

The Commission's staff reviewed medical literature for the years from 1950 to 1960 and noted 22 reports of serious symptoms caused by antihistamines overdose in children under five years of age; six of these cases resulted in death. Eighteen of the 22 cases appear to be due to accidental ingestion. Diphenhydramine was

[1] The numbers in brackets refer to the reference documents listed at the end of this notice.

involved in 16 of the 22 reported cases and in four of the six fatalities. [1, 2, 3, 5, 7, 8, 9, 10] In one reported case [7], a 13-month-old child suffered major motor seizures, serious cardiac arrhythmia, and cardio-respiratory depression following ingestion of 100–150 mg of diphenhydramine hydrochloride.

Data from the FDA's National Clearinghouse for Poison Control Centers for the years 1977 through 1980 show that a total of 632 accidental ingestions of diphenhydramine were reported during this four-year period. [14] Of these cases, 89 reported some symptomatology (i.e., lethargy, nausea, vomiting, etc.). A total of 20 children were hospitalized. Eight of the hospitalized children reported symptoms.

The Commission's death certificate file shows that seven deaths were reported for children under five years of age involving antihistamine preparations during the period of 1973 through 1980. [14, 23] Five of these deaths involved products containing diphenhydramine hydrochloride.

D. Need for Special Packaging

Preparations containing diphenhydramine in all oral dosage forms could result in injuries and poisonings among children, if they are not in special packaging. [27] The FDA is already permitting diphenhydramine monocitrate for over-the-counter use in sleep aids. Other forms of diphenhydramine may well be similarly permitted for OTC use in the future, as antitussives, sleep aids, or other products.

The regulation issued in final form in February 1984 applies only to diphenhydramine hydrochloride. [34] Therefore, the Commission believes that that regulation should be broadened to cover diphenhydramine base in all oral dosage forms. The Commission has determined that the equivalent of 75 mg diphenhydramine hydrochloride is 66 mg diphenhydramine base because 75 mg diphenhydramine hydrochloride consists of 66 mg diphenhydramine base and 9 mg hydrochloride. [26, 27] Based on the toxicity data that supported the diphenhydramine hydrochloride regulation, the amendment applies to all covered preparations containing that amount or more.

E. Technical Feasibility, Practicability, and Appropriateness

In issuing a standard for special packaging under the PPPA, the Commission is required by section 3(a)(2) of the PPPA, 15 U.S.C. 1472(a)(2), to find that the special packaging is "technically feasible, practicable, and appropriate "

1. *Technical feasibility.* Whether diphenhydramine preparations are marketed in tablet or liquid form, there are numerous package designs that meet the requirements of 16 CFR 1700.15(b) and that would be suitable for use with them. [12]

2. *Practicability.* Because many existing designs that could be used to market diphenhydramine preparations are currently being used with other drugs and dietary supplements, it is clear that special packaging for these products is practicable in that it is adaptable to modern mass production and assembly line techniques. The Commission would anticipate no major supply or procurement problems for packagers of diphenhydramine-containing products or the manufacturers of child-resistant closure and capping equipment. [12] In addition, the Commission would expect no serious problems experienced by manufacturers of the products in incorporating the child-resistant packaging features into their existing packaging lines. [12]

3. *Appropriateness.* As shown by the use of many existing suitable designs with other drug products, special packaging is appropriate since it is available in forms that are not detrimental to the integrity of the substance and that do not interfere with its storage or use. [12]

Accordingly, the Commission finds that special packaging for diphenhydramine-containing preparations is technically feasible, practicable, and appropriate.

F. Effective Date

The PPPA provides that, except for good cause, no regulation shall take effect sooner than 180 days or later than one year from the date such regulation is issued. The Commission decided to apply this range to the proposed amendment.

The Commission proposed an effective date of 180 days following final issuance, based on the belief that this would provide any manufacturers of diphenhydramine preparations with sufficient lead time to comply with the special packaging requirements. Since no public comments provided arguments or data to support a shorter or longer period of lead time, the Commission has decided that the final amendment will become effective in 180 days. This means that the original rule for diphenhydramine hydrochloride will become effective on August 13, 1984 and the amended rule for diphenhydramine base will become effective on February 11, 1985.

G. Environmental Considerations

Rules requiring poison prevention packaging of products normally have little or no potential for affecting the human environment, and, therefore, neither an environmental assessment nor an environmental impact statement is required. *See* 16 CFR 1021.5(c)(3). From the facts then available, the Commission concluded in February 1984 that the proposed amendment, if issued, would have no significant effects on the environment. The Commission continues to believe that there will be no such effects.

H. Regulatory Flexibility Act Certification

Using the criteria of the Regulatory Flexibility Act, 5 U.S.C. 601(3), the Commission staff concluded that no firm that might be required to institute changes to its packaging under the proposed amendment and no firm doing business with any directly affected firms would be subject to any significant effects as a result of the proposed amendment. Therefore, the Commission certified that the proposed amendment would not, if issued, have a significant economic impact on a substantial number of small entities.

The amendment will not apply to any preparations that are currently marketed, other than those that are already covered by the packaging requirement for diphenhydramine hydrochloride that was issued in February 1984. As discussed in sections A and D above, future marketing of diphenhydramine base products is likely. Even if any preparations will be required to be converted to special packaging by the final amendment, the costs will not be significant. As discussed in section E above, the Commission has found the amendment to be technically feasible, practicable, and appropriate.

I. Conclusion

Therefore, having considered the available human experience data and the medical literature, the Commission concludes that the requirement for special packaging set forth below should be issued. In making this determination, the Commission has considered—

(1) The reasonableness of the amendment;

(2) Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

(3) The manufacturing practices of industries affected by the PPPA; and

(4) The nature and use of the diphenhydramine preparations covered by the amendment.

Accordingly, pursuant to provisions of the Poison Prevention Packaging Act of 1970 (Pub. L. 91-601, secs. 2(4), 3, 5, 84 Stat. 1670-72; 15 U.S.C. 1471(4), 1472, 1474) and under the authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92-573, sec. 30(a), 86 Stat. 1231; 15 U.S.C. 2079(a)), the Commission revises paragraph (a)(17) to 16 CFR 1700.14, to read as follows (although unchanged, the introductory text of paragraph (a) is included below for context):

§ 1700.14 Substances requiring special packaging.

(a) *Substances.* The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and that the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(17) *Diphenhydramine.* Preparations for human use in a dosage form intended for oral administration and containing more than the equivalent of 66 mg diphenhydramine base in a single package shall be packaged in accordance with the provisions of § 1700.15 (a), (b), and (c), if packaged on or after February 11, 1985.

Authority: Pub. L. 91-601, secs. 2(4), 3, 5, 84 Stat. 1670-72; 15 U.S.C. 1471(4), 1472, 1474; Pub. L. 92-573, sec. 30(a), 86 Stat. 1231; 15 U.S.C. 2079(a).

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

Dated: August 9, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

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10. Wyngaarden, J. B. and Seevers, M. H. The toxic effects of antihistaminic drugs. J.A.M.A., 145:277-282, 1951.

11. Transmittal memo, with attached impact analysis of DPH regulation, from Elliott Foutes, dated March 30, 1983.

12. Memo on technical feasibility, practicability, and appropriateness of DPH regulation, from Charles Wilbur, dated October 27, 1982.

13. Memo on update on diphenhydramine ingestions, from Dorothy Drago, dated April 1, 1983.

14. Memo on summary of data discussed in previous memos (dated 2/24/82 and 7/30/82) on diphenhydramine, from Fred Marozzi, dated December 8, 1982.

15. Transmittal memo with attached briefing paper on proposed diphenhydramine regulation, from Virginia White, dated June 3, 1983.

16. Memo on proposed diphenhydramine regulation (RESTRICTED), from Harleigh Ewell, dated June 6, 1983.

17 Vote sheets on proposed diphenhydramine regulation, dated June 6, 1983.

18. Memo on use of diphenhydramine in OTC nighttime sleep aids (RESTRICTED), from Elliot Foutes, dated July 14, 1982.

19. Memo on diphenhydramine hydrochloride (RESTRICTED), from Evelyn Spiro, dated March 8, 1982.

20. Memo on recommended level for regulation of diphenhydramine, with attached chart, from Fred Marozzi, dated July 30, 1982.

21. Final rule on Marketing Status of Ingredients recommended for over-the-counter use. 47 FR 17738, April 23, 1982.

22. Memo on recommendation with respect to development of a PPPA regulation covering OTC antihistamine preparations (RESTRICTED), from Denise Orzech, dated February 24, 1982.

23. Transmittal memo on recommendations for special packaging requirements under PPPA for OTC antihistamines, with attached briefing package, from Virginia White, dated August 24, 1982.

24. Memo on draft Federal Register notice proposing CRC requirements for diphenhydramine, from Harleigh Ewell, dated April 1, 1983.

25. Memo on draft proposed PPPA requirement for diphenhydramine (effective date) (RESTRICTED), from Harleigh Ewell, dated June 23, 1983.

26. Ballot vote sheets on reconsideration of the effective date in proposal to require special packaging for diphenhydramine preparations (RESTRICTED), from Harleigh Ewell, dated June 23, 1983.

27. Memo on diphenhydramine regulation update, from Denise Orzech, dated August 16, 1983.

28. Memo on OTC products containing DPH, from Elliot Foutes, dated Dec. 1, 1983.

29. Public comment from Drug Enforcement Administration, dated Aug. 26, 1983.

30. Proposed requirements for Child-Resistant Packaging; Diphenhydramine Hydrochloride, Federal Register document, dated July 11, 1983.

31. Transmittal memo with attached briefing paper on final rule for special packaging of preparations containing diphenhydramine, from Virginia White, dated January 1984.

32. Letter from M.J. Finkel, FDA to Warner-Lambert Co., NDA6-514OTC, vol. 04TTFM004TTFM; Documents Management Branch, FDA, 5600 Fishers Lane, Rockville, MD 20857.

33. Federal Register notice; Diphenhydramine: Marketing status as a nighttime sleep-aid drug product for over-the-counter human uses. 47 FR 17740, April 23, 1982.

34. Federal Register document: Requirements for Child-Resistant Packaging; Diphenhydramine Hydrocholoride. 49 FR 5737, Feb. 15, 1984.

35. Federal Register document: Proposed Amendment to Child-Resistant Packaging Requirements; Diphenhydramine Base. 49 FR 5768, Feb. 15, 1984.

[FR Doc. 84-21624 Filed 8-14-84; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 11 and 389

[Docket No. RM83-13-000]

Annual Charges for Use of Government Dams and Other Structures Under Part I of the Federal Power Act

Issued: August 9, 1984.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; notice of effective date and OMB control number.

SUMMARY: On May 24, 1984, the Federal Energy Regulatory Commission issued a final rule in Docket No. RM83-13-000, 49 Fed. Reg. 22770 (June 1, 1984) setting annual charges under section 10(e) of the Federal Power Act for hydroelectric projects which use Government dams or other structures. This notice sets forth

the OMB control number for the information collection requirements in this rule and the effective date of the rule.

EFFECTIVE DATE: August 15, 1984.

FOR FURTHER INFORMATION CONTACT: Jan Macpherson, Rulemaking and Legislative Analysis Division, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act, 44 U.S.C. 3501-3520 (1982) and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1983), require that OMB approve certain information collection requirements imposed by agency rule. On July 18, 1984, OMB approved the information collection requirements in 18 CFR 11.22(c) and 11.23(b) and issued Control Number 1902-0136 for these sections. Therefore, the final rule in Docket No. RM83-13-000 will become effective August 15, 1984.

Accordingly, Part 389, Chapter I, Title 18, Code of Federal Regulations is amended as set forth below.

1. The authority citation for Part 389 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982).

§ 389.101 [Amended]

2. The Table of OMB Control Numbers in § 389.101(b) is amended by inserting "11.22(c)" and "11.23(b)" in numerical order in the section column, and "0136" in the corresponding positions in the OMB Control Number column.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21535 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

INTERNATIONAL TRADE COMMISSION

19 CFR Parts 201, 204, and 207

Amendments to Rules of Practice and Procedure

AGENCY: International Trade Commission.

ACTION: Amendment of rules; final action.

SUMMARY: These rules amend Parts 201, 204, and 207 of the Commission's *Rules of Practice and Procedure*. Part 201 sets forth rules of general application; Part 204 governs Commission investigations concerning the effect of imports on agricultural programs (section 22 of the Agricultural Adjustment Act); and Part 207 governs investigations of whether injury to domestic industries results from imports sold at less than fair value or from subsidized exports to the United States.

The amendments to Part 201 provide, in particular, for an expansion of the definition of confidential business information to include certain additional information of commerical value; clearer marking of the confidential portions of documents for which confidential treatment is requested; certain changes concerning paper size of documents, unbound copies, and one-sided copying; clarification of the provision permitting additional time for responses when service is by mail; and adjustment of the fees charged for copying and searching for documents in response to requests under the Freedom of Information Act. The amendment to Part 204 deletes the word "Tariff" to reflect the change in name of the Commission in 1975 from the Tariff Commission. The amendments to Part 207 provide that the Commission will not serve on all parties to antidumping and countervailing duty proceedings responses to requests for confidential treatment or documents under protective order; conform the requirement concerning number of copies to be filed to that of Part 201; and reflect the change in name of the U.S. Customs Court to the U.S. Court of International Trade.

EFFECTIVE DATE: August 15, 1984.

FOR FURTHER INFORMATION CONTACT: William W. Gearhart, Esq., Assistant General Counsel, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202-523-0487

SUPPLEMENTARY INFORMATION: Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties.

Notice of these proposed changes was published in the Federal Register of April 12, 1984 (49 FR 14502). Persons wishing to comment on the proposed changes were given until May 12, 1984, to do so. Comments were received only from two parties, the law firm of Squire, Sanders & Dempsey, Washington, D.C., and the U.S. Steel Corp., Pittsburgh, Pa. Both parties recommended that the proposed addition to rule § 201.6(a) of the phrase "other information of commercial value" be deleted or that the term be narrowly construed. In addition, U.S. Steel opposed the amendment to rule § 207.3 providing that the Commission need no longer serve on all parties responses to requests for confidential treatment and responses to requests for confidential information in antidumping and countervailing duty cases. Their comments are available for public inspection in the Office of the Secretary to the Commission in the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436.

The Commission carefully considered comments submitted by both parties, but has decided that the rules as originally proposed should be adopted. The Commission does not believe that the proposed change in rule 201.6(a) is excessively broad or is likely to become a device relied upon by parties submitting data for shielding their submissions from public scrutiny. The Commission does not intend that the amendment become a basis for providing confidential treatment for briefs, letters, and other documents provided by parties which, while prepared at considerable expense and technically copyrightable, contain the basic facts and argumentation in support of their case. Rather, the Commission seeks to protect only a limited class of material: (1) Which is of commercial value, such as copyrighted material analyzing an industry sector which is sold commercially in the marketplace (e.g., Dunn and Bradstreet reports), and (2) which is deemed necessary to the Commission's investigation and which the Commission might otherwise have to purchase. The Commission is seeking to distinguish between material prepared by or for a party to be used in support of or in conjunction with their case, which would not be protectable on commercial value grounds, and material prepared for commercial sale to subscribers. In most cases, the Commission will be seeking to protect the preparer of the material rather than the submitter, such as where public access to the material or reproduction at 10 cents per page is likely to injure the preparer financially. Briefs prepared by lawyers and economic analyses prepared by economic consultants retained by the parties in the course of a proceeding would not qualify as "information of commercial value" necessary to the Commission's investigation which the Commission might otherwise have to purchase, even though such documents were prepared at considerable expense and are copyrightable.

The Commission also rejected U.S. Steel's request that rule 207.3 covering service of documents in antidumping and countervailing duty cases continue to require that the Commission serve copies on all parties of responses to

requests for confidential treatment from individual parties and responses to requests for access to confidential information under protective order. U.S. Steel opposed the change on the grounds that (1) parties submitting the request often did not properly serve other parties and that the Commission's service of a response was often the first notice which other parties received, and (2) other parties needed notice of the Commission response in order to determine that nature of the Commission's action and whether to object to it. The Commission proposed eliminating serving such responses on parties other than the requesting party because the serving of responses has become burdensome and the overwhelming number of requests for confidential treatment or access to confidential information are of a routine nature and of little interest to other parties. Copies of Commission responses to such requests are available and will continue to be available for public inspection in the Commission's public inspection file. In addition, requests for confidential treatment or confidential documents not containing a proper service list are not processed by the Commission until a proper service list is submitted, and rule § 207.3 provides that parties failing to properly serve other parties risk loss of their status as parties.

The amendments set forth below are intended to remedy problems that have arisen under existing Commission practice, reflect present costs incurred in furnishing information under the Freedom of Information Act, and correct certain errors in the Commission's rules.

Rule 201.6(a) is amended to include within the definition of confidential business information, in addition to information which concerns or relates to trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, "other information of commercial value," the disclosure of which is likely to have the effect of either (1) Impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions, or (2) causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such information. Such "other information of commercial value" may include copyrighted material or other material of commercial value prepared or purchased at considerable expense by the submitter but which is not otherwise covered by the definition.

Rule 201.6(b)(3) is amended to require that persons requesting confidential treatment for documents containing business information clearly indicate on the cover of such documents the pages on which confidential information appears and identify the confidential information on those pages by means of brackets. Confidential versions of briefs and other documents presently filed with the Commission often do not clearly identify which information is confidential. When the Confidential information is not clearly identified, the Commission staff must spend extra time comparing confidential and nonconfidential versions in order to identify the confidential information. This causes delays in processing requests and may result in the Commission's inadvertent overlooking of portions not clearly marked as confidential.

Rule 201.6(b)(3) also is amended to refer to the requirement set forth in rule 201.8(d) that a nonconfidential version of confidential documents be furnished. Persons filing confidential documents often fail to file nonconfidential versions because they have failed to follow rule 201.8(d). This amendment would remind them of the rule 201.8(d) requirement.

Rule 201.8(d) is amended to require that all submissions be on letter-sized paper (8½ inches by 11 inches), except patent file wrappers or other documents prepared by or for another agency or court; and that the original and at least one copy of all submissions be printed on one side only and be unbound. These requirements will facilitate storage and reproduction of documents. The paper-size requirement was erroneously deleted from this rule in a previous revision.

Rule 201.16(d) is amended to make clear the fact that the additional time for responses permitted when service is by mail is 3 calendar days in the case of service to a person located in the United States and 10 calendar days in the case of a person located in a foreign country, rather than 3 or 10 working days.

Rule 201.20(a) is amended to provide that fees for search time for records will be computed at the rate of $8.00 per hour for time spent by agency personnel in grades GS-2 through GS-10 and at the rate of $16 per hour for time spent by agency personnel in grades GS-11 and above. This charge reflects the current level of Federal salaries. However, no charge will be imposed when the total charge for search time and copying does not exceed $25.00. On charges of $25.00 or less, the cost of billing, bookkeeping, and check processing tends to equal or exceed the fee collected. The Commission presently does not impose a fee for search time when the search time is one half hour or less.

Rule 201.20(b), which provides for copying fees, is amended to provide that the Commission will not impose a fee unless the total charge for search time and copying exceeds $25.00. The Commission presently does not impose a fee for copying unless the total charge for copying exceeds 50 cents.

Rule 201.20(c) is amended to provide that the Commission will not process a request for information which is expected to involve assessed fees in excess of $25.00 unless the request states that whatever cost is involved is acceptable or is acceptable up to a specified limit which covers anticipated costs. The present rule provides a limit of $15.00, but this limit has been rendered obsolete by rules 201.20 (a) and (b), which waive all search time and copying charges of $25.00 or less.

Rule 204.5 is amended to delete the word "Tariff" in Tariff Commission, the former name of this Commission. Due to an oversight, this reference was not deleted in earlier rule changes. The name of the agency was changed effective January 3, 1975, by section 171 of the Trade Act of 1974 (19 U.S.C. 2231).

Rule 207.3 is amended to provide that the Commission, in antidumping and countervailing duty proceedings, need not serve on all parties of record its responses to requests for confidential treatment from individual parties. It also is amended to make clear that the Commission will not serve on all parties responses to requests for access to confidential information under protective order.

Rule 207.45(b) is amended to provide that parties filing requests for a review of antidumping and countervailing duty actions must file an original and 14 copies of such documents (rather than 19 copies, as under the present rule). This change would conform this requirement to the copies requirement of rule 201.8(d).

Rules 207.50 and 207.51 are amended to reflect the fact that persons entitled to judicial review may seek such review in the U.S. Court of International Trade (rather than the U.S. Customs Court, the former name of this court).

List of Subjects

19 CFR Part 201

Administrative practice and procedure, Business and industry, Imports, Investigations.

19 CFR Part 204

Administrative practice and procedure, Agricultural commodities, Imports, Investigations.

19 CFR Part 207

Administrative practice and procedure, Antidumping, Business and industry, Countervailing duties, Investigations.

PART 201—[AMENDED]

Parts 201, 204, and 207 are amended as set forth below:

1. Paragraphs (a) and (b)(3) of § 201.6, which concerns confidential business information, are revised as follows:

§ 201.6 Confidential business information.

(a) *Definition.* Confidential business information is information which concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value, the disclosure of which is likely to have the effect of either (1) impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions, or (2) causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such information.

(b) * * *

(3) With each submission of, or offer to submit, business information which a submitter desires to be treated as confidential under paragraph (a)(2) of this section, the submitter shall provide the following, which may be disclosed to the public:

(i) A written description of the nature of the subject information;

(ii) A justification for the request for its confidential treatment;

(iii) A certification in writing under oath that substantially identical information is not available to the public;

(iv) A copy of the document (A) clearly marked on its cover as to the pages on which confidential information can be found, and (B) with information for which confidential treatment is requested clearly identified by means of brackets (except when submission of such document is withheld in accord with paragraph (b)(4) of this section); and

(v) A nonconfidential copy of the documents as required by § 201.8(d).

* * * * *

2. Paragraph (d) of § 201.8, which concerns filing of documents, is revised as follows:

§ 201.8 Filing of documents

* * * * *

(d) *Number of copies.* A signed original (or a copy designated as an original) and fourteen (14) copies of each document shall be filed. All submissions shall be on letter-size paper (8½ inches by 11 inches), except copies of documents prepared for another agency or a court (e.g., patent file wrappers or pleading papers). The original and at least one copy of all submissions shall be printed on one side only and shall be unbound (although they may be stapled or held together by means of a clip). In the event that confidential treatment of the document is requested under § 201.6, at least one additional copy shall be filed, in which the confidential business information shall have been deleted and which shall have been marked conspicuously "nonconfidential" or "public inspection." The name of the person signing the original shall be typewritten or otherwise reproduced on each copy.

* * * * *

3. Paragraph (d) of § 201.16, which concerns service of process and other documents, is revised as follows:

§ 201.16 Service of process and other documents.

* * * * *

(d) *Additional time after service by mail.* Whenever a party or Federal agency or department has the right or is required to perform some act or take some action within a prescribed period after the service of a document upon it and the document is served upon it by mail, three (3) calendar days shall be added to the prescribed period, except that when mailing is to a person located in a foreign country, ten (10) calendar days shall be added to the prescribed period.

4. Paragraphs (a)(1), (b), and (c) of § 201.20, which concerns fees for searching for or copying of records, are revised as follows:

§ 201.20 Fees.

(a) *Search for records.* (1) The charge will be computed at the rate of $3.00 per hour for actual search time spent by agency personnel in salary grades GS-2 through GS-10 and at the rate of $16.00 per hour for actual search time by agency personnel in salary grades GS-11 and above, with said charges to be computed in quarter hour increments; however, no charge will be imposed when the total charge for search time and copying of records (see § 201.20(b)) does not exceed $25.00.

* * * * *

(b) *Copying of records.* The charge for reproduction, duplication, or copying of records by the Commission will be 10 cents per page; however, no charge will be imposed when the total charge for search time (see § 201.20(a)) and reproduction, duplication, or copying of records does not exceed $25.00.

(c) Unless a request for information specifically states that whatever cost is involved is acceptable, or acceptable up to a specified limit that covers anticipated costs, a request that is expected to involve assessed fees in excess of $25.00 or the specified limit will not be deemed to have been received until the requester is advised of the anticipated costs and agrees to bear such costs.

* * * * *

5. Section 204.5, which concerns reports issued by the Commission as a result of investigations conducted under section 22 of the Agricultural Adjustment Act (7 U.S.C. 624), is revised as follows:

§ 204.5 Reports.

After completion of its investigation, the Commission will transmit to the President a report of the results thereof, including its findings and recommendations based thereon, and a statement of the steps taken in the investigation, together with a transcript of the evidence submitted at the hearing. A copy of such report will be transmitted to the Secretary of Agriculture.

6. Section 207.3, which concerns service of documents in connection with Commission proceedings under section 303, section 516A, and title VII of the Tariff Act of 1930 (19 U.S.C. 1303, 1516A, and 1671–1677) and sections 102–107 of the Trade Agreements Act of 1979 (Pub. L. 96–39, 93 Stat. 144), is revised as follows:

§ 207.3 Service of documents.

Any party submitting a document for inclusion in the record of the investigation shall, in addition to complying with § 201.8, serve a copy of each such document on all other parties to the investigation in the manner prescribed in § 201.16. Failure to comply

with the requirements of this rule may result in removal from status as a party. The Commission shall make available to all parties to the investigation a copy of each document, except transcripts of conferences and hearings and responses to requests under § 201.6(b) (confidential business information) and § 201.76 (documents under protective order), placed in the record of the investigation by the Commission.

7. Paragraph (b)(1)(i) of § 207.45, which concerns investigations to review certain antidumping and countervailing duty actions, is revised as follows:

§ 207.45 Investigation to review outstanding determination.

* * * * *

(b) *Procedures*—(1) *Commencement of proceedings*—(i) *Upon receipt of a request.* A proceeding is commenced upon the filing with the Commission of the original and fourteen (14) true copies of a request. Requests for a review investigation may be filed by any person. All requests shall set forth a description of changed circumstances sufficient to warrant the institution of a review investigation by the Commission under this section.

* * * * *

8. Paragraphs (a) and (b) of § 207.50, which concerns judicial review under section 516A of the Tariff Act of 1930 with respect to antidumping and countervailing duty actions, is revised as follows:

§ 207.50 Judicial review.

(a) *In general.* Persons entitled to judicial review under section 516A of the Act may seek review in the U.S. Court of International Trade.

(b) *Transmittal of record.* In the event a Commission determination is appealed to the U.S. Court of International Trade under section 516A, a copy of the record in the proceeding before the Commission, as such record is defined in § 207.2(j), or a certified list of all items therein, will be transmitted to the court by the Secretary in accordance with the rules of the court.

* * * * *

9. Paragraph (a) of § 207.51, which concerns judicial review of the denial of applications for disclosure of certain confidential information under protective order, is revised as follows:

§ 207.51 Judicial review of denial of application for disclosure of certain confidential information under protective order.

(a) *In general.* Persons entitled to judicial review under section 777(c)(2) of a Commission determination not to disclose confidential information concerning domestic price or cost of production may apply to the U.S. Court of International Trade for an order directing the Commission to make the information involved available.

* * * * *

Issued: August 9, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-21719 Filed 8-14-84; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 16

Statement of Policy as to Administrative Action To Be Taken by the Federal Highway Administration in Instances of Irregularities; Rescission of Regulation

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescission of regulation.

SUMMARY: This document rescinds the FHWA regulation on debarment procedures because the regulation has been superseded by a Department of Transportation regulation which prescribes uniform formal procedures for the suspension and debarment of participants in DOT financial assistance programs if serious misconduct or improper use of Federal financial assistance funds is involved.

EFFECTIVE DATE: May 18, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Hugh T. O'Reilly, Office of the Chief Counsel, (202) 426-0780, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The regulations contained in 23 CFR Part 16 were published to prescribe the administrative action which should be taken by the Administrator in order to safeguard the Federal interest in instances of irregularities in the administration and execution of the direct Federal and Federal-aid highway programs. On April 18, 1984, a final rule was published in the Federal Register (49 FR 15197) by the Office of the Secretary of Transportation which sets forth procedures that would enable the DOT, including the FHWA to deny any individual, corporation, or other business entity the opportunity to participate in a program of a recipient receiving DOT financial assistance, including contracts awarded pursuant to grants, because of serious misconduct or improper use of Federal financial assistance. Since the DOT regulations adequately safeguard the FHWA interest in instances where government funds are not properly utilized, Part 16 is no longer necessary and is, therefore, rescinded. However, any unacceptability actions pending under the procedures of 23 CFR Part 16 on the date of this rescission shall not abate.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. Since the impact of this final rule is expected to be minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

Since this is a technical amendment that merely rescinds FHWA provisions which have been superseded by DOT provisions which are more formal and uniform, public comment is unnecessary. For this reason, the FHWA finds good cause to make the amendment final without prior notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act. For the same reason, notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action would result in the receipt of useful information.

PART 16—STATEMENT OF POLICY AS TO ADMINISTRATIVE ACTION TO BE TAKEN BY THE FEDERAL HIGHWAY ADMINISTRATION IN INSTANCES OF IRREGULARITIES [REMOVED]

In consideration of the foregoing, the FHWA hereby removes Part 16 "Statement Of Policy As To Administrative Action To Be Taken By The Federal Highway Administration In Instances Of Irregularities" from title 23, Code of Federal Regulations. Existing periods of unacceptability and pending actions of unacceptability do not abate by reasons of this action.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The procedures provided by OMB Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

(23 U.S.C. 315; 49 1.48(b))

Issued on: August 8, 1984.

L.P. Lamm,

Deputy Administrator, Federal Highway Administration.

[FR Doc. 84-21727 Filed 8-14-84; 8:45 am]

BILLING CODE 4910-22-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Non-Multiemployer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Non-Multiemployer Plans contains the interest rates and factors for the period beginning September 1, 1984. The interest rates and factors are to be used to value benefits provided under terminating non-multiemployer pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974.

The valuation of plan benefits is necessary because, under section 4041 of the Act, the Pension Benefit Guaranty Corporation ("PBGC") and the plan administrator must determine whether a terminating pension plan has sufficient assets to pay all benefits under the plan that are guaranteed by the PBGC under the Title IV plan termination insurance program.

The interest rates and factors set forth in Appendix B to Part 2619 are adjusted periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after September 1, 1984, and will enable the PBGC and plan administrators to value the benefits provided under those plans. These rates and factors will remain in effect until Appendix B of the regulation is again amended.

EFFECTIVE DATE: September 1, 1984.

FOR FURTHER INFORMATION CONTACT: Mrs. Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 611, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006, 202-254-6476 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On January 28, 1981, the PBGC published a final regulation on Valuation of Plan Benefits in Non-multiemployer Plans (46 FR 9492). That regulation, codified at 29 CFR Part 2619 (1983), sets forth the methods for valuing plan benefits of terminating non-multiemployer plans covered under Ttile IV of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* (1976), *as amended.* The regulation contains formulas for valuing different types of benefits. Appendix B to the regulation sets forth the interest rates and factors that are to be used in the formulas. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

As published in the 1983 edition of 29 CFR, Appendix B of Part 2619 contains interest rates and factors for valuing benefits in plans that terminated during various periods from September 2, 1974 through June 1, 1983. The rates and factors adopted for valuing benefits in plans that terminated on or after June 1, 1983 remained in effect until September 1, 1983. On August 15, 1983, the PBGC published new rates and factors for plans that terminated on or after September 1, 1983 (48 FR 36817). That rate remained in effect for plan terminations through the end of January, 1984. In January, February, March, April, June, and July of 1984 the PBGC published new rates and factors for plans terminating during the months of February through August of 1984 (49 FR 1896, 49 FR 6486, 49 FR 9856, 49 FR 14730, 49 FR 24721, and 49 FR 28551).

At this time, changes in the financial and annuity markets require a decrease in the rates used for valuing benefits. Accordingly, this amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after September 1, 1984, which set reflects a decrease of ¼ percent in the interest rate.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as PBGC publishes another amendment concerning them. Any change in the rates normally will be published in the Federal Register by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This determination is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions. The PBGC has found that the public interest is best served by issuing the rates and factors on a prospective basis so that plans may be able to calculate the value of plan benefits before submitting a notice of intent to terminate. Also, plans will be able to predict employer liability more accurately prior to plan termination.

Because of the need to provide immediate guidance for the valuation of benefits of plans that will terminate on or after September 1, 1984, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment to the final regulation effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, February 17, 1981, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

1. The authority citation for Part 2619 reads as follows:

Authority: Secs. 4002(b)(3), 4041(b), 4044, and 4062(b)(1)(A), Pub. L. 93-406, 88 Stat. 1004, 1020, 1025, 1029 (1974) as amended by Secs. 403(1), 403(d), and 402(a)(7), Pub. L. 96-364, 94 Stat. 1302, 1301, and 1299 (1980) (29 U.S.C. 1302, 1341, 1344, 1362).

2. Appendix B is amended by revising Rate Set 49 and adding Rate Set 50 of Appendix B to read as follows:

Appendix B—Interest Rates and Quantities Used To Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "G_y" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate Set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities				
	On or after	And before		k_1	k_2	k_3	n_1	n_2
*			*		*		*	
49	8-1-84	9-1-84	10.75	1.1000	1.0875	1.0400	7	8
50	9-1-84		10.50	1.0975	1.0850	1.0400	7	8

Roderick J. O'Neil,
Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84-21559 Filed 8-14-84; 8:45 am]

BILLING CODE 7708-01-M

VETERANS ADMINISTRATION

38 CFR Part 18

Information Collection Requirements

AGENCY: Veterans Administration.

ACTION: Technical amendments.

SUMMARY: This document amends Veterans Administration regulations to include OMB control numbers at the places in the regulations where current information collection requirements are described.

EFFECTIVE DATE: August 8, 1984.

FOR FURTHER INFORMATION CONTACT: Ana del Toro, Office of Equal Opportunity (006B5), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 389-2150.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in the regulatory sections listed below have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and assigned the control numbers contained in the listing.

Text of the Amendments

Following the text of:

§ 18.406 [Amended]

Section 18.406(c) add: (Approved by the Office of Management and Budget under control number 2900-0415)

§ 18.422 [Amended]

Section 18.422(e) add: (Approved by the Office of Management and Budget under control number 2900-0414).

Dated: August 8, 1984.

By direction of the Administrator.

Dominick Onorato,
Associate Deputy Administrator for Information Resources Management.

[FR Doc. 84-21640 Filed 8-14-84; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-10-FRL-2653-3]

Approval and Promulgation of State Implementation Plan; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: By this Notice, EPA announces its approval of primary standard and secondary standard total suspended particulate (TSP) attainment plans for Medford, Oregon. The TSP plans were submitted by the State of Oregon Department of Environmental Quality (DEQ) as revisions to the State Implementation Plan (SIP) pursuant to the requirements of Part D of the Clean Air Act (hereinafter referred to as the Act).

EFFECTIVE DATE: August 15, 1984.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Air Programs Branch (10A-84-4), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

State of Oregon, Department of Environmental Quality, 522 S.W. Fifth, Yeon Building, Portland, Oregon 97204

Copy of the State's submittal may be examined at:

The Office of the Federal Register, 110 L Street, NW., Room 8401, Washington, D.C.

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

FOR FURTHER INFORMATION CONTACT: Michael J. Schultz, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone (206) 442-1985, (FTS) 399-1985.

SUPPLEMENTARY INFORMATION: On April 18, 1984 (49 FR 15229) EPA proposed approval of primary standard and secondary TSP attainment plans for the Medford, Oregon TSP nonattainment area. The control strategies relied on both industrial and nontraditional source control measures. Considerable emphasis was placed on reducing emissions from residential wood stoves. The proposed rulemaking (49 FR 15229) may be consulted for additional background and attainment plan information.

A 30-day public comment period was provided following publication of the proposed rulemaking. No comments were received.

EPA therefore approves the primary standard and secondary standard TSP attainment plans for the Medford, Oregon TSP nonattainment area, as submitted on April 25, 1983. The plans are represented by Section 4.10 of the Oregon State Implementation Plan. This section is entitled "Medford-Ashland Air Quality Maintenance Area State Implementation Plan for Particulate Matter."

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of the Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Incorporation by reference and Intergovernmental Relations.

(Sec 110, 172, and 176 of the Clean Air Act, 42 U.S.C. 7410, 7502, and 7506)

Dated: August 9, 1984.

William D. Ruckelshaus,
Administrator.

Note.—Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1982.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart MM—Oregon

1. Section 52.1970 is amended by

adding, paragraph (c)(67) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(67) On April 25, 1983, the State Department of Environmental Quality submitted Section 4.10, "Medford-Ashland Air Quality Maintenance Area State Implementation Plan for Particulate Matter."

2. Section 52.1973 is amended by revising the attainment date table to read as follows:

* * * * *

§ 52.1973 Attainment dates for national standards.

Air quality control region and nonattainment area	Pollutant						
	TSP		SO_2		NO_2	CO	O_3
	1st	2nd	1st	2nd			
Portland interstate AQCR							
Interstate AQCR (Washington portion):							
1. Portland-Vancouver (Oregon portion)	a	f	a	b	b	h	i
2. Salem	a	b	a	b	b	e	e
3. Eugene-Springfield AQMA	a	i	a	b	b	h	b
4. Remainder of AQCR.	c	c	a	b	b	d	c
Southwest Oregon Intrastate AQCR:							
1. Medford-Ashland AQMA	j	k	a	b	b	g	e
2. Remainder of AQCR	c	c	a	b	b	b	b
Northwest Oregon Intrastate AQCR	a	b	a	b	b	b	b
Central Oregon Intrastate AQCR	a	c	a	b	b	b	b
Eastern Oregon Intrastate AQCR	c	c	a	b	b	b	b

1st—Primary.
2nd—Secondary.
a. Air designated as having air quality levels presently below the primary standards or area is unclassifiable.
b. Area designated as having air quality levels presently below secondary standards or area is unclassifiable.
c. May 1975.
d. May 31, 1976.
e. Dec. 31, 1982.
f. Dec. 31, 1986.
g. Later than Dec. 31, 1982 but before Dec. 31, 1987.
h. Dec. 31, 1985.
i. Dec. 31, 1987.
j. Dec. 31, 1984.
k. Dec. 31, 2000.

[FR Doc. 84-21645 Filed 8-14-84; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 52

[A-8-FRL-2653-5]

Approval and Promulgation of State Implementation Plans; Salt Lake and Davis Counties, UT

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This document approves a revision to the Utah State Implementation Plan (SIP) which provides for an Inspection/Maintenance (I/M) Program for Salt Lake and Davis Counties. The I/M program is a requirement under the Clean Air Act (Sec 172–178) for nonattainment areas receiving an extension to December 31, 1987 to demonstrate attainment of the ozone and/or carbon monoxide standards. This document also approves the carbon monoxide (CO) plan for Salt Lake County and the ozone plan for Salt Lake and Davis Counties. A construction moratorium in effect since 1979 on major stationary sources of carbon monoxide and volatile organic compounds (VOC) will be lifted with this action.

DATES: This action will be effective on October 15, 1984, unless notice is received by September 14, 1984 that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the revision are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 1860 Lincoln Street, Denver, Colorado 80295.

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

The Office of the Federal Register, 110 L Street, NW., Room 8401, Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: Robert R. DeSpain, Chief, Air Programs Branch, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295, (303) 844-3471.

SUPPLEMENTARY INFORMATION: On September 20, 1982, the State of Utah submitted the 1982 revision to its carbon monoxide/ozone SIP for the following nonattainment areas: (1) Carbon Monoxide—Salt Lake City, Ogden, Provo, and (2) Ozone—Salt Lake and Davis Counties.

On February 3, 1983 (48 FR 5128), EPA proposed to approve certain portions of that submittal and to disapprove others. The specific proposals were:

(1) Disapproval of the Salt Lake City carbon monoxide plan because the I/M program requirements had not been met and because several other transportation requirements had not been adequately addressed.

(2) Disapproval of the Salt Lake County and Davis County ozone plans for the reasons stated above.

(3) Approval of the Ogden and Provo carbon monoxide plans. However, EPA proposed to approve the plan on the assumption that the transportation requirements, including a monitoring plan, contingency plan, conformity determination procedures, and basic transportation needs would be adequately addressed during the comment period [subsequently this issue was approved by EPA on December 21, 1983 (48 FR 56379)].

On March 14, 1983, EPA received comments from the Governor of Utah which discussed all of the proposed actions, including the deficiencies in the Ogden and Provo CO plans. The Governor pointed out that the Utah SIP incorporates by reference a document entitled "Traffic Control Measures for the Wasatch Front Region" prepared by the Wasatch Front Region Council (WFRC) which discusses basic transportation needs, transportation monitoring plans, and contingency plans. The Governor also pointed out that the Utah DOT is required by regulation (as included in the Utah SIP) to submit highway project plans to the State Bureau of Air Quality to determine conformity with the SIP.

On April 22, 1983, the Utah Bureau of Air Quality submitted supplemental information which addressed each of the transportation requirements cited in the proposed rulemaking.

On July 21, 1983, the Utah legislature adopted legislation providing State authority to adopt and enforce I/M. The legislation requires that the two county governments implement I/M programs.

On December 9, 1983, the Governor of Utah submitted the implementation schedules and on December 19, 1983, he submitted the Salt Lake City-County Health Regulations #22 and the Davis County Motor Vehicle Inspection/Maintenance Ordinance establishing the counties' rules and regulations for the I/M program. The Regulations/Ordinance required compliance of every motor vehicle with the inspection program, unless specifically exempted from the program, i.e., off-road vehicles not registered to operate on public highways, agricultural motor vehicles, etc. The Regulations/Ordinances further delegated the inspection portion of the program to county-certified private garages who will issue compliance certificates. A certificate is required at the time of vehicle registration with the county.

The implementation schedules show courses of action (i.e., establishment of I/M program staff, mechanic training through program certification, public awareness campaign) for mandatory vehicle inspection effective April 1, 1984.

On February 6, 1984, a revision to the SIP was made showing the impact of control strategies for Davis and Salt Lake Counties' ozone reduction and Salt Lake, Weber, and Utah Counties' carbon monoxide reductions.

The ozone section, in the February 6 SIP revision (Section 9 Part D), defines the extent of the ozone problem and predicts the emission reductions necessary to attain the standard. An emissions inventory was prepared based on program strategies currently being implemented and on growth projected for both counties.

The program strategies, as defined in Section 9.D.4, is for the control of VOC emissions from sources covered by Group I and II Control Techniques Guidance documents (CTG's). Section 9.D.4 also commits to adopting regulations for sources covered by future CTG's (Group III). Program strategies were aimed at vehicle hydrocarbon/nitrogen oxides emissions and major hydrocarbon (HC) point sources, i.e., petroleum refining, storage and distribution. The I/M program, as one of these strategies, is designed to reduce the automotive HC emissions by 25%. The combination of all program/control strategies demonstrates attainment by November 1, 1985.

The carbon monoxide (CO) section (Section 9 Part C) identifies highway motor vehicles as the most significant source of CO emissions. Control strategies result in a 45 percent reduction in Center City CO (1980–1987 from FMVCP), the I/M program, and through other vehicle improvement programs, i.e., ridesharing, transit improvements, etc. These strategies demonstrate attainment by November 1986.

On March 1, 1984, the Utah Bureau of Air Quality submitted supplemental information regarding the Salt Lake County I/M program (i.e., emission standards, data collection and analysis method) and Davis County I/M program (referee station description).

On April 1, 1984 the I/M program was implemented as scheduled in Davis and Salt Lake Counties.

EPA Response: The Salt Lake and Davis Counties I/M regulations and programs meet the requirements of EPA and the Clean Air Act and are approved.

The State submittal of regulations and SIP revisions have corrected all the deficiencies as stated in the February 3, 1983, Federal Register (48 FR 5128).

For the Salt Lake City CO plan, areas of concern were:

1. I/M program requirements—covered in the December 19, 1983 submittal;

2. Monitoring plan, contingency plan, and conformity determination procedures—covered in the March 14, 1983 submittal.

For the Salt Lake and Davis County ozone plan, the areas of concern were:

1. I/M program requirements—covered in the December 19, 1983 submittal;

2. Monitoring plan, contingency plan, conformity determination procedures—covered in the March 14, 1983 submittal;

3. Commit to develop and adopt regulations to control VOC emissions from sources covered by Group III CTG's—covered in the February 6, 1984 submittal. Utah has adopted and EPA has approved regulations (46 FR 25092 and 47 FR 23447) controlling sources covered by Group I and II CTG's. EPA policy is to accept, at this time, a commitment to adopt RACT for Group III CTG sources. Such a commitment has been made in the Utah SIP

The public is advised that this action will be effective October 15, 1984. However, if written notice is received by September 14, 1984, that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the final action is taken. One notice will withdraw this final action and another will begin a new rulemaking by announcing a proposal of this action and providing for a public comment period.

Under Section 307(b)(1) of the Clean Air Act, petitions for review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Incorporation by reference and intergovernmental relations.

This rulemaking is issued under the authority of sections 110, 172 and 176 of the Clean Air Act (42 U.S.C. 7410, 7502 and 7506).

Dated: August 9, 1984.

William D. Ruckelshaus,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Utah was approved by the Director of the Federal Register on July 1, 1982.

PART 52—[AMENDED]

Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

Subpart TT—Utah

1. Section 52.2320 is amended by adding paragraph (c)(17) as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(17) Provision to meet the requirements of Part D of the Clean Air Act as amended in 1977 providing for implementing automobile inspection and maintenance in Salt Lake and Davis Counties were submitted on December 9, 1983, December 19, 1983, February 6, 1984, and March 1, 1984. A revision providing for the commitment to adopt regulations for VOC sources covered by future CTG's (Group III) was submitted on February 6, 1984.

§ 52.2335 [Removed]

2. Section 52.2335 is removed.

§ 52.2337 [Removed]

3. Section 52.2337 is removed.

[FR Doc. 84-21648 Filed 8-14-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-6-FRL-2653-4]

Approval and Promulgation of Implementation Plans; Texas Lead Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: As required by section 110(a) of the Clean Air Act and the October 5, 1978 (43 FR 46246), promulgation of national ambient air quality standards (NAAQS) for lead, the State of Texas has submitted revisions to its State Implementation Plan (SIP) for lead for the Dallas area of the State. This action approves the part of the lead SIP which provides for attainment and maintenance of the lead NAAQS for the Dallas County area of the State. The rest of the Texas lead SIP was previously approved by EPA (except for the Dallas and El Paso part of the SIP) in a Federal Register notice published on October 4, 1983 (48 FR 45246). The El Paso area lead SIP will be addressed in a separate rulemaking.

EFFECTIVE DATE: Effective on August 15, 1984.

ADDRESSES: Incorporation by reference material and EPA's November 1983 Evaluation Report are available for public review during normal business hours at the following locations:

Texas Air Control Board, 6330 Hwy. 290 East, Austin, Texas 78723

EPA, Region 6, Library, 28th floor, Interfirst Two Bldg., 1201 Elm Street, Dallas, Texas 75270

EPA, Public Information Reference Unit, Library, Room 2922 (PM213), 401 M Street SW., Washington, D.C. 20460

The Office of the Federal Register, Room 8401, 1100 L Street, NW., Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT: J. Ken Greer, State Implementation Plan Section, Air Branch, EPA, Region 6, at (214) 767-9859 or FTS-729-9859.

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 1978, the NAAQS for lead was promulgated by EPA (43 FR 46246). Both the primary and secondary standards were set at a level of 1.5 micrograms of lead per cubic meter of air (μg lead/m^3) averaged over a calendar quarter. As required by section 110 of the Clean Air Act (CAA), and the October 5, 1978 promulgation of the NAAQS for lead, all States must submit a SIP which will provide attainment and maintenance of the lead NAAQS.

The general requirements for a SIP are outlined in section 110 of the Clean Air Act and EPA regulations, 40 CFR Part 51, Subpart B. Specific requirements for developing a lead SIP are outlined in 40 CFR Part 51, Subpart E. These provisions require the submission of air quality data, emission data, air quality modeling, control strategies for each area exceeding the NAAQS, a demonstration that the NAAQS will be attained within the time frame specified by the CAA, and provisions for ensuring maintenance of the NAAQS. EPA has evaluated the Texas lead SIP for Dallas County by comparing it to the requirements for an approvable SIP, as set forth in the above mentioned regulations. [EPA's Evaluation Report, dated November 1983, is available for public review at addresses listed in ADDRESSES section of this notice.]

On June 12, 1980, the Governor of Texas submitted to EPA the State's SIP for attainment and maintenance of the NAAQS for lead. Additional information concerning the lead SIP was submitted to EPA in letters dated January 29, 1982, March 15, 1982, June 3, 1982, June 15, 1982, August 23, 1982, October 14, 1982, and December 3, 1982.

On October 4, 1983 (48 FR 45246), EPA approved the general Texas lead SIP except for the part of the SIP concerning the Dallas and El Paso areas. As explained in the notice and in EPA's September 1982 Evaluation Report, a proposed control plan for the Dallas area, specifically for two areas in Dallas around two secondary lead smelters, was requested from the State before EPA could take action on the Dallas part of the Texas lead SIP. EPA's notice of proposed approval of the Texas lead SIP for Dallas County was published in the Federal Register on December 29, 1983 (48 FR 57339). The State has submitted final lead control plans for the Dallas area, submitted in letters dated April 6, 1984 and July 16, 1984. The final lead control plan is described below, along with EPA's final action on the Dallas County part of the Texas lead SIP.

II. Description of the Lead Control Plan for Dallas County

In the State's April 6, 1984 letter to EPA, Texas submitted to EPA a final control plan for one of the secondary lead smelters in Dallas County, RSR Corporation (Murph Metals) facilities. The final control plan includes a final Agreed Court Order 83-5680 of the 95th District Court in Dallas County (between the City of Dallas and the State of Texas vs. RSR Corporation and Murph Metals, Inc.), applicable to the RSR facility in Dallas. In the State's May 10, 1984 letter to EPA, Texas submitted to EPA a final control plan for the other secondary lead smelter in Dallas County, Dixie Metals, Inc. The letter also included final Texas Air Control Board (TACB) regulations for Dallas County applicable to secondary lead smelters in Dallas. The RSR lead control plan, the Agreed Court Order for RSR, the Dixie lead control plan, and the Dallas County lead smelter regulations are discussed in detail in EPA's "Evaluation Report for the Texas Lead SIP for the Dallas Area," dated November 1983, which is available for review at the addresses listed in the ADDRESSES section of this notice. This notice will discuss in general the State's final lead control plan for RSR and Dixie, will discuss the public comment received, and will outline EPA's final action concerning the Dallas County part of the Texas lead SIP.

A. Control Plan for RSR Corporation

In a letter dated April 6, 1984, Texas submitted a final lead SIP revision for the RSR Corp. facility in Dallas. The SIP revision was an addition to the Texas lead SIP and superseded the previously submitted modeling analyses and demonstration of attainment which TACB had submitted to EPA. The submittal included:

(1) A demonstration of attainment for the area around the RSR smelter,

(2) A lead emission inventory for 1982 for the facility,

(3) A lead emission inventory for maximum operations for the facility,

(4) Estimates of mobile source emissions of lead for the area around RSR,

(5) A description of additional control measures and emission limitations required for the facility,

(6) A lead emission inventory for maximum operations with additional control measures applied for the facility,

(7) A summary of the predicted maximum ambient air quarterly lead concentrations around RSR after additional controls are implemented, as predicted by modeling,

(8) Maps of the plant layout and,

(9) A copy of the Consent Order for RSR which was approved by the Dallas District Court on October 17, 1983.

The final control plan and Consent Order 84-2 for RSR was reviewed by the TACB Regulations Committee on February 17, 1984, and approved by the members of the Texas Air Control Board on February 17, 1984. EPA has been parallel-processing the RSR lead control plan to allow EPA's final action on the control plan to be published by August 1, 1984 (as required by the court

settlement agreement of July 26, 1983[1], concerning EPA's action on the approval/disapproval and promulgation of lead SIP's for all the States in the U.S.A.). EPA received the final RSR control plan as submitted by the Governor of Texas, which included the Dallas District Court Consent Order of October 1983, which is in effect and requires all lead control measures and emission limitations to be implemented at the RSR smelter facility no later than June 1, 1984.

As explained in EPA's proposed rulemaking, modeling of the RSR facility has been done by Texas and EPA. The TACB using the Texas Climatological Model (TCM) predicted attainment of the lead NAAQS around the smelter, at full production, after the additional lead control measures are implemented. Details of the modeling are provided in EPA's November 1983 Evaluation Report.

The TACB lead control plan for RSR and the Agreed Court Order provide for the implementation of control technology at the smelter to control lead emissions from both point sources and fugitive sources at RSR. In general, the control measures can be described as: (a) Requiring specific lead emission rate limitations for the 4 stacks at the RSR facility; (b) requiring building enclosure by the use of double wind curtains or solid doors; (c) requiring that negative pressure be maintained on the smelter and batch house buildings at all times and that the building ventilation be ducted to a baghouse; (d) requiring paving or covering with vegetation of most of the outside plant areas; (e) prohibiting the outdoor storage of lead bearing materials; (f) and requiring washing of truck transport tires, and wetting of work areas. Texas has demonstrated that the required control measures and emission limitations are adequate to demonstrate attainment around the RSR facility, and, with full implementation of the control measures and emission limitations required by the agreed Court Order for RSR, the lead NAAQS will continue to be maintained even if the facility operates under maximum production conditions. Specific details of the lead control measures and emission limitations are provided in EPA's Evaluation Report.

B. Operations at the RSR—Dallas Smelter

Currently at the RSR smelter, the lead production facilities are not operating due to the requirements of a TACB and City of Dallas Court Order, No. 83-5680, entered in the 95th Judicial District Court of Dallas County, Texas. The Court Order required RSR, as of February 29, 1984, to cease all lead operations at the facility until the smelter could comply with the dates for implementation of the Court Order of October 17, 1983, which required implementation of certain lead control measures by February 29, April 1, and June 1, 1984. The smelter had notified TACB that due to a recent Federal Trade Commission (FTC) ruling against RSR, the company was required to attempt to diversify itself of the Dallas smelter, and RSR was delaying the final implementation of certain lead control measures until the outcome of the FTC ruling as to whether RSR would have to sell the Dallas smelter. TACB and the City of Dallas requested closure of the RSR smelter on February 29, 1984, until the sale of the smelter was finalized, and until all commitments to install lead control measures were met by either RSR, or the new owners of the smelter. The February Court Order, No. 83-5680, requires that all lead control measures must be implemented by June 1, 1984, (as required by the October Court Order), or, implemented before the smelter is allowed to reopen and operate the lead producing parts of the facility. In May 1984, the FTC did decide that RSR must sell the smelter to the only group which made an offer for purchase, and the sale has been finalized and approved by the FTC. Regardless, before the smelter is allowed to begin operation again, even though under new management, the control measures will be implemented as required by the Texas lead SIP for the RSR smelter in Dallas. Currently the NAAQS for lead is being maintained in the areas around the RSR smelter. The Texas lead SIP had demonstrated that with the implementation of the additional lead control measures for the smelter that are required by the SIP, the NAAQS for lead will continue to be maintained around the smelter during the operation of the facility in the upcoming years.

C. Control Plan for Dixie Metals

In a letter dated July 16, 1984, Texas submitted a final SIP revision for the Dixie Metals facility in Dallas. The SIP revision was an addition to the Texas lead SIP and superseded the previously submitted modeling analyses and demonstration of attainment which TACB had submitted to EPA. The submittal included:

(1) A demonstration of attainment for the area around the Dixie smelter,

(2) A lead emission inventory for 1982 for the facility,

(3) A lead emission inventory for maximum operations for the facility,

(4) Estimates of mobile source emissions of lead for the area around Dixie,

(5) A description of additional control measures and emission limitations required for the facility,

(6) A lead emission inventory for maximum operations with additional control measures applied for the facility,

(7) A summary of the predicted maximum ambient air quarterly lead concentrations around Dixie after additional controls are implemented, as predicted by TCM modeling.

(8) Maps of the plant layout and,

(9) A copy of final Texas general regulations for secondary lead smelters located in Dallas County.

The Dixie final control plan and Dallas County smelter regulations were reviewed by the TACB Regulations Committee on May 18, 1984, and approved by the members of the Texas Air Control Board on May 18, 1984. The Governor of Texas has submitted to EPA the final Dixie control plan and the final Dallas County smelter regulations, which require all lead control measures and emission limitations to be implemented at the Dixie smelter no later than June 30, 1985.

As explained in EPA's proposed rulemaking, modeling of the Dixie facility has been done by Texas and EPA. Both modeling analyses predicted attainment of the lead NAAQS around the smelter, at full production, after the additional lead control measures are implemented. Details of the TACB and EPA modeling are provided in EPA's November 1983 Evaluation Report.

The TACB final lead control plan for Dixie and the final secondary lead smelter regulations for Dallas County provide for the implementation of reasonably available control technology at the smelter to control lead emissions from both point sources and fugitive sources at Dixie. In general, the control measures for Dixie are conceptually similar to the control measures for RSR, except that since the Dixie facility is smaller, and has less plant area and fewer buildings, the list of Dixie control measures is not as lengthy as the RSR requirements, although Texas has demonstrated that similar emission reductions are being obtained. The major control measures which are identical for Dixie as for RSR are: The same lead emission rate limitations for Dixie's stacks, the same requirements for smelter building enclosure and maintenance of negative pressure on the

[1] Order and Settlement Agreement (dated July 26, 1983), *Natural Resources Defense Council, Inc. (NRDC)* v. *William D. Ruckelshaus*, (D.D.C.) No. 82-2137.

smelter building, and the same requirements for paving and sweeping, or covering with vegetation of the plant property. Also, specific to the Dixie facility, there are outside storage bins and an outside battery saw which will be required to be fully enclosed to prevent fugitive emissions. Texas has demonstrated that the required control measures and emission limitations are adequate to demonstrate attainment around the Dixie facility. The control measures are required by the Dallas County Regulations, revisions to § 113, applicable to lead smelters in Dallas County, which were adopted by the Texas Air Control Board on May 18, 1984. The TACB regulations will require full implementation of the controls by June 30, 1985. With full implementation of the control measures and emission limitations at Dixie, the lead NAAQS will continue to be maintained even if the facility operates under maximum production conditions. Specific details of the lead control measures and emission limitations are provided in EPA's Evaluation Report.

D. Public Comment on EPA's Proposed Action

The City of Dallas submitted the only comment on EPA's December 29, 1983 (48 FR 57339) proposed action on the Texas lead control State Implementation Plan (SIP) for Dallas County. The City's comment letter was dated February 27, 1984, and concerned the Texas Air Control Board (TACB) lead control plan for Dixie Metals Company in Dallas. The letter requested that the same lead control measures be applied to Dixie Metals as were being required of the RSR facility in Dallas. The City recommended that the control measures for Dixie include: (1) Enclosure of the smelter building and maintenance of negative pressure with the exhaust routed to a baghouse, (2) enclosure of the battery wrecking, storage and batch preparation areas with air flow vented to a baghouse, (3) no outdoor storage of lead bearing materials except for lead ingots, unbroken batteries and material in closed containers, (4) all transportation of lead bearing materials outside of a building should be within closed containers or tarped vehicles, (5) all work areas in smelter building and battery wrecker area should be kept wet to minimize dust, (6) the wheels of all vehicles leaving the plant area should be washed, (7) all spills on plant property should be cleaned up quickly, all packing and storage areas should be paved and vegetation should be grown on all unpaved areas, and (8) an automatic restart provision should be installed and maintained for the plant's baghouse fans. The City also strongly recommended that no exemptions from installation of control measures be allowed for the Dixie facility based on the smelter not exceeding a certain production rate. The City also emphasized that since recent monitoring data for monitors around Dixie have shown values at or very close to the NAAQS for lead (during periods of operations at reduced capacity at the smelter), the Dixie smelter should be required to adhere to the same type controls imposed upon RSR.

EPA has reviewed the City of Dallas comments concerning the Dixie lead control plan and the Dallas County Smelter Regulations. EPA believes that the concerns and suggestions addressed by the City of Dallas are addressed by the TACB's final Dixie lead control plan, as adopted by the Texas Air Control Board on May 18, 1984. The State is requiring essentially the same control measures to be implemented at Dixie as at RSR, with the same lead emission limitations for the stacks at Dixie as required for the stacks at RSR. Each of the City's suggested control measures for Dixie have been incorporated into the Dixie lead control plan and the Dallas County smelter regulations.

In the regulations, the State has *not* provided for the possibility of an exemption from the installation of control measures at the Dixie plant, nor provided for an exemption due to limited production levels at a smelter in Dallas County. Therefore, all of the City of Dallas concerns and suggestions have been addressed by TACB in the Dixie lead control plan that EPA is approving today.

E. SIP for the Remainder of Dallas County

The State has submitted all available monitoring information for Dallas County which shows that the lead NAAQS has not been exceeded throughout the County except in 1982 near the RSR facility. TACB has validated that no other lead point sources are operating in Dallas County except for the two secondary lead smelters for which control plans have been submitted (the State provided to EPA in a January 29, 1982 letter that a secondary smelter named ESB had permanently shut-down and was only being used as a warehouse). Therefore, EPA's lead phasedown-in-gas program will continue to keep the lead NAAQS from being violated throughout Dallas County due to mobile source emissions of lead. Since any new industrial sources of lead seeking to locate in Dallas County will be required to undergo TACB new source review, which requires that new sources must demonstrate that the NAAQS's will be maintained if the source is allowed to operate in an area, no specific lead control plan is required of TACB for the remainder of Dallas County. Implementation of the requirements of the general Texas lead SIP along with implementation of the lead control plans for the RSR and Dixie facilities will ensure that the lead NAAQS is maintained throughout Dallas County.

In addition to the past monitoring information for Dallas County which the State has submitted to EPA, the TACB has agreed with EPA to operate a number of lead monitoring sites throughout Dallas County. As mentioned in the proposed rulemaking, EPA has approved TACB's State and Local Air Monitoring Stations (SLAMS) in Dallas, and the National Air Monitoring Stations (NAMS) in Dallas for lead. The Texas SLAMS and NAMS sites for lead in Dallas County are adequate to fully monitor the attainment and maintenance of the lead NAAQS throughout the County of Dallas.

On October 13, 1983, the United States Court of Appeals for the District of Columbia Circuit remanded portions of EPA's stack height regulations (40 CFR 51.1, 51.12 and 51.18 (1983)) to the Agency for reconsideration. *Sierra Club v. EPA*, 719 F.2d 436, *cert. denied sub nom. Alabama Power Co. v. Sierra Club*, No. 83-1429 (U.S. July 2, 1984). The stack heights concerned in this SIP action, however, are below the de minimus height of 65 meters. The de minimus provision of EPA's stack height regulations (40 CFR 51.1(ii)(1) (1983)) was not challenged in the Court of Appeals. Accordingly, in EPA's opinion the raising of the baghouse stacks at the RSR facility to a height of 100 feet (approximately 113 feet below the de minimus height specified in EPA's regulations) is approvable.

EPA'S Action

EPA has evaluated the Dallas part of the Texas lead SIP and has determined that it meets the requirements of section 110(a) of the Clean Air Act and 40 CFR Part 51, Subparts B and E. EPA believes that the Dallas part of the SIP is adequate to attain and maintain the lead NAAQS's throughout Dallas, with the implementation of the Agreed Court Court Order for RSR, and the Dallas County smelter regulations applicable to the Dixie facility. EPA is approving the Dallas part of the State's lead SIP, since the State has submitted to EPA final control plans for the RSR and Dixie lead smelters, and final smelter regulations for Dallas County. Specifically EPA is

approving as part of the Texas Lead SIP the following TACB regulations for lead smelters in Dallas County:

Section 113.81—Maintenance and operation of control equipment,
Section 113.83—Storage of lead containing materials,
Section 113.85—Fugitive emissions from lead processes,
Section 113.87—Battery or lead reclaiming operations,
Section 113.88—Lead emission limits for reverberatory furnaces and blast furnaces,
Section 113.121(b)—Compliance with other rules,
Section 113.122(b)—Dates for control plan submission and for final compliance,
Section 113.123(b)—Control plan procedure, and
Section 113.124(b)—Reporting procedure.

EPA is taking a no-action on sections 113.113 and 113.114 since these two sections allow approval by TACB's Executive Director of alternate means of control and/or emission reductions if requested by the affected sources, and if the controls or reductions are equivalent. All alternate lead control measures approved by TACB must be submitted by Texas to EPA as a SIP revision, and be reviewed and approved by EPA, as required by the CAA, before the alternative control measures become part of the Federally approved Dallas lead SIP If the Dallas County regulations are revised in the near future, EPA will review the changes and notify the public of any revisions. EPA will address the approvability of sections 113.113 and 113.114 of the Dallas County Smelter Regulations in a future Federal Register notice. EPA finds that the general Texas lead SIP that has been approved previously by EPA contains regulations that satisfy general requirements not specifically mentioned in the Dallas County lead SIP, and these general regulations can be incorporated into the Dallas County lead SIP.

This action is effective immediately since this action is only approving the State Regulations for Dallas County and the TACB Board Order for the RSR secondary smelter, which have been effective since February 17, 1984 for the Regulations, and October 17, 1983 for the TACB Board Order. Therefore, making EPA's approval action effective immediately will not add or change requirements applicable to the Dallas County smelters.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 15, 1984. This action may not be challenged later in proceedings to enforce its requirements. [See Section 307(b)(2).]

Under Executive Order 12291, today's action is not "Major" It has been submitted to the Office of Management and Budget for review.

Incorporation by reference of the State Implementation Plan for the State of Texas was approved by the Director of the Federal Register Office on July 1, 1982.

This notice of final rulemaking is issued under the authority of Sections 110(a) and 301 of the Clean Air Act, as amended, 42 U.S.C. 7410(a) and 7601.

Lists of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen oxides, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Incorporation by reference and Intergovernmental relations.

Dated: July 31, 1984.

William D. Ruckelshaus

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart SS—Texas

§ 52.2270 [Amended]

1. Section 52.2270 is amended by adding paragraphs (c) (53) and (54) as follows:

* * * * *

(c) * * *

(53) Revisions to the Texas State Implementation Plan for lead for Dallas County (concerning a lead control plan for the area around the secondary lead smelter in West Dallas), were submitted to EPA on April 6, 1984, by the Governor of Texas, as adopted by the Texas Air Control Board on February 17, 1984.

(54) Revisions to the Texas State Implementation Plan for lead for Dallas County (concerning a lead control plan for the area around the secondary lead smelter in South Dallas), and revisions to Regulation III, chapter 113, Subchapter B, Lead Smelters in Dallas County, were submitted to EPA on July 16, 1984, by the Governor of Texas, as adopted by Texas Air Control Board on May 18, 1984. No action is taken on Regulation III, Sections 113.113 and 113.114.

2. Section 52.2279 is amended by revising the table entry for "Metropolitan Dallas-Fort Worth Intrastate (Dallas County only)" as follows and by removing footnote (f.):

§ 52.2279 Attainment dates for national standards.

Air quality control region	Pollutant	Lead
• • •	• • •	• • •
Metropolitan Dallas-Fort Worth Instrastate (Dallas County Only).	• • •	June 30, 1985.
• • •	• • •	• • •

Footnote f [Removed].

* * * * *

[FR Doc. 84-21643 Filed 8-14-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 86

[AMS-FRL-2653-1]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Gaseous Emission Regulations for 1985 and Later Model Year Light-Duty Trucks and Gaseous and Evaporative Emission Regulations for 1985 and Later Model Year Heavy-Duty Engines

AGENCY: Environmental Protection Agency.

ACTION: Denial of petition for reconsideration.

SUMMARY: This document announces EPA's denial of a petition for reconsideration by American Motors Corporation regarding useful life requirements applicable to emissions certification for light-duty trucks. These requirements were contained in regulations published on November 16, 1983 (48 FR 52170). The denial of AMC's petition was signed by the EPA Administrator on June 15, 1984.

ADDRESS: A copy of the petition and EPA's response may be obtained from the Central Docket Section (LE-131A), West Tower Lobby, 401 M Street SW., Washington, DC 20460, ATTN: Docket A-81-11.

FOR FURTHER INFORMATION CONTACT: Gregory J. Dana, Office of Mobile Sources, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-7647

Note.—Under section 307(b)(1) of the Clean Air Act, EPA hereby finds that this action is of national applicability. Accordingly, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication. Under section 307(b)(2) of the Act, the decision which is the subject of this notice may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

Dated: August 7, 1984.

Sheldon Meyers,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 84-21649 Filed 8-14-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[Gen. Docket No. 83-1009; FCC 84-400]

Amendment Relating to Multiple Ownership of AM, FM and Television Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule; Stay of effective date.

SUMMARY: In a *Report and Order* in General Docket 83-1009, released August 3, 1984, the Commission amended its broadcast station multiple ownership rules to permit a single entity to have cognizable ownership interests in up to 12 AM, 12 FM and 12 TV stations. This Order stays the effective date of the change in the television rule. The change in the television rule, from 7 stations to 12 stations, will now not become effective until 60 days after reconsideration or until April 1, 1985, whichever is later. This action was taken in order to assure adequate time for reconsideration before the rule change went into effect.

EFFECTIVE DATE: August 9, 1984.

FOR FURTHER INFORMATION CONTACT: William H. Johnson, Mass Media Bureau (202) 632-6460.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio and television broadcasting.

Order

In the matter of amendment of § 73.3555 [formerly §§ 73.35, 73.240, and 73.633] of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations; Gen. Docket No. 83-1009, (8-9-84; 49 FR 31877).

Adopted: August 9, 1984.

Released: August 9, 1984.

By the Commission.

1. In a *Report and Order* in this proceeding released August 3, 1984, the Commission amended its multiple broadcast station ownership rules. These rules, which had prohibited any entity from owning or holding cognizable interests in more than seven AM stations, seven FM stations, and seven TV stations, were amended to permit a maximum of twelve AM, twelve FM and twelve TV stations. The rule changes were to be effective 30 days from the date of their publication in the Federal Register and, unless a prior Commission decision to the contrary was reached, the rules were to "sunset" at the end of six years.

2. The Commission is now in receipt of a letter from several members of Congress requesting that the Commission suspend the implementation of that part of its decision relating to television stations to permit review and reconsideration of the issues related thereto.

3. Unlike many rule changes, those involved here are not fully self-implementing. That is, notwithstanding the rule changes that have been adopted, no change in station ownership may take place without the filing of a specific application and receipt of the Commission's consent to the license assignment or transfer of license control. As a consequence of this we are in a particularly advantageous position to monitor and control the implementation of the rule changes involved in this proceeding. We are aware that concerns have been expressed by the Congress and we are sensitive to those concerns. Moreover, we recognize the desirability of affording a full opportunity for reconsideration of the decision. Thus, we have decided not to proceed with the implementation of the decision insofar as it relates to television station ownership. It is that portion of the decision that has raised the greatest concern and it is our belief that a temporary stay of the television portion of the rule change will ultimately benefit the public interest by assuring adequate time for Commission reconsideration. This is a procedure that has been followed on previous occasions where strong Congressional interest was expressed. See, e.g. *Fourth Report and Order in Docket 11279,* 15 FCC 2d 466 (1968) (delaying, in response to expressed Congressional concerns, implementation of rules authorizing subscription television stations).

4. Accordingly, IT IS ORDERED, That the portion of the Commission's *Report and Order in Docket 83-1009* amending the rules relating to television broadcast station ownership (§ 73.3555(d)) IS STAYED until 60 days after reconsideration or until April 1, 1985, whichever is later.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84-21674 Filed 8-14-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 73 and 74

Oversight of the Radio and TV Broadcast Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends broadcast regulations in 47 CFR Parts 73 and 74. Amendments are made to combine Subparts A, B and C (Experimental TV, Experimental Facsimile and Developmental Broadcast Stations respectively) into one subpart designated Subpart A and titled Experimental Broadcast Stations. Inaccuracies are corrected, language and rule requirements are contemporized, amendments to delete certain requirements that are no longer necessary are made and editorial revisions are executed as needed for purposes of clarity and ease of understanding.

EFFECTIVE DATE: August 15, 1984.

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

FOR FURTHER INFORMATION CONTACT: Steve Crane, Mass Media Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Parts 73 and 74

Radio broadcasting.

Order

In the matter Oversight of the Radio and TV Broadcast Rules.

Adopted: August 1, 1984.

Released: August 9, 1984.

By the Chief, Mass Media Bureau.

1. Subparts A, B and C of Part 74 contain the rules for the licensing and operation of experimental and developmental broadcast stations. Such stations are licensed for the purpose of conducting experimental and developmental research in potentially new and improved broadcast technologies. Subpart A is designated Experimental TV Broadcast stations; B is Experimental Facsimile Broadcast stations; and C is Developmental (Radio) Broadcast stations.

2. The licensing and operational procedures described in the three subparts are virtually identical. For the most part, the differences in regulatory text in the three subparts are merely the identifying terms "television" for Subpart A, "facsimile" for Subpart B and "developmental" for Subpart C.

3. As presently constituted, the three subparts must be revised separately in

every Commission Order affecting rules pertaining to each. For example, recent rule changes pertaining to posting of station and operator licenses; station records; and operator requirements prompted word-for-word amendments in each subpart. This requires trebling amendment preparation, rule writing and editing functions, thereby increasing substantially the potential for errors or omissions in our rulemaking documents, which subsequently must be corrected. There are also increased publishing costs and a parallel cost increase in staff handling and preparation functions.

4. Since the three separate subparts present virtually the same regulatory requirements for experimental television, experimental facsimile and developmental stations, it is clear that one subpart containing all experimental broadcast application and operation requirements would better serve our purpose and that of the industry.

5. Therefore, we will herein retitle Subpart A "Experimental Broadcast Stations" and with only modest revisions, create a single subpart that embraces all classes of experimental and developmental station operation. Subparts B and C will be removed. The results will streamline the Part 74 rules and the future housekeeping function in this Part; speed administrative handling and thereby lower administrative costs; focus the rule users' attention on one location in the body of regulations; and lower our rules' publishing costs.

6. As the three separate sections from the three subparts are reconciled and recreated as one single new section, certain modifications have been made, as necessary. Since most of these rules have long existed unreviewed and unrevised, this Order will, where needed, contemporize the regulatory language, modify requirements where conformance to changes has been neglected, restructure for ease of understanding, and relax requirements where possible. (For example, relaxation of the Rebroadcast section simply conformed it to the less stringent requirements of the Rebroadcast rule in Part 73, which was changed in 1972).

7 The Alphabetical Index of Part 74 is revised to reflect these changes and is made a part of this Order as Appendix B. All other rules' amendments are included in Appendix A of this Order.

8. No substantive change are made herein which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

9. These amendments are implemented by authority designated by the Commission to the Chief, Mass Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rule making, effective date provisions and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B).

10. Since a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act does not apply.

11. Therefore, it is ordered, That pursuant to sections 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended, and §§ 0.61 and 0.283 of the Commission's Rules, Parts 73 and 74 of the FCC Rules and Regulations are amended as set forth in the attached appendices, effective on the date of publication in the Federal Register.

12. For further information on this *Order*, contact Steve Crane, (202) 632-5414, or John Reiser, (202) 632-9660.

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

Appendix A

1. 47 CFR 73.1010 is amended by revising paragraph (e) to read as follows:

§ 73.1010 Cross reference to rules in other parts.

* * * * *

(e) Part 74 (Volume III), Experimental, Auxiliary, and Special Broadcast, and Other Program Distributional Services, including:

(1) Subpart A, Experimental Broadcast Stations;

(2) Subpart D, Remote Pickup Broadcast Stations;

(3) Subpart E, Aural Broadcast Auxiliary Stations;

(4) Subpart F, Television Auxiliary Broadcast Stations;

(5) Subpart G, Low Power TV and TV Translator Stations;

(6) Subpart H, Low Power Auxiliary Stations;

(7) Subpart I, Instructional Television Fixed Service;

(8) Subpart L, FM Broadcast Translator Stations and FM Broadcast Booster Stations.

2. 47 CFR 73.3500 is amended by revising the titles of Forms 309, 310 and 311 to read as follows:

§ 73.3500 Application and report forms.

* * * * *

Form No.	Title
*	*
309	Application for Authority to Construct or Make Changes in an International or Experimental Broadcast Station.
310	Application for an International or Experimental Broadcast Station License.
311	Application for Renewal of an International or Experimental Broadcast Station License.

* * * * *

3. 47 CFR 73.3533 is amended by revising paragraph (a)(2) to read as follows:

§ 73.3533 Application for construction permit or modification by construction permit.

(a) * * *

(2) FCC Form 309, "Application for Authority to Construct or Make Changes in an Existing International or Experimental Broadcast Stations."

* * * * *

4. 47 CFR 73.3536 is amended by revising paragraph (b)(2) to read as follows:

§ 73.3536 Application for license to cover construction permit.

* * * * *

(b) * * *

(2) FCC Form 310, "Application for an International or Experimental Broadcast Station License."

* * * * *

5. 47 CFR 73.3539 is amended by revising paragraph (a) to read as follows:

§ 73.3539 Application for renewal of license.

(a) Unless otherwise directed by the FCC, an application for renewal of license shall be filed not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed, except that applications for renewal of license of an experimental broadcast station shall be filed not later than the first day of the second full calendar month prior to the expiration date of the license sought to be renewed. If any deadline prescribed in this paragraph falls on a nonbusiness day, the cutoff shall be the close of business of the first full business day thereafter.

* * * * *

PART 74—[AMENDED]

Subpart A—[Amended]

6. 47 CFR Part 74 is amended by revising the title headnote of Subpart A to read "Subpart A—Experimental Broadcast Stations."

Subpart B—[Removed and reserved]

7 47 CFR Part 74 is amended by removing and reserving Subpart B—Experimental Facsimile Broadcast Stations, consisting of §§ 74.201 through 74.284.

Subpart C—[Removed and Reserved]

8. 47 CFR Part 74 is amended by removing and reserving Subpart C—Developmental Broadcast Stations, consisting of §§74.301 through 74.384.

9. 47 CFR 74.1 is amended by revising paragraph (b) to read as follows:

§ 74.1 Scope.

* * * * *

(b) Rules in Part 74 which apply exclusively to a particular service are contained in that service subpart, as follows: Experimental Broadcast Stations, Subpart A; Remote Pickup Broadcast Stations, Subpart D; Aural Broadcast STL and Intercity Relay Stations, Subpart E; TV Auxiliary Broadcast Stations, Subpart F; Low Power TV and TV Translator Stations, Subpart G; Low Power Auxiliary Stations, Subpart H; Instructional TV Fixed Service, Subpart I; FM Broadcast Translator Stations and FM Broadcast Booster Stations, Subpart L.

10. 47 CFR 74.15 is amended by revising paragraph (a) to read as follows:

§ 74.15 Station license period.

(a) Licenses for experimental broadcast stations will be issued for a one year period.

* * * * *

11. 47 CFR 74.18 is amended by revising paragraph (e) to read as follows:

§ 74.18 General operator requirements.

* * * * *

(e) Persons who perform any operating or transmitter technical duties licensed under Subparts A, G and L must hold a commercial radio operator license (any class, unless otherwise endorsed).

12. 47 CFR 74.101 is revised to read as follows:

§ 74.101 Experimental broadcast station.

The term "experimental broadcast station" means a station licensed for experimental or developmental transmission of radio telephony, television, facsimile, or other types of telecommunication services intended for reception and use by the general public.

13. 47 CFR 74.102 is amended by revising the section title and the rule text to read as follows:

§ 74.102 Uses of experimental broadcast stations.

A license for an experimental broadcast station will be issued for the purposes of carrying on research and experimentation for the development and advancement of new broadcast technology, equipment, systems or services which are more extensive or require other modes of transmission than can be accomplished by using a licensed broadcast station under an experimental authorization (see § 73.1510).

14. 47 CFR 74.103 is amended by revising paragraphs (a) and (d) to read as follows:

§ 74.103 Frequency assignment.

(a) Frequencies allocated to broadcasting and the various categories of auxiliary stations, in the FCC's Table of Frequency Allocations (Part 2 of this chapter), may be assigned respectively to experimental broadcast and experimental auxiliary stations.

* * * * *

(d) In a case of important experimentation which cannot be feasibly conducted on frequencies allocated to broadcasting or the various categories of auxiliary stations, the FCC may authorize an experimental station of any class to operate on other frequencies upon a satisfactory showing of the need therefore and a showing that the proposed operation can be conducted without causing harmful interference to established services. However, experimental operation which looks toward the development of radio transmitting apparatus or the rendition of any type of regular service using such frequencies will not be authorized prior to a determination by the FCC that the development of such apparatus or the rendition of such service would serve the public interest.

15. 47 CFR 74.112 is amended by revising the introductory paragraph to read as follows:

§ 74.112 Supplementary statement with application for construction permit.

A supplementary statement shall be filed with, and made a part of, each application for construction permit for any experimental broadcast station confirming the applicant's understanding:

* * * * *

16. 47 CFR 74.113 is amended by revising the introductory test of paragraph (a) and paragraph (a)(7) to read as follows:

§ 74.113 Supplementary reports with application for renewal of license.

(a) A report shall be filed with each application for renewal of experimental broadcast station license which shall include a statement of each of the following:

* * * * *

(7) Program of further developments in broadcasting.

* * * * *

17. 47 CFR 74.131 is amended by revising the introductory text of paragraph (a), paragraph (a)(1); paragraphs (b) and (c) to read as follows:

§ 74.131 Licensing requirements, necessary showing.

(a) An applicant for a new experimental broadcast station, change in facilities of any existing station, or modification of license is required to make a satisfactory showing of compliance with the general requirements of the Communications Act of 1934, as amended, as well as the following:

(1) That the applicant has a definite program of research and experimentation in the technical phases of broadcasting which indicates reasonable promise of substantial contribution to the developments of the broadcasting art.

* * * * *

(b) A license of an experimental broadcast station will not authorize exclusive use of any frequency. In case interference would be caused by simultaneous operation of stations licensed experimentally, such licensees shall endeavor to arrange satisfactory time division. If such agreement cannot be reached, the FCC will determine and specify the time division.

(c) A license for an experimental broadcast station will be issued only on the condition that no objectionable interference to the regular program transmissions of broadcast stations will result from the transmissions of the experimental stations.

18. 47 CFR 74.132 is revised to read as follows:

§ 74.132 Power limitations.

The license for experimental broadcast stations will specify the maximum authorized power. The operating power shall not be greater than necessary to carry on the service and in no event more than 5 percent above the maximum power specified. Engineering standards have not been established for these stations. The efficiency factor for the last radio stage of transmitters employed will be subject

to individual determination but shall be in general agreement with values normally employed for similar equipment operated within the frequency range authorized.

19. 47 CFR 74.134 is revised to read as follows:

§ 74.134 Multiple ownership.

No persons (including all persons under common control) shall control, directly or indirectly, two or more experimental broadcast stations unless a showing is made that the program of research requires a licensing of two or more separate stations.

20. 47 CFR 74.151 is amended by revising the introductory paragraph to read as follows:

§ 74.151 Equipment changes.

The licensee of an experimental broadcast station may make any changes in the equipment that are deemed desirable or necessary provided:

* * * * *

21. 47 CFR 74.161 is revised to read as follows:

§ 74.161 Frequency tolerances.

The departure of the carrier frequency or frequencies of an experimental broadcast station must not exceed the tolerance specified in the instrument of authorization. For modes of transmission that do not have a resting or center carrier frequency, the occupied bandwidth of the station transmissions may not exceed that specified in the instrument of authorization.

22. 47 CFR 74.162 is revised to read as follows:

74.162 Frequency monitors and measurements.

The licensee of an experimental broadcast station shall provide the necessary means for determining that the frequency of the station is within the allowed tolerance. The date and time of each frequency check, the frequency as measured, and a description or identification of the method employed shall be entered in the station log. Sufficient observations shall be made to insure that the assigned carrier frequency is maintained within the prescribed tolerance.

23. 47 CFR 74.163 is revised to read as follows:

§ 74.163 Time of operation.

(a) Unless specified or restricted hours of operation are shown in the station authorization, experimental broadcast stations may be operated at any time and are not required to adhere to a regular schedule of operation.

(b) The FCC may limit or restrict the periods of station operation in the event interference is caused to other broadcast or nonbroadcast stations.

(c) The FCC may require that an experimental broadcast station conduct such experiments as are deemed desirable and reasonable for development of the type of service for which the station was authorized.

24. 47 CFR 74.165 is amended by revising paragraph (b) to read as follows and by removing the Note following paragraph (b).

§ 74.165 Station and operator licenses; posting of.

* * * * *

(b) The original license of each station operator shall be posted at the place where he is on duty. However, if the original license of a station operator is posted at another radio transmitting station in accordance with the rules governing that class of station and is available there for inspection by an authorized FCC representative, or if the station operated is licensed for portable or mobile operation, a verification card (Form 758–F) is acceptable in lieu of the posting of such license.

* * * * *

25. 47 CFR 74.181 is revised in its entirety to read as follows:

§ 74.181 Station records.

(a) The licensee of each experimental broadcast station must maintain adequate records of the operation, including:

(1) Information concerning the nature of the experimental operation and the periods in which it is being conducted.

(2) Information concerning any specific data requested by the FCC.

(b) Station records must be retained for a period of two years.

26. 47 CFR 74.182 is revised in its entirety to read as follows:

§ 74.182 Program service and charges.

(a) The licensee of an experimental broadcast station may transmit program material only when necessary to the experiments being conducted, and no regular program service may be broadcast unless specifically authorized.

(b) The licensee of an experimental broadcast station may make no charges nor ask for any payment, directly or indirectly, for the production or transmission of any programming or information used for experimental broadcast purposes.

27 47 CFR 74.183 is revised to read as follows:

§ 74.183 Station identification.

Each experimental broadcast station shall make aural or visual announcements of its call letters and location at the beginning and end of each period of operation, and at least once every hour during operation.

28. 47 CFR 74.184 is revised to read as follows:

§ 74.184 Rebroadcasts.

(a) The term "rebroadcast" means reception by radio of the programs or other transmissions of a broadcast station, and the simultaneous or subsequent retransmission of such programs or transmissions by a broadcast station.

(1) As used in this section, the word "program" includes any complete program or part thereof.

(2) The transmission of a program from its point of origin to a broadcast station entirely by common carrier facilities, whether by wire line or radio, is not considered a rebroadcast.

(3) The broadcasting of a program relayed by a remote broadcast pickup station is not considered a rebroadcast.

(b) No licensee of an experimental broadcast station may retransmit the program of another U.S. broadcast station without the express authority of the originating station. A copy of the written consent of the licensee originating the program must be kept by the licensee of the experimental broadcast station retransmitting such program and made available to the FCC upon request.

Appendix B

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(Secs. 4, 303, 48 Stat., as amended, 1066, 1032; 47 U.S.C. 158, 303)

[FR Doc. 84-21453 Filed 8-14-84; 8:45 am]

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47 CFR Part 73

[MM Docket No. 83-1377; FCC 84-298]

Amendment To Classify Certain Changes In Television and FM Facilities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action revises §§ 73.3571, 73.3572 and 73.3573 of the Commission's Rules to classify certain changes in television and FM facilities as minor changes, delete changes in the primary station for television and FM translator stations from the major change classification, and substitute a 50% benchmark with respect to permissible changes in ownership in a pending AM, FM or television application. This action is taken to expedite the processing of applications and will reduce burdens on both the applicant and the processing staff.

EFFECTIVE DATE: July 1, 1984.

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

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 632-6485.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio, Reporting and recordkeeping requirements, Television.

First Report and Order

In re Matter of Revision of §§ 73.3571 73.3572 and 73.3573 of the Commission's Rule; MM Docket No. 83.1377.

Adopted: June 27, 1984.

Released: August 10, 1984.

By the Commission: Commissioner Rivera dissenting in part and issuing a statement at a later date.

1. The Commission has before it a *Notice of Proposed Rulemaking* in this proceeding (49 FR 1252, published Janaury 10, 1984). In the *Notice* we proposed revision of §§ 73.3572 and 73.3573 of the Rules concerning major changes in the facilities of authorized or proposed television and FM stations as well as television and FM translator stations.[1] Specifically, we proposed defining any change in power, antenna location and/or height above average terrain as a minor change. In regard to FM translator stations, we proposed deletion of changes in the primary station from the major change classification. We recognized that these revisions would also affect the classification of major and minor amendments to pending applications under §§ 73.3572(b) and 73.3573(b) of the Rules. Finally, we proposed revising §§ 73.3571(b), 73.3571(j)(2), 73.3572(b) and 73.3573(b) of the Rules in regard to ownership changes on pending applications.[2]

[1] At the outset, we would like to emphasize that we are *not* amending § 1.1305 of the Rules in regard to major actions within the meaning of the National Environmental Policy Act. We will continue to require a narrative statement pursuant to § 1.1311(a) and withhold action for 30 days following the issuance of a public notice of those applications, the narrative statements, and major environmental amendments. Interested parties may file a petition to deny pursuant to section 309(d) of the Act directed against the environmental portion of such applications.

[2] A list of parties filing comments in this proceeding is contained in Appendix B.

50% Changes in Service Areas

2. Presently, § 73.3572(a)(1) and 73.3573(a)(1) of the Rules classify as a "major change" any change in frequency, station location, or any change in power, antenna location, or antenna height (or combination thereof) which would result in a 50% change in the service area of a television or FM station. As stated in the *Notice*, a major change application is subject to a variety of requirements, including our cut-off procedures, a 30-day holding period following Commission public notice of acceptance and publication of local notice by the applicant. A major amendment to a pending application is also subject to these requirements. Consistent with our underlying statutory responsiblities, our processing procedures must be directed toward providing service to the public in the most expeditious and efficient manner possible.

3. The comments we received on this proposal were mixed. Representative of the opposition were the comments filed by the American Broadcasting Companies, Inc. (ABC). The gravamen of that opposition is that interested parties would lose important procedural rights such as the right to file a petition to deny and the present 30-day public notice period. In addition to the need for the Commission to be informed of all relevant facts, ABC contends that the proposed revision will not afford interested parties an "adequate opportunity to protect their interests in an orderly and logical manner" which is specifically mandated by Congress.[3] Furthermore, ABC has referred to the importance of public participation in our processes as the "best vehicle" for detecting noncompliance. As an example, ABC refers to the fact that a substantial change in service area could very well involve a loss of service to particular areas. The law firm of McKenna, Wilkinson & Kittner (MWK), on behalf of several television licensees, contends that informal objections are not an effective substitute for petitions to deny. In this connection, MWK contends that because of the lack of "adequate" notice and "insufficient" time to file, the informal objections may not offer a meaningful way of protecting the rights of interested parties. Furthermore, MWK asserts that informal objections are not subject to the same "rigorous procedural requirements" as petitions to deny, which must be verified and based upon specific facts and, consequently, we may be deciding important public interest issues on the basis of "conclusory allegations."

4. After a careful review of all of these comments, we continue to believe that changes in power, antenna location and/or antenna height should be classified as minor changes for both the television and *commercial* FM broadcast service. At the outset, we would like to reiterate our belief that there is no rational basis to classfy a 49% change in a service area as a minor change, while a 51% change is a major change subject to a variety of requirements, and delays. We consider the validity of this rather arbitrary classification in the context that television and commercial FM stations are allocated on a predetermined channel basis in which specific channels are assigned to specific communities—the respective Table of Assignments. These Tables are based upon maximum power and antenna height as well as minimum spacing requirements. These assignments presume the stations will operate at maximum facilites. We agree that public participation in all of our processes is important and is a valuable means of monitoring compliance with all Commission and statutory requirements. Application processing expediency should not be used as a sole justification for restricting public participation in our processes. However, it must be noted that modifying the facilities of an existing station is primarily an engineering function. In the event that an interested party believes that an application is not in compliance with our technical requirements, we are unable to perceive any difference in the burden such parties will have in bringing these matters to our attention, whether by means of a formal petition to deny or an informal objection. Irrespective of the particular type of pleading, specific factual data would be considered in detail, while unsupported conclusory allegations would be rejected. We believe that the same considerations would apply to other matters which could legitimately be considered in conjunction with an application to change facilities. In any event, such matters as loss of service our adverse UHF impact are considered by our processing staff in the context of both major and minor changes. We recognize that, where applicable, the statutory rights concerning notice, a holding period and petitions to deny, to some extent, facilitate public participation. However, it should be emphasized that under the revised procedures, notice of tender will still be issued. Further, we are unpersuaded that in regard to technical changes and other matters referred to in the comments, an informal objection would not suffice with respect to such public participation. Finally, we also feel that the statutory right to file a petition for reconsideration as provided for in section 405 of the Act, provides a safety net for both relevant public interest considerations and participation by interested parties. With respect to this statutory right, it should be noted that Section 405 also requires that after an action granting an application without hearing, we act upon any subsequently filed petition of reconsideration within 90 days.

Changes in Service Areas of Noncommercial Educational FM Stations

5. In paragraph 4 of the *Notice*, we proposed to include noncommercial FM stations within the ambit of the proposed rule revision. Even though there is no Table of Assignments for noncommercial FM stations, we noted that the maximum power and antenna height limitations are applicable to both the commercial and noncommercial FM services. Instead of minimum spacing requirements, noncommercial FM proposals must protect the 1 mV/m contour of all existing FM stations for objectionable interference. The staff engineering review is essentially the same for both major and minor changes. In view of the considerations and the fact that § 73.3573(a)(1) of the Rules does not now distinguish between commercial and noncommercial FM stations, we saw no compelling reasons to distinguish them under the proposed revision. Nevertheless, we invited comments on whether noncommercial FM applications and amendments should continue to be within the purview of § 73.3573(a)(1) of the Rules. We received comments specifically opposing the inclusion of noncommercial FM stations within the proposed revision. In joint comments filed by the licensees of Channel 6 television Stations KVIE, Sacramento, California and KRMA, Denver, Colorado, as well as the coments filed by the National Assocition of Broadcasters, concern was expresed pertaining to objectional interference to Channel 6 reception. These parties contend that the public notice, cut-off procedures and 30-day holding period provide Channel 6 television stations "a reasonable opportunity" to consider and analyze the interference potential and thereafter bring any potential problem to the attention of the Commission. In a somewhat different vein, Educational FM Associates argues that "very

[3] See H. Rep. No. 1800, 86th Cong., 2nd Sess. (1960) reprinted in 1960 U.S. Code Cong. Adm. News 3516, 3518.

substantial chunks" of the noncommercial FM spectrum could be claimed with "virtually no advance notice" and many of these changes could have a significant preclusionary impact with respect to future noncommercial FM proposals. As a consequence, these comments urge that we retain the 50% benchmark for applications and amendments in the noncommercial FM Service.

6. We have carefully considered these arguments and have determined that this would not be the most opportune time to consider a significant revision of our processing procedures in regard to the noncommercial FM service. We are keenly aware of the interference problem some noncommercial FM stations can cause for Channel 6 television reception and the fact that there are no specific rules dealing with FM–TV interference. In order to address this problem, we have instituted a rulemaking proceeding in BC Docket No. 20735.[4] We feel that our decision as to what constitutes a major or minor changes for noncommercial FM stations should follow that proceeding. Accordingly, we are deferring action on this aspect of the proposed revisions.

Change in Primary Station for FM Translators

7 In paragraph 6 of the *Notice*, we stated our belief that a change in the primary station by an FM translator should not necessitate either a major or minor change application. Several parties have expressed reservations concerning our proposal to merely require notification for an FM translator wishing to change its primary station. ABC was among several parties suggesting that this change in our procedural requirements is "premature" until the "future direction of the FM translator service is established." In addition, both the NAB and NRBA refer to the fact that this procedure precludes interested parties from monitoring changes in the translator operation to assure compliance with statutory and Commission requirements.

8. As stated in paragraph 6 of the *Notice*, we have already amended § 74.732(e) of the Rules to substitute a notification requirement for a change in the primary station of a television translator or LPTV station. After careful consideration of the comments, we are unpersuaded that we should process changes in the primary station of an FM translator differently than changes in the primary station of a television translator or LPTV station. In regard to the comments referring to the future direction of the translator service, we note that on April 11, 1984, we denied a petition for rulemaking looking toward a significant revision of our FM translator rules. *Report and Order* in BC Docket No. 19918 (FCC 84–158). Although that Order contemplates the possibility of further action, we do not believe that it is premature to relieve licensees of this regulatory burden and afford translator licensees maximum flexibility to change its programming service as circumstances warrant. We will continue to require that the consent of the primary station be obtained under section 325(a) of the Act and that the translator licensee comply with such Commission requirements proscribing the means of primary station delivery to the translator station. While we expect the translator licensee to comply with all applicable requirements, we believe, however, that a change in a primary station does not need to be addressed in an application context. As stated by the NRBA, the primary station is the "essence" of the translator service. It is also the most discernable aspect of a translator operation to anyone wishing to bring any matter of noncompliance to our attention. We feel that such matters will be relatively few and can be considered in an enforcement context.

Other Matters

9. In the *Notice*, we proposed revising §§ 73.3571(b), 73.3571(j)(2), 73.3572(b) and 73.3573(b) of the Rules in regard to ownership changes on a pending application. These rules now require a new file number if the ownership changes "in the case of an authorized station, would require the filing of an application therefor on FCC Form 314, 315, 345. " By implication, if the proposed changes would only require the filing of FCC Form 316 ("the short form"), the amendment would be considered minor and there would be no new file number. We were concerned that applicants in these situations faced multiple forms and unnecessarily complicated policies pertaining to the assignment or transfer of licenses and existing construction permits. *C.f., Grace Missionary Baptist Church*, 48 RR 2d 129 (1980); *Metromedia, Inc.*, 55 RR 2d 1278 (1984). Therefore, in the interest of simplicity and efficient application processing, we proposed merely requiring an original party or parties to retain more than a 50% ownership interest in the application as originally filed. In most situations, this revision does not represent a departure from the present rules. Under current policy with respect to the filing of Form 316, a party with an attributable interest or whose qualifications otherwise have been "passed on" by the Commission, can acquire control by acquiring less than an additional 50% interest (e.g. a 30% interest becoming a 79% interest). The proposed revision would extend this policy to permit such a party to acquire more than a additional 50% interest (e.g. a 30% interest becoming a 100% interest). In both situations, a minority interest party can become a majority interest party. We feel that classifying both of these ownership changes as minor is a reasonable classification of an amendment in accordance with Section 309(g) of the Act. As stated in paragraph 4, *supra*, we believe that public participation is important and a valuable means of monitoring compliance with all Commission and statutory requirements. This would be especially true in regard to the ownership of the applicant. However, in the situtation outlined above, we do not believe that it would serve any overriding purpose to have an applicant lose its file number, lose its place in the processing line, publish local notice and await a 30-day cut-off period when the original party or parties to the application still control more than 50% of the ownership. Moreover, as a consequence, we do not deem ownership changes involving new parties with less than controlling interest on a construction permit application to be "substantial" within the meaning of either section 309(b) or section 309(c)(2)(B) of the Act. For the reasons set forth above and in the *Notice* we are adopting this proposal.

10. We also received comments on matters which were not within the scope of this proceeding. Included among those comments was a suggestion that we apply the 50% change in service area criteria to applications modifying the facilities of translator stations. One party suggested that an application to assign the license of a noncommercial FM translator station be processed as a minor change. Other comments overlapped into the ongoing rulemaking proceeding involving low power television and television translators (MM Docket No. 83–1350). To the extent these comments addressed issues in Docket MM 83–1380 they will be associated with that docket as late filed comments. Otherwise, these comments were beyond the scope of this proceeding and were not considered.

11. We are also taking this opportunity to further implement our action in BC Docket No. 80–90, released June 14, 1983 (FCC 83–259). Inasmuch as certain Class B and Class C FM stations

[4] *Second Further Notice of Proposed Rule Making* in BC Docket No. 20735, FCC 82–225, 47 FR 24144 (June 3, 1982).

will be automatically downgraded on March 1, 1987 to Class B1, C1, or C2, it is somewhat anomalous to continue to process applications proposing a downgrading in class of station as major changes. Therefore, as a matter of procedure, applicants with licenses or permits in existence on March 1, 1984, may, until March 1, 1987, file a minor change application to effectuate a downgrading in class.[5] All other proposals to either upgrade or downgrade the class of FM station must first be submitted as petitions for rulemaking to amend the Table of Allotments.

12. Pursuant to the Regulatory Flexibility Act of 1980, our final analysis is as follows:

I. *Need for and Purpose of the Rules.*

1. We have concluded that the present application procedures we are revising unnecessarily burden the applicant and delay the processing of change request.

II. *Summary of issues raised by public comments to the initial regulatory flexibility analysis, Commission assessment, and changes made as a result.*

1. The opposing comments primarily contend that application processing expediency and the easing of the burden on the applicant should not override the rights of interested parties wishing to bring certain matters to the attention of the Commission. As set forth above, we find that public participation will not be significantly curtailed by the changes and that the benefits of the changes in terms of expedited processing are substantial.

III. *Significant Alternatives Considered and Rejected.*

1. The alternative rejected as to retain a public notice and a holding period procedure. Any such procedure would continue to burden the applicant and delay processing. Moreover, the revised procedures will not preclude interested parties from having relevant concerns considered by the Commission.

13. Authority for adoption of the rules contained herein is contained in sections 4(i) and 303 of the Communications Act of 1934, as amended.

14. Accordingly, it is ordered, That §§ 73.3571, 73.3572 and 73.3573 of the Commission's Rules ARE AMENDED as set forth in Appendix A, effective July 1, 1984.[6]

Federal Communications Commission.[7]

William J. Tricarico,

Secretary.

Appendix A

PART 73—[AMENDED]

47 CFR Part 73 of the Federal Communications Commission's Rules and Regulations is amended as follows:

1. In § 73.3571, paragraphs (b) and (j)(2) are revised as follows:

§ 73.3571 Processing of AM broadcast station applications.

* * * * *

(b) If an application is amended so as to effect a major change as defined in paragraph (a)(1) of this section or so as to result in a situation where the original party or parties to the application do not retain more than 50% ownership interest in the application as originally filed, § 73.3580 will apply to such amended application.

* * * * *

(j) * * *

(2) A new file number will be assigned where an application for a new station is amended (whether by a single amendment or by a series of amendments) so as to result in a situation where the original party or parties to the application do not retain more than 50% ownership interest in the application as originally filed, and § 73.3580 will apply to such amended application.

2. In § 73.3572, paragraphs (a)(1) and (b) are revised as follows:

§ 73.3572 Processing of TV broadcast, low power TV, and TV translator applications.

(a) * * *

(1) In the first group are applications for new stations or major changes in the facilities of authorized stations. A major change for TV broadcast stations authorized under this part is any change in frequency or community of license which is in accord with a present allotment contained in the Table of Assignments (§ 73.606). Other requests for change in frequency or community of license for television stations must first be submitted in the form of a petition for rulemaking to amend the Table of Assignments. In the case of lower power TV and TV translator stations authorized under Part 74 of this chapter, a major change is any change in:

(i) Frequency (output channel) assignment;

(ii) Transmitting antenna system including the direction of the radiation, directional antenna pattern or transmission line;

(iii) Antenna height;

(iv) Antenna location exceeding 200 meters;

(v) Authorized operating power; or

(vi) Community or area to be served.

However, if the proposed modification of facilities, other than a change in frequency, will not increase the signal range of the station in any horizontal direction, the modification will not be considered a major change. Provided further that the FCC may, within 15 days after the acceptance of any other application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore subject to the provisions of § 73.3580 and 1.1111 pertaining to major changes.

(2) * * *

* * * * *

(b) A new file number will be assigned to an application for a new station or for major changes in the facilities of an authorized station, when it is amended so as to effect a major change, as defined in paragraph (a)(1) of this section, or result in a situation where the original party or parties to the application do not retain more than 50% ownership interest in the application as originally filed and § 73.3580 will apply to such amended application. An application for change in the facilities of any existing station will continue to carry the same file number even though (pursuant to FCC approval) an assignment of license or transfer of control of such licensee or permittee has taken place if, upon consummation, the application is amended to reflect the new ownership.

3. In § 73.3573, paragraphs (a)(1) and (b) are revised as follows:

§ 73.3573 Processing FM broadcast and FM translator station applications.

(a) * * *

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. A major change for FM stations authorized under this part is any change in frequency or community of license which is in accord with a present allotment contained in the Table of Allotments (§ 73.202). Other requests for change in frequency or community of license for FM stations must first be submitted in the form of a petition for rulemaking to amend the Table of Allotments. In the case of FM translator stations authorized under Part 74, it is any change in frequency (output channel), or authorized principal community or area. For noncommercial educational FM stations, a major change is any change in frequency or community of license or any change in

[5] After the license application to implement the downgrading is granted, the Table of Allotments will automatically be changed. Any further change in the class will require a rulemaking.

[6] Major change applications presently on file but not yet placed on an "A" cut-off list will be processed under the revised rules. On the other hand, major change applications presently on file and either on a cut-off list or cut-off prior to the July 1, 1984 effective date will be processed as major changes. Amendments filed after the effective date to all pending applications will be classified under the revised rules.

[7] Statement of Commissioner Rivera to be issued at a later date.

power or antenna location or height above average terrain (or combination thereof) which would result in a change of 50% or more in the area within the station's predicted 1 mV/m field strength contour. (A change in area is defined as the sum of the area gained and the area lost as a percentage of the original area). However, the FCC may within 15 days after the acceptance of any other application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore subject to the provisions of §§ 73.3580 and 1.1111 pertaining to major changes. Until March 1, 1987, an applicant with authorized facilities in existence as of March 1, 1984, may effectuate a downgrading in class of FM station by filing a minor change application. All other proposals to either upgrade or downgrade the class of an FM station must first be submitted as petitions for rulemaking to amend the Table of Allotments (§ 73.202)

* * * * *

(b) A new file number will be assigned to an application for a new station or for major changes in the facilities of an authorized station, when it is amended so as to effect a major change, as defined in paragraph (a)(1) of this section, or result in a situation where the original party or parties to the application do not retain more than 50% ownership interest in the application as originally filed, and § 73.3580 will apply to such amended application. An application for changes in the facilities of any existing station will continue to carry the same file number even though (pursuant to FCC approval) an assignment of license or transfer of control of such licensee or permittee has taken place if, upon consummation, the application is amended to reflect the new ownership.

* * * * *

APPENDIX B

Parties submitting comments in MM Docket No. 83-1377

The State of Alaska Division of Telecommunication Systems
National Association of Broadcasters
American Broadcasting Companies, Inc.
Educational FM Associates
KNME-Television
Joint Comments from John H. Phipps Broadcasting Stations, Inc.; Ralph C. Wilson Industries, Inc.; Television Station Partners; and Wilson Communications, Inc.
National Radio Broadcasters Association
Stuart B. Mitchell and Associates
Cox Communications, Inc.
Joint Comments from Central California Educational Television and the School District No. 1 in the City and County of Denver and State of Colorado
Joint Comments from E. O. Roden & Associates, Inc.; Forward Communications Corporation; GCC Communications of Houston, Inc.; Group One Broadcasting Company; Guaranty Broadcasting Corporation; Infinity Broadcasting Corporation; KFAB Broadcasting Company; Kirby Broadcasting Company; Lake Huron Broadcasting Corporation; Laurens County Broadcasting Co., Inc.; May Broadcasting Company; Summit Radio Corporation; Suncoast Stereo Corporation; Tri-Cities Broadcasting Company; WBIP Broadcasting Company; WEDR, Inc.; and WKRG-TV, Inc.
Hubbard Broadcasting, Inc.

Reply Comments

Hubbard Broadcasting, Inc.
Ponca City Radio, Inc.
National Public Radio
The State of Alaska Division of Telecommunications Systems

[FR Doc. 84-21670 Filed 8-14-84; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 74

[MM Docket No. 83-523; RM-2954; RM-2603; RM-2609; FCC 84-362]

Amendment in Regard to the Instructional Television Fixed Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Instructional Television Fixed Service (ITFS) rules. In the technical area, the rule changes will now permit variation in the transmission standards for ITFS, authorization of temporary fixed stations on a secondary basis and the authority to deliver ITSF programming to cable headends. In the non-technical areas the rule changes include: intituting a one-step licensing process and extending the ITFS license term to ten years from the current five years. This action was taken in response to a number of rule making requests and as a result of the Commission's general review of its rules. The rule changes will provide greater flexibility of ITFS licensees to meet the needs of their users and reduce the cost of operating ITFS systems.

EFFECTIVE DATE: July 26, 1984.

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

FOR FURTHER INFORMATION CONTACT: Brian F Fontes, Mass Media Bureau (202) 632-6302.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 74

Instructional Television Fixed Service, Television.

Report and Order

In the Matter of Amendment of Part 74 of the Commission's Rules and Regulations in regard to the Instructional Television Fixed Service; MM Docket No. 83-523, RM-2954, RM-2603, RM-2609, RM-3057

Adopted: July 26, 1984.
Released: August 13, 1984.

By the Commission: Commissioner Rivera dissenting in part and issuing a statement.

Introduction

1. In this *Report and Order*, we are amending certain technical and non-technical rules regarding the Instructional Television Fixed Service (ITFS). These changes will provide ITFS licensees with additional operational flexibility by relaxing certain transmission standards, permitting temporary fixed operation and authorizing ITFS service to cable headends. In addition, this action will eliminate certain administrative burdens by simplifying the licensing procedure and extending the license term for ITFS stations from five to ten years.

Background

2. On May 26, 1983, the Commission adopted a *Notice of Proposed Rule Making (Notice)* in the above captioned matter.[1] The *Notice* indicated that the current ITFS rule may be unnecessarily restricting the activities of ITFS licensees and may be causing inefficient spectrum utilization. Accordingly, the Commission proposed a number of changes in the technical and non-technical ITFS rules. In the technical area, these proposed changes included: (1) relaxing the current transmission standards imposed on ITFS stations; (2) authorizing the use of temporary fixed stations; and, (3) permitting delivery of ITFS programming to cable headends. In addition, although not specifically proposed as rule change, the Commission sought comment on allowing wideband ITFS transmissions. The non-technical changes proposed were: (1) modifying the current four channel assignment limitation; (2) relying on prior frequency coordination to prevent frequency interference; (3) instituting a one-step licensing process and (4) increasing the licensing term from five years to ten years.[2] A total of

[1] *See Notice of Proposed Rule Making*, MM Docket No. 83-523, 48 FR 29553 (June 27, 1983).

[2] The proposed changes listed in the *Notice* were, in part, the result of a number of petitions for rule making filed before the Commission. These petitions include: Center for Excellence, Inc. petition (RM-2954) to permit operation of "movable fixed" or "temporary fixed" stations; Kessler and Wilhelm

Continued

14 parties filed comments in response to these proposals.[3]

3. In a *Report and Order* in General Docket No. 80–112, the Commission reallocated a portion of the ITFS spectrum to the Multipoint Distribution Service (MDS) and permitted ITFS licensees to lease their excess channel capacity.[4] That action has increased the public's interest in ITFS. Therefore, in addition to this *Report and Order*, The Commission will consider a companion *Further Notice of Proposed Rule Making (Further Notice)* in this proceeding. The *Further Notice* focuses attention on issues not fully explored in the earlier *Notice* and that have arisen from the changed circumstances that have occurred as a result of our actions in Docket No. 80–112. The *Further Notice* will address a number of issues, such as the nature and scope of permissible ITFS service, ITFS eligibility requirements interference criteria and the resolution of mutually exclusive applications.

Technical Issues

4. *Transmission Standards.* Although ITFS transmitting equipment operates with very low power and has a useful operating range of only about 20 miles, the existing rules require that ITFS stations meet transmission standards closly paralleling those of full power television broadcast stations. The Commission, in the *Notice*, observed that these rules preclude ITFS licensees from using a wide variety of lower costs television origination and recording equipment satisfactory for instructional television purposes but not in conformance with certain broadcast transmission standards. In addition, the rules preclude the use of other video formats more appropriate to the material being transmitted.[5] Accordingly, the *Notice* proposed relaxing the current rules concerning transmission standards imposed on ITFS operations. The proposed rule changes would let the quality of ITFS service be determined by the needs or demands of the licensee rather than by Commission dictate.

5. The commenting parties generally favor relaxing Commission rules governing ITFS transmission standards.[6] Some parties, however, caution that the relaxation of current transmission standards must not be done in such a manner as to denigrate the integrity of ITFS channels. Further, they indicate that such changes must not preclude continued transmission of television broadcast quality signals by those ITFS licensees wishing to do so. For example, Arizona State University (ASU), although generally favoring the relaxing of transmission standards, encourages the Commission to retain specific minimum standards. George Washington University (GWU) proposes that any change in transmission standards should provide that, at a minimum, existing frequency tolerance and spurious emission standards must be met in order to provide licensees with adequate interference protection. Contemporary Communications Corporation (CCC) supports the proposed relaxation of ITFS technical standards, provided that they are compatible with the overall engineering policy being developed in General Docket No. 80–113.[7] CCC suggests that the Commission bear in mind that MDS, ITFS and the private Operational Fixed Service (OFS) are related services which share the 2500–2690 MHz band.

6. After reviewing the record on this matter, we are persuaded that ITFS operators should not be restricted to NTSC format or broadcast quality video signals when other video standards may be better suited to their needs. We believe that the costs imposed on school districts and other educational and nonprofit institutions to meet the technical transmission standards for ITFS are counterproductive to the development of ITFS systems. Since adopting technical standards for ITFS transmissions in 1963, technological changes have occured in television origination and recording equipment. These changes would allow ITFS licensees to use equipment that is more cost-effective or appropriate to their specific needs if our rules governing transmission standards are changed. For these reasons, we are amending our rules to relax the technical standards for ITFS transmissions.

7. In making this decision, we intend that stations not experience increased interference as a result of our actions. Therefore, we will permit any type of video signal format so long as the transmitter is type-accepted for the particular modulation to be used and complies with the emission requirements set forth in § 74.936 of the Commission's rules.[8] Thus, we will remove the financial burden of having to meet broadcast quality transmission standards. Further, we believe that this action will create greater flexibility for ITFS licensees to meet the needs of their users and will foster the development of ITFS systems, but it will not increase objectionable interference.

8. *Temporary Fixed Stations.* In the *Notice*, the Commission proposed that ITFS systems be authorized to use temporary fixed transmitters that could

petition (RM–2609) to permit the delivery of instructional and cultural material to Community Antenna Television (CATV) systems for subsequent distribution to schools within the cable franchise area; Kessler and Wilhelm petition (RM–2603) to permit implementation of more economical ITFS systems and to allow ITFS licensees the choice of technical standards more appropriate to their instructional goals; Eastern New Mexico University petition (RM–3057) to amend ITFS frequency assignments to permit point-to-point FM Transmission across sparsely populated areas. In a separate docket (General Docket No. 83–322) the Commission addresses an ITFS related petition filed by the Board of Trustees, The California State University and Colleges for San Diego State University (RM–3292) to amend the licensed operator requirements for ITFS stations.

[3] The commenting parties include: The Boston Catholic Television Center, Inc.; Arizona State University; San Diego County Office of Education; The Public Broadcasting Service; The Southern California Instructional Television Fixed Service Advisory Committee; The George Washington University; The National Cable Television Association, Inc.; University of Louisville, Belknap Campus; Illinois Institute of Technology; The Association for Higher Education of North Texas; The Catholic Television Network; Joint Comments of Connecticut Educational Telecommunications Corporation, University of Houston, Nebraska Educational Television Commission, University of Nebraska, South Carolina Educational Television Commission; The Diocese of San Diego; and Contemporary Communications Corporation.

[4] *See Report and Order*, General Docket No. 80–112, 48 FR 33873 (July 26, 1983). Also, *See Memorandum Opinion and Order on Reconsideration* in General Docket No. 80–112, FCC 84–177, released June 5, 1984.

[5] In this regard, the Commission has received a petition for rule making (RM–2603) from the engineering firm of Kesseler and Wilhelm requesting permission to use non-standard color encoding schemes to meet certain specialized ITFS needs, such as the transmission of medical programs. In addition the Commission has granted waivers to the Anaheim City School District to use the SECAM/60 color system and to several Florida ITFS systems to operate non-broadcast standard equipment. This experience has proven to be cost-efficient to the ITFS licensee and has not resulted in interference to the transmissions of other stations.

[6] Parties favoring the relaxation of technical transmission standards include: the Association for Higher Education of North Texas (AHE); the Boston Catholic Television Center (BCTC); the Catholic Television Network (CTN); the Diocese of San Diego (DSD); the University of Louisville and, the Joint Comments of Connecticut Educational Telecommunications Corporation, University of Houston, Nebraska Educational Television Commission, University of Nebraska and South Carolina Educational Television Commission (Joint Commenters).

[7] 45 FR 29350 (May 2, 1980).

[8] Recently, the Commission amended its rules to permit the television aural baseband to be used for stereophonic sound, second language programming and any other broadcast or non-broadcast use. In order to accommodate these additional signals, the maximum permissible aural deviation level was increased from ±25 kHz to ±75 kHz. *See Second Report and Order* in Docket No. 21323, 49 FR 18100 (April 27, 1984). We are amending the ITFS rules to allow increase deviation in conformance with our actions in Docket No. 21323. Accordingly, ITFS licensees will be permitted to provide subcarrier services; however, transmitters must be type accepted and designed for subcarrier operation without electrical or mechanical alterations to the exciter or other transmitter circuits.

be transported to any number of locations for the purpose of transmitting picture and sound information back into the ITFS system. The Commission indicated in the *Notice* that temporary fixed operation would increase the flexibility and scope of ITFS use and would enable the ITFS operator "to make available to many participants the unique advantages of interactive instruction."[9] In this regard, the *Notice* proposed to allow the filing of applications for temporary fixed stations on a secondary basis, as the spectrum space allows. Additionally, we proposed that any of the licensed ITFS channels may be used on a temporary fixed basis, but only in the geographic area covered by the ITFS license.

9. Our proposal to permit temporary fixed ITFS operation received a variety of comments. BCTC states that temporary fixed stations will be difficult to operate in an effective and efficient manner without impacting on other ITFS users, and suggests that a solution would be to authorize such temporary operations in the TV broadcast auxiliary service. ASU approves of the proposals regarding temporary fixed stations, but cautions the Commission about possible interference problems with existing licensees and users. PBS favors the operation at temporary fixed locations, provided such operations do not preclude the establishment of stations at permanent locations. The Southern California ITFS Advisory Committee (SG Advisory Committee), San Diego County Office of Education (SDCOE), CTN, Joint Commenters, and DSD support the proposal for temporary fixed stations on a secondary basis. The University of Louisville (U of L) also favoring the proposal for temporary fixed stations, argues that these temporary stations should be allowed to transmit directly to receiver locations and that the use of temporary fixed, non-licensed receiving locations should be authorized in this proceeding.

10. We are aware of the value of temporary fixed stations to ITFS licensees' operations. By permitting these stations, we would add a new dimension to ITFS and allow for programming not easily originated from the studio. Such service would also enhance the services provided by ITFS operators. Nevertheless, we remain concerned about the impact that these operations would have on conventional ITFS operations. Therefore, while we are modifying our rules to permit the operation of temporary fixed stations, such use will be on strict secondary basis.[10] Furthermore, operation of temporary fixed stations must be limited to the geographic area of the ITFS licensee and must be coordinated with other licensees in the same area. Temporary fixed operations will also be permitted on channels already assigned to ITFS licensees, provided that such operations do not cause more interference than the primary ITFS authorization. The use of one or more additional transmitters for temporary fixed stations will come under the authorization granted by the ITFS license. If the need for point-to-multipoint transmission grows in a given area, secondary temporary fixed stations will have to give way to primary ITFS operation. Secondary stations may be required to change channels, bands or even discontinue operation in order to protect primary authorizations.

11. *Delivery of ITFS Programming to Cable Headends.* In the *Notice*, the Commission proposed to permit the delivery of ITFS programming to cable headends for subsequent distribution to schools and other institutions within the cable franchise area. In making this proposal the Commission noted that, if ITFS programs could be fed to cable headends, ITFS signals could be delivered to schools without line-of-sight transmission paths.[11] The Commission also noted that allowing ITFS signals to be sent to cable headends would make it feasible to link adjacent communities through the cable system so that the expense of the ITFS system could be shared among school districts. In addition, the Commission stated that permitting ITFS signals to be transmitted via cable systems could improve the signal quality of ITFS reception to end-users. Finally, the *Notice* indicated that such action would be consistent with the Commission's goal of establishing ITFS as a low-cost alternative to the use of UHF and VHF television stations for the transmission of instructional programming to schools.

12. All commenting parties, including the National Cable Television Association (NCTA), favor permitting delivery of ITFS programming to cable systems. In addition, BCTC states that the Commission should permit ITFS programming to be delivered to homes wired for cable. BCTC, SDCOE and CTN also suggest allowing ITFS programming to be delivered by other means of distribution such as Multipoint Distribution Services (MDS). PBS, GWU, and DSD also encourage the FCC to permit ITFS channels to be used for studio transmitter link (STL) and studio-headend links (SHL) to deliver programs to cable headends on a secondary basis.

13. After reviewing the record in this proceeding, we believe that a number of benefits will accrue from permitting the delivery of ITFS programming to cable headend for subsequent distribution within the cable system. We recognize that certain economies will be realized by this action. Receiving systems would not have to be installed at each ITFS receiving location, thereby eliminating the cost of constructing and maintaining ITFS receiving antenna towers. The need for line-of-site transmission paths from an ITFS station would no longer exist. Furthermore, allowing ITFS signals to be delivered by cable would also improve the signal quality of ITFS reception. The quality of the signal would be more uniform and less susceptible to disturbances due to meteorological conditions. In addition, since cable system headends typically have high reception towers, ITFS stations may be able to transmit their signals to headends farther away than through direct transmission to the receive locations. Accordingly, any ITFS applicant that lists only cable headends as its specified receive locations, will be required to show that one use of the cable system will be to distribute educational and instructional programming to schools and other appropriate ITFS users.

14. By this *Report and Order*, we are also permitting the use of ITFS frequencies for studio-transmitter link (STL) operation on a secondary basis. An ITFS licensee's origination equipment and studio may be distant from a desirable location from which to transmit the ITFS signal. In this situation ITFS licensees will be permitted to use ITFS frequencies for STLs on a secondary basis to deliver programming to the primary ITFS transmitter. Such operation would be required to conform to the same requirements set forth

[9] The *Notice* also indicated that waivers to permit the operation of "movable fixed" and "temporary fixed" ITFS stations have been granted to a number of entities. The waivers granted allow these licensees to transmit programming such as "live" governmental meetings to lawyers who deal with such bodies on a regular basis; doctor rounds from hospitals for instruction of nurses; and teleconferences.

[10] It should be noted that operation of temporary fixed ITFS stations within 35 miles of the U.S.-Canadian border may be precluded by Canadian use of some or all of the channels. At this time, no restrictions exist for operation along the U.S.-Mexican border.

[11] In this regard, we have granted waivers to permit operating ITFS stations to specify cable headends as receiver sites in circumstances where the waiver permitted expansion of the ITFS service to schools unable, for a variety of reasons, to receive the signal by traditional line-of-sight transmission. The School Board of Broward County, Florida, was granted such an authorization on October 29, 1979, by letter from Broadcast Facilities Division.

previously for temporary fixed stations. Specifically, they would be permitted only within the geographical area of the ITFS licensee, must be coordinated with other licensees in the same area and would be on a strict secondary (not-to-interfere) basis.

15. *Wideband ITFS Transmissions.* In the *Notice,* the Commission also sought comment on a petition for rule making (RM-3057) filed by Eastern New Mexico University to allow the combination of three contiguous ITFS channels for wideband ITFS transmissions. Such transmissions would use a frequency modulated video carrier to provide long-haul, point-to-point communications over sparsely populated areas.[12]

16. BCTC, in its comments, states that wideband transmissions should be permitted on a secondary basis for point-to-point purposes in sparsely populated areas. ASU and SDCOE also support the use of wideband transmissions. The SC Advisory Committee and CTN believe that such authorization should be granted on a case-by-case waiver basis.

17 After reviewing the comments on this issue, we believe that such use of ITFS frequencies is inappropriate. A scheme that would allow several channels to be used for transmitting only one signal would decrease the number of channels available for ITFS use. As stated in the *Notice,* we believe that spectrum is available elsewhere for such wideband transmissions, and that other services such as the private operational fixed service should be used to provide long-haul communications needs. Such authorization would require the creation of a different set of technical standards and a second category of accepted equipment for this band. Nevertheless, we are aware of the needs of ITFS licensees and will continue to consider waivers on a case-by-case basis, especially where the applicant, such as Eastern New Mexico University, requires wideband capabilities and where frequency congestion is not a problem.

Non-Technical Issues

18. *Four-Channel Assignment Limit.* The *Notice* proposed relaxing the current ITFS four-channel assignment limitation. Several parties endorse this proposal. BCTC, ASU, SDCOE, SC Advisory Committee, AHE, and Joint Commenters all support removing the four-channel assignment limitation. Although CTN and DSD generally support removal of the current assignment limitation, they argue that applicants requesting more than four channels should be required to demonstrate that they intend to use the additional channels for instructional purposes and that no one licensee should have the majority of available frequencies.

19. Section 74.902(c) of the Rules precludes assignment of more than one channel group (four channels) to the same licensee for use within a single area of operation. In the past, the Commission has waived this rule in areas where a need has been shown. While commenting parties favor the elimination of this rule, they recommend that requests for additional channels be accompanied with a description of how these channels will be used. There has been a signficant increase in recent applications filed for ITFS stations and in the demand for channels in certain areas. In addition, we anticipate a further increase in ITFS applications as our deregulatory actions take hold. Therefore, we are not amending our rules to relax the four-channel assignment limitation. ITFS applicants and licensees seeking more than one channel group will be required to submit a showing in support of a request for waiver of the rule. Such requests must include a complete description of how the additional channels will be used for traditional ITFS purposes and why present channel capacity is insufficient to accommodate the additional needs. The waiver burden will be exceedingly high particularly in areas where a large demand for channels exists.

20. *Frequency Coordination.* The Commission stated in the *Notice,* that "in order to avoid frequency conflicts and to facilitate new entry into already congested areas we will assume that, prior to filing their applications, ITFS applicants have coordinated the technical aspects of their proposals with existing channel users and other relevant licensees." In this regard, the *Notice* indicated our belief that (based on past experience with point-to-point microwave services) nearly all potential frequency conflicts can be resolved through the use of prior frequency coordination. The *Notice* also requested comment on how to resolve disputes that might arise if two or more mutually exclusive applicants wish to use a specific channel at the same time. For example, the *Notice* asked whether the Commission's licensing priority should be based on a first-come, first-serve basis, a lottery selection technique or some other method.

21. Comments on prior frequency coordination were mixed. Some parties requested that the Commission establish minimum protected contours and specify interference standards for existing stations. Other parties requested that the status quo be maintained and let frequency coordination be accomplished at the local level. BCTC and SDCOE support the prior frequncy coordination by new ITFS applicants. ASU believes that the Commission should establish minimum protected contours for existing stations. PBS argues that the Commission's reliance on prior frequency coordination is a serious mistake. PBS claims that prior coordination seriously burdens ITFS applicants by requiring every existing licensee and permittee to retain sufficient engineering expertise to evaluate every new application filed in its service area. PBS urges the Commission to continue to evaluate the interference potential of ITFS applicants and to reject those predicted to cause interference. The Commission, according to PBS, could also specify a set of standards for the interference showings applicants must meet and simply evaluate the showing against the standards. The Joint Commenters also recommend the adoption of protected contours and interference ratios. DSD agrees with the process of coordinating frequencies at the local level but believes that the Commission should review the results and serve as final aribiter. The SC Advisory Committee, GWU, AHE and CTN all support frequency coordination at the local level.

22. The growth in the ITFS service as a result of this and previous proceedings has increased the number of mutually exclusive applicants. The *Notice* requested comments on how we should resolve any disputes that might arise if two or more mutually exclusive applicants wish to use a specific channel at the same time. We also asked if we should establish protected contours, interference ratios, or allow the users to resolve any problems that may arise by mutual agreement. In view of the increased interest in ITFS as a result of our actions, we will seek additional comments on these issues in the companion *Further Notice.* Accordingly, we will not address the issue of how to resolve mutually exclusive situations in this *Report and Order.*

23. In the interim, we will continue to assume that prior to filing ITFS applications, the applicants have coordinated the technical aspects of their proposal with existing channel

[12] The use of frequency modulation would provide higher quality and longer range communications but would require approximately three times the spectrum of traditional amplitude modulated ITFS transmissions.

users and other relevant licenses and will continue to process ITFS applications on their merits. To facilitate the needed engineering studies for new applicants, Commission records on existing licensees or pending applicants will be made available for examination.

24. *One-Step Licensing.* In the *Notice,* the Commission proposed a one-step licensing process for ITFS applicants. With this one-step licensing process, the Commission issues a single ITFS station license.[13] There is, however, an implied construction permit for the period of one year in the grant. If construction is not completed within that one-year period, the license is invalid and will be deleted from the Commission's records, assuming there is no request for an extension of time. The *Notice* requested comment on this approach.

25. All parties commenting on this proposal favor a one-step licensing process. However, two parties provided qualifying language. The University of Illinois (U of I) believes that one year is too short a time period after the grant of a license to complete construction since the budgeting and scheduling processes in academic institutions are generally complex and lengthy. PBS suggests the Commission issue construction permits on a form with a tear-off portion which the licensee must sign and return when the station is ready for operation. According to PBS, this would be a one-step process that would allow the Commission to keep a record of ITFS stations actually operating.

26. We believe that one-step licensing is appropriate for ITFS applicants.[14] Currently, we use one-step licensing for remote pickups, aural studio-to-transmitter links, intercity relays, and TV auxiliaries. This process has proved beneficial in reducing the administrative burden on both the Commission and licensees. Simarily, we believe that ITFS will benefit from such a simplification of the licensing process. In addition, we agree that a one year construction requirement may pose unreasonable burdens on ITFS licensees. We recognize that the budgeting and scheduling processes for educational institutions could delay the construction of ITFS facilities beyond the one year period. Accordingly, we are adopting a requirement that construction of the facility be completed within 18 months of the grant of the license. ITFS licensees are cautioned, however, that we are concerned that the construction of facilities be initiated and completed in a timely manner. This is especially true given the fact that other entities, willing to proceed in a timely manner, may be precluded from using these frequencies.

27 In this *Report and Order,* we are amending our rules to permit one-step licensing for ITFS stations. However, if construction is not completed within 18 months and if there has been no request for an extension of time to complete construction, then the ITFS station license will be subject to automatic cancellation and the frequencies will be issued in the normal process to other applicants. We believe this decision will provide for maximum utilization of ITFS frequencies and will expedite our licensing process.

28. *Extension of the ITFS License Term.* The *Notice* proposed extending the ITFS license term from the current five years to ten years. The *Notice* also contained a proposal to amend the rules by requiring that, if a licensee has not operated its ITFS station for a given period of time, the license will be forfeited. We invited comments on whether a one year non-operation period is an appropriate time frame before requiring forfeiture of the license. Additionally, we requested comment on including a requirement that the station must receive "substantial use" to avoid license forfeiture.

29. An overwhelming majority of the commenting parties favor the proposed 10-year license term. Comments varied, however, on the issue of forfeiting ITFS licenses for those stations either not operated for one year or not deemed to receive "substantial use" SDCOE supports the proposal that unused ITFS licenses be forfeited, but recommends that the period of non-use before forfeiture occurs be two years. The longer period would account for academic calendars and budgeting processes that may impact on ITFS station operations. BCTC believes a clear distinction should be made between non-use by ITFS entities which have never constructed and activated their authorized facilities and those which have constructed and/or activated their stations. The SC Advisory Committee urges the Commission to make some effort to define a procedure that would make "substantial use" a condition for retention of the license. They suggest an annual report to the Commission indicating the number of hours per channel that the station is in operation. U of L proposes that if non-operation occurs, through no fault of the licensee, and is expected to extend past one year, the licensee may obtain an extension of time upon informal application to the Commission. DSD argues that a requirement of "substantial use" should include some definition of the number of hours per channel the station would have to be operating. DSD also believes the Commission should determine a time schedule for taking action against an under-utilized station and include a probationary period to restore the station to the minimum standard of substantial use.

30. Two parties AHE and CTN, oppose the rule change. AHE would support a requirement that the licensee of any ITFS channel not in operation for more than one year submit a statement to the Commission showing good cause for non-operation and advising the Commission as to when the station will be operational. Regarding "substantial use," AHE believes that since the needs of individual ITFS systems vary greatly and imposing a strict definition of "substantial use" would be unfair to many licensees. AHE also believes that any problem of "substantial use" of ITFS channels should be largely alleviated by the Commission's *Order* in General Docket No. 80-112, that allows ITFS licensees to lease excess capacity on licensed channels. CTN believes that forfeiture of an ITFS license in the event of a one-year period of non-use is too harsh and, like AHE, favors allowing the licensee to explain why the channel has not been used during the one year period.

31. The Communications Amendments Act of 1982 allows us the opportunity to extend the ITFS license term to ten years. All commenting parties favored the lengthened license period and we are changing our rules accordingly.

32. We are not inclined to establish a "substantial use" standard at this time.[15] We believe the action in Docket No. 80-112 and our further consideration of this matter in the *Further Notice* will assure sufficient programming on ITFS systems. Nevertheless, if an ITFS channel remains unused for more than

[13] Previously, the Commission granted both a construction permit giving permission to build the ITFS facilities and a subsequent station license authorizing the operation of the ITFS station.

[14] The Communications Amendments Act of 1982 (Pub. L. No. 96-254) amended the Communications Act of 1934 so that construction permits are no longer required.

[15] The *Report and Order* in Docket No. 80-112 indicated that we cannot anticipate how much time is required for each ITFS licensee to meet its needs. *See* 48 FR 33873 (July 26, 1983) at para. 116. In the *Memorandum, Opinion and Order on Reconsideration* in General Docket No. 80-112 the Commission, upon reconsideration, established an interim requirement that during the school year, an ITFS licensee must provide 15 hours of ITFS programming per channel between the hours of 8 A.M. and 10 P.M. on Monday through Friday before being allowed to lease excess ITFS capacity. *See Memorandum Opinion and Order on Reconsideration* in General Docket No. 80-112, FCC 84-177, released June 5, 1984.

one year, the authority to operate on such channel(s) will be forfeited and the frequency or frequencies will be available to other applicants. We believe that a one year period is reasonable to allow ITFS licensees sufficient time to remedy the non-use situation and to accommodate our responsibilities to ensure efficient spectrum usage.

Summary

33. In summary, we believe that the technical and non-technical rule changes adopted in this *Report and Order* will increase the viability of the ITFS service, allow for reasonable technical experimentation by ITFS licensees, and encourage more efficient utilization of the ITFS spectrum. In addition, these changes will permit ITFS operators greater flexibility to develop and offer services that specifically address their needs. Accordingly, we shall amend our rules to (1) relax technical transmission standards; (2) permit the operation of temporary fixed stations; (3) permit the delivery of ITFS programming to cable systems; (4) implement a one-step licensing process; and (5) lengthen the license term to ten years.

34. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need for and Purpose of the Rules

The Commission has concluded that permitting the operation of temporary fixed stations; permitting the delivery of ITFS programming to cable systems; implementing a one-step licensing process; and lengthening the ITFS license term to ten years would enhance efficient use of ITFS and reduce the costs associated with ITFS operation, thereby improving ITFS's viability to provide services to its users. Our rule changes will create a less restrictive environment and allow ITFS licensees to more readily adapt their operations to their programming needs.

II. Summary of Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis, Commission Assessment, and Changes Made as a Result

A. Issues raised

No issues or concerns were raised specifically in response to the initial regulatory flexibility analysis. The issue of relaxing technical transmission standards, authorizing temporary fixed stations and allowing ITFS programming to be delivered to cable systems received favorable reactions. Some parties expressed concern that relaxing technical transmission standards may present some interference problems. However, most parties agree that if interference problems emerge they could be resolved at the local level.

The non-technical rule changes also received a generally favorable response. Commenters favored relaxing the four-channel assignment limitation, but felt that a description of proposed channel use should accompany requests for more than four-channels. Commenters also favor maintaining frequency coordination at the local level, but expressed concern that increased demand for ITFS would make frequency coordination at the local level more difficult. At some point, according to the commenters, the Commission might have to establish protective contours and interference ratios as a means of resolving interference problems. All parties oppose the use of lotteries. Most commenters would favor a paper comparative hearing. Finally, all commenters favored both the one-step licensing process and the ten-year license term, but they expressed concern that the one-year period required to complete construction is too short for academic institutions. The commenters opposed the "substantial use" standard to determine if a license should be forfeited.

B. Assessment

The Commission views the absence of specific claims of adverse impact with respect to its ITFS proposals as indicative of their lack of potential for negative effects on small businesses.

Information submitted before the Commission suggests that in metropolitan areas with extensive ITFS operations, frequency coordination among ITFS users may become difficult to accomplish. Where coordination is not effective, interference could occur among ITFS operators and with other licensees in the area. It appears that such situations will be limited and that local coordination is preferred. However, a *Further Notice of Proposed Rule Making* will address the issue of frequency coordination, including the possibility of establishing protection contours and carrier-to-interference ratios. In some isolated cases, the concerned parties may request the Commission to resolve interference problems.

C. Changes made as a result of such comments

As a result of the comments, we are permitting an 18 month period to complete construction of an ITFS system after being granted a license. This will permit the academic budgeting process sufficient time to allocate resources to ITFS construction. Finally, rather than rely upon a "substantial use" standard to determine if an ITFS license should be forfeited, we have determined that if an ITFS station remains unused for a one year period the license will be forfeited.

III. Significant Alternatives Considered and Rejected

The Commission's other alternatives were: (1) To maintain broadcast quality transmission standards; (2) to prohibit temporary fixed stations; (3) to forbid the delivery of ITFS programming to cable headends; (4) to establish ITSF contours and interference ratios rather than rely upon the flexibility of local frequency coordination; (5) to maintain the process of applying for a construction permit and then applying for an ITFS license, rather than a one-step licensing process; and (6) to maintain a five-year license term rather than expand the term to ten years. To deny the rule changes affecting transmission standards, temporary fixed stations, delivery of ITFS programming to cable headends, frequency coordination at the local level, one-step licensing, and a ten-year license term would be to forego the beneficial objectives sought in this rule making. Maintaining the status quo would necessitate needless government paperwork and restrict licensees' flexibility to meet the needs of the public served by ITFS. A more restrictive approach to regulation likely would interfere with the realization of the full potential and benefits of ITFS.

35. Authority for adoption of the rules contained herein is contained in Sections 2, 4(i), and 303 of the Communications Act of 1934, as amended.

36. Accordingly, IT IS ORDERED, That Part 74 of the Commission's Rules IS AMENDED as set forth in Appendix A, effective upon adoption pursuant to 5 U.S.C. 553(d)(1).

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 74 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 74—EXPERIMENTAL AUXILIARY, AND SPECIAL BROADCAST, AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

1. In § 74.15, paragraph (e) is revised to read as follows:

§ 74.15 Station license period.

* * * * *

(e) Licenses for instructional television fixed stations will be issued for a period of 10 years beginning with the date of the grant.

2. Section 74.901 is amended by adding the following definition in the appropriate alphabetical sequence as follows:

§ 74.901 Definitions.

* * * * *

Temporary fixed ITFS station. An ITFS station used for the transmission of material from temporary unspecified points to an ITFS station.

* * * * *

3. Section 74.902 is amended by adding a new paragraph (f) to read as follows:

§ 74.902 Frequency assignments.

* * * * *

(f) A temporary fixed ITFS station may use any available ITFS channel on a secondary basis. Operation of stations located within 35 miles of Canada shall be limited by § 74.24(h)(3) of this Subpart.

4. Section 74.931 is amended by revising paragraph (d) and adding a new paragraph (g) to read as follows:

§ 74.931 Purpose and permissible service.

* * * * *

(d) Stations may be licensed in this service as originating or relay stations to interconnect instructional television fixed stations in adjacent areas, to deliver instructional and cultural material to, and obtain such material from, commercial and noncommercial educational television broadcast stations for use on the instructional television fixed system, and to deliver instructional and cultural material to, and obtain such material from, nearby terminals or connection points of closed circuit educational television systems employing wired distribution systems or radio facilities authorized under other parts of this chapter, or to deliver instructional and cultural material to any CATV system serving a receiving site or sites which would be eligible for direct reception of ITFS signals under the provisions of paragraphs (a) and (b) of this Section.

* * * * *

(g) On a secondary basis, an ITFS station may be operated as a temporary fixed station from temporary unspecified points to an ITFS station under the provisions of paragraph (a), (b), (d) or (e) of this Section.

5. Section 74.932 is amended by adding a new paragraph (d) to read as follows:

§ 74.932 Eligibility and licensing requirements.

* * * * *

(d) In case of permanent discontinuance of operation of a station licensed under this subpart, authority to operate is forfeited and the licensee shall forward the station license to the Commission for cancellation. For the purposes of this Section, a station which is not operated for a period of one year is considered to have been permanently discontinued. If use of a channel(s) is discontinued, authority to operate on such channel(s) is forfeited and an application for modification shall be filed to delete such channel(s).

6. Section 74.937 is amended by revising paragraph (b) to read as follows:

§ 74.937 Antennas.

* * * * *

(b) Directive transmitting antennas shall be used whenever feasible so as to minimize interference to other licensees. The radiation pattern shall be designed to minimize radiation in directions where no reception is intended. When an ITFS station is used for point-to-point service, an appropriate directional antenna must be used.

* * * * *

7 Section 74.938 is amended by revising paragraph (a) to read as follows, and by removing paragraphs (c), (d) and (e) in their entirety.

§ 74.938 Transmission standards.

(a) The width of an ITFS channel is 6 MHz. ITFS transmitters must be type accepted by the Commission for the particular visual and aural signals that will be employed in actual operation. Either the manufacturer or the licensee must obtain transmitter type acceptance for the transmitter by filing a application for type acceptance with appropriate information concerning the signal waveforms and measurements.

* * * * *

8. Section 74.970 is amended by revising paragraph (b) to read as follows:

§ 74.970 Modulation limits.

* * * * *

(b) *Aural transmitter.* The maximum frequency deviation of the aural carrier shall not be permitted to exceed ± 75 kHz on peaks of frequent recurrence during any transmission. This is defined as 100% modulation.

9. Section 74.982 is amended by adding a new paragraph (f) to read as follows:

§ 74.982 Station identification.

* * * * *

(f) Temporary fixed ITFS stations shall identify with the call sign of the primary station and a temporary fixed identifier.

Statement of Commissioner Henry M. Rivera, Dissenting in Part

RE: Report and Order Amending Part 74 in Regard to the Instructional Television Fixed Service (MM Docket No. 83-523).

I dissent from this decision in one respect—its extension of ITFS license terms to ten years.[1] By law, television broadcasting station license terms may not exceed five years.[2] Under the prevailing test of whether a particular activity is broadcasting,[3] ITFS facilities, when used for home television distribution (and all have that capability), certainly must be considered television broadcast stations. Therefore, it seems plain that ITFS operations may not be authorized for more than five years at a time (unless this Commission were to license programmer-lessees as broadcasters, a result not proposed by the majority here). The Commission has given neither reasoned analysis nor, indeed, any analysis whatever, in support of its determination on license terms. The agency's muteness on this important issue only days after being admonished by the United States Court of Appeals for the District of Columbia Circuit to be mindful of the restrictions imposed on broadcasters by the Communications Act[4] signals the Commission's apparent intention to disregard the requirements outlined by the Court's decision.

[FR Doc. 84-21676 Filed 8-14-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 40453-4053]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closures, commercial salmon fishery.

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[1] *See Report and Order* para. 31.

[2] 47 U.S.C. section 307(b).

[3] *National Association of Broadcasters* v. *FCC*, No. 83-1926, Slip op. at 13-27 (D.C. Cir. July 24, 1984); *United States Satellite Broadcasting Co.* v. *FCC*, No. 83-1692, slip op. at 19-20 (D.C. Cir. July 24, 1984).

[4] *See NAB* v. *FCC*, *supra*.

SUMMARY: The Secretary of Commerce announces closures of the commercial salmon fishery in the fishery conservation zone (FCZ) in the special fishery zone between the south jetty at the mouth of the Columbia River and Cape Falcon, Oregon, and between the U.S.-Canada border and Cape Alava, Washington, at midnight August 8, 1984, because the quotas for coho salmon have been taken. The Acting Director, Northwest Region, NMFS, has determined in consultation with the Oregon Department of Fish and Wildlife (ODFW) and the Washington Department of Fisheries (WDF) that the commercial quota of 12,400 coho salmon for each area was reached recently by midnight August 6. This action is required by Federal regulations for the fishery.

EFFECTIVE DATE: Closures of the FCZ in the special fishery zone from the south jetty at the mouth of the Columbia River to Cape Falcon, Oregon, and the U.S.-Canada border to Cape Alava, Washington, to commercial salmon fishing are effective at 0001 hours Pacific Daylight Time, August 9, 1984.

FOR FURTHER INFORMATION CONTACT: Thomas E. Kruse, Acting Director, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700, Seattle, WA 98115; telephone 206-526-6150.

SUPPLEMENTARY INFORMATION: Emergency regulations to manage the ocean commercial and recreational salmon fisheries off the coast of Washington, Oregon, and California were published in the Federal Register on May 3, 1984, 49 FR 18853.

The emergency regulations specify at § 661.42(a)(2) that when a quota for the commercial fishery, for any species in any portion of the fishery management area, is projected by the Regional Director to be reached on or by a certain date, the Secretary will close, by publishing a notice in the Federal Register, the commercial fishery for all species as of the date of the quota will be reached.

The coho quotas for the commercial fishery in the FCZ (1) in the special fishery zone between the south jetty at the mouth of the Columbia River and Cape Falcon, Oregon, and (2) between the U.S.-Canada border and Cape Alava, Washington, is 12,400 fish for each area, as shown in Table 3 of § 661.42(a)(1) of the emergency regulations. Based on the most recent catch and effort information supplied by the ODFW an WDF, the commercial fisheries in the two areas reached their 12,400 coho salmon quotas by noon on August 6, when ODFW and WDF acted to close State waters and to prohibit further landings after a grace period of 24 hours for landing in coastal ports (48 hours for Puget Sound landings). Subsequent evaluation of all landings data on August 8 confirmed that the quotas had been taken. The Secretary therefore issues this notice to close the FCZ in these two areas effective midnight, August 8, 1984.

The Acting Regional Director consulted with the Directors of the ODFW and WDF, and advised the Executive Director, Pacific Fishery Management Council, regarding this closure.

As provided under § 661.42(d), all information and data relevant to this notice of closure have been compiled in aggregate form and are available for public review from 8:00 a.m. to 4:30 p.m. weekdays at the above address.

Other Matters

This action is taken under the authority of 50 CFR 661.42 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fish, Fisheries, Fishing, Indians.

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

Dated: August 9, 1984.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 84-21027 Filed 8-10-84; 12:03 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 159
Wednesday, August 15, 1984

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 1079

Milk in the Iowa Marketing Area; Proposed Temporary Revision of Shipping Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed temporary revision of rule.

SUMMARY: This notice invites written comments on a proposal to reduce the supply plant shipping requirement under the Iowa Federal milk order for the months of September, October and November 1984. This action was requested by the operator of a pool supply plant who ships milk to distributing plants regulated by the order.

DATE: Comments are due seven days after publication in the Federal Register.

ADDRESS: Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-4829.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified as a "non-major" action.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to assure that the market would be adequately supplied with milk for fluid use with a smaller proportion of milk shipments from pool supply plants.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1079.7(b)(1) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Iowa marketing area is being considered for the months of September, October and November 1984.

All persons who desire to submit written data, views, or arguments in connection with the proposed revision should file the same with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, not later than 7 days after publication of this notice in the Federal Register. Please submit two copies of the documents filed. The period for filing views is limited because a longer period would not provide the time needed to complete the required procedures and include September 1984 in the temporary revision period.

All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposal would temporarily revise the supply plant shipping percentage provision set forth in § 1079.7(b) by reducing the shipping requirement 10 percentage points, from the present 35 percent to 25 percent, during the months of September, October and November 1984.

Pursuant to the provisions of § 1079.7(b)(1), the supply plant shipping percentages set forth in § 1079.7(b) may be increased or decreased by up to 10 percentage points during any month to encourage additional milk shipments to pool distributing plants or to prevent uneconomic shipments.

Beatrice Companies, Inc. (Beatrice), on behalf of Beatrice Cheese, requested this action in order to prevent uneconomic shipments of milk during September, October and November 1984. Beatrice said that producer receipts under the Iowa order are practically unchanged from the previous year, when a similar action under the order was taken, and that Class I utilization has remained fairly constant. Because the distributing plants anticipate having a sufficient supply of milk for Class I needs this fall, Beatrice said that there will be no need for supply plants to ship as much as 35 percent of their producer receipts and that a temporary lowering of the supply plant shipping requirement, to a 25 percent shipping standard, is needed to prevent uneconomic shipments of fluid milk for such months.

List of Subjects in 7 CFR Part 1079

Milk marketing orders, Milk, Dairy products.

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

Signed at Washington, D.C., on: August 9, 1984.

Edward T. Coughlin,
Director, Dairy Division.

[FR Doc. 84-21634 Filed 8-14-84; 8:45 am]
BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 73

[Docket No. 83-069]

Scabies in Cattle

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Withdrawal of Proposed Rule and Notice of Intent to Review Existing Regulations.

SUMMARY: The cattle scabies regulations (contained in 9 CFR Part 73 and referred to below as the regulations) restrict the interstate movement of certain cattle because of cattle scabies, a contagious skin disease caused by mites. A document published in the Federal Register on March 4, 1980 (45 FR 14050-14062), proposed to revise the cattle scabies regulations by (1) adding certain definitions, (2) revising the conditions under which the cattle may be moved interstate, and (3) providing for the use of specifically approved treatment facilities for cattle that are required to be treated prior to interstate movement.

Prior to the end of the comment period provided for by the proposal, several persons requested that the comment period be extended. In response, such persons were advised by Department officials that an extension of the comment period would not be necessary

since action was to be taken to withdraw the proposal and that a new proposal would be published in the Federal Register.

Also, recently the regulations were changed to allow the use of ivermectin for treatment of scabies (49 FR 10528, March 4, 1984). It appears that ivermectin will be such an improvement in the treatment of the disease that it may revolutionize the treatment of cattle scabies and become the predominant means of treating cattle for that disease. The proposal did not contain provisions concerning ivermectin.

The Department is currently reviewing the regulations and it is anticipated that a new proposal will be developed. Further, this document invites written comments concerning any changes that should be made in the regulations.

DATES: This withdrawal of proposed rule is effective August 15, 1984. Written comments should be submitted on or before October 15, 1984.

ADDRESS: All written comments concerning any changes that should be made in the cattle scabies regulations should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 728 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. G. O. Schubert, Special Diseases staff, VS, APHIS, USDA, Federal Building, Room 820, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8438

List of Subjects in 9 CFR Part 73

Animal diseases, Animal pests, Cattle, Quarantine, Transportation, Scabies, Mites.

Under the circumstances explained above, the proposal published in the Federal Register on March 4, 1980 (45 FR 14050-14062), to revise 9 CFR Part 73, the cattle scabies regulations is hereby withdrawn.

Authority: Secs. 4-7, 23 Stat. 32, as amended; Secs. 1 and 2, 32 stat. 791, 792, as amended; Secs. 1-4, 33 Stat. 1264, 1265, as amended; Secs. 3 and 11, 76 Stat. 130, 132, 76 Stat. 663; 7 U.S.C. 450 and 21 U.S.C. 111-113, 115, 117, 120, 121, 123-126, 134b and 134f; 7 CFR 2.17, 2.51, 371.2(d).

Done at Washington, D.C., this 9th day of August, 1984.

D.F. Schwindaman,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-21031 Filed 8-14-84; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISISON

10 CFR Ch. I

Issuance of Quarterly Report on the Regulatory Agenda

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Regulatory Agenda.

SUMMARY: The Nuclear Regulatory Commission has issued the July 1984 Regulatory Agenda. The Agenda, which is a quarterly compilation of all rules on which the NRC has proposed, or is considering action as well as those on which it has recently completed action, and all petitions for rulemaking which have been received and are pending disposition by the Commission, is issued to provide the public with information regarding NRC's rulemaking activities.

ADDRESS: A copy of this report, designated NRC Regulatory Agency (NUREG-0936) Vol. 3, No. 2 is available for inspection and copying at a cost of seven cents per page at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Single copies of the report may be obtained at a cost of $6.00 payable in advance from the NRC/GPO Sales Program, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Alzonia W. Shepard, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, Telephone (301) 492-7051, Toll free number (800) 368-5642.

Dated at Bethesda, Maryland this 6th day of August 1984.

For the Nuclear Regulatory Commission.

J.M. Felton,

Director, Division of Rules and Records, Office of Administration.

[FR Doc. 84-21034 Filed 8-14-84; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 24016; ref. Petition Notice PR 84-7]

Edward Bramlitt; Radiation Safety Requirements for Crewmembers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Petition for rulemaking; correction.

SUMMARY: On Monday, August 6, 1984, the Federal Aviation Administation published a petition for rulemaking (49 FR 31298) from Edward Bramlitt that seeks to establish radiation safety requirements for crewmembers engaged in air commerce. This document is issued to correct the docket number for that petition and to correct a typographical error in the petitioner's background/supportive information.

FOR FURTHER INFORMATION CONTACT: Andrew F. Horne, Biomedical and Behavioral Sciences Division, Office of Aviation Medicine, (202) 426-3434, or Lawrence Bedore, Air Transportation Division, Office of Flight Operations, (202) 426-8096, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591.

SUPPLEMENTARY INFORMATION: In FR Doc. 84-20852 beginning on page 31298 in the issue published on August 6, 1984, the docket number "20416" should read "24016." In addition, on page 31299, first column, first paragraph, 21st line, the word "altitudes" should read "latitudes."

Issued in Washington, D.C., on August 10, 1984.

John H. Cassady III,

Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 84-21040 Filed 8-14-84; 8:45 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Part 399

[PSDR-71A; Policy Statements Docket 38975]

Statements of General Policy; Micronesian Fare Flexibility: Termination of Rulemaking

Dated: August 2, 1984.

AGENCY: Civil Aeronautics Board.

ACTION: Termination of rulemaking.

SUMMARY: The CAB is terminating a rulemaking proceeding, which had been proposed to grant fare flexibility in Micronesian (including Guam) and American Samoan markets. Effective January 1, 1983, the Board's regulatory authority over the level of rates and fares in overseas air transportation terminated. Accordingly, the question of fare flexibility in these markets has become moot. The Board is, therefore, terminating the rulemaking proceeding on its own initiative.

FOR FURTHER INFORMATION CONTACT: Peter B. Schwarzkopf, Assistant General Counsel, International Affairs, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, DC 20428; 202-673-5928.

SUPPLEMENTARY INFORMATION: In PSDR-71, 46 FR 29727, June 3, 1981, the Board proposed to amend §§ 399.32 and 399.34 of its Policy Statements to increse fare flexibility between the continental United States and Micronesia (including Guam) and American Samoa, and within and between Micronesia and American Samoa. Carriers would be entitled to decrease fares without limitation, and to increase fares up to 30% above the adjusted Standard Industry Fare Level (SIFL), generally without being subject to suspension on fare level grounds.

Comments were filed by the Governor of Guam, the Guam Airport Authority and the Guam Growth Council, jointly, and the Office of the Representative to the United States of the Commonwealth of the Northern Mariana Islands, opposing the proposed fare flexibility. In addition, the Department of Interior filed an answer to the Continental/Air Micronesia petition for fare flexibility urging caution, without taking a position on the merits.

In accordance with the provisions of section 1601(a)(2)(1) of the Federal Aviation Act, the Board's authority to regulate fares in interstate and overseas air transportation ended on January 1, 1983. Accordingly, the question of fare flexibility in these overseas Micronesian and American Samoan markets is now moot. We have, therefore, decided to terminate this rulemaking proceeding.

We recognize that when the Compact of Free Association becomes effective, points in the Federated States of Micronesia, the Marshall Islands and Palau will again become subject to regulation under the Federal Aviation Act, since transportation between United States points and those Micronesian points will become foreign air transportation. At that time these Pacific points will have the benefit of the 10% upward fare flexibility provided by Order 80-5-139. Further fare flexibility adjustments may then be made by Board Order as may be appropriate to the circumstances prevailing at that time (see, *e.g.*, Order 81-1-119).

List of Subjects in 14 CFR Part 399

Administrative practice and procedure, Advertising, Air carriers, Antitrust, Archives and records, Consumer protection, Freight forwarders, Grant programs—transportation, Hawaii, Motor carriers, Puerto Rico, Reporting requirements, Travel agents, Virgin Islands.

Accordingly:

1. The authority for Part 399 is:

Authority: Sec. 101, 102, 105, 204, 401, 402, 403, 404, 405, 406, 407, 408, 409, 411, 412, 414, 416, 801, 1001, 1002, 1102, 1104, Pub. L. 85-726, as amended, 72 Stat. 737, 740, 743, 754, 757, 758, 760, 763, 766, 767, 768, 769, 770, 771, 782, 788, 797, 92 Stat. 1708; 49 U.S.C. 1301, 1302, 1305, 1324, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382, 1386, 1461, 1481, 1482, 1502, 1504.

2. The Civil Aeronautics Board terminates the rulemaking proceeding in Docket 38975.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-21736 Filed 8-14-84; 8:45 am]

BILLING CODE 6320-01-M

POSTAL SERVICE

39 CFR Part 265

Increase in Fees for Record Retrieval

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule increases the fees charged for furnishing Postal Service records to members of the public. The increased fees implement existing policy to recover the direct costs of document search and duplication incurred by the Postal Service.

DATE: Comments must be received on or before September 14, 1984.

ADDRESS: Written comments should be addressed to USPS Records Office, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20250-5010. Copies of all written comments will be available for public inspection and photocopying between 9:00 am and 4:00 pm in Room 8121 at the above address.

FOR FURTHER INFORMATION CONTACT: Martha J. Smith, (202) 245-5568.

SUPPLEMENTARY INFORMATION: The following proposed modifications to Part 265—Release of Information—revise longstanding fees for retrieving data, manually and by computer, in order to reflect current labor and administrative costs. Existing fees were established on July 1, 1980, 45 FR 44270, and do not reflect current direct costs. The revised fees comport with the requirement, at 5 U.S.C. 552(a)(4), that "fees shall be limited to reasonable standard charges for document search and duplication and provide for recovery of only the direct costs of such search and duplication." Accordingly, it is proposed to amend Part 265 of 39 CFR as follows:

List of Subjects in 39 CFR Part 265

Release of information, Postal Service.

PART 265—RELEASE OF INFORMATION

§ 265.8 [Amended]

1. In § 265.8, paragraphs (b) (1), (2) and (3) are amended by striking out "$3.35", "$4.00", and "1980", respectively, and inserting "$4.25", "$5.35", and "1984", respectively, in lieu thereof.

2. At the end of § 265.10, revise Appendix A to read as follows:

Appendix A—Information Services Price List In Effect January 1, 1984

Whenever an individual requests information which must be retrieved by computer, standard charges will be incurred based upon resources required to furnish this information. Estimates will be provided to the requester in advance and will be based upon the following standard price list.

Description of services	Price	Unit
A. System Utilization services:		
Central Processor Unit (CPU)		Hour.
370/158-1 (WA)	$189.00	
4341 (MC NB 1B)	280.00	
3033S	660.00	
3033N (NR)	888.00	
3033U	1,134.00	
Amdahl V8 (MA SB)	1,323.00	
Amdahl 5860 (MB NY SA)	1,638.00	
3081 (SL St)	1,827.00	
Disk usage (Selector) Channel.	366.25	Hour.
Multiplexor (Byte) Channel	17.50	Hour.
Tape Usage (Block MPX) Channel.	6.50	Hour.
Volume Mounts	.50	Mount.
Minimum Job Charges:		
Flushed	1.00	Job.
Executed	2.00	Job.
3800 Printing	1.10	1,000 Lines
Dedicated Use of 370/135	15,704.00	Per A/P
B. System Occupancy Charges:		
Tape Occupancy	34.00	Hour.
Unit Record Occupancy		Hour.
WDSS 1288 OCR	137.00	
Printers	1.10	1,000 Lines.
Teleprocessing/Graphics Occupancy.	5.00	Hour.
C. System Spooling Charges:		
Cards Read, Local	6.35	1,000 Cards.
Cards Read, Remote	.65	1,000 Cards.
Lines Printed, Local	1.10	1,000 Lines
Lines Printed, Remote	.20	1,000 Lines.
Cards Punched, Local	34.00	1,000 Cards.

Description of services	Price	Unit
Cards Punched, Remote	3.40	1,000 Cards.
D. Peripheral Charges:		
Keypunching	10.00	100 Cards.
Key-to-Tape	17.00	Hour.
Xeroxing Offline	3.80	100 Pages.
Paper for Terminals; 1-Part	22.00	Box.
Paper for Terminals, 2-Part	26.00	Box.
Magnetic Tape Purchase	13.50	Reel.
Microfilm Processing, Offline	.01	Frame.
Microfiche Processing	.01	Frame.
Microfiche Duplicating	.05	Sheet.
Remote Job Entry Terminal Rent.	600.00	Per A/P.
Programmer Support	30.00	Hour.
Programmer Support, Overtime.	45.00	Hour.
Systems Analysis Support	40.00	Hour.
Systems Analysis Support, Overtime.	60.00	Hour.
Inspection Service Processing	2,960.00	Per A/P.
Wilkes-Barre Nucleus Processing.	13.80	1,000 Transact.
St. Louis ADPC Nucleus Processing.	13.80	1,000 Transact.

(39 U.S.C. 401; 5 U.S.C. 552 (a)(4)(A))

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 84-21613 Filed 8-14-84; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL 2615-5]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: On February 3, 1983 (48 FR 5110), USEPA proposed disapproval of the 1982 State Implementation Plan (SIP) revision for carbon monoxide (CO) and ozone, which had been submitted in draft form by the Illinois Environmental Protection Agency (IEPA) pursuant to the Part D requirements of the Clean Air Act (Act). The notice of proposed rulemaking provided that if the State substantially changed the draft revisions, USEPA would evaluate the changes and publish a revised notice of proposed rulemaking. On May 4, 1983, November 4, 1983, December 23, 1983, December 27, 1983, and January 20, 1984, the State submitted substantial revisions to the draft SIP. This rulemaking announces USEPA's analysis of these changes, revises USEPA's proposed rulemaking on the State's SIP submission, and solicits public comments on the revised SIP and USEPA's proposed action. USEPA is proposing rulemaking on this draft CO and Ozone SIP revision at the request of the State to parallel process this action. USEPA will take final rulemaking action on this SIP revision when it is submitted in final form without further proposal only if there are no significant changes in the final submittal.

DATE: Comments on this revision and on the proposed USEPA action must be received by September 13, 1984.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review. (It is recommended that you telephone Randolph O. Cano at (312) 886-6035 before visiting the Region V office).

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Comments on this proposed rule should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), USEPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6035.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 added a new Part D to Title I of the Act. Under Part D, the States had to revise their State Implementation Plans (SIPs) for all nonattainment areas and submit the revisions to USEPA by January 1, 1979 (sections 171-178 of the Act; section 129(c) (uncodified) of Pub. L. 95-95). The revised plan had to provide for attainment by December 31, 1982, unless the State demonstrated that it could not attain either the ozone or CO standard by that date despite the implementation of all reasonably available control technology (RACT) (sections 172(a)(1), 172(a)(2) of the Act).

If USEPA approved this demonstration, the attainment date for ozone or CO could be extended up to December 31, 1987, and the State could defer certain of the Part D planning requirements. States receiving such extensions were to submit a second SIP revision that provided for attainment by the approved attainment date and complied with all of the Part D requirements (section 172(c)).

These second SIP revisions had to be submitted by July 1, 1982 (Section 129(c) (uncodified), Pub. L. 95-95). On January 22, 1981 (46 FR 7182), USEPA published final criteria for reviewing these revisions. These criteria supplement the "General Preamble" for SIP revisions for nonattainment areas, which was published on April 4, 1979 (44 FR 20372).[1] Other requirements for plan preparation and USEPA policy guidance are contained in a technical support memorandum dated November 15, 1982, which is available for review at the Region V office listed above.

The State of Illinois submitted an initial SIP revision for CO and ozone in the Chicago Metropolitan area and for ozone in the St. Louis (Illinois portion) metropolitan area in April 1979. The State requested that USEPA extend the attainment date for the standards in these areas until December 31, 1987. USEPA approved the initial plan revision on February 21, 1980 (45 FR 11572).

On February 3, 1983 (48 FR 5110), USEPA proposed disapproval of, and solicited public comment on, the 1982 Illinois SIP revision for CO and Ozone which had been submitted by IEPA in draft form on June 30, 1982. On December 3, 1982, the State submitted responses to comments included in USEPA's November 15, 1982, Technical Support Document. On May 4, 1983, November 4, 1983, December 23, 1983, December 27, 1983, and January 20, 1984, the State submitted substantial revisions to the draft SIP. This rulemaking announces USEPA's analysis of these changes, revises USEPA's proposed rulemaking on the SIP, and solicits public comments on the revised SIP and USEPA's action.

USEPA is proposing rulemaking on this draft CO and Ozone SIP revision at the request of the State to parallel process this action. USEPA will take final rulemaking action on this SIP revision when it is submitted in final form without further proposal only if there are no significant changes in the final submittal.

In the February 3, 1983 (48 FR 5110), proposed rulemaking, USEPA identified a number of major plan deficiencies which were addressed by IEPA in later submissions. These included:

1. Illinois' failure to incorporate a commitment for the adoption and final submittal of the volatile organic compounds (VOC) reasonably available control technology (RACT);

2. Illinois' reliance on contigency measures, and other related modeling deficiencies;

(a) The SIP relied on contingency measures as part of the demonstration of attainment.

[1] USEPA published four additional notices supplementing the general preamble in 1979: July 2, 1979 (44 FR 38583); August 28, 1979 (44 FR 50371); September 17, 1979 (44 FR 53761); and November 23, 1979 (44 FR 67182).

(b) The SIP provided ranges of estimates of emission control requirements rather than providing single best estimates of control requirements for each demonstration area.

(c) Various modeling procedures used by the IEPA deviated substantially from USEPA recommended procedures.

3. Failure to commit to sufficient emission reductions to demonstrate attainment in Kenosha and Racine Counties in Wisconsin:

4. Failure to provide an acceptable demonstration of attainment of the CO standard: and,

5. Failure to implement the vehicle inspection and maintenance (I/M) program to which it committed in its 1979 SIP by December 31, 1982, as required by USEPA policy.

The remainder of this Federal Register notice will briefly discuss how these deficiencies were addressed by IEPA in subsequent submittals, and will announce USEPA's proposed action. A more detailed discussion of these issues is contained in the technical support documents for this rulemaking which are available for inspection at the USEPA Region V Office listed at the front of this notice.

In the Chicago area, the State of Illinois has now revised its attainment plan by committing to implement RACT regulations for all major VOC sources, certain transportation control measures (TCMs), stage II vapor recovery and a vehicle inspection and maintenance (I/M) program. USEPA's analysis of Illinois' submittal shows that these steps are sufficient to demonstrate attainment by 1987 in the Chicago area. In the St. Louis area, Illinois has committed to adopt RACT regulations for major VOC sources, certain TCMs and I/M. USEPA's analysis shows this plan also demonstrates attainment by 1987, although, USEPA's analysis differed from the exact analysis used by Illinois as explained below. Today's notice proposed to approve the attainment demonstrations for both the Chicago and East St. Louis areas and solicits public comment on USEPA's proposed action.

Stationary Source Control Measures

Stationary source control measures are discussed in terms of various groups of Control Technique Guidelines (CTGs). The Illinois Pollution Control Board (IPCB) has adopted, and USEPA has aproved, RACT regulations for the first group of source categories (RACT I). The IPCB adopted RACT regulations for the second group of source categories (RACT II) on December 30, 1982, and submitted these regulations to USEPA on January 28, 1983. In its June 30, 1982, submittal, IEPA included proposed regulations and discussion for the third group of source categories (RACT III,) and for all major sources not covered by CTGs (non-CTG RACT). However, this submittal did not include commitments to adopt these regulations. USEP's February 3, 1983, Federal Register proposed to disapprove the Illinois SIP, in part, due to the absence of a commitment from all the agencies which are in any way responsible for adopting these regulations. Illinois' May 4, 1983, submittal included a letter from Governor Thompson to USEPA, on behalf of several State agencies, that committed to adopt these regulations and set forth a schedule for adoption.

In its December 23, 1983, submittal, the State committed to the implementation of stage II vapor recovery controls in the Chicago area and identified a schedule for implementation which included proposal of the regulation by the IPCB in March 1984, adoption in September 1985 and final compliance with the adopted rule in December 1987 This is judged to be a full commitment on behalf of all groups under the Governor's control including IEPA, the Illinois Department of Energy and Natural Resources and the IPCB.

These actions by the State of Illinois satisfy USEPA's concerns regarding the earlier proposed disapproval. USEPA, therefore, now proposes to approve the State's plan to adopt RACT III, non-CTG RACT regulations and stage II vapor recovery regulations.

Ozone Attainment Demonstrations

By replacing the Chicago area attainment demonstration of June 30, 1982, first with an attainment demonstration submitted May 4, 1983, and later with the attainment demonstration of December 23, 1983, which was subsequently modified in a January 20, 1984, submittal, Illinois has made several significant changes to the attainment demonstration which USEPA proposed to disapprove on February 3, 1983. Similarly, the Illinois replacement of the June 30, 1982, St. Louis area attainment demonstration with the December 23, 1983, attainment demonstration also represents a significant change. For the both the Chicago and St Louis areas the most notable changes are: (1) Illinois replaced its range-based attainment demonstration with an attainment demonstration based on a single best estimate of the control requirements; (2) Illinois no longer relies on contingency measures for demonstrating attainment; (3) Illinois has eliminated adjustments of control requirments based on chemical mechanism and mixing height considerations; and (4) Illinois no longer uses a non-local range of HC/NO_x ratio and instead uses a ratio based on local monitoring data. These changes adequately respond to the major attainment demonstration deficiencies identified for the Illinois areas of Chicago and St. Louis in the February 3, 1983, Federal Register.

The ozone attainment demonstrations for the Chicago and St. Louis (Illinois portion) areas are discussed in greater detail below.

(a) Chicago Area

The February 3, 1983, Federal Register cited two major deficiencies of the SIP with respect to the attainment demonstration for ozone in the Chicago area. First, the attainment demonstration relied on contingency measures and had several related modeling deficiencies; and second, attainment was not demonstrated in Southeast Wisconsin. The current SIP (reflecting the attainment demonstration submitted December 23, 1983 as modified January 20, 1984) no longer relies on contingency measures and does not contain the related modeling deficiencies.

Illinois, in its December 23, 1983, submittal as modified January 20, 1984, addresses the Wisconsin ozone violation in a new modeling analysis for critical days at the Kenosha and Racine, Wisconsin, receptor sites, as well as with a variety of modifications to its emissions inventory. The modeling analysis uses USEPA's recommended monitor-based HC/NO_x ratio of 6.7 It does not make the adjustments to modeling results contained in previous SIP submittals and corrects other miscellaneous deviations from USEPA guidance. Although Illinois modeled only the critical days, USEPA's analysis found that the site-days modeled by Illinois include the site-day from which the emission control requirement for the Chicago-Northwest Indiana area is obtained. The Illinois SIP is correct in finding that a 46.9% reduction from 1979 emissions in the Chicago-Northwest Indiana area is necessary to achieve attainment in all receptor areas of this metropolitan area.

Illinois' Ozone SIP for the Chicago area bases its demonstration of attainment solely on reductions in emissions from Illinois sources. However, the Illinois SIP also includes an estimate of emissions from the Indiana portion of the Chicago-Northwest Indiana area, which was derived by the Air Pollution Control

Division of the Indiana State Board of Health. USEPA has evaluated prospects for achieving attainment by 1987 based on the sum of emissions for Northwest Illinois, plus Northwest Indiana, and concluded that attainment should be achieved.

Illinois performed two modeling analyses for the Chicago area, one in which a target concentration of 0.124 ppm was used, and the other in which a target concentration of 0.120 ppm was used but the base year concentration was rounded to two significant figures. The more conservative of these two analyses, the analysis using a 0.120 ppm target concentration, found a need for a 46.9 percent reduction of emissions from 1979 levels. The State concluded that its 49.1 percent emission reduction estimate provides sufficient emissions reductions to assure both reasonable further progress (RFP) and attainment of the ozone national ambient air quality standard (NAAQS) by 1987 using either target concentration. As discussed further below, USEPA has performed its own analysis of emission reductions in the Chicago-Northwest Indiana area based on information given in the Illinois SIP. This analysis, in combination with the State's more conservative modeling analysis, also leads USEPA to the conclusion that the O_3 NAAQS will be attained by 1987 and RFP will be maintained.

The most significant emissions inventory modification contained in the December 23, 1983, submittal is a reassessment of projected emissions for several source categories involved in the production and marketing of gasoline. The revised inventory reflects a significant decline in gasoline consumption as projected by the Illinois Department of Energy and Natural Resources. The submittal also changes emission estimates for a variety of other source categories, including degreasing, petroleum refining, dry cleaning, and highway vehicles. Finally, this submittal presents updated information on NO_x emissions from power plants. USEPA considers these modifications to be acceptable. Additionally, review of Illinois' responses to USEPA's August 23, 1982, comments on several emissions inventory issues indicates that Illinois' responses are acceptable with the exception of credits taken for plant shutdowns.

Based on USEPA's analysis of the Illinois submittal, emissions in the Chicago-Northwest Indiana area will be reduced by 47.9% between 1979 and 1987. The emission reduction percentage calculated by USEPA is slightly different from the 49.1% reduction estimated from the data presented by Illinois. Much of the difference is attributable to credit taken by Illinois for plant shutdowns, which are not federally enforceable and may not be properly reflected in the base year and attainment year emissions inventories. However, the most important feature of these two reduction percentages is that both are sufficient to achieve attainment in all areas impacted by the Chicago-Northwest Indiana area.

The emission reductions from stage II vapor recovery in Northeast Illinois are included in the above reduction percentages. This credit is appropriate because the State's December 23, 1983, submittal commits the State to the implementation of stage II recovery controls in the Chicago area. USEPA's analysis concludes that attainment by 1987 would not be demonstrated without the adoption of this or some other similarly effective control measure.

USEPA assessed the emissison reductions committed to in the Illinois and Indiana Control Strategies and agrees that taken together the two strategies achieve the reduction needed to achieve attainment in the Chicago-northwestern Indiana area. USEPA also assessed RFP as presented in the Illinois SIP. Although USEPA determined that elements of the State's analysis of RFP are inappropriate, USEPA's own analysis confirms the State's conclusion that RFP will be maintained by the SIP. The Illinois control strategy has been discussed in this proposed rulemaking. The specifics of the Indiana control strategy are discussed in a separate proposed rulemaking.

(b) St. Louis Area (Illinois Portion)

On February 3, 1983, USEPA proposed to disapprove Illinois' attainment demonstration for the St. Louis area (Illinois portion), due to the reliance on contingency measures for demonstrating attainment and due to related modeling deficiencies. On May 4, 1983, Illinois replaced the contingency-based attainment demonstration with an attainment demonstration that compared the emission reductions achieved under Illinois' control program against the emission reduction requirements presented in Missouri's December 1, 1982, SIP submittal. On December 23, 1983, Illinois submitted an analysis which made many of the same changes to the St. Louis area (Illinois portion) inventory as were made to the Chicago inventory and which relied on updated modeling submitted by Missouri on August 24, 1983. A review of the December 23, 1983, submittal is presented in the technical support documents which are available for inspection at the Region V office listed on the beginning of the Federal Register notice. The following discussion summarizes this review. Illinois concluded that it must achieve a 41.7% reduction from 1979 emissions.

The inventory in Illinois' December 23, 1983, submittal claims two sets of emission reductions that are not federally-enforceable plant shutdowns credits, and stage II vapor recovery. The State has not shown that the emission reductions claimed for plant shutdowns are federally enforceable or that appropriate adjustments have been made to the emissions inventories to reflect the impact of shutdowns. The State has not provided the enforceable commitment to adopt stage II vapor recovery regulations in the Illinois portion of the St. Louis area as it has for the Chicago area. Therefore, these emissions reductions are not creditable at the present time.

The technical support documents analyze probable emissions in the Illinois portion of the St. Louis area for 1979, 1980, and 1987. This analysis deletes plant shutdown credits and emission reduction for stage II vapor recovery. This analysis also makes similar emissions inventory corrections as were made for the Chicago area inventory. This analysis indicates that 1987 emissions in the Illinois portion of the St. Louis area will be reduced by 48% from 1979 levels, a similar reduction percentage to that reported by Illinois if stage II and plant shutdown credits are excluded. The emissions in the Illinois portion of the St. Louis area are expected to be reduced sufficiently to achieve attainment without these provisions of the Illinois submittal. It appears that, with the minimum reductions attributable to RACT II controls, the Illinois portion of the area will achieve the necessary percent emission reduction, including a growth margin. In addition, USEPA's analysis of the States' emissions inventory projections finds that RFP will be maintained. USEPA therefore, proposes to approve the ozone attainment demonstration for the Illinois portion of East St. Louis area.

Attainment Demonstration for Carbon Monoxide (CO) in the Chicago Area

The Illinois' CO SIP includes separate attainment demonstrations for downtown Chicago and for other nonattainment areas in and near Chicago (i.e., the freeway corridors). Illinois has submitted two basic attainment demonstrations for downtown Chicago. The first demonstration was submitted June 30,

1982, and the second demonstration was submitted May 4, 1983. (Illinois also submitted responses to comments on the first demonstration on December 3, 1982.) In its May 4, 1983, submittal, Illinois states that this analysis reflects IEPA's current best estimate of the anticipated emission reductions from implementation of the Federal Motor Vehicle Control Program.

The May 4th analysis for CO in downtown Chicago relies on the rollback model. This analysis assumed that the violations monitored downtown were predominantly the result of motor vehicle emissions. Stationary source emissions were considered by means of a 0.2 ppm constant background concentration. The rollback analysis relied on emission factors derived for the MOBILE 2.5 emission factor model. Illinois also used 1982 air quality data in its analysis in the belief that the use of these data provide a more stringent test of whether attainment will be achieved by 1987 than do the 1979 to 1981 air quality data.

The rollback approach assumes that the nonbackground component of an observed concentration will decrease by the same percentage as emissions. Illinois provided rollback calculations based on a variety of vehicle operating conditions that might be applicable in the downtown area, as well as for two different ambient temperatures. In all cases, attainment was shown to occur by the end of 1987 USEPA made additional calculations based on slightly different assumptions of vehicle operating conditions. These calculations support Illinois' conclusion that attainment will be achieved by the end of 1987 Rollback calculations for 1979, 1980, and 1981 support Illinois' statement that 1982 air quality data are the most constraining of the more recent data.

A final issue concerning the downtown attainment demonstration relates to inspection and maintenance (I/M). Illinois' attainment demonstration for CO in downtown Chicago does not reflect the impact of an inspection and maintenance program. However, consideration of an I/M program would lead to lower estimates of future CO concentrations and would also lead to the projection of an earlier attainment date. Thus, Illinois' attainment demonstration may be considered adequate evidence that the CO standard will be achieved in downtown Chicago by the end of 1987 USEPA, therefore, revises its earlier proposed action and now proposes approval of this portion of the Illinois SIP

The CO attainment demonstration for the freeway corridors was submitted by Illinois on June 30, 1982. This attainment demonstration was based on hot-spot modeling using the CALINE 3 model. On August 23, 1982, USEPA sent comments to Illinois on its June 30, 1982, submittal. The February 3, 1983, Federal Register did not specifically address the approvability of the attainment demonstration for the freeway corridors.

Based on USEPA comments transmitted on August 23, 1982, the State submitted a corrected analysis on January 20, 1984. This analysis shows that attainment did not occur by 1982 at a few locations in the freeway corridors in the Chicago area. However, these locations were predicted to have 1982 concentrations only slightly above the standard, and it is likely that attainment will occur well before 1987 at all locations in the Chicago area freeway corridors. USEPA, therefore, proposes to approve this portion of the Illinois SIP

Transportation Control Measures

The Transportation Control Plan (TCP) for Northeastern Illinois describes eight TCMs to be implemented to obtain the hydrocarbon (HC) reduction goal. The TCP will implement the following Transportation Control Measures (TCMs): public transportation; ridesharing; traffic flow improvements; bicycle promotion; long range transit; park and ride lots; alternative work schedules; and exclusive bus carpool lanes.

The TCP for East St. Louis describes six TCMs to be implemented to provide HC and CO emission reduction targets. The TCP will implement the following TCM package: traffic flow improvements, electric vehicles use; increase in ridesharing; increase in van pooling, 30% increase in transit ridership, and park and ride lots.

USEPA finds these TCMs adequate and USEPA proposes approval of these TCMs.

Vehicle Inspection and Maintenance (I/M)

On February 3, 1983 (48 FR 5111), USEPA's proposed rulemaking on the State's June 30, 1982, draft 1982 Ozone and CO SIP found that the State had not implemented the I/M program to which it committed in the 1979 SIP and that the June 30, 1982, SIP submittal did not contain the various elements required under USEPA's 1982 SIP policy (46 FR 7182). The submittal stated that I/M would only be implemented as a contingency measure if warranted by Post-1982 monitoring data, and there were no rules and regulations adopted to implement and enforce the I/M program. The State responded to the February 3, 1983, proposal on May 4, 1983. The May 4, 1983, submittal presents modified cost-effectiveness calculations, but does not change Illinois' conclusions that I/M is not a reasonably available control measure and is not required under the Act. A detailed review of Illinois' May 4, 1983, response can be found in an August 4, 1983, technical support document.

On September 19, 1983, the IEPA responded to the August 3, 1983, Federal Register proposal (48 FR 35315), in which USEPA proposed to find that the State failed to implement a motor vehicle inspection and maintenance program. The September 19, 1983, letter made reference to a commitment by the Governor of Illinois to USEPA's Administrator to proceed with implementation of inspection and maintenance of motor vehicles in Illinois. The IEPA stated that it intended to present to USEPA a specific description of how it plans to carry out the Governor's commitment. On November 4, 1983, the State submitted an I/M implementation schedule. On November 14, 1983, USEPA informed the State that the schedule was neither reasonable or expeditious. In a December 23, 1983, letter from Richard J. Carlson, Director, IEPA, to Valdas V. Adamkus, Regional Administrator, Illinois submitted a revision to the SIP stating that a new proposal for implementing an I/M program would be contained in a future letter. This proposal was submitted on December 27, 1983. The December 27, 1983, submittal contained a schedule for implementation of an I/M program and committed to start testing general auto fleets on October 1, 1985. The State presented information on four main options but did not specify a particular program option, stating that they believed any of the four options can be administered properly and will produce satisfactory results. The December 27, 1983, revision contains a commitment to implement an I/M program commencing October 1, 1985. This is inconsistent with USEPA policy which requires full program implementation by December 31, 1982.

Illinois' December 27, 1983, Ozone and CO SIP submittal did not contain enforceable regulations and other program elements specified in the January 22, 1981, Federal Register (46 FR 7182). USEPA has determined that the I/M portions of Illinois 1982 Ozone and CO SIP did not meet any of the requirements specified in the January 22, 1981 Federal Register. To date, the State has failed to implement an I/M program as required by section 172 of the Act and by its SIP revision that was

approved on February 21, 1980 (45 FR 11472).

On July 1, 1984, the Illinois General Assembly adopted legislation which would enable the State to implement an I/M program. To have the effect of law, the legislation must be signed by the Governor. USEPA is encouraged by this progress made by the State toward the implementation of an I/M program. This is a significant first step in a series of events which must occur for an I/M program to be operational. The lack of the following I/M program elements, however, constitutes a major SIP deficiency: inspection test procedures, emission standards, inspection station licensing requirements, emission analizer specification and maintenance/calibration requirements, record keeping and record submittal requirements, quality control, audit, and surveillance procedures, procedures to assure that noncomplying vehicles are not operating on the public roads, any other official program rules, regulations, and procedures, a public awareness program, a description of any mechanic training program and a demonstration that the program will meet the RACT emission reduction requirements. It is USEPA's expectation that Illinois will submit these program elements in the near future. This will enable USEPA to propose full approval of the Illinois I/M program.

USEPA cannot presently propose approval of the I/M portion of the 1982 Ozone and CO SIP. The State has not implemented in I/M program to which it committed in its 1979 SIP The I/M portion of the SIP does not contain the various elements required under USEPA's 1982 SIP policy. USEPA cannot fully approve the I/M portion of the SIP until all program elements specified in the January 22, 1981, Federal Register (46 FR 7182) are met.

USEPA will address all comments received on the February 3, 1983, proposed action on the I/M SIP in the final rulemaking on the I/M portion of the Illinois 1982 Ozone and CO SIP

All interested persons are invited to comment on this SIP revision and on USEPA's proposed actions. Written comments received by the date specified above will be considered in the development of USEPA's final rulemaking.

Under the Regulatory Flexibility Act 5 U.S.C. 600 et seq., the USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. Under 5 U.S.C. 605(b) this requirement may be waived if USEPA certifies that the rule will not have a significant economic effect on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

If USEPA takes final action to disapprove any portion of this SIP for a nonattainment area as proposed today, a moratorium on the construction and modification of major stationary sources of pollution will go into effect in the area for which the plan is disapproved as required by section 110(a)(2)(I) of the Act and 40 CFR 52.24 (1981). This moratorium will prohibit construction of major new stationary sources of the pollutant for which the plan is disapproved. A major stationary source is any source which emits or has the potential to, emit 100 tons per year or more of a pollutant. See 40 CFR 52.24(f)(5) (1981). The moratorium would also prohibit major modifications to existing major stationary sources; a major modification is any physical change in a source or change in the operation or a source that would result in a significant net increase of a pollutant. See 40 CFR 52.24(f)(6) (1981). Thus, it is clear that final disapprovals would be likely to affect some small entities.

USEPA has in the past made efforts to quantify the impacts of Act rules on the construction and modification of sources but has been unable to do so. USEPA's lack of success is due in part to the need to obtain information on future plans for business growth. This information is difficult to obtain, as businesses are understandably reluctant to make their plans public. Consequently, USEPA is making no quantified assessment of the potential economic impact on small entities of the disapprovals proposed today.

Additionally, although USEPA believes that a final action would be likely to have some impact on small entities, this impact cannot affect the Agency's actions. Under the ACT, the imposition of the construction moratorium is automatic and mandatory whenever the Agency determines that a plan for a nonattainment area fails to satisfy all of the applicable requirements. Under Executive Order 12291, today's action is not "Major" It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to USEPA, and any USEPA response, are available for public inspection at the USEPA Region V office listed above.

List of Subjects in 40 CFR Part 52

Air pollution control, ozone, sulfur oxides, nitrogen dioxide, lead, particulate matter, carbon monoxide, hydrocarbons.

(Sections 110, 172 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601(a)).

Dated: July 23, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc 84-21644 Filed 8-14-84, 8:45 am]

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40 CFR Part 170

[OPP-250052; PH-FRL-2606-8]

Worker Protection Standards for Agricultural Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance Notice of Proposed Rulemaking (ANPR).

SUMMARY: EPA intends to conduct a rulemaking to revise the present regulations found in 40 CFR Part 170. Part 170 currently covers protection of workers from certain hazards posed by the use of agricultural pesticides. In the rulemaking the Agency intends to consider: (1) Expanding the scope of the regulations, including the categories of workers, work activities, and pesticide uses to which the regulations would apply; (2) revising reentry times; (3) revising the protective clothing provisions; (4) revising the standard for warnings; and (5) imposing other types of safety requirements. Also under consideration will be the method by which the standards will be implemented and enforced. EPA encourages public comment on this Advance Notice of Proposed Rulemaking (ANPR). EPA expects to issue a Notice of Proposed Rulemaking within 12 months.

DATES: Comments, data, other evidence, and arguments on suggested changes to Part 170 should be submitted on or before October 1, 1984.

ADDRESSES: By mail, submit comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, submit comments to: Program Management and Support Division (TS-757C), Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, Virginia.

All comments should bear the identifying notation "OPP-250052." Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Linda M. Billings, Director, Pesticides Farm Safety Staff (TS-766C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 1101, Crystal Mall Building 2, 1921 Jefferson Davis Highway, Arlington, Virginia, (703-557-7666).

SUPPLEMENTARY INFORMATION:

I. Background

Under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA registers pesticide products and in so doing evaluates their risks to all users and persons directly or indirectly exposed to the pesticide or its residues. Before a pesticide registration is issued, EPA evaluates the risks the product may pose, including potential hazards to pesticide applicators and other farmworkers who might come in contact with such products during transportation, storage, mixing, loading, or application, or after the product has been applied. After evaluation of the risks, determinations are made as to directions for use, precautionary statements, classification, restrictions, reentry times, protective clothing, and other label instructions necessary to protect humans and the environment.

One of the basic purposes of the 1972 FIFRA Amendments was to make clear that EPA is to register products in such a manner as to protect persons occupationally exposed to pesticides. The legislative history of the 1972 amendments shows that there was an express intent on the part of the Congress that farmers and farmworkers were to be afforded protection under the provisions of FIFRA. The Senate Committee on Agricultural and Forestry Report stated that:

> The Committee believes there can be no question * * * but * * * that the bill [The Federal Environmental Pesticides Control Act of 1972 (FEPCA)] requires the Administrator to require that the labeling and classification of pesticides be such as to protect farmers, farm workers, and others coming in contact with pesticides or pesticide residues. (S. Rep. No. 92-838, (Part II), 92nd Congress, 2nd Session at 14 (1972) (Agriculture and Forestry), U.S. Code Congressional and Administrative News 1972, p. 4063).

EPA's authority to promulgate Part 170 was recognized in *Organized Migrants in Community Action* v. *Brennan* 520 F.2d 1161 (D.C. Cir., 1975). There, the Occupational Safety and Health Administration (OSHA) had proposed emergency standards to protect farmworkers from exposure to certain pesticides. The United States Court of Appeals held that the Administrator of EPA had been given authority by the Congress, when it amended FIFRA in 1972, to provide protection to farmers and farmworkers from the adverse effects of pesticides; and, because EPA was exercising its authority, that OSHA was preempted from issuing standards on its own in this area.

In 1974, EPA promulgated 40 CFR Part 170 pursuant to the authority granted to it by the extensive amendments in 1972 to FIFRA. This part deals with the occupational safety and health of farmworkers performing hand labor operations in fields during or after application of pesticides. It consists of four requirements: (1) Prohibition on spraying workers in fields; (2) reentry intervals; (3) protective clothing; and (4) warnings.

Since 1974, the Agency has set additional reentry intervals for specific pesticide products through the registration and the reregistration processes. In addition, improvements in product labels have been initiated through a Label Improvement Program for the worker protection requirements in Part 170. While these measures have addressed some of the needed changes for worker protection, a more comprehensive revision of Part 170 is necessary.

In accordance with Executive Order 12291, a review of Part 170 was conducted in fiscal year 1983. That review concluded that the current standards were inadequate. Consequently, the Agency decided to conduct a complete review and revision of Part 170. Through this ANPR, EPA is soliciting the public's views in preparation for issuing its proposal to revise Part 170.

II. The Basis for This Advance Notice and Review of Part 170

EPA intends to revise Part 170 for two reasons: To make the regulation reflect new information on the use of pesticides and their effects upon occupational safety and health, and to facilitate compliance with and enforcement of the regulation.

A. New Information

Since 1974, when 40 CFR Part 170 was promulgated, EPA has imposed new kinds of data requirements that concern worker safety; the Agency has acquired much additional data on pesticides; the use patterns have changed; and new methodologies have been developed to determine reentry intervals.

The Agency has been examining information (gathered since 1974 from various sources) on health effects due to pesticides. These include poisoning incident reports, studies of hospital admissions, studies on chronic effects, and a variety of special studies on field exposures. To augment these efforts, the Agency requests the submission of any pertinent data on both acute and chronic health effects, as well as reports from other agencies, institutions, or the public which would assist EPA in revising Part 170.

B. Enforcement Concerns

Difficulties in initiating enforcement actions were another major reason for considering revisions in Part 170. An analysis of these problems revealed that they could be addressed in part through a Label Improvement Program (LIP), which would subject violations of Part 170 to the unlawful acts section of FIFRA. Consequently, in 1983, EPA published PR Notice 83-2 which instituted a LIP to incorporate the provisions of Part 170 on the labels of affected products. As part of the current revision of Part 170, a thorough analysis of compliance and enforcement problems and issues will be undertaken, and appropriate remedies will be developed. In particular, EPA is interested in the best procedures to follow to ensure compliance and enforcement.

III. Specific Issues on Which Public Comment is Requested

Part 170 specifies four basic protections for persons engaged in agricultural hand labor in fields: (1) Protection from being sprayed; (2) reentry intervals; (3) protective clothing; and (4) warnings. EPA seeks public comments on the adequacy of the present requirements in 40 CFR Part 170. A number of specific issues on which

EPA encourages public comment are discussed below.

1. *Scope and applicability.* The first issue is the adequacy of the categories of workers, work activities, pesticide uses, and use sites to which the regulation applies. Part 170 now protects only farmworkers who perform hand labor operations in fields after pesticide application. It does not apply to: (1) Soil-incorporated pesticides; (2) mosquito and related public pest control applications; (3) greenhouse treatments; (4) livestock and other animal treatments; (5) treatments of golf courses and other non-agricultural areas; and (6) mixing, loading, and application activities. The Agency will examine these exclusions to determine whether they should be revised.

The Agency intends to expand the scope of the regulations to set basic safe work practice rules for mixers, loaders, applicators, and other workers handling agricultural pesticides. These rules could require employers to provide training, supervision, personal protective equipment, emergency medical assistance, and other protection measures for their employees. The Agency favors establishing requirements for personal protective equipment for employees who handle pesticides. The Agency is considering whether it is possible to tailor the definition of personal protective equipment relative to the toxicity category of the pesticide being handled.

EPA seeks comments on the continuance of the present exclusions under Part 170 and broadening of the scope of workers and activities covered by the regulation.

2. *The present post-application reentry intervals.* Reentry intervals are a major part of occupational health and safety standards to protect farmworkers from hazardous exposure to pesticides and their residues. The existing reentry intervals in Part 170 are of two types: A general one, which prohibits unprotected persons from entering a field treated with any pesticide until sprays have dried or dusts have settled; and specific times of either 24 hours or 48 hours (based on the length of the time acutely toxic levels of residues were thought to persist on plant surfaces) for the following twelve pesticides:

Pesticide	Hours
Ethyl parathion	48
Methyl parathion	48
Guthion	24
Demeton	48
Azodrin	48
Phosaline	24
Carbophenothion	48
Metasystox-R	48
EPN	24
Bidrin	48
Endrin	48
Ethion	24

The regulation states that longer reentry intervals appearing on product labels will prevail over any specified in Part 170. There is also a provision which allows the States to set more stringent standards; notably, California has set longer reentry intervals for several pesticides.

The Agency proposes to reexamine both the specific and the general reentry intervals contained in Part 170 in light of more recent data to determine if different or additional specific reentry times should be established. For reasons discussed below, the Agency intends to adopt a generic reentry interval of 24 hours for Toxicity Category I pesticides. However, longer reentry intervals will be established as necessary for certain specific products, such as those listed above. Also, exceptions may be made for products having uses or methods of application which have been shown not to pose hazards to workers.

The establishment of a generic 24-hour reentry interval for Category I pesticide active ingredients is appropriate for the following reasons: (1) These are the most hazardous pesticides with the highest toxicities; (2) the large majority of known reentry-type poisoning incidents have occured after the application of Toxicity Category I pesticides; (3) a large number of them do not have specific reentry intervals under Part 170 nor on appropriate pesticide labels; and (4) the current Part 170 allows reentry as soon as the sprays have dried and the dusts have settled. This means in practice that after application of a pesticide at first light in the morning, workers can reenter on the same day and in a relatively short time. Under some conditions this interval could be as little as two hours after pesticide application, and may not be sufficient time for toxic levels of residues to dissipate. California and North Carolina have established a 24-hour generic reentry interval for Toxicity Category I pesticides.

It should be noted that in addition to the intervals that were established in Part 170, other reentry intervals also have been established through the registration process, and these have been incorporated on product labels. In addition, reentry intervals are currently being designated through Registration Standards as a part of the reregistration process.

An option to establishing reentry intervals for specific pesticide products in Part 170 would be to set these reentry intervals through the ongoin registration and reregistration processes and place them on product labels. Thus, Part 170 would only address generic reentry intervals; individual product restrictions would require specific reentry intervals, and these would be placed on appropriate product labels.

In addition to acute toxicity data, EPA also considers data available on the chronic risks posed by certain pesticide products in deciding what worker protection restricitons may be necessary. One option the Agency is considering is to establish reentry intervals or other special requirements, such as warnings, posting, or personal protective equipment, for all pesticide products that EPA has found to pose risks of cancer, birth defects, adverse reproductive effects, or other adverse chronic effects. For example, in line with this approach, Part 170 could require that all pesticides that have been identified during the reregistration process or as a result of a special pesticide review (see 40 CFR 162.11) as posing the chronic risks mentioned above be subject to reentry intervals, regardless of their acute toxicity.

The Agency requests comments on this approach and upon the appropriateness of establishing reentry interals and other requirements to protect farmworkers from chronic hazards. EPA also requests comment concerning the use of the post-application reentry intervals contained in Part 170 and the procedures by which such intervals should be established.

3. *Protective clothing.* The Agency intends to revise the defintion of and requirements for protective clothing for field workers contained in Part 170. The current requirement pertains only to early reentry situations and does not apply to work acticvities after the expiration of the reentry interval. Reentry into a field before the required interval has expired is allowed if protective clothing is worn. Protective clothing is defined in § 170.2 as:

(d) The term "protective clothing" means at least a hat or other suitable head covering, a long sleeved shirt and long legged trousers or a coverall type garment (all of closely woven fabric, covering the body, including arms and legs), shoes and socks.

After the reentry interval has expired, protective clothing is not required by current Part 170, and no requirement exists in Part 170 for other types of personal protective equipment, such as gloves or respirators. The Agency believes that protective clothing as defined above may not adequately protect workers exposed to pesticides in

freshly sprayed fields. EPA favors including gloves and other types of personal protective equipment, if necessary, in a revised definition pertaining to field workers performing tasks prior to the expiration of a reentry interval.

EPA seeks comment on the appropriate definition of personal protective equipment for farmworkers. The Agency also seeks comment on the need to extend protective clothing requirements to those times when farmworkers enter the treated field after the reentry interval has expired. The Agency further seeks comment on the need to address related protective clothing issues, such as standards for the cleanliness of required personal protective equipment and provision of changing facilities.

4. *Warnings.* The Agency is considering the need to revise the requirement for warnings to workers. Section 170.5 states:

(a) When workers are expected to be working in a field treated or to be treated with a pesticide, appropriate and timely warning to such workers shall be given. The warning may be given orally and/or by posting warning signs at the usual points of entrance to the field, and/or on bulletin boards at points where the workers usually assemble for instructions. Where any person has reason to believe that a farm worker is unable to read, he shall give the farm worker oral warning and make reasonable effort to ensure understanding of such warning. When required, warnings shall be given in appropriate languages other than the English language. Oral warnings should be given in such a manner as to inform workers of areas or fields which should be entered without protective clothing, the period of time the area or field should be vacated and actions to take in case of accidental exposure.

One issue to address is whether posting of fields should remain optional or should be required. If posting is made mandatory an important issue to consider is the types of reentry intervals to which the posting requirement should apply, e.g., 48 hours, 7 days, or longer. EPA invites comments on whether to make posting mandatory and whether it should apply to reentry intervals of two days or longer.

Another issue to explore is the chain of responsibility for communication of warnings. As it stands now, Part 170 has been interpreted to make the owner or lessee responsible for notification of workers; however, it does not specifically state such. In revising this provision EPA intends to specify the responsible persons.

In addition to specifying the responsible party as the owner or lessee, EPA is also considering whether applicators and crew leaders should also be made responsible for failure to communicate warnings, information on reentry intervals, or other worker protection requirements. In some cases, the owner or lessee is not present to provide the warnings to workers, although the crew leader is. In other circumstances (e.g., where a contractor is engaged to apply the pesticide) the owner or lessee may not have an opportunity to examine the label directions, but the applicator realistically can be expected to read the label and be aware of the requirements for reentry intervals, posting, etc. Thus, holding only the owner or lessee responsible may not provide adequate incentive for crew leaders and contract applicators to perform the functions of communicating worker protection requirements and warnings. The Agency requests public comment on expanding the class of persons responsible for enforcing worker protection requirements and on specific approaches to use in implementing such requirements. Comments should address the various employment, agency, and contract relationships that owners and lessees may use to obtain field labor, pesticide application, or both.

5. *Other occupational safety and health provisions.* In the field of occupational health and safety, numerous advances have been made in methods and technology used to protect workers. Health standards promulgated by the Occupational Safety and Health Administration (OSHA), as well as other public and private organizations, include provisions that are not currently contained in Part 170. Those provisions include requirements for: (1) Setting quantitative levels of maximum exposure averaged over a working day; (2) notifying workers of workplace chemicals to which they are exposed; (3) monitoring workers' exposure to workplace chemicals on a routine basis; (4) establishing certain methods of compliance, including personal protective equipment such as respirators; (5) use of certain housekeeping measures; (6) hygiene facilities; (7) medical surveillance over specified time intervals; (8) worker information and training programs; and (9) recordkeeping. However, it should be noted that some of the foregoing provisions are already utilized in other regulatory actions under FIFRA, such as classification for restricted use and applicator certification and training requirements.

EPA recognizes the distinction frequently drawn between fixed and non-fixed workplaces, i.e., factories versus changing field locations, and that there is substantial disagreement as to whether it is feasible to adapt to agricultural situations many of the occupational health standards originally developed for use in fixed workplaces. EPA seeks comments on what, if any, of the traditional provisions contained in occupational health standards should be added to Part 170 and whether the inclusion of any such provisions would add to cost-effective protection of agricultural workers from pesticides.

6. *Enforcement.* The Agency recognizes the need to ensure that any promulgated revisions to the farmworker safety standards become enforceable requirements, such that any failure to follow the standards will be subject to penalties under section 14 of FIFRA. The Agency is considering various approaches to making the standards legally enforceable.

As stated earlier, the States and EPA have usually taken enforcement action against unlawful pesticide exposure to farmworkers that could be shown to result from use inconsistent with label directions (see section 12(a)(2)(G) of FIFRA). In revising Part 170, the Agency is considering the following options: (1) To require inclusion of the requirements of Part 170 in product labeling (supplementary material which accompanies a product but is not on the actual label); (2) to require inclusion of the requirements of Part 170 on the product label; or (3) to require a reference to the requirements of Part 170 on the product label.

To require the relevant portions of Part 170 to be printed verbatim on the product label could have the disadvantage of using much of the limited available space on the label for the purpose of printing Part 170. However, it would provide the user with immediate access to Part 170's requirements. To require relevant portions of Part 170 to be made a part of the product labeling, or to reference Part 170 as a use requirement (such as "Do not use except as provided in 40 CFR Part 170"), would obviate the problem of available space on the label. However, these approaches may have other disadvantages, such as the lack of immediate availability of Part 170 requirements to the user or additional printing costs to the manufacturer.

The Agency also is considering the option of promulgating some provisions of farmworker protection standards as "other regulatory restrictions" under section 3(d)(1)(C)(ii) of FIFRA. This could subject persons who used pesticides in violation of these restrictions to penalties under FIFRA (sections 12 (a) (2) (F) and 14) without the need to change product labels.

However, this again would not allow the user to determine all required precautions to the taken by merely examining the label.

The Agency requests comments on these approaches and on any other means to establish the provisions of Part 170 as enforceable requirements.

7. *Role of the States.* Section 24(a) of FIFRA authorizes the States to regulate the sale or use of pesticide products, but a State may not adopt requirements of use restrictions which are less stringent than those contained in the product's Federal registration. Section 170.4 of Part 170 implements this statutory provisions by allowing States to establish farmworker safety standards which are more restrictive than those set forth in Part 170. The Agency believes that the States have an important role to play in protecting farmworkers from pesticide exposure hazards, and EPA is considering three different approaches pertaining to the role of the States in this area.

First, the Agency is considering proposing revisions to Part 170 which would continue the current approach and establish certain nationwide minimum standards, such as revised reentry intervals and protective clothing requirements. Such standards would protect farmworkers from the most common risks of pesticide use.

A second approach the Agency is considering is to establish a full range of worker protection standards that would be set as either nationwide or regional maximums. The use restrictions in such standards would take into account the need for more stringent standards in areas with certain climatic conditions. Thus, for example, longer reenty intervals would be required in certain designated regions where high temperature and lack of rainfall result in the greater hazards from pesticide residues in treated agricultural fields.

A third approach the Agency is considering is to promulgate standards which would protect all farmworkers from possible pesticide exposure hazards, while permitting States to apply for an exemption from the requirements of Part 170 by either (1) submitting a request to allow registrants to obtain less restrictive Federal labels for certain registered pesticide products or (2) submitting a petition to EPA requesting that Part 170 be amended so as to modify or waive its applicability to certain pesticide uses in the State. Under either method of obtaining exemptions from the requirements of Part 170, the States would have to submit data establishing that less stringent standard would protect farmworkers from unreasonable risks of on-the-job pesticide exposures.

The Agency recognizes that there are a variety of advantages and disadvantages inherent in the utilization of each of these approaches. The first approach, which would set nationwide minimum standards for farmworker protection, may not address adequately those hazards that may occur in regions of the country with special climatic conditions. However, promulgation of such standards could be done in a more expeditious manner than would be possible if the Agency were to promulgate different use restrictions for different regions of the country. Utilization of the second approach would require the Agency to expend a substantial amount of resources and time in order to review the varying topographic and climatic conditions throughout the country and, thereafter, establish differing use restrictions for each region. Thus, the regional option of the second approach may delay substantially the promulgation of this portion of final farmworker safety regulations.

The third approach may allow the Agency to promulgate standards in a fairly expeditious manner, but its utilization may require the Agency to devote a significant amount of resources to the review of exemption applications submitted after the standards have been promulgated. Moreover, in response to a petition to modify Part 170, the Agency might have to conduct a notice and comment rulemaking if it determined that the State had made an adequate showing that Part 170 should be modified with regard to its applicability to a certain pesticide use.

EPA invites public comment on each of these approaches.

(17 U.S.C. 136w)

List of Subjects in 40 CFR Part 170

Labeling, Occupational safety and health, Pesticides and pests, Intergovernmental relations.

Dated: July 27, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-21117 Filed 8-14-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR PART 3110

Noncompetitive Leases; Amendment Clarifying Minimum Noncompetitive Lease Size

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend the existing regulations to clarify that the minimum size for a noncompetitive oil and gas lease offer in the coterminous States is 640 acres or an entire surveyed or protracted section, whichever is larger. The proposed rulemaking would also change the minimum size for a noncompetitive lease offer in Alaska to 2,650 acres or 4 entire contiguous surveyed or protracted sections, whichever is larger. It would also add a new section clarifying that parcels offered under the simultaneous oil and gas leasing program are not controlled by the new limits imposed by this amendment on the size of lease offers. The change would promote more efficient economic exploration and development of the mineral resources on the public lands.

DATE: Comments should be submitted by October 15, 1984. Comments postmarked or received after the above date may not be considered as part of the decisionmaking process on issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Valliere Cacy, (202) 653-2190.

SUPPLEMENTARY INFORMATION: This proposed rulemaking amends § 3110.1-3(a) to provide that a noncompetitive oil and gas lease offer must encompass, at a minimum, 640 acres or an entire surveyed or protracted section, whichever is larger. In those instances where a section contains less than 640 acres, contigous lands, if available, must be included in an offer to accommodate the minimum acreage requirement.

The proposed rulemaking would establish for the first time a minimum noncompetitive oil and gas lease offer size of 2,560 acres or 4 entire contiguous

surveyed or protracted sections, whichever is larger, for Alaska. Again, the minimum acreage is controlling and contiguous available lands must be included until the minimum acreage is attained. The purpose of the change is to promote more efficient economic exploration and development of the mineral resources of the United States in Alaska where there presently is very little information concerning the mineral potential of the public lands that are available for noncompetitive oil and gas lease offers.

The proposed rulemaking would add a new paragraph to § 3110.1–3 which clarifies the point that the size of parcels offered by the Bureau of Land Management for lease under the simultaneous oil and gas leasing progam are not restricted by the provisions of § 3110.1–3(a) relating to minimum parcel size.

The principal author of this proposed rulemaking is Valliere Cacy, Division of Fluid Mineral Leasing, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The changes made by this proposed rulemaking will be applicable to anyone offering to lease public lands for oil and gas. For the most part, the changes and designed to clarify the minimum size that a noncompetitive oil and gas lease offer must encompass. While this will increase the amount of rental that must be deposited with some offers, the amount will be insignificant and should have little or no impact on those making such offers.

The proposed rulemaking contains no additional information collection requirements requiring approval of the Office of Management and Budget under 44 U.S.C. 3507

List of Subjects in 43 CFR Part 3100

Administrative practice and procedure, Environmental protection, Mineral royalties, Oil and gas reserves, Public lands—classification, Public lands—mineral resources, Surety bonds.

Under the authority of the Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et. seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 760 et seq.), the Act of May 21, 1930 (30 U.S.C. 301–306), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), the Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a), the Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96–514), and the Attorney General's Opinion of April 2, 1941 (40 Op. Att. Gen. 41), it is proposed to amend Subpart 3110, Part 3110, Group 3100, Subchapter C of Title 43 of the Code of Federal Regulations as set forth below:

§ 3110.1–3 [Amended]

1. Section 3110.1–3 is amended by:

A. Amending paragraph (a) by removing the word "section", where it first appears, and replacing it with the phrase "section, whichever is larger," and by adding at the end of the paragraph the sentence "Public domain lease offers in Alaska shall not be made for less than 2,560 acres or 4 full contiguous sections, whichever is larger, where the lands have been surveyed under the rectangular survey system or are within an approved protracted survey, except where the offer or parcel includes all available lands within the subject sections and there are no contiguous lands available for lease."; and

B. Adding a new paragraph (d) to read:

* * * * *

(d) The restrictions set forth in paragraph (a) of this section regarding the minimum size of noncompetitive oil and gas lease offers do not apply to the development of parcels for leasing under subpart 3112 of this title.

J. Steven Griles,

Acting Assistant Secretary of the Interior.

July 6, 1984.

[FR Doc. 84–21677 Filed 8–14–84; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MM Docket No. 83–523; FCC 84–363]

Amendment in Regard to the Instructional Television Fixed Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes new or modified rules for the Instructional Television Fixed Services (ITFS). The rules are proposed in response to a significant increase in the number of applications filed for new ITFS facilities following a Commission proceeding that permitted ITFS licensees to lease or otherwise use excess channel capacity for non-ITFS purposes. Most of the applicants propose to lease channel time to operators in the Multipoint Distribution Service. This action invites comments on the nature and scope of permissible ITFS service; eligibility requirements for becoming an ITFS licensee; control of an ITFS facility by a licensee that leases excess channel capacity to others; procedural standards for "cutting off" applications; selection procedures and criteria for choosing among mutually exclusive applicants; and interference protection standards. The proposed rules are intended to foster both the growth and development of ITFS and a broader and more efficient use of spectrum capacity.

DATES: Comments are due by September 17, 1984 and replies by October 2, 1984.

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

FOR FURTHER INFORMATION CONTACT: Stuart B. Bedell, Mass Media Bureau (202) 632–9356.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 74

Instructional television fixed service, Television.

Further Notice of Proposed Rule Making

In the Matter of Amendment of Part 74 of the Commission's Rules and Regulations In Regard to the Instructional Television Fixed Service; MM Docket No. 83–523.

Adopted: July 26, 1984.

Released: August 10, 1984.

By the Commission: Commissioner Rivera issuing a separate statement.

Introduction

1. On May 26, 1983, the Commission adopted a *Notice of Proposed Rule Making* in MM Docket No. 83–523, 48 FR 29,553 (1983). The *Notice* proposed

changes in certain Instructional Television Fixed Service (ITFS) requirements contained in Part 74 of the Commission's Rules. On the same day, the Commission adopted a *Report and Order* in General Docket No. 80–112, 94 FCC 2d 1203 (1983), which reallocated eight of the twenty-eight channels reserved for ITFS to the Multipoint Distribution Service (MDS) and permitted ITFS licensees to use their excess channel capacity for non-ITFS purposes, either by themselves or by leasing to other parties.

2. Both the *Notice*, whose proposed changes included relaxation of certain ITFS technical and nontechnical requirements, and the *Report and Order* were premised, in part, on the fact that the twenty-eight channels allocated for ITFS were vastly underutilized. *See Notice, supra* at 29,554–55; *Report and Order, supra* at 1250. This was found to be the result of the specialized nature of ITFS and the limited funds available for its growth. *Id.* The growth and development of the educational and instructional services for which ITFS was designed were viewed as desirable goals and the Commission determined that permitting the leasing or commercial use of excess channel capacity and removing unnecessary and burdensome requirements would foster these goals. We continue to believe that both the goals and the means for their realization are meritorious and that the use of underutilized ITFS transmission time will foster a broader and more efficient use of spectrum capacity and will generate new revenue sources for the development of ITFS.

3. In another action today we are adopting a *Report and Order* in MM Docket 83–523 which relaxes ITFS transmission standards, authorizes "temporary fixed stations," authorizes program delivery to cable headends, encourages frequency coordination, authorizes a one-step licensing procedure and increases the ITFS license term from five years to ten years. Additionally, we note that since the adoption of the *Notice* in MM Docket 83–523 and the *Report and Order* in General Docket 80–112, there has been a significant increase in the number of applications filed for new ITFS facilities.[1] This interest in the ITFS spectrum is clearly a result of our decision to permit the use of ITFS excess channel capacity for commercial purposes in that most of the applications propose, under varying circumstances, to lease channel time to MDS operators. While increased usage of the ITFS spectrum is desirable and encouraged, we believe that further consideration of certain aspects of the use of channel capacity for non-ITFS purposes, and other matters relating to ITFS generally, is necessary to assure the preservation of the ITFS service. This will foster the goals sought to be achieved by such usage; namely, the growth and development of ITFS. Existing ITFS rules and policies are not adequate or inclusive enough to deal realistically with the rapidly changing developments in this area.

4. Therefore, we are issuing the instant *Further Notice* and soliciting comments on matters dealing with the following: the nature and scope of permissible ITFS service; eligibility requirements for becoming an ITFS licensee; control of an ITFS facility by a licensee that leases excess channel capacity to others; procedural standards for "cutting off" applications that are accepted for filing; selection procedures and criteria for choosing among mutually exclusive applicants; and interference protection standards.[2]

Permissible ITFS Service

5. When the Commission decided to permit ITFS licensees to use their excess channel capacity for non-ITFS purposes, it still required licensees to utilize "each of their main channels substantially for legitimate ITFS use." We stated that we expected "traditional uses" to continue and that "any wholesale abandonment of the primary purpose of the facility could jeopardize the entity's license." *Report and Order* in General Docket 80–112, *supra*, at 1251, 1252–53.

6. The purpose and permissible uses of ITFS were originally established in 1963 [3] and are embodied in § 74.931 of the Commission's Rules. The service was intended to be used for the transmission of programming to "accredited schools" for the "formal education of students." [4] Specifically, § 74.931(a) provides:

> Instructional television fixed stations are intended *primarily* to provide a means for the transmission of instructional and cultural material to *specified receiving locations* for the *primary purpose* of providing a *formal educational* and cultural development to *students enrolled* in *accredited* public and private *schools, colleges and universities.* [Emphasis added].

On a secondary basis, ITFS stations are permitted to transmit special training material to selected receiving locations outside school systems such as hospitals, nursing homes, training centers, and commercial and industrial establishments for the extension of professional training. ITFS service is also permitted to professional groups or individuals for the purpose of informing them of new developments and technical activities in their fields and for other related services directly concerned with formal or informal instruction and training. Section 74.931(b). When stations are not being used for these purposes, licensees are authorized to use the facilities for administrative activities (*e.g.*, holding of conferences with personnel, distribution of reports, exchange of data or statistics). Section 74.931(c). Stations may also be licensed as relay stations, under certain circumstances, to interconnect ITFS systems. Section 74.931(d).

7 Over the years, as the educational needs of our society have changed and the demand for educational and instructional services has increased, certain ITFS systems have emphasized programming directed to in-service training and professional career development. More recently, it appears that some applicants perceive an increasing need to include homes and offices, as well as industry sites, laboratories and military bases, as receive locations for the dissemination of public service information and continuing and adult education courses. Some ITFS systems request additional channels solely for these purposes and some new applicants, who propose leasing channel time for MDS use, also appear to emphasize this aspect of their ITFS service proposals.

8. We believe that the need and demand for the dissemination of programming of an educational, instructional, cultural and informational nature, for other than classroom purposes, will continue to expand into offices, industry, hospitals, training and cultural centers and the individual home, and that this is not only inevitable, but desirable. While educational institutions which are the traditional ITFS licensees may be an appropriate source for certain of these materials, ITFS is by no means the only delivery system that is, and can be, utilized for such purposes. Programming of this nature is available, and can be made available where the demand exists, through commercial and educational broadcast stations, cable television systems, videotext and teletext services, video cassettes,

[1] In FY 1984, it is anticipated that over 700 applications will be filed, as compared to a total of 170 applications filed in FY 1983.

[2] A number of letters and other comments have been informally submitted to the Commission which deal, in some respects, with certain of these matters. These documents will be associated with the docket and the parties are invited to file further comments directly addressing the matters discussed herein.

[3] *Report and Order* in Docket No. 14744, 39 FCC 846 (1963).

[4] *Id.* at 852–3.

satellite services and eventually multichannel MDS. ITFS, in many instances, is a proper and important adjunct to these other sources and while its entry into new markets is not to be discouraged, we presently believe that the foundation of the service must continue to be that for which it was designed—the transmission of educational materials to accredited schools for the formal education of students enrolled there. This kind of programming is not traditionally provided by other outlets and the specialized and unique audience served is one whose very important needs could too readily be ignored if ITFS stations were permitted to transmit their programming to any location of their choosing or any location equipped to receive the programming. This is especially true where ITFS licensees are leasing excess channel time for MDS-type uses. In our assignment of frequencies, we have distinguished between ITFS and MDS, to which we have allocated different channels. If we fail to define and enforce permissible use requirements, we risk the loss of the ITFS service to subscription entertainment delivery systems and the failure to meet the important specialized needs the ITFS service is designed to serve.

9. We believe all ITFS applicants, whether leasing excess system time or not, must transmit educational programming to accredited schools specified as receive locations in their applications, for the formal education of enrolled students. However, rather than treating such service as the "primary purpose" of ITFS systems, which connotes a majority of the system's time, we believe it may be sufficient to treat such program service as an "essential use" of the ITFS system. We, therefore, solicit comments on whether it may be appropriate to amend the rules to provide that as long as some system time is devoted to educational programming for students enrolled in accredited schools, that the remainder of time used for ITFS purposes, even if that be a majority of the time, can be devoted to programming other than in-school instructional programs. This seems especially appropriate where the applicant is a local educational institution which is devoting time to what it has determined is the extent of its own in-school needs. We also seek comments on the following matters. Should the same standard apply to other local entities (*e.g.*, noncommercial organizations that are the licensees of educational broadcast television stations and are now seeking ITFS licenses) that are proposing to serve needs of schools not directly associated with them? Is it necessary to quantify "essential use" for any applicant by prescribing a minimum amount of time that must be devoted to programming directed at schools? [5] Should such use be determined on a per-channel or per-system basis? Should adult or continuing education programming received outside the school (*e.g.*, in the home), but for credit toward an academic degree, be considered toward meeting an "essential use" standard and would an applicant be capable of demonstrating the public receptiveness to, and exent of, such service at the construction permit application stage?

10. A related matter specifically concerns the ITFS applicant that is proposing to use excess channel capacity for non-ITFS purposes. In order to qualify for such usage, the ITFS licensee is required to use a "significant portion" of its system for traditional ITFS uses. See § 74.931(e) of the Rules. Due to the uncertainty which had arisen because of the ambiguity associated with the "significant portion" requirement, we established an interim standard, pending the outcome of the instant rulemaking proceeding, in our reconsideration of the *Report and Order* in Docket 80-112.[6] This was necessary to prevent a *de facto* reallocation of the ITFS channels for other uses and to discourage entities not primarily interested in providing traditional ITFS services from filing proposals which could change the nature of the service.[7] The standard we established provided that:

> No ITFS licensee may lease or use for non-ITFS purposes capacity on any channel unless that channel is being used for ITFS purposes for a minimum of 15 hours per week during the period between 8:00 a.m. and 10:00 p.m. each day, Monday through Friday, excluding holidays and vacations.

We further stated that if an ITFS licensee uses each of its main channels for traditional programming only, then each channel would be considered as being used substantially for ITFS purposes regardless of the number of hours a licensee operates each day, each week, or each year. We continue to believe that this distinction is appropriately made between the ITFS applicant that is proposing to lease or otherwise use channel capacity for non-ITFS purposes and the ITFS applicant that is proposing to use its facilities *only* for traditional ITFS purposes, including the transmission of educational and instructional programming to schools. This is to assure that an applicant that is proposing to contract away a considerable segment of its channel capacity for non-ITFS use will, in fact, present at least a minimum amount of ITFS programming to the audience designed to be served by the traditional ITFS services.

11. In our reconsideration *Order, supra*, we concluded that 15 hours of weekly transmission time between 8:00 a.m. and 10:00 p.m. of ITFS programming constitutes a minimal usage of an ITFS channel, based on the recognition that primary and secondary schools are generally in session during the day for approximately six hours of instruction, or an average of 30 hours per school week. We found that any licensee that was leasing excess capacity and was transmitting ITFS programming for less than half that time would not be using a "significant portion" of that channel's capacity for ITFS purposes. In adopting this standard, we indicated that we had never collected data on how many hours per day (or per week or per year) ITFS stations generally operated prior to our decision to allow non-ITFS usage. We also recognized that existing ITFS use may vary considerably from system to system and that generalizations may be difficult to make. To the extent that such data may be available, we solicit its submission for our consideration and solicit comments on whether such data can practically be used for establishing a minimum-operating standard.

12. Whether the interim standard strikes a proper balance between utilizing idle spectrum capacity more efficiently and assuring the preservation and development of the ITFS service is a matter on which comments are also invited. The standard, as noted, was intended to set a *minimum* only and was not an attempt to define what we expect to see as a typical ITFS operation. We believe that some minimum standard is necessary when non-ITFS usage is involved and propose to retain a 15-hour minimum unless comments suggest that a higher standard is more appropriate. We also invite comments on whether the minimum amount of ITFS programming should be on a per-day basis (*e.g.*, each channel must be utilized at least three hours per day, Monday through Friday, Between 8:00 a.m. and 10:00 p.m.) rather than on a per-week basis. One concern with a per-week standard is that ITFS programming, could be "loaded" in one or two days per week and the remaining channel

[5] We believe minimum requirements are essential for entities proposing to lease excess channel time, or otherwise use their channels for non-ITFS purposes. See ¶¶ 10–13, *infra*.

[6] *Memorandum Opinion and Order*, FCC 84-177, adopted April 26, 1984, released June 5, 1984.

[7] *Id.*

capacity leased out for non-ITFS purposes: *e.g.*, 24 hours per day, five days per week. Comments are solicited on whether to adopt the interim standard as a final rule or to modify the rule by setting a higher minimum, a per-day per-channel usage requirement, or both.

13. Section 74.931(e) of the rules, as amended in the reconsideration *Order, supra*, establishes that the transmission of programming which is intended both for the education of students in schools (§ 74.931(a)) and for such things as in-training service and professional career development (§ 74.931(b)) is acceptable for meeting the minimum standard. However, as previously stated, we consider it essential that all ITFS systems provide some amount of programming to accredited schools, which are specified as receive locations, for the formal education of enrolled students (§ 74.931(a)). If an applicant is proposing to use its facilities for non-ITFS purposes and is proposing at least the 15-hour minimum amount of ITFS programming, or more, should we require that a specific amount of that time be devoted to programming for the education of students enrolled in accredited Schools? Comments are invited on this matter.

Eligibility Requirements

14. To be eligible for an ITFS license, a party must be a school, a governmental organization engaged in the formal education of students (*e.g.*, a school board or district), or an nonprofit educational organization.[8] In the case of nonprofit educational organizations the Commission considers eligibility by taking into account whether the organization has any state, regional or national accreditation.[9] While accreditation can be a determining eligibility factor, we believe that unaccredited organizations should also be permitted to demonstrate their educational nature and the validity of the ITFS service proposed. Some nonprofit organizations not accredited by any recognized accrediting agency are ITFS licensees that for years have been providing and producing educational, instructional and training programming to schools, hospitals and social service agencies. We believe that entities with this kind of experience, or organizations which are clearly involved in education or have a history of educational service of a nature other than ITFS, should not be precluded from being licensed or seeking additional licenses. *See Public Broadcasting Service (PBS)*, FCC 83-611, adopted December 30, 1983; released January 9, 1984.

15. Since our decision to permit the leasing of excess channel capacity for commercial purposes, we have seen a significant increase in the number of applications filed by nonprofit organizations seeking to establish ITFS stations. Most of these applicants are either backed by MDS operators and have agreements to lease channel capacity to them or intend to lease capacity on any facilities which may be authorized. Although we are not now questioning the validity of the educational nature of certain of these organizations, we believe that more formal screening criteria should be established to continue to assure that nonprofit organizations which are issued ITFS licenses are bona fide educational entities. We have already suggested factors which can be considered; *e.g.*, accreditation, educational background and experience, history of educational service. In addition, comments are invited on what documentation might be appropriate to establish the educational nature of the applicant.

16. One specific source of concern in this area is that most nonprofit organizations which have applied for ITFS licenses have no local presence in the communities where facilities are sought. Backed by MDS operators who desire to establish multichannel MDS systems through the leasing of ITFS capacity, many of these applicants have filed numerous applications for many major markets. Many are mutually exclusive with each other or with local or regional educational institutions or organizations which, in some cases, also have lease agreements with MDS entities. Many of the applications, as originally filed, were not tailored to the community applied for; the proposed programming for all communities was often vague and virtually identical; few proposed to provide equipment for local program production; many did not have the consent of the local schools specified as receive sites for the proposed ITFS service. In fairness to the applicants, we recognize that they were attempting to file proposals as quickly as possible to avoid the "land rush" of applications which has developed and that they had little guidance as to what would constitute acceptable proposals. It is the purpose of this rulemaking to establish such guidelines.

17 The ITFS rules do not prohibit nonlocal applicants. The Commission simply did not contemplate national ITFS networks and the changes in technology which have made such networks feasible, when the rules were adopted some twenty years ago. In recent years, certain state educational television commissions have shown an interest in the ITFS service. The South Carolina Educational Television Commission is an example of a state entity that has been granted permits to establish ITFS systems in communities throughout South Carolina as a means of furthering the educational needs of the state. Last year, we authorized the Public Broadcasting Service (PBS) to establish a national network of ITFS stations in communities where local member stations have noncommercial educational television broadcast stations. *See PBS, supra*. We believe that under proper circumstances, state, regional or national networks can provide many benefits to communities through the exchange of programming among all stations in the system and through the economies resulting from cost-sharing.

18. Thus, while the importance of localism and knowledge of the educational needs of a community cannot be underestimated, we do not believe that a qualified educational organization should automatically be precluded from becoming an ITFS licensee solely on the basis that the organization is not physically located in the community where the facility is sought. Nonlocal service can complement local educational outlets and serve unserved local needs, especially in those communities where channels remain vacant and no local educational entity is applying for their use. Because ITFS frequencies were allocated in the first instance for in-school educational purposes, which are generally under local control, we invite comments on whether nonlocal applicants, who have otherwise established the bona fide educational nature of their organization and propose an ITFS service consistent with the other standards to be established to this proceeding, should still demonstrate a local involvement in the educational communities in which they seek construction permits. We also invite

[8] Section 74.932(a) of the Rules provides: "A license for an instructional television station will be issued only to an institutional or governmental organization engaged in the formal education of enrolled students or to a nonprofit organization formed for the purpose of providing instructional television material to such institutional or governmental organizations. A nonprofit organization which would be eligible for a license for a noncommercial eduational television broadcast station is considered to be eligible for a license for an [ITFS] station."

[9] Sections 74.932(a)(1) and (2) of the Rules provides: "In determining the eligibility of educational organizations, the accreditation of the appropriate state department of education or the recognized regional and national accrediting organizations will be taken into consideration."

comments on whether in the comparative context it would be appropriate to grant a preference to local over nonlocal applicants. *See* paragraph 35, *supra*. We note, in this connection, that the staff of the Mass Media Bureau has requested by letters of March 20, 1984, from certain nonlocal applicants who also propose to lease excess channel capacity, a showing of reasonable assurance that the specified local educational institutions and other entities that they propose to serve are supportive of their applications and intend to utilize the proposed service in their educational curricula and developmental programs. Applicants were requested to submit letters from each specified receive location. The letters were not required to contain a binding commitment, but were expected to demonstrate something more than a mere expression of general interest in the proposed service. Among other things, these applicants were also requested to describe the nature and extent of involvement by local educational, cultural and civic groups in the selection and/or production of ITFS programming.

19. We seek comments as to whether such showings by nonlocal applicants should be required by rule and incorporated into the ITFS construction permit application form (FCC Form 330-P).[10] We also invite comments on the extent to which nonlocal applicants should involve local entities in the selection of educational programming. Should a nonlocal licensee establish a local program selection and development committee or can other methods be established to assure that the local educational needs of the educational institutions served will continue to be met on an ongoing basis? We prefer to afford applicants the flexibility to establish procedures for ongoing local involvement which they believe are suitable, based on individual circumstances, and to demonstrate the suitability of these procedures to us. Finally, we invite comments on whether requirements established for local involvement, including requirements of reasonable assurance that local institutions intend to use the proposed service, should also be applicable to local entities that are not serving their own local in-school needs.

Licensee control

20. Another matter which arises as a result of our decision to permit the leasing or other non-ITFS use of excess channel capacity is the issue of the extent of control a licensee should be required to exercise over its facilities when those facilities are being shared by others. The issue becomes more complicated when the party sharing the facilities is the entity responsible, as a result of the financial arrangements between the parties for the very existence of the ITFS station.

21. In the *Report and Order* in General Docket 80-112, *supra*, at 1252, we noted that existing ITFS facilities did not readily lend themselves to widespread MDS use, in that they were tailored to the unique requirements of the particular licensee. Many systems serve a limited number of receive locations with highly directionalized antenna patterns. We also pointed out that a licensee would most likely consider it own growth requirements and limit the availability of excess channel capacity so that it could retain channel use for its own needs as they arise. We thus concluded that existing licensees would carefully select lessees for long-term contracts and tailor the contractual arrangements to their individual needs.

22. We did not consider the fact, however, that a relatively small number of new entities, backed by MDS operators, would seek to establish "national networks" of ITFS stations, that certain of the applicants would be financially dependent on the MDS entity and that lease arrangements would be entered into for "excess channel capacity" prior to the time the ITFS applicant was even aware of what the instructional and educational needs were of the local institutions it was proposing to serve. Many of the proposals appeared tailored as much to the requirements of MDS as to ITFS. All proposed community-wide coverage with omnidirectional antennas and in markets throughout the country where multichannel MDS has the possibility of competing successfully with other delivery systems. Lease agreements provide, in many instances, that the MDS lessee will finance, construct, own, maintain and operate the physical plant and will lease a large proportion of channel time, with the ITFS licensee itself leasing back the physical facilities, at only a nominal rate, for the ITFS time it reserves by contract for itself. The right to lease ITFS excess channel capacity, and our reasons for permitting this practice, however, present unique questions of "control" as it relates to the ITFS service, which have not been addressed by prior case law. We allowed leasing, in part, as a revenue source for the funding of ITFS operations, recognizing that the lack of resources was an underlying reason for the widespread underutilization of the allocated spectrum. We believe the entry of new applicants into this service can result in an increase in the ITFS programming presently available and that many ITFS stations would not be built without the financial support and backing of MDS operators.

23. In exchange for this backing, MDS operators may require certain necessary and appropriate contractual terms which may appear to infringe on ITFS licensee control. For example, an MDS operator may need access to a specified amount of airtime, during specified periods of the day, for leasing to be worthwhile. The MDS interest must also have some measure of financial control, since it is agreeing to contribute much of the funding. Also, allowing the MDS lessee control over the design and construction of the system may be in the best interests of the parties and the public because of the greater technical expertise which MDS operators generally have. We invite comments on what measure of control and what rights and responsibilities should generally be retained by the ITFS licensee to assure that ITFS channels are used to meet present and changing educational and instructional needs. How should the responsibilities pertaining to programming, construction and operations be divided between the sharing entities? Specifically, we seek comments as to the licensee's ability to recapture air time or otherwise have time available to meet changing ITFS needs as they arise. With respect to the construction, operation, maintenance and ownership of the station's facilities, our preference would be to impose as few restrictions as possible, affording the parties the flexibility to negotiate these matters on their own.

Processing Procedures

24. New processing procedures are required because of the significant increase in ITFS applications following the issuance of our leasing decision and the fact that present ITFS rules and policies do not allow for an orderly, efficient and equitable processing of these applications. Specifically, ITFS rules do not provide for the traditional cut-off or "window" filing periods. As a result, applications remain subject to petitions to deny and mutually exclusive proposals until the day they are acted upon. Because the demand for channels exceeds the supply in a number of major markets, many mutually exclusive situations exist which cannot be

[10] Form 330-P will be revised when a *Report and Order* is issued to track the standards and requirements which are ultimately adopted in this proceeding.

resolved without the establishment of a selection procedure.

25. Even though we now find it necessary to establish procedures for resolving mutually exclusive situations, it is important to emphasize that parties are still encouraged to resolve such disputes privately. The instructional programming carried by ITFS provides a necessary public service and should reach students and other intended audiences as soon as possible. Realizing that there will be a period of time before a decision is issued in this proceeding, which adopts permanent rules for resolving mutually exclusive proposals, we intend to expedite the processing of applications whenever the parties, by private agreement, can eliminate the mutual exclusivity. To foster a stable atmosphere for negotiating settlements, we are implementing a cut-off procedure immediately for applications already on file. *See* paragraph 30, *infra*. We encourage parties to attempt to achieve resolutions through frequency coordination, time-sharing, reductions in the number of channels requested or other acceptable methods.

Cut-Off Procedures

26. As noted, there are not cut-off periods or other restrictions on the filing of petitions to deny or the filing of applications which are mutually exclusive with a previously filed application. No procedural rules have specifically been developed for ITFS because there was no pressing need for cut-off and selection procedures until recently. It is axiomatic that the longer an application remains subject to competing applications, the greater the likelihood that a mutually exclusive situation will develop. Furthermore, the Mass Media Bureau's staff has experienced situations where its resources have been expended in processing applications only to discover the filing of mutually exclusive proposals at the last minute. Most services have cut-off rules or "window" filing periods to avoid such problems and to allow for a more efficient processing procedure. While in the past the use of traditional cut-off dates has been the principal means of limiting filings which may affect pending applications, the "window" or "date certain" cut-off approach has recently has been employed on an increasing basis. *See Second Report and Order* (Private Land Mobile) in Docket PR 79-191, 90 FCC 2d 1281 (1982); *Memorandum Opinion and Order on Reconsideration* (Cellular Radio), 89 FCC 2d 58 (1982); *report and Order* (MDS) in General Docket 80-112, *supra;* and *Notice of Proposed Rulemaking* (Low Power Television Service) in MM Docket No. 83-1350, Mimeo No. 34076, released December 23, 1983.

27. It is well established that cut-off dates may be used as a means of restricting the period during which petitions and mutually exclusive applications may be filed. *See Kessler v. FCC*, 326 F.2d 673 (1963). The traditional cut-off rules [11] utilize an "A" or initial cut-off list which is in the form of a Public Notice that contains identifying information on an application or applications accepted for filing and sets a date by which mutually exclusive applications and petitions must be filed. Later, a "B" list is issued containing all applications filed by the cut-off date which are mutually exclusive with the application(s) on the "A" list and setting a date for the filing of petitions against the later filed applications. At the end of the "B" cut-off period, a universe of applications and petitions can be determined and a stable environment exists in which to complete the processing of the applications.

28. "Window" or "date certain" cut-offs specify a date or period for the filing of applications. All applications filed during this period are considered together and any mutually exclusive proposals are segregated from the others and the processing of both the single applications and the mutually exclusive proposals can proceed efficiently since they are not longer vulnerable to new applications being filed.

29. In considering whether the "A" and "B" cut-off procedure or the "window" approach would be more appropriate for ITFS, we will be mindful that a longer time may be required for educational institutions and nonprofit educational organizations to obtain local authorization to file for facilities and to obtain the necessary funding. We intend to establish finite periods for filing new applications, but wish to implement the procedure which best suits the needs of such entities. Comments are invited on the appropriateness of these or other cut-off procedures.

30. With respect to application currenty pending, the vast majority have been on file for well over four months and they all have been on Public Notice as being accepted. Many have been subject to petitions to deny and many are mutually exclusive with each other, as well. We believe it inappropriate to permit these applications to remain vulnerable to petitions and other proposals for an unlimited period of time. Accordingly, parties will be given 30 days from the publication of this document in the Federal Register to file petitions to deny or mutually exclusive applications against any ITFS application that was accepted for filing on or before the publication date. This will allow us to facilitate the processing of applications that have been on file for long periods of time and will permit the grant of any pending applications that are not mutually exclusive. This procedure will also permit negotiations among mutually exclusive applicants that might resolve the conflicts, thus leading to an earlier inauguration of new ITFS service. Such negotiations might otherwise prove fruitless if competing applications could be filed at any time. Applications filed after the publication of this *Further Notice* will be processed under the present standards, until such time as final rules are adopted in this proceeding. The processing of all mutually exclusive applications will be deferred until the adoption of procedures for making choices among conflicting proposals.

31. The existing ITFS rules do not define "major" changes in authorized or proposed facilities and we do not intend to amend the rules in this regard. However, we propose to continue our present practice of treating applications for construction permits for new channels, or for the addition of channels to existing facilities, or similar amendments to pending applications, as being subject to a thirty-day "holding" period before action will be taken. *See* section 309 of the Communications Act of 1934, as amended.[12]

Selection Procedure for Mutually Exclusive Applications

32. As mentioned earlier, there are at present no established criteria for resolving mutually exclusive cases. Although we strongly encourage private resolution of conflicts, we do not anticipate that all of the estimated 200 mutually exclusive applications on file can be settled through private resolution. Therefore, we must establish

[11] Section 73.3571(c) for AM, § 73.3573(d) for FM and § 73.3572(c) for television broadcast services.

[12] We also propose to continue our present practices in the following matters. Applications for changes in facilities which do not involve new or additional channel requests, licences to cover construction permits and applications for extension of time to construct can be acted upon at any time after their acceptance for filing. Assignment and transfer of control applications, which are not subject to competing applications (*See* section 310(d) of the Act) will be held for thirty days after acceptance for filing (except for *pro forma* changes) to afford parties an opportunity to file petitions to deny under section 309 of the Act. License renewal applications should be filed four months before the expiration of the license term and will not be acted upon any sooner than 30 days prior to the expiration date.

procedures for resolving mutually exclusive situations.

33. Amendments were solicited in the *Notice* in Mass Media Docket 83-523 on certain selection procedures for deciding among mutually exclusive applicants; *i.e.*, lotteries, "first-come-first-served," or other methods.[13] That *Notice*, however, was issued and the comments were received prior to the submission of the vast majority of pending applications. Commenters did not have an opportunity to assess the impact which the new applications, filed after our decision to permit leasing and non-ITFS use, might have on the traditional ITFS service. Notwithstanding the changed circumstances, we believe that the comments filed in response to the first *Notice*, objecting to full hearings and "first-come-first-served" procedures, were well founded and still apply. Given the nature of the service, full hearings are wasteful of our resources and those of the applicants. The "first-come-first-served" method would appear to disfavor local educational entities, such as school boards, which may not be able to prepare and file applications as quickly as commercially backed applicants. Therefore, we propose to eliminate both methods from consideration as possible selection procedures.

34. That leaves for consideration several alternative methods for making selections. These include: (1) A lottery with preferences accorded for specified factors; (2) a paper hearing in which specified factors are given merits or demerits, including "enhancements," in much the same way as factors are weighed in full comparative hearings; (3) a mechanical point system, in which the specified factors are reduced to points, so that the applicant with the highest total will be the winner; or (4) a combination of the preceeding methods, such as a point system, with a drawing to be used in the case of applicants with identical or very close total points. Those proposing the use of lotteries may wish to address the appropriateness of following the lottery statute, section 309(i) of the Act, for the ITFS service. *See Random Selection Lotteries*, 93 FCC 2d 952 (1983).

35. In each of the selection procedures that we are considering, it will be necessary to determine which, if any, criteria should be afforded a greater weight or a preference. We believe that any criterion proposed should be designed to promote the objectives for which ITFS stations are primarily authorized. At this point, three criteria appear most important: (1) The amount of programming proposed for in-school use; (2) the amount of other traditional ITFS programming as provided for in § 74.931(b), *e.g.*, adult and professional education; and (3) the nature of applicants; i.e., applicants with an established presence in the community, as opposed to nonlocal applicants. Comments are solicited on the selection procedures, these criteria, any other criteria that would promote ITFS goals and aid in the selection process, and the weight to be accorded to each. Commenters should, of course, relate any criteria proposed to their preferred method of selection. Comments are also invited as to the means by which petitions to deny will be considered under the selection procedure proposed.

Miscellaneous

36. In the *Report and Order* adopted today in this docket, we are retaining § 74.902(c) of the Rules which precludes assignment of more than four channels to the same licensee for use within the same area. This rule also provides that where an applicant applies for more than one channel, "the Commission will determine whether or not a grant of the channels requested would serve the public interest." In the past, when spectrum capacity was abundant, the Commission routinely granted four-channel requests and, in many instances, also granted waiver requests for more than four channels. Since our decision to permit leasing, the demand for channels has significantly increased, especially in the major markets. We believe it may now be necessary to impose a specific standard for granting multiple channels. We are concerned that applicants whose proposals realistically require only one or two channels may be requesting four or more, whether to reserve scarce capacity for future educational needs or to accommodate the interests of MDS lessees. Accordingly, we invite comments on the factors to be considered in assessing the sufficiency of the showing submitted by an applicant requesting more than one channel.

37 Furthermore, we note that those nonlocal applicants proposing national service have requested a substantial number of channels throughout the country. If all their applications were granted, a scarcity of spectrum capacity could result with the effect that channels may not be available in many markets for other deserving or future applicants, including local educational entities, or for existing licensees seeking to expand. We, therefore, invite comments on whether only one channel should be made available in any particular community for use by nonlocal applicants.

38. *Interim Processing Standards.* We intend to continue the processing of applications that are not mutually exclusive during the pendency of this proceeding. However, because of the uncertainties that have developed since our decision to permit the leasing of excess channel capacity and because of the vagueness of many proposals now on file, we believe it is necessary to clarify, through the adoption of the following interim processing standards, certain of our existing policies, rules and application form requirements which will be applied in determining the appropriateness of granting particular proposals. All applications granted will be subject to a condition that the applicant comply with any policies and rules that may be ultimately established in this proceeding. Action on mutually exclusive proposals will be deferred pending the conclusion of this proceeding and the adoption of selection procedures. Accordingly, applicants for new facilities will be required to include information with respect to the following:

1. Applicants must specify accredited public or private schools, colleges or universities which provide formal education to enrolled students as receive sites. For each channel requested, a showing must be submitted as to the number of hours of programming to be devoted to the transmission of educational and instructional programming to students enrolled at such receive sites.

2. Applicants proposing to lease or otherwise use excess channel capacity for non-ITFS purposes must comply with Section 73.931(e) of the Rules, with respect to the 15-hour minimum per channel, per week of traditional ITFS programming.

3. A showing must be submitted as to compliance with the eligibility requirements of § 74.932(a) of the Rules. Non-profit educational organizations that otherwise establish their qualifications will not be precluded from being licensed *solely* on the basis that they may be a nonlocal entity.

4. All applicants that are not educational institutions or school districts proposing to serve their own in-school needs must submit a showing of reasonable assurance that the specified educational institutions and other entities which are proposed to be served are supportive of the application and intend to utilize the service in their

[13] Comments received in response to the earlier *Notice* relating to selection procedures will be associated with the additional comments filed in this proceding.

educational curricula and/or developmental programs. This showing should take the form of a letter from each receiving location specified in the application. It should be signed by an individual authorized to sign for this purpose on behalf of the specified entity. The Commission is not requiring the submission of a binding commitment from such entities, but something more than a mere expression of interest should be demonstrated.

5. A copy of any document, instrument, contract or summary of any understanding relating to ownership, use or control of the station or its facilities, as required by section II, question 11 of Form 330–P, must be submitted.

6. A proposed weekly schedule of programs must be submitted, as required by section IV, question 2 of Form 330–P, for each channel requested. On the basis of the proposed weekly schedule of programs, a showing, in narrative form, of the need for the number of channels requested to meet the traditional ITFS programming proposals.

Technical Standards

39. In a companion docket to General Docket 80–112, we released a *First Report and Order* amending the Rules with regard to technical requirements applicable to the MDS [14] and a *Further Notice of Proposed Rulemaking and Notice of Inquiry* [15] addressing other MDS technical issues.

40. Current ITFS rules depend on informal coordination between operators to anticipate and resolve electrical interference problems encountered when stations are operated in the same geographical area. It was noted in the *Technical Standards Order* that as more MDS stations became operational, informal coordination procedures became less successful and that formal procedures and interference criteria were required.[16] In view of the proposals for the increased ITFS/MDS use of the 2500–2690 MHz band, we propose to adopt ITFS technical standards similar to those for MDS, including a "service protection concept." We will also address ITFS matters which, because of the nature of the service, require different standards. This action is intended to establish uniform coordination procedures for both services, promote a more efficient utilization of the spectrum and benefit both the Commission, in processing applications, and applicants, in designing systems.

41. The proposed standards include the following:

1. Cochannel protection ratio of 45 dB.
2. Adjacent channel protection ratio of 0 dB.
3. Standard antenna parameters for interference analysis (i.e. a two foot parabolic reflector antenna).
4. A nominal 710 square mile service area dependent upon, and conforming to, the transmitting antenna pattern where interference from other stations will not exceed the cochannel and adjacent channel protection ratios.
5. Cochannel and adjacent channel protection for existing ITFS receive sites (which have been authorized by having been specified in applications filed with, and granted by, the Commission) and which are located outside the above mentioned service area; provided, however, that the power flux density of the transmitted signal is above the specified minimum usable level proposed herein.

In addition, we propose that each ITFS application include a potential interference analysis of cochannel stations within a 50 mile radius of its transmitter site. Moreover, we encourage applicants applying for first adjacent channel facilities to colocate or be within 0.5 miles of other adjacent channel facilities.

42. Since the proposed ITFS technical standards have already been addressed in great detail by the *Technical Standards Order* and *Technical Standards FNPRM, supra*, we shall only briefly describe the identical changes as they apply to ITFS. A comprehensive discussion of the issues is contained in the above referenced *Order* and *FNPRM* docket file.

43. *Cochannel Interference.* The MDS rules specify a 45 dB cochannel protection ratio (i.e. the difference between the desired signal and the undesired signal must be 45 dB at the receiver antenna terminals) for stations operating in the same geographical area.[17] The 45 dB ratio was established on the basis of tests conducted by the Television Allocation Study Organization (TASO), in which actual television pictures, both with an without cochannel interference, were compared by a panel of viewers.[18] We propose to adopt the same 45 dB protection ratio for ITFS. Accordingly, comments are requested on the cochannel protection ratio.

44. *Adjacent Channel Interference.* In addition, the MDS rules specifiy a 0 dB adjacent channel protection ratio (i.e. the undesired channel signal must not be stronger than the desired signal at the receiver antenna terminals) for stations operating in the same area.[19] This ratio was based on tests conducted at the Commission's Laboratory in Maryland.[20] In these tests, actual television pictures, both with and without adjacent channel interference, were compared by a panel of viewers. We propose to adopt the same 0 dB adjacent channel protection ratio for colocated ITFS stations. Comments are requested on this standard and on appropriate adjacent channel protection ratios for adjacent channel facilities which are not colocated.

45. *The Standard Antenna.* In order to determine by calculation whether an undesired signal will cause harmful interference, a two foot parabolic reflector antenna was chosen as a reference.[21] We stress, as we did in the *Technical Standards Order*, that we are not requiring that antennas with such characteristics be used, but rather that these characteristics are to be used in making interference and other calculations. Comments are requested on the standard antenna.

46. *Protected Service Concept.* The *Technical Standards Order* addressed two possible operational configuration that may appear in an ITFS transmission system.[22] The ITFS transmitting antenna would be either omnidirectional or wide beamwidth directional (i.e., single cardioidal pattern) at local receivers. In either case, the definitions of the protected service area in the *Technical Standards Order* would be applied to ITFS as the minimum protected service area, i.e., an area where receive sites should not experience interference. Applications need not be filed to add such receive sites after an initial authorization and such sites would receive "protection" even though not necessarily listed in the Commission's files. However, applications must continue to be filed to construct or add all ITFS "response" stations, even in the protected area.

47. For a station using an omnidirectional antenna, we propose that the boundary of the protected service area should be 15 miles from the transmitting site. For a station using a directional antenna, we propose that the

[14] *First Report and Order*, General Docket 80–113, FCC 84–175, adopted April 26, 1984, released June 14, 1984. (hereinafter *Technical Standards Order*).

[15] *Further Notice of Proposed Rulemaking and Notice of Inquiry*, General Docket 80–113, FCC 84–176, adopted April 26, 1984, released June 14, 1984. (hereinafter *Technical Standards FNPRM*).

[16] *Technical Standards Order*, ¶¶ 6 and 7.

[17] See the discussion in *Technical Standards Order*, ¶¶ 9–23.

[18] *Id.* at ¶ 11.

[19] *Id.* at ¶¶24–33.

[20] FCC, *A Study of the Characteristics of Typical Television Receivers Relative to the UHF Tabcos*, Project Number 2229–3 (June 1974).

[21] See *Technical Standards Order*, ¶¶37–43.

[22] *Id.* at ¶¶49–133.

boundary of the protected service area be determined by the following equation:

$$D_b = \frac{D_{bmax}}{\text{antilog}\left(\frac{G_{max} - G}{20}\right)}$$

in which the parameters are defined as follows:

D_b=the distance to the boundary in direction of interest;
G=the transmitter antenna gain in the direction of interest;
G_{max} = The maximum antenna gain;
D_{bmax}=the Distance to boundary, in the direction of maximum gain that will make the total area of the protected service area equal to or less than 710 square miles.

All distances are in miles; the gains are in dB relative to an isotropic antenna; and the antilog is taken to the base 10.

48. An ITFS station may have long path links to receivers or relay stations located outside the protected area. This is practical using high gain directional antennas and/or elevated antenna heights. These stations located outside the proposed protected area could be licensed and afforded the same degree of protection if the transmitted signal producers a power flux density of −75.6 dBW/m at the receive sites.[23] Comments are requested on the protection of receive sites as proposed above.

49. *Equivalent Isotropically Radiated Power (EIRP).* Proposed MDS rules specify the power limitation in terms of EIRP rather than transmitter power.[24] The EIRP is directly related to the signal power radiated from the antenna, and therefore, significant in the determination of service area and interference potential to other stations.

50. It has been proposed in the *Technical Standards FNPRM* to limit the radiated power of a station using an omnidirectional antena to a maximum of 33 dBW (2000 watts) EIRP This is equivalent to a 100 watt (20 dBW) transmitter operating into an antenna with 13 dB gain with the assumption that there would be no transmission line losses.

51. It has also been proposed to limit the radiated power of a station according to the following formula:

$$EIRP_{max} = EIRP_{omni} + 10 \log (360/BW)$$

in which

$EIRP_{max}$=EIRP in the direction of maximum gain in dBW
$EIRP_{omni}$=the EIRP of a station that uses an omni-directional transmitting antenna in dBW
BW=the total horizontal plane beamwidth of the station's transmitting antenna system measured at the one half-power points. (Stations using more than one antenna in their system will use the total beamwidth of all antennas).

We propose to adopt these EIRP limits for ITFS and request comments on this matter.

52. *Analysis of Interference potential.* MDS applications must include an analysis of the potential for harmful interference to all existing and previously proposed cochannel or adjacent channel operations located within 50 miles of the applicant's proposed transmitter location. In addition, an existing system operator can agree to accept interference from the proposed system, in which case the proposed system may be granted a license.

53. We propose to adopt the same interference analysis requirements for ITFS applications. If the potential for interference is indicated by the analysis, we believe that the parties involved should have the opportunity to negotiate a mutually acceptable resolution of the problem. This will be taken into consideration in the Commission's decision as to the disposition of the application. Comments are requested on the interference analysis requirements.

54. Finally, we propose to amend § 74.934(a)(2) of the Rules by relaxing the requirement that unattended ITFS relay stations use the direct heterodyne frequency conversion method. It appears there are ITFS licensees that desire to operate ITFS unattended relay stations with a state-of-the-art type transmitter which would minimize the potential for adjacent channel interference (*e.g.*, such a relay station may demodulate the incoming signal to separate baseband video and audio signals for retransmission). We request comments on amending the rule to allow for this alternative.

55. *Regulatory Flexibility Act Initial Analysis.*

I. Reason for Action

A significant increase in the demand for ITFS frequencies, generated primarily by the Commission's decision to permit ITFS licensees to lease excess channel capacity for commercial purposes, has posed new questions about how the channels should be authorized and used. Many recent applications have presented questions pertaining to eligibility requirements to be an ITFS licensee and the permissible scope of the service. In addition, the demand for channels has resulted in numerous mutually exclusive applications. The *Further Notice* addresses question necessary to update the 20 year old rules governing the ITFS service, looking toward a more efficient utilization of the ITFS spectrum, the growth and development of ITFS and the adaptation of the service to modern needs. Modification of the rules pertaining to procedural requirements and protection standards will aid in the efficient and expedited processing of applications.

II. The Objective

The Commission solicits comments on Part 74 of its Rules governing the authorization and operation of ITFS facilities. Specifically, it would inquire into the scope of permissible service, eligibility requirements, control of shared facilities, procedures for "cutting off" applications accepted for filing, selection procedures for mutually exclusive applicants, and interference protection standards. The comments will assist the Commission in amending the rules as necessary to assure the efficient utilization of the spectrum and to accelerate the growth of ITFS.

III. Legal Basis

The proposed action is authorized by section 303 of the Communications Act of 1934, as amended, which requires the Commission to prescribe the nature of licensed services, study new uses of frequencies and prescribe the qualifications of licensees.

IV. Description, Potential Impact and Number of Small Entities Affected

The action would invite comments on issues affecting all ITFS licensees and potential applicants. The entities include nonprofit educational institutions such as colleges, universities, public and private secondary and elementary schools. Any policies and rules established through this proceeding would be expected to produce the favorable impact of aiding the growth and development of ITFS and to increase the efficient use of the spectrum.

V Recording, Record Keeping and Other Compliance Requirements

None.

[23] In order to be afforded this protection, ITFS licensees who add receive sites outside the protected area will be required to file an application, and receive an authorization, for modification of their present facilites.

[24] *Technical Standards FNPRM*, ¶¶5–21.

VI. Federal Rules Which Overlap, Duplicate or Conflict With This Rule

None.

VII. Any Significant Alternatives Minimizing Impact on Small Entities and Consistent With Stated Objectives

The Commission's alternative is to leave the rules unchanged. This alternative would not accomplish the objectives sought to be achieved by this proceeding.

56. For purposes of this nonrestricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a public notice is issued stating that substantial disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments, pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1201 of the Commission's Rules.

57 Pursuant to procedures set out in § 1.415 of the Commission's Rules, interested parties may file comments on or before September 17, 1984, and reply comments on or before October 2, 1984. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

58. In accordance with the provisions of § 1.419 of the Commission's Rules, an original and five copies of all comments, replies, or other documents filed in this proceeding shall be furnished to the Commission. Participants filing the required copies who also wish each Commissioner to have a personnal copy of the comments may file an additional six copies. Members of the general public who wish to express there interest by participating informally in the rule making proceeding may do so by submitting one copy of the comments, without regard to form, provided only that the Docket Number is specified in the heading. Responses will be available for public inspection during regular business hours in the Commission's Dockets Reference Room (Room 239) at its headquarters in Washington, D.C. (1919 M Street, Northwest).

59. For further information concerning this proceeding, contact, Jerry Thomas or Joel Margolis (legal/policy) and Henry Allen (technical), Distribution Services Branch, Mass Media Bureau, (202) 632-9356.

Federal Communications Commission.

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

William J. Tricarico,

Secretary.

Separate Statement of Commissioner Henry M. Rivera

Re: Further Notice of Proposed Rulemaking in Mass Media Docket 83-523 (ITFS Licensing Policies)

The Commission by this Further Notice solicits comment on a broad array of issues concerning the nature, purpose and method of operation of the instructional television fixed service. In light of the recent decision in *National Association of Broadcasters* v. *FCC*,[1] one of the questions that also must be resolved is how best to put this service into compliance with the regulatory classification guidelines outlined by the Court.[2] Having already considered the matter, I believe the answer is straightforward.[3] However, I do not have a corner on wisdom and it may be that there are other approaches that satisfy the requirements of this case. My colleagues' unfortunate head-in-the-sand approach (*i.e.*, refusing to admit the existence of a problem by failing even to solicit comment on this question), not only puts the status of ITFS operations at legal risk, but deprives this agency of useful public input. I hope, by this statement, to solicit such input.

[FR Doc. 84-21675 Filed 8-14-84; 8:45 am]

BILLING CODE 6712-01-M

[1] No. 82-1926, slip op. at 13-27 (D.C. Cir. July 24, 1984); *United States Satellite Broadcasting Co* v. *FCC*, slip op. at 19-20 (D.C. Cir. July 24, 1984).

[2] By default, ITFS is presently considerd a private, non-broadcast service. *See* Notice of Proposed Rulemaking in Docket 80-112, 45 Fed. Reg. 29323 (1980). Now that we permit ITFS licensees to lease excess capacity to MMDS programmers, that classification plainly must be revised. Under the teaching of *NAB* v. *FCC*, the dissemination of radio communications is broadcasting within Section 153(o) if it is intended for reception by the general public, whether or not the activity is advertiser-supported or paid for directly by subscribers. Most, if not all, service that can now be provided on ITFS frequencies, meets this test.

[3] *See Amendment of Part 74 in Regard to Instructional Television Fixed Service*, MM Docket No. 83-523,—, FCC 2d—, adopted July 28, 1984 (Statement of Commissioner Henry M. Rivera, Dissenting in Part); Remarks of Commissioner Henry M. Rivera before ALI-ABA Course of Study on Communications Law: The New Regulatory and Technological Framework, Washington, D.C., March 29, 1984.

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47 CFR Parts 73 and 76

[Docket No. 21323; RM-2836; FCC 84-361]

Use of Subcarrier Frequencies in the Aural Baseband of Television Transmitters

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rule making.

SUMMARY: This action proposes to amend Parts 73 and 76 of the Commission's rules to address cable carriage of program related subcarriers on the aural baseband of television stations. These subcarriers can be used to provide services such as TV stereophonic sound and second language audio. No specific rule changes are proposed. Rather, the item takes a neutral position and asks for comments concerning how protective regulation would serve the overall public interest. It also requests comments on a proposal suggested jointly by the National Association of Broadcasters and the Association of Maximum Service Telecasters.

If the Commission were to require cable carriage of program related aural subcarriers it might ensure the availability of program enhancing audio features in cable homes. Such action might also have an adverse effect on a substantial portion of the cable industry. The Commission's final decision on this issue will address the overall public benefit as it is affected by these competing interests.

DATES: Comments are due by September 19, 1984 and replies by October 4, 1984.

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

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 73

Television broadcasting.

47 CFR Part 76

Cable television.

Second Further Notice of Proposed Rulemaking

In the matter of the use of subcarrier frequencies in the aural baseband of television transmitters; Docket No. 21323, RM-2836.

Adopted: July 26, 1984.
Released: August 13, 1984.
By the Commission.

1. On March 29, 1984, the Commission adopted a *Second Report and Order* in this proceeding, 49 FR 18100 (April 27, 1984), hereinafter *"Second Report and Order,"* which expanded the permissible uses of the television aural baseland. This expanded authority allows broadcast stations to use the television aural baseband for stereophonic sound, second language service, and any other broadcast or non-broadcast purpose. In making this decision, the Commission deferred action on whether to require cable systems to carry program-related aural subcarriers of broadcast television stations (e.g., those subcarriers that are used for stereophonic sound or second language services).[1] In this *Second Further Notice of Proposed Rule Making*, we are requesting additional comments and information on the mandatory carriage issue and on a proposal for resolving it that has been suggested recently by the National Association of Broadcasters (NAB) and the Association of Maximum Service Telecasters (MST).[2]

Background

2. In our discussion of the cable issue in the *Second Report and Order*, we distinguished between TV aural subcarrier signals that are related to program content and those that are unrelated to the primary television service and thus ancillary in nature. Our review of the record in this proceeding confirmed our initial assessment that aural subcarrier signals used for ancillary purposes do not merit protective regulation. However, with regard to program-related services such as TV stereo and second language programming, we are aware of arguments raised in the comments concerning the possible need for must carry protection. We also were concerned that retransmission of TV aural subcarriers might pose technical problems for a substantial portion of the cable industry. We therefore were unwilling to impose new technical performance requirements on cable systems without further information that such requirements would serve the overall public interest and could be justified in terms of the policies underlying must carry. We indicated our intention to seek additional information on this issue and to examine the option proposed by the NAB and the MST.[3]

3. *Cable Retransmission Requirements.* The Commission's rules require that cable systems carry the signals of local broadcast television stations and specify the manner in which broadcast television signals, both local and distant, are to be carried.[4] The rules require that where a signal is carried, the programs broadcast shall be carried in full, without deletion or alteration of any part.

4. The Commission's concern in adopting "must carry" protection for local broadcast stations was for the preservation of "free service, ... service to outlying areas, and ... local service with local control and selection of programs ...," *First Report and Order in Dockets 14895 and 15233*, 38 FCC 683, 700 (1965). We held that "the distribution of multiple reception services through [cable] systems cannot be permitted to curtail the viability of existing local service or to inhibit the growth of potential service by new broadcast facilities" *Id.* at 699. We also noted that "our commercial television system is based upon the distribution of programs to the public through a multiplicity of local station outlets" *Id.* at 700. These policies were reiterated in our *Second Report and Order in Dockets No. 14895, 15233, and 15971*, 2 FCC 2d 725 (1966) and in our *Cable Television Report and Order*, 36 FCC 2d 143, 173 (1972).[5]

5. The application of multiplexing techniques to the television transmission system has made it both possible and practical to transmit additional information on the television signal without degrading the quality of the main program service or producing interference to other stations. To date, the signals of this type that we have authorized are teletext, on the vertical blanking interval of the video signal, and subcarriers on the aural baseband, as addressed in this proceeding. The Commission has not extended must carry protection to such services where it has determined that they are not integral with, or essential to, regular program service. In the *Report and Order* in Docket 81-741, 48 FR 27054 (June 16, 1983), we ruled that teletext services, given their ancillary and discretionary nature, "are plainly not analogous to the types of services we have traditionally accorded mandatory carriage status," *Id.* para 48. We made a similar determination in our earlier decision in this proceeding not to require cable carriage of ancillary services on the television aural baseband.[6]

Discussion

6. Our purpose in this *Further Notice* is to explore the need for cable systems to carry program-related TV aural baseband signals and to choose a plan for regulation that is consistent with the overall public interest. We do not believe that we have sufficient information at this time to support a position either "pro" must carry, or "con", and therefore are not proposing any specific rules. Rather, we are assuming a neutral posture and intend to give full consideration to all options for balancing the competing needs and interests associated with this issue. While we intend to examine the NAB/MST approach, as described below, we will not limit our deliberations to this option.

7 One issue upon which we invite comment is by what standard the Commission should make its decision whether to require mandatory carriage of TV stereo and second language capacity. Does the test for whether something constitutes a single copyrightable work [7] present an

[1] In the context of this issue, we consider program related signals to be those that are intended to be enjoyed simultaneously with regular program material.

[2] The NAB and MST proposal was submitted on March 19, 1984 in a late filed pleading styled as a "Motion to Accept NAB and MST Middleground Proposal."

[3] The details of this proposal are discussed in paragraphs 13 and 14 *infra*.

[4] The rules for carriage of broadcast television signals are set forth in 47 CFR 76.51-76.67.

[5] The Commission has also declined to require cable carriage of low power stations or main channel subscription television service. See *Report and Order Authorizing Low Power Television Service*, 47 FR 21468, 21492 (May 18, 1982); *Memorandum Opinion and Order* (Signal Carriage Rules-STV), 77 FCC 2d 523, 528 (1980), *aff'd sub nom. WWHT, Inc. v. F.C.C.*, 656 F. 2d 807 (D.C. Cir 1981).

[6] *See, Second Report and Order*, paragraph 20.

[7] *E.g., WGN Continental Broadcasting Co. v. United Video, Inc.*, 523 F. Supp. 403 (1981), *rev'd* 693 F. 2d 218 affirmed 693 F. 2d 628 (7th Cir. 1982).

appropriate Commission framework for deciding must carry policy?

The Need for Signal Carriage Requirements

8. Stereo sound, second language capability, and other program-related uses of aural subcarriers are extensions of basic television service. As such they have the potential to develop as an important component of the television program service that is protected by the signal carriage rules. In deciding whether to provide must-carry protection for program related aural subcarriers, we therefore first need to evaluate their relationship to local program service and their contribution to the public interest objectives served by the carriage rules. To assist us in evaluating the need for regulation, we are requesting information and comment on these questions:

(1) How long will it take for receiver equipment with TV stereo and second language channel capability to achieve substantial penetration in television markets? This equipment would include television receivers with the capability to receive stereo and second language audio programming and add-on or stand alone audio receivers with similar capability. What constitutes substantial penetration? If we adopt must carry rules, should we require cable systems to invest in carrying program-related signals before there is substantial penetration?

(2) What proportion of new receivers will have: (a) stereo and second language capability; (b) only stereo capability; (c) only second language capability; and (d) no such capabilities?

(3) How important is stereo sound to television viewers? For example:

(a) To what extent, if any, will viewers prefer programming with stereo sound to basic, monaural programming?

(b) Will viewers consider stereo sound important enough to be a factor in their program choices?

(c) What proportion of television households will acquire a stereo equipped receiver or separate enhanced audio unit, and in what time frame?

(4) What is the current status of cable carriage of stereo sound in connection with pay services and other special programming?

(a) How much and what kinds of programming are carried in stereo now, using the simulcast method or some other technology? Do any cable systems have second language capacity now? Is there any evidence of what percentage of cable systems already have stereo or second language capacity?

(b) How many subscribers receive these programs in stereo as opposed to mono?

(c) Do cable systems charge a premium for stereo services and, if so, what are the charges for alternative levels of service?

(d) What is the extent of over-the-air TV stereo activity where the aural signal is simulcast over an FM station?

(5) What kinds and amounts of programming will be produced with stereo sound and when will such programming be available? How much and what kinds of local programming will be produced with stereo sound?

(6) What would be the net effect on local television service if local stations provided stereo service and cable systems:

(a) Carried no stero service for any programs regardless of source?

(b) Carried stereo service of all programming except those of local stations?

(c) Carried stereo service for some programming, but not for any local stations?

(d) Gave equivalent stereo service to local programming that they do for other programs?

(7) What proportion of the viewing public (as a whole and demographically) will make use of a second language service?

(8) What kinds and amounts of programming will be produced with a second language channel? In particular, how much and what kinds of local programming will be available with a second language channel?

(9) What kinds of communications service could cable systems offer independently on the aural subcarrier facilities that would be used by broadcasters of program-related signals? Would the market served by the independent services offered by cable systems be different from that of the broadcast services and, if so, what would be its size and composition?

(10) Public television stations are likely to be early entrants into stereophonic and second language services. Absent FCC intervention, would cable operators be less likely to carry public stations' subcarrier signals than commercial stations' signals? Would they be less likely to carry non-affiliated stations as opposed to network stations? Should the FCC be concerned about any potential disparity in cable carriage among local services?

9. We recognize that the development of TV subcarrier services is still in its early stages and that because of this it may be difficult to provide definitive answers to many of the above questions. Accordingly, we request interested parties to respond to our questions based on the information that is currently available and on their informed expectations. Any conclusions and recommendations should be supported by clear, logical analysis that is mindful of our public interest policy concerns.

Technical Considerations Associated With Signal Carriage

10. On the other side of this issue, we are aware that retransmission of TV aural subcarrier signals may pose significant technical problems for some cable systems. In order to gauge the impact of protective regulation on cable systems, we need a fuller understanding of the technical problems that arise in cable carriage of TV subcarrier signals and the cost of modifications to plant and equipment to overcome particular problems. We ask interested parties to provide information in response to these questions:

(1) What is the nature of the technical problems associated with:

(a) Any inability to retransmit usable stereo subcarrier signals,

(b) Adjacent channel interference produced by stereo subcarriers, and

(c) Any degradation of main program signal quality caused by stereo subcarrier signals?

(2) What cable systems will experience stereo retransmission difficulty and how many such systems are there?

(3) What subcarrier signals used by cable systems for purposes such as subscriber access control and premium sound will conflict with broadcast program related subcarriers? How many cable systems can and/or are currently using such subcarriers?

(4) What are the costs associated with retransmission of stereo signals?

(a) With respect to new equipment, what is the difference in cost of equipment that is capable of retransmitting stereo signals as compared to equipment that might otherwise be used? How would such equipment alternatives differ in technical design?

(b) What modifications would be necessary to correct stereo retransmission problems in existing equipment and how much would such modifications cost?

(c) Are there any expenses other than those associated with equipment that would be incurred in carriage of stereo services?

(5) Is it reasonable, from a technical standpoint, to consider must carry rules that would protect all TV stereo transmissions, regardless of the

technology used, or should consideration of such protection be limited to the BTSC system?

(6) Are the retransmission problems associated with a second language service different from those of stereo signals, which presumably will be carried on a subcarrier that is in a lower portion of the aural baseband?

(7) What cable systems will experience difficulty retransmitting a second language service on a subcarrier in the upper portion of the aural baseband and how many such systems are there?

(8) What are the costs associated with retransmission of second language signals?

(a) With respect to new equipment, what is the difference in cost of equipment that is capable of retransmitting second language signals as compared to equipment that might otherwise be used? How would such equipment alternatives differ in technical design?

(b) What modifications would be necessary to correct second language retransmission problems in existing equipment and how much would such modifications cost?

(c) Are there any expenses other than those associated with equipment that would be incurred in carriage of second language service?

11. We also invite comments on the underlying policy considerations of this rule making:

(1) Is FCC mandated carriage of stereo and second language signals necessary to further the purposes of the must carry rules?

(2) Should we consider whether and what market forces would result in carriage of these subcarrier signals in determining whether to require carriage by regulation?

NAB and MST Option

12. The NAB and MST offer their proposal as a solution that they believe accommodates the concerns of cable systems with respect to must carry protection for program related TV aural subcarriers, yet also preserves the integrity of broadcast television program material. The provisions of this option are:

(1) Cable systems could strip enhanced audio transmissions on TV aural subcarriers whenever:

(a) Carriage of the enhanced audio signal would materially degrade the main program video or monaural aural signal or would produce interference with the video or aural signal of adjacent channels or the enhanced audio signal could not be carried without material degradation of that signal, and the interference or degradation could be cured only by a significant capital expenditure by the cable operator; or (b) the aural subcarrier signals are for purposes other than main channel stereo or second language audio.

(2) Cable systems could begin to strip enhanced audio transmissions upon submission to the Commission of a properly supported certification that carriage of an enhanced audio signal is creating, or would create, the requisite level of material interference or degradation, and an estimate of the cost of correcting it.

(3) Cable systems would have to maintain existing equipment and make adjustments necessary for the interference free and undegraded retransmission of protected enhanced aural subcarrier signals.

(4) Interference of degradation created by equipment (e.g. baseband converters) acquired after March 29, 1984 could not serve as the basis for an exemption. for use with this plan. We also need estimates of the costs to convert cable systems that insert their own subcarriers on the aural baseband of the television signals they carry.

Implementation Considerations

14. In the event that the Commission were to find it necessary to apply must carry protection to program-related aural subcarrier signals, we need information with respect to how such requirements should be implemented for cable systems in differing stages of development. We therefore are requesting comment and discussion on the specific effects of must carry requirements for program-related aural subcarriers on:

(1) Systems that were constructed prior to March 29, 1984 (the adoption date of the Second Report and Order in this proceeding);

(2) Systems that had begun, but not completed, construction prior to March 29, 1984;

(3) Systems that began construction between March 29, 1984 and the adoption of any new signal carriage requirements; and,

(4) Systems that have completed the franchising process and begin construction within one year of the adoption of any new signal carriage requirements.

The Commission wishes to emphasize that in requesting information concerning implementation policy it does not intend to signal or indicate in any way the direction of its final decision in this matter. Our position on this issue is to remain neutral pending examination of the record developed in response to this *Notice*.

Procedural Matters

15. Accordingly, IT IS PROPOSED to amend Parts 73 and 76 of the Commission's Rules and Regulations, to provide appropriate regulation for cable carriage of program-related TV aural baseband signals if we determine that must carry regulation is warranted. No specific proposals are set forth herein for such regulation.

16. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an initial regulatory flexibility analysis (IFRA) of the expected impact of the regulatory alternatives on small entities. This IFRA appears in the Appendix. Written public comments are requested on the IFRA with respect to any new information that is developed in this phase of our deliberations. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of this *Further Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act (Pub L. No. 96–354, 94 Stat. 1164, 5 U.S.C. sections 601–612.

17 Authority for rule making as contemplated herein is contained in sections 2(a), 3(a), 4(i), 303, and 307 of the Communications Act of 1934, as amended.

18. Pursuant to the procedures set forth in sections 1.415, 1.419, and 1.421 of the Commission's Rules and Regulations, interested parties may file comments and information on or before September 19, 1984 and reply comments on or before October 4, 1984. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments.

19. In accordance with § 1.419 of the Commission's Rules and Regulations, formal participants shall file an original and five copies of all comments, reply comments, pleadings, briefs or other documents. Parties wishing each Commissioner to have a personal copy of their comments may submit an additional six copies. Members of the public who wish to express their interest

by participating informally may do so by submitting one copy. All filings in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters at 1919 M. Street, Northwest, Washington, D.C.

20. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rulemaking until the time a public notice is issued stating that a substantial disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments, pleadings, and formal oral arguments) between a person outside the Commission and a Commissioner or member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comment must prepare a written summary of that presentation; on the day of the oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1201 of the Commission's rules.

21. For further information on this matter, contact Ralph A. Haller, Mass Media Bureau, at (202) 632-9660, or Alan Stillwell, Mass Media Bureau, at (202) 632-6302.

Federal Communications Commission.

William J. Tricarico,

Secretary.

APPENDIX

Regulatory Flexibility Initial Analysis

I. Reason for Action

In its decision of March 29, 1984 to authorize expanded use of the television aural baseband, (*Second Report and Order* in Docket 21313, 49 FR 18100) the Commission deferred action on whether to require cable systems to carry program-related aural subcarrier services such as stereo sound and second language programming. If the Commission were to require cable systems to carry program-related aural subcarrier services, it might ensure the availability of program enhancing audio features in cable homes.

II. The Objectives

In this *Further Notice*, the Commission takes a neutral position on the cable carriage issue and does not indicate any specific proposals for new rules. Instead, it asks for comments with respect to how protective regulation would serve the overall public interest and on a proposal submitted jointly by the National Association of Broadcasters and the Association of Maximum Service Telecasters.

III. Legal Basis

Legal action as proposed is in furtherance of sections 2(a), 3(a), 4(i), 303 and 307 of the Communications Act of 1934, as amended.

IV Description, Potential Impact, and Number of Small Entities Affected

This phase of the TV aural subcarrier proceeding contemplates the possible application of cable "must carry" protection to program-related subcarrier signals on the aural baseband of broadcast television stations. Such signals can be used for service enhancements such as stereophonic sound and second language services.

A substantial number of small businesses may be affected. Those that would be affected in a positive manner include commercial television stations, through guaranteed access to cable homes for their enhanced audio services, and manufacturers of equipment for consumers and cable systems. The small businesses that may be negatively affected are cable systems that might not be able to retransmit aural subcarriers with their existing plant and equipment. The extent of negative impact on cable systems is unknown at this time. Ascertainment of this information is one of the objectives of this *Further Notice*.

V. Recording, Record-Keeping and Other Compliance Requirements

None.

VI. Federal Rules Which Overlap, Duplicate or Conflict With This Rule

None.

VII. Any Significant Alternative Minimizing the Impact on Small Entities and Consistent With the Stated Objective

The policy alternatives for this issue range from full requirements for carriage of program-related subcarrier signals by all cable systems, to intermediate approaches that would provide exceptions for systems that could not retransmit subcarrier signals, to no requirements for carriage of program-related subcarriers by any cable systems.

[FR Doc. 84-21072 Filed 8-14-84; 8:45 am]
BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 49, No. 159
Wednesday, August 15, 1984

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

Forms Under Review by Office of Management and Budget

August 10, 1984.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, D.C. 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New

• Agricultural Marketing Service.
Kiwifruit Grown in California—Marketing Order
N/A
On Occasion
Farms, Businesses or other for-profit: 217 responses; 64 hours; not applicable under 3504(h)
Jay N. Guerber (202) 447-5120

• Animal and Plant Health Inspection Service.
Musk Thistle Questionnaire
N/A
One time survey
State or local governments, Non-profit institutions: 100 responses; 350 hours; not applicable under 3504(h)
Gary L. Cunningham (301) 436-8896

• Foreign Agricultural Service
Readership Survey
N/A
Annually
Individuals or Households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small business or organizations; 3,000 responses, 510 hours; not applicable under 3504(h)
Geraldine Schumacher (202) 447-7115

• Soil Conservation Service.
Resource Conservation and Development Program Volunteerism Survey
N/A
One time only
Individuals or households, Non-profit institutions, Small businesses or organizations: 625 responses; 625 hours; not applicable under 3504(h)
Steve F Baima (202) 447-7697

Reinstatement

• Agricultural Research Service.
Application for Nonexclusive Patent License for USDA Invention
AD-761
On Occasion
Individuals or Households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small business or organizations: 50 responses; 150 hours; not applicable under 3504(h)
Ann Whitehead (301) 344-2786

Jane A. Benoit,
Acting Department Clearance Officer.

[FR Doc. 84-21679 Filed 8-14-84; 8:45 am]
BILLING CODE 3410-01-M

Animal and Plant Health Inspection Service

[Docket No. 84-067]

Advisory Committee on Foreign and Poultry Diseases; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of a Meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

SUMMARY: The purpose of this document is to give notice of a meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

Place, dates, and time of meeting: The meeting will be held at Room 743A of the Federal Building, United States Department of Agriculture, 6505 Belcrest Road, Hyattsville, Maryland, September 10, 1984, from 1:00 p.m. to 4:30 p.m., and September 11, 1984, from 7:30 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. Harless McDaniel, Chief Staff Officer, Technical Support, VS, APHIS, USDA, Room 757, Federal Building, Hyattsville, MD 20782, 301-436-8087.

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to advise the Secretary on means to prevent, suppress, control or eradicate an outbreak of foot-and-mouth disease or other destructive foreign animal or poultry diseases in the event such disease should enter the United States.

The meeting will be open to the public. Written statements concerning these matters may be filed with the committee before or at the time of the meeting.

Written statements concerning the meeting may be forwarded to Dr. Harless McDaniel, Chief Staff Officer, Technical Support, VS, APHIS, Room 757, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8087

Dated: August 9, 1984.

James O. Lee, Jr.,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 84-21632 Filed 8-14-84; 8:45 am]

BILLING CODE 3410-34-M

Rural Electrification Administration

Sugar Land Telephone Company, Sugar Land, Texas; Proposed Loan Guarantee

AGENCY: Rural Electrification Administration (REA).

ACTION: Proposed Loan Guarantee.

SUMMARY: Under the authority of Pub. L. 93-32 (87 Sat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 320-22, "Guarantee of Loans for Telephone Facilities," dated February 4, 1975, published in proposed form in the Federal Register September 16, 1974 (Vol. 30 No. 180, pages 33228-33229), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $26,231,000 to Sugar Land Telephone Company of Sugar Land, Texas. This loan guarantee will be used to finance the construction of facilities to extend telephone service to new subscribers and improve telephone service for existing subscribers.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Brown III, President, Sugar Land Telephone Company, P.O. Box 650, Sugar Land, Texas 77478.

SUPPLEMENTARY INFORMATION: Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed program, including the engineering and economic feasibility studies and the proposed schedule for advances to the borrower of the guaranteed loan funds from Mr. Robert C. Brown III at the address given above.

In order to be considered, proposals must be submitted September 14, 1984 to Mr. Robert C. Brown III. The right is reserved to give such consideration and to make such evaluation or other disposition of all proposals received as Sugar Land Telephone Company and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 320-22 are available from the Director, Public Information Office, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.581—Rural Telephone Loans and Loan Guarantees.

Dated: August 9, 1984.

Harold V. Hunter,

Administrator.

[FR Doc. 84-21635 Filed 8-14-84; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Little Luckiamute Watershed, Oregon

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the Little Luckiamute Watershed project, Polk County, Oregon.

FOR FURTHER INFORMATION CONTACT: Jack P. Kanalz, State Conservationist, Soil Conservation Service, 1220 SW. Third Avenue, 16th Floor, Portland, Oregon 87204, telephone (503) 221-2751.

SUPPLEMENTARY INFORMATION: A determination has been made by Jack P. Kanalz that the proposed works of improvement for the Little Luckiamute project will not be installed. The sponsoring local organizational have concurred in this determination and agree the Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Jack P. Kanalz, State Conservationist, at the above address and telphone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the Federal Register.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: August 3, 1984.

Jack P. Kanalz,

State Conservationist.

[FR Doc. 84-21615 Filed 8-14-84; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

[Docket 42327]

Air National Aircraft Sales and Service, Inc., Continuing Fitness Investigation; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-titled matter is assigned to be held on August 22, 1984, at 10:00 a.m. (local time), in Room 1012, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C., before the undersigned.

In order to facilitate the conduct of the conference, parties and prospective parties shall, no later than August 16, 1984, submit one copy to each party and four copies to the Judge of (1) proposed stipulations; (2) proposed requests for additional information and evidence; (3) statements of positions; and (4) proposed procedural dates.

Dated at Washington, D.C., August 9, 1984.

William A. Kane, Jr.,

Administrative Law Judge.

[FR Doc. 84-21733 Filed 8-14-84; 8:45 am]

BILLING CODE 6320-01-M

Announcement of Proposed Collection of Information Under the Provisions of the Paperwork Reduction Act (44 U.S.C. 35)

Agency Clearance Officer from whom a copy of the collection of information and supporting documents is available: Robin A. Caldwell (202) 673-5922.

New

Title of the Collection of Information: Carrier-Owned Computer Reservation Systems.

Agency Form Number: None.

How Often the Collection of Information Must Be Filed: Information is to be disclosed upon request.

Who is Asked or Required to Report: Air carriers that operate computer reservation systems.

Estimate of Number of Annual Responses: 40,400.

Estimate of Number of Annual Hours Needed to Complete the Collection of Information: 10,100.

Dated: August 3, 1984.

Robin A. Caldwell,

Chief, Information Management Division, Office of Comptroller.

[FR Doc. 84-21737 Filed 8-14-84; 8:45 am]

BILLING CODE 6320-01-M

[Order No. 84-8-50; Docket 42194]

Application of Air Via, Inc. for a Certificate of Public Convenience and Necessity

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order Instituting a Fitness Investigation of Air Via, Inc., 84-8-50, Docket 42194.

SUMMARY: The Board is issuing an order instituting a fitness investigation of Air Via, Inc.

DATES: Persons wishing to file requests for additional evidence or petitions to intervene in the Air Via Fitness Investigation shall file their petitions in Docket 42194 by August 24, 1984.

ADDRESSES: Requests for additional evidence and petitions to intervene should be filed in Docket 42194 and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

In addition copies of such filings should be served on: Air Via, Inc., the Secretary of Transportation; and the Attorney General.

Service will also be required on any other person filing petitions.

FOR FURTHER INFORMATION CONTACT: Anne W. Stockvis, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5088.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-8-50 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 84-8-50 to that address.

By the Bureau of Domestic Aviation: August 10, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-21732 Filed 8-14-84; 8:45 am]

BILLING CODE 6320-01-M

[Order No. 84-8-44; Docket 42217]

City of St. Louis and Trans World Airlines, Inc., Joint Motion

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order To Show Cause: Order 84-8-44, Docket 42217

SUMMARY: The Board has tentatively concluded that the Joint Motion of the City of St. Louis and Trans World Airlines, Inc. for a designation under the U.S.-U.K. Air Services Agreement should be granted. The Board directs interested persons to show cause why it should not make this tentative conclusion final. The complete text of Order 84-8-44 is available as noted below.

DATES: Comments on the order to show cause shall be filed by September 10, 1984. Reply comments shall be filed by September 20, 1984.

ADDRESSES: All pleadings should be filed in the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428 in Docket 42217, *Joint Motion of City of St. Louis and Trans World Airlines, Inc. for a designation under the U.S.-U.K. Air Services Agreement.*

FOR FURTHER INFORMATION CONTACT: Patricia N. Snyder, Bureau of International Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5203.

SUPPLEMENTARY INFORMATION: The Complete text of Order 84-8-44 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 84-8-44 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: August 9, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-21734 Filed 8-14-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration
Title: Petition by a Firm for Certificate of Eligibility to Apply for Trade Adjustment Assistance
Form Numbers: Agency-ITA-840P; OMB-0625-0103
Type Of Request: Extension of the expiration date of a currently approved collection
Burden: 600 respondents; 4,800 reporting hours
Needs And Uses: The information is used to determine whether or not a trade-impacted producing firm qualifies for certification of eligibility to apply for financial aid technical assistance under the Trade Act of 1974, as amended.
Affected Public: Farms, businesses or other for-profit organizations, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sherri Fox, 395-3785

Agency: International Trade Administration
Title: Distribution License Procedure
Form Number: Agency-EAR 373.3 (d) and (g); OMB 0625-0052
Type Of Request: Extension of the expiration date of a currently approved collection
Burden: 469 respondents; 711 reporting hours
Needs And Uses: The Distribution License Procedure is a "bulk-type" licensing procedure developed in response to and advice received from the export community. It is designed to facilitate the export of commodities under large-scale international marketing programs.
Affected Public: Business or other for-profit organizations, small businesses or organizations
Frequency: On occasion, monthly
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sherri Fox, 395-3785

Agency: National Oceanic and Atmospheric Administration (NOAA)
Title: Federal Fisheries Permit (Amendment C)
Form Number: Agency-NOAA 88-155 and 88-156; OMB-0648-0097
Type Of Request: Revision of a currently approved collection
Burden: 10,676 respondents; 5,425 reporting hours
Needs And Uses: The application procedure is used by NOAA to issue permits. The permit is used to enumerate the number of participants and monitor level of fishing activities. Amendment C adds king crab to the Alaska Region's permit system.
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: Annually
Respondent's Obligtation: Required to obtain or retain a benefit
OMB Desk Officer: Sherri Fox, 395-3785

Agency: Patent and Trademark Office
Title: Patent Maintenance Fees
Form Number: Agency-PTO-1536; OMB-N/A

Type Of Request: New collection
Burden: 6,250 respondents; 500 reporting hours
Needs And Uses: The information requested will be used to record the payment of maintenance fees in order to keep a patent in force
Affected Public: Individuals or households, businesses or other for-profit organizations, Federal agencies or employees, non-profit institutions, small businesses or organizations
Frequency: Other—once every four years
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sherri Fox, 395-7231

Agency: Patent and Trademark Office
Title: Practice before the Patent and Trademark Office
Form Number: Agency-N/A; OMB-N/A
Type Of Request: Existing collection in use without an OMB control number
Burden: 202 respondents; 1,728 reporting/recordkeeping hours
Needs And Uses: This collection is used to insure compliance with the Patent and Trademark Office code of Professional Responsibility by attorneys, agents, and others who represent clients before the Patent and Trademark Office
Affected Public: Individuals or households, federal agencies or employees
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sherri Fox, 395-7231

Agency: United States Travel and Tourism Administration
Title: In-Flight Survey of International Air Travelers
Form Number: Agency-N/A; OMB-0605-0007
Type Of Request: Extension of the expiration date of a currently approved collection
Burden: 165,600 respondents; 27,600 reporting hours
Needs And Uses: This survey provides consumer marketing data on international travelers to and from the United States which allows USTTA to identify and analyze specific foreign travel markets
Affected Public: Individuals or households
Frequency: On occasion
Respondent's Obligation: Voluntary
OMB Desk Officer: Sherri Fox, 395-7231

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230. Written comments and recommendations for the proposed information collections should be sent to the OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20203.

Dated: August 8, 1984.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 84-21054 Filed 8-14-84; 8:45 am]
BILLING CODE 3510-CW-M

International Trade Administration

[A-588-091]

Certain Electric Motors from Japan; Final Results of Administrative Review of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Duty Order.

SUMMARY: On July 29, 1983, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain electric motors from Japan. The review covers the five known manufacturers and/or exporters of this merchandise to the United States and generally the period December 1, 1980 through November 30, 1981. We gave interested parties an opportunity to submit oral or written comments on the preliminary results. At the request of the petitioner and one exporter, we held a public hearing on October 13, 1983.

As a result of our review of the comments received, we have changed the margins for three exporters and we have eliminated one exporter covered in the preliminary results. We have made no changes in the final results of review for the remaining firms from those presented in our preliminary results.

EFFECTIVE DATE: August 15, 1984.

FOR FURTHER INFORMATION CONTACT: Laurie Lucksinger or Susan Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 1983, the Department of Commerce ("the Department") published in the Federal Register (48 FR 34492-93) the preliminary results of its administrative review of the antidumping duty order on certain electric motors from Japan (45 FR 84994, dated December 24, 1980). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of alternating current, polyphase electric motors of not less than 150 horsepower but not greater than 500 horsepower, not including submersible well pump motors. Such motors are currently classifiable under items 682.4545, 682.4600, 682.5010, and 682.5030 of the Tariff Schedules of the United States Annotated.

The review covers the five known manufacturers and/or exporters of these Japanese electric motors to the United States and generally the period December 1, 1980 through November 30, 1981.

Analysis of Comments Received

We gave interested parties an opportunity to submit oral or written comments on the preliminary results. At the request of the petitioner, National Electric Manufacturers Association ("NEMA"), and one respondent, Toshiba Corporation and Toshiba International Corporation, we held a public hearing on October 13, 1983.

At the hearing, we indicated that we would provide NEMA and Toshiba one final opportunity to comment on two recurring issues in this case: (1) The standards we should use in selecting a home market model for comparison, and (2) the criteria we should use to determine if a "system" sale or "package" sale is appropriate for comparison. We received comments from both parties on April 23, 1984. Those comments and our positions on those comments are incorporated in *Comments 1, 2, ,3, and 4.*

Comment 1: NEMA and Toshiba commented on two of the Department's criteria for selection of comparable home market models: the plus or minus ten percent horsepower rule and the time frame for determining the existence of contemporaneous home market sales. *Comment* 2 addresses the latter criterion.

NEAM contends that the plus or minus ten percent horsepower rule is too narrow and it urges, as a compromise, that we consider Japanese motors within the same motor "family" (*i.e.*, having the same voltage range, number of poles and enclosure type) as similar, thereby eliminating the horsepower rule. NEMA indicates that motors in the same family satisfy the similarity criteria set forth in section 771(16)(C) of the Tariff Act of 1930 ("the Tariff Act"). First, the components and designs of motors within a family are essentially identical, and the only significant difference is the quantity or size of components and size

of the enclosure that houses them. Second, motors in the same family are used for the same purposes. Finally, NEMA contends that Toshiba's evidence demonstrated that it is possible and reasonable to make adjustments for any different physical characteristics, including differences in width, length, volume, etc. and thereby to compare any motors within a family. Using prices of Toshiba motors sold in the U.S. during 1981–82, NEMA argues that prices within a family for motors up to 400 horsepower are directly related to horsepower, and therefore, may be adjusted to account for *any* differences in horsepower.

Toshiba contends that there is no basis whatsoever for the Department to reconsider this issue and that any further change violates administrative due process. The Department established the rules for comparability, including a rule of plus or minus ten horsepower, during the fair value investigation. In the first administrative review, despite Toshiba's objections, the Department reopened this and other issues relating to motor comparability and decided to change the horsepower rule to plus or minus ten percent for subsequent reviews. Toshiba argues that, while NEMA disagreed with both rules, NEMA at no time offered any alternative even though the Department specifically asked NEMA for suggestions. Accordingly, since there is no evidence of any change in Toshiba's pricing policies, the Department has no justification to consider this issue again.

Department's Position: Based on our analysis of available information, we have decided to retain the plus or minus ten percent horsepower rule as one of our comparability criteria.

While we agree with NEMA that motors within the same family are the same general class or kind of merchandise, we disagree that motors at the lower end of the horsepower rating spectrum have the same use as motors at the higher end, as required by section 771(16)(C) of the Tariff Act. Further, we are not convinced that such motors "may reasonably be compared", as required by section 771(16)(C). NEMA uses the trend of prices of Toshiba's U.S. motors to support its argument that the motors can be compared. However, our section 751 reviews have shown that Toshiba's motors produced for the Japanese market are custom-made, unlike the more standard U.S. motors, and that Toshiba's costs of manufacturing motors for the Japanese market follow no pattern. Further, as set out in section 353.16 of the Commerce Regulations, we make adjustments for differences in the physical characteristics of merchandise on the basis of cost of manufacture because we maintain that cost is a more appropriate indicator than price to gauge similarity. Therefore, U.S. price trends are irrelevant here.

Accordingly, we conclude that, in conjunction with identical voltage, poles and enclosures, the plus or minus ten percent horsepower criterion is a reasonable basis for selecting a similar home market model for comparision. (*see* Comment 10 concerning Toshiba's argument that our actions violate administrative due process.)

Comment 2: Concerning the criterion for the time frame for determining the existence of contemporaneous home market sales, NEMA argues that we should broaden the time frame from the current standard (within 120 days prior and 60 days after the U.S. sale or export date) to at least one year. NEMA indicates that its aggregated price statistics for the two relevent blocks of motors (126–200 HP and 201–500 HP) historically have changed little over the course of a year or longer. Further, NEMA contends that an examination of Toshiba's 1981–82 U.S. prices demonstrates that a broader time frame is appropriate, since that evidence shows consistency in prices throughout a year period.

Toshiba not only disagrees with a broader time frame for subsequent reviews, but argues that there was no basis for the Department's expansion to a 120/60 day period for this review from the 90/45 day time frame used in the first review. both changes are against the statutory requirement that price comparisons be made between contemporaneous sales and are unjustified since no evidence exists to indicate a change in Toshiba's marketing practices either between the period of the fair value investigation and that covered by the first review or between the periods covered by the first and current reviews.

Department's Position: Neither the statute nor the regulations specifically provide criteria for what constitutes a contemporaneous sale. Section 353.20 of the Commerce Regulations provides for the use of a single price if that was the price for 80 percent of the sales of such or similar merchandise in the period or for the use of a weighted-average price if prices varied. Otherwise, the regulation allows the Department to determine foreign market value in a manner it deems appropriate. We developed the 90/45 day policy (or here the 120/60 day policy) for situations where prices varied within a period but, for example, weighted-averages were inappropriate because of the paucity of sales.

NEMA's reference to consistency in prices over a year period is based on Toshiba's sales of motors to the United States. However, in determining an appropriate comparison sale to derive a foreign market value, we examined sales in the home market. Since the majority of Toshiba's home market sales are custom-made models with the result that prices vary according to the specifications of the contract, the prices do not necessarily reflect the same pattern of consistency as the prices of the stock motors sold in the U.S. Therefore, changing to a broader time period is not warranted and we will continue to use a 120/60 day time frame for determination of appropriate comparison motors.

Comment 3: Toshiba maintains that the Department incorrectly chose system sales (an integrated unit consisting of an electric motor plus related electrical and contracted equipment) as a basis of comparison. These sales, custom designed by Toshiba to serve specific needs and demands of Japanese customers, are distinguishable from U.S. sales where purchasers buy the individual component of a system and assemble the system themselves. The difference between the two types of sales are fundamental and substantial, and there is no basis for the Department to treat home market system sales as such or similar to merchandise sold to the U.S. Indeed, unit prices for the motors in system sales do not even exist. Again, Toshiba charges that the Department is unjustifiably changing its practice from previous reviews.

Second, assuming *arguendo* that system sales can be "such or similar merchandise", the Department did not give Toshiba sufficient time to supply the complex cost information required to adequately determine allowances for differences in physical characteristics.

Finally, Toshiba contends the Department's methodology in the preliminary results for determining which system sales to consider as such or similar merchandise is flawed. We determined, that, where the cost of the motor was more than twenty-five percent of the cost of the system, we would consider that sale as such or similar for comparison purposes. Toshiba contends the twenty-five percent figure is arbitrary and too low because the Department then must make physical differences adjustments for as much as seventy-five percent of the cost of a system sale. Further, the

Department would attribute the entire profit of the system sale to the motor portion of the sale.

If we do insist upon considering system sales for motor comparisons, Toshiba proposes that we adopt an earlier NEMA position to use such sales only when Toshiba's home market prices for the electric motors in each of the system sales is separately indicated in the proposals, bids, or final contracts of such sales. At the very least, the Department should require the cost of the individual motor in question to be at least 90 percent of the total cost of the system sale. Finally, Toshiba argues for some allocation of the system sale profit, rather than full attribution to the motor portion. Toshiba points to a proposal of the Treasury Department in 1979 that, if differences in physical characteristics accounted for more than ten percent of the value of the merchandise, the adjustment should include an allocation of profit.

NEMA considers motors that are part of a system to be valid motor sales and points out that, if we were to disregard such motors, it would be an invitation to disguise as many motor sales as possible as part of a "system" If the firm's accounting system does not document revenues associated with the motor portion of the system sale, NEMA suggests we use the best information otherwise available to determine the proper price, for example, the price of the motor if sold separately, the list price or the price for other motors within the appropriate motor family.

Department's Position: We have determined that system sales can be such or similar merchandise under section 771(16) of the Tariff Act. We cannot exclude a sale of a motor, when the motor fits the comparability criteria, solely because it is sold along with other equipment. To determine whether or not merchandise is such or similar solely on the existence of a separate price could allow disguised margins. Therefore, if a system sale includes a unit which is the same class of kind of merchandise covered by the order, we may use that motor in our comparisons by determining its commercial value.

Concerning the price of the motor, we verified that Toshiba's proposals bids, etc. do not contain a separate price for the motor. Based on our analysis of available information, we have decided that a floor of 25 percent of the cost of manufacturing the system is generally too low because of the resultant distortions through excessive adjustments for differences in the physical characteristics. Therefore, we will consider using a motor incorporated in a system sale for comparison if the cost of that motor constitutes more than 50 percent of the total cost of manufacture of the system and we will allocate profit and other expenses to that motor in order to create a commercial value for it. We will only consider such motors if no single motor or package motor sale in the home market (*see* Comment 4) meets the comparability criteria. Since we did not give Toshiba sufficient time to provide the necessary data for analysis of such sales in this review period, we have deferred until the next review analysis of those U.S. sales for which we have now selected a system sale for comparison.

Comment 4: Toshiba argues the Department's use of home market package sales (a single sale of several electric motors with spare parts or accessories, all at a single price) for comparisons with individual motor sales in the U.S. creates problems similar to those in the use of system sales. As with system sales, there is no basis to treat package sales as "such or similar merchandise" to motor sales as there are no unit prices for the motors included in a package sale.

Assuming *arguendo* that we do include package sales for motor comparisons, Toshiba suggests that we should only use those sales in which the cost of the individual motor in question represents a substantial portion of the sale in question, again (as with system sales) at least 90 percent. Toshiba should not be penalized by the use of "best information available" because it is unable to provide prices for motors that have no prices. NEMA's position on package sales is the same as its argument on system sales.

Department's Position: Motors included as part of a package sale meet the similarity standards of section 771(16)(C) of the Tariff Act. Since such sales include mainly motors, they are sales of the same general class of kind of merchandise, use for the same purposes, and we can develop a price for the individual motor on the basis of cost plus an allocated portion of the profit on the package. We find no good reason to exclude a motor included as part of a package sale from our choice of comparisons, as long as the motor meets our comparability criteria.

Unlike the situation with system sales, in these final results, we have used the best information available for U.S. sales where home market package sales are available for comparison. Here we were not apprised that certain reported home market sales were package sales until the verification, well after the agreed upon deadline for submission of all data necessary to complete the review.

Comment 5: NEMA argues that the Department should verify that Toshiba reported all home market and third-country sales including system sales and package sales.

Department's Position: We examined Toshiba's internal records and found no discrepancies between recorded sales and reported sales.

Comment 6: NEMA argues that the adjustments for differences in physical characteristics of the merchandise claimed by Toshiba and allowed by the Department are excessive, unjustified, and contrary to law. NEMA argues that the Commerce Regulations permit adjustments only for costs directly related to creating those physical differences, *i.e.*, only direct manufacturing costs (material, direct labor and *direct* (variable) factory overhead).

Further, NEMA indicates that its examination of the Toshiba claimed costs demonstrates that often the majority of total favorable cost claims are in two vague categories, "miscellaneous" and "factory overhead" NEMA suggests that whatever is included in these costs does not directly result in physical differences in the product and, therefore, should not be allowed. NEMA also argues that where a part supplied by a subsidiary is included, the transfer price should not be used but rather the subsidiary's true direct manufacturing costs. Finally, NEMA's comparison of two very comparable Toshiba motors, one sold in the U.S., the other in Japan, shows Toshiba's differences claims to be excessive.

Tosahiba claims that the costs associated with physical differences necessarily include all factory expenses, whether those costs are determined to be "variable" or "fixed" Since a manufacturer such as Toshiba bases its pricing decisions on total production costs, these total costs must be used in calculating differences in cost of producing U.S. and home market motors.

Toshiba asserts this approach is required by § 353.16 of the Commerce Regulations which provides that, in making allowance for differences in physical characteristics, the Department will be guided primarily by "differences in cost of production". In § 353.7 of the Commerce Regulations the term "cost of production" is defined as the "costs of materials, labor and *general expenses*, excluding profit, incurred in producing such or similar merchandise" (emphasis added). The term "general expenses" includes all overhead costs, both fixed and variable. To interpret "cost of production" in two different ways for

different sections of the regulations would violate the fundamental principle of construction, that, in the absence of any explicit indication to the contrary, the same term appearing at different places in the same statute or set of regulations is to be construed in the same fashion.

Toshiba asserts that it did not report transfer prices as the basis for cost differences.

Concerning NEMA's comparison of two comparable motors, Toshiba argues that an examination of the two motors reveals that the weight and height of the motors are substantially different, justifying the claimed cost differences.

Department's Position: For the preliminary results, we incorrectly included fixed overhead costs in the adjustment for differences in physical characteristics. Since we did not have Toshiba data differentiating between variable and fixed overhead costs, we requested after the hearing that Toshiba provide the information. It responded that it could not do so, maintaining that it includes both fixed and variable costs when pricing a machine. We therefore have disallowed the "factory overhead" portion of the difference in merchandise claim.

While we appreciate that Toshiba takes into account total costs in pricing its motors, it is our policy to adjust only for costs directly related to the difference in physical characteristics of the merchandise, namely, direct material, direct labor and variable factory overhead. Section 353.16 of the Commerce Regulations requires that there be differences in the physical characteristics of the merchandise being compared and that we adjust only for the costs that are a result of these differences. The allocation of fixed costs is not affected by such differences.

We therefore do not agree with Toshiba that the term cost of production has the same meaning under §§ 353.7 and 353.16. Under § 153.11 of the Customs Regulations, for entries prior to 1980, the term used for adjusting for differences in physical characteristics was cost of *manufacture,* which the Treasury Department defined as materials, labor, and variable overhead (*see* Railway Track Maintenance Equipment, *Determination of Sales at Less than Fair Value,* 42 FR 41339, August 11, 1977). We find no mention in the comments to the Customs Regulations proposed in 1979 or the regulations adopted by the Department in 1980 warranting a different interpretation than that adopted by Treasury. Moreover, the Department since 1980 has adhered to the Treasury policy.

At the verification of Toshiba's response for this review period, we examined in detail the claimed adjustment for differences in the physical characteristics for one pair of comparison sales. We are satisfied that the costs in the "miscellaneous" category were properly quantified and that the claimed costs are directly related to the physical differences. Finally, three Toshiba cost centers manufacture motors. We verified that the cost figures submitted reflect true direct manufacturing costs and not transfer prices.

Comment 7: NEMA believes that in its calculation of the ESP offset for Toshiba's sales, the Department incorrectly included home market expenses that are not selling expenses, but rather are either general/administrative costs or non-operating expenses. Toshiba's response described the expenses as including: (1) Division staff expenses, and (2) non-operating expenses such as "debenture expense, inventory disposal, special R & D, etc." Further, NEMA indicates that the Department did not "cap" the allowable expenses as required by section 353.15 of the Commerce Regulations, even if they were selling expenses.

Toshiba argues that the expense deductions are appropriate in that it is its accounting practice (as refelcted in its formal profit and loss statements) to charge all the expenses in question directly to home market sales, so that these expenses constitute an indispensable component of selling expenses. Since the Department permitted the adjustments in the first section 751 review, any change again would violate the principles of administrative due process.

In an additional comment, Toshiba referred to a decision of the Court of International Trade that the ESP offset "cap" is invalid (*Silver Reed America, Inc.* v. *United States,* Slip Op. 84-8, February 1, 1984) and requested that the Department deduct all indirect selling expenses in the determination of foreign market value.

Department's Position: We have reexamined the claimed expenses and we agree with NEMA that the staff expenses claimed by Toshiba are properly considered general and administrative expenses and that the claimed non-operating expenses also are not selling expenses incurred in selling motors in the home market. Toshiba's accounting practices do not override the character of these expenses.

The Department has appealed the ruling of the Court of International Trade on the ESP offset "cap." For this review we have corrected our computer program by "capping" the amount of the offset.

Comment 8: NEMA contends the Toshiba's costs of manufacturing including in the Department's preliminary results' constructed value calculations are too low. Toshiba's production cost claims for factory overhead are less than Toshiba's own figures for factory overhead claimed for physical differences calculations. In such instances, NEMA urges the Department to use the overhead costs claimed for the physical differences calculations.

Toshiba explained that the reason for the apparent discrepancy is that, in constructed value calculations, the factory overhead costs for two of the company's three cost centers were included under material costs, while in the physical differences calculations such costs were included under factory overhead.

Department's Position: Our verification of Toshiba's response substantiates Toshiba's explanation, therefore, a recalculation of factory overhead costs that we included in constructed value is not warranted.

Comment 9: Concerning the general expenses included in the Department calculation of constructed value, NEMA repeats its argument of the first administrative review, that the Department is incorrect in its premise that the Tariff Act provides for circumstance-of-sale adjustments is constructed value calculations.

Assuming *arguendo* that such adjustments are proper, NEMA claims the Department in its internal policy paper on constructed value (Policy Paper #47) errs by basing general expenses on U.S. sales. General expenses and profit are both addressed in section 773(e)(1)(B) of the Tariff Act, which requires that they be based on sales of merchandise of the same general class or kind *in the home market.*

NEMA then asserts that, in the calculation of Toshiba's constructed value, the Department did not follow the policy paper in several respects. First, while the policy paper sets forth that general and administrative expenses should be the same in all markets, the staff division and non-operating expenses, claimed by Toshiba as indirect selling expenses in price to price comparisons and as general expenses in constructed value calculations, vary significantly.

Second, NEMA argues that, contrary to Policy Paper 47, the Department did not add the selling expenses of Toshiba's U.S. subsidiary (as part of

overall general expenses) in its constructed value, to determine if general expenses are greater than the 10 percent statutory minimum. Finally, if we persist in making circumstance-of-sale adjustment in constructed value calculations, we should not do so until we calculate the appropriate profit amount.

Toshiba argues that NEMA raised these same issues in the first administrative review, at which time the Department determined that its interpretation of the Tariff Act and its internal policy paper on the calculation of constructed value are correct. Accordingly, NEMA should be foreclosed from continually raising the issue and the Department should be foreclose from reconsidering it.

Department's Position: Toshiba is correct that NEMA disagreed with our calculation of general expenses in the first administrative review. We stand by our position in response to NEMA's criticism (*see* Comment 6, *Final Results of Administrative Review of Antidumping Duty Order*, 48 FR 14719–21, April 5, 1983) and we maintain that the legal premise of the internal policy paper with regard to circumstance-of-sale adjustments is correct.

However, in this review NEMA raised additional questions that caused us to reevaluate the calculation of the general expenses and we conclude that certain errors were made in the first review and in the preliminary results of this review and that portions of our internal policy paper are incorrect.

We define the term general expenses as "general, administrative and selling" expenses incurred in selling the same general class or kind of merchandise *in the home market*. The 10 percent statutory test for general expenses, the 8 percent statutory test for profit, and the calculations of general expenses and profit should be completed before circumstance-of-sale adjustments are made. Where we did not follow that procedure for the preliminary results, we have recalculated the results here. We will also correct the internal policy paper.

The allocation of the general and administrative expenses portion of the general expenses caused the distortion noted by NEMA between ESP offset expenses and constructed value expenses. Toshiba derived an expense ratio for general and administrative expenses to sales revenue. In the home market calculation, Toshiba applied the percentage to the market sales price, while in the constructed value calculation it multiplied the percentage by the total of materials and fabrication costs. However, for constructed value calculations, it is improper to use a ratio based on a denominator of sales value and then apply it to the smaller factor, *i.e.*, materials and fabrication. The denominator in developing the ratio should have been the total of materials and fabrication.

Subsequent to the hearing we notified Toshiba of the distortion and we requested that it allocate total general and administrative expenses on the basis of only materials and fabrication. Toshiba claimed it did not have the data to do so. Therefore, as the best information available, we derived a ratio using as the denominator the cost of goods sold for the entire corporation, taken from Toshiba's income statement. We multiplied that ratio by the materials and fabrication costs of the motors in question. Toshiba also used total sales as its base in allocating non-operating expenses. We have recalculated these expenses as we did general administrative expenses.

Further, the policy paper does not provide for granting an ESP offset, which we believe is required by section 773 of the Tariff Act and § 353.15 of the Commerce Regulations. Accordingly, we have recalculated constructed value as the total of the following:

(1) Material and fabrication costs of such merchandise;

(2) General and administrative expenses (as explained above) plus home market selling expenses, ensuring that total general expenses equal at least ten percent of materials and fabrication;

(3) Profit usually realized on home market sales of the general class or kind of the comparable merchandise, ensuring that it is at least eight percent of the total of materials, fabrication and general expenses;

(4) Circumstance-of-sale adjustments in accordance with § 353.15 of the Commerce Regulations, including ESP offsets or commission offsets if appropriate; and,

(5) Packing of the exported product.

Comment 10: Toshiba strongly objects to our continued requests for new information when we have previously made a formal decision not to require such information. Citing NEMA comments on motor comparability and constructed value and the Department's behavior on these issues, Toshiba contends such actions are in direct violation of well-established norms of sound administrative procedure binding an agency to act in accordance with the rules and standards it formulated. The Department's prior rulings in this proceeding on electric motors from Japan are the equivalent of the "law of the case" and that latter doctrine also binds the Department's subsequent actions. Accordingly, Toshiba argues that the Department cannot make further methodological changes or demands for new types of information, such as extensive cost data on system and package sales.

Department's Position: We addressed above the specific areas of change that concern Toshiba. To the extent that we have made errors in previous reviews in conflict with the statute, regulations, and/or Departmental policy, as we have done with respect to constructed value and adjustments for differences in physical characteristics, we cannot be bound by decisions in previous reviews. We would then only be compounding the error. Finally, motors sold as a part of a system sale or package sale can meet the definition of such or similar merchandise. We erred in not examining system sales in the first review and we were unaware of package sales until late in this review.

Comment 11: Toshiba argues that, in instances where the U.S. sales are ESP and foreign market value is based on third-country sales to Canada, and the motors for Canada were shipped directly to Canada from Japan, the Department incorrectly did not make circumstance-of-sale adjustments to foreign market value. Toshiba International Corporation, Toshiba's U.S. subsidiary, arranges all sales in the U.S. and Canada and incurs the same type of expenses on sales in both markets. Therefore, where deductions are made to the U.S. price for warranty, advertising and indirect selling expenses, the Department should make similar adjustments to Canadian price. The Department did so in both the fair value investigation and the first administrative review.

NEMA does not object to such a correction. However, it argues that, if Toshiba's Vancouver sales office is also undertaking selling functions for Canadian sales, then we must reduce the portion of Toshiba International's expenses allocated to Canadian sales by the amount incurred by the Vancouver office in order to avoid double counting.

Department's Position: We have recalculated the results making Toshiba's requested circumstance-of-sale adjustments. Although Toshiba only requested that we do so in ESP situations, we have also made adjustments in purchase price situations by adjusting foreign market value for the difference between Toshiba International's direct selling expenses in the two markets. After verifying the relationship between Toshiba International and Toshiba's Vancouver

office, we are satisfied that expenses allocate to Canadian sales were not duplicated.

Comment 12: Toshiba indicates that the Department consistently failed to make any adjustments for differences in physical characteristics when it compared U.S. standard motors to Canadian custom-made motors. Again, Toshiba indicates that the Department made such adjustments in the fair value investigation and the first administrative review. It also points out we did not make any such adjustments when U.S. custom-made motors were involved.

NEMA agrees to the correction for differences in physical characteristics with the qualifications that it made with respect to Toshiba's differences in physical characteristics claim when foreign market value was based on home market sales (*see* Comment 6).

Department's Position: We agree that these adjustments are justified, but the data for the Canadian and U.S. custom-made motors were not properly quantified. We have deferred analysis of these U.S. custom-made sales and U.S. sales with which these Canadian custom-made motors were compared and will cover them in our next review.

Comment 13: Toshiba points out that the Department, for a variety of reasons, appears to have used wrong data in ninteen motor comparisons. The most prevalent reason was the Department's comparison of U.S. and Canadian motors with different horsepower and different service factor ratings. Toshiba argues that motors with a 50 horsepower difference can only be compared if the. lower horsepower motor has a 1.15 service factor and the higher horsepower motor has a 1.0 service factor. If the service factors for the two motors were the same the comparison violates the Department's ten percent horsepower rule. The other reasons for errors include the Department's failure to follow its own criteria for choosing system sales for comparisons and the Department's overlooking more appropriate sales for comparison.

Department's Position: We agree with Toshiba that we made the suggested errors in comparisons for eighteen sales. Where we have information available to complete appropriate analysis we have now used that data and made the changes. We deferred until the next review any sales for which necessary data were not available. Based on a review of the record, we maintain that one of the alleged errors is not an error.

In addition, we confirm that in these final results we have corrected two computational errors in the preliminary results for Toshiba: (1) Failure to convert Canadian dollars into U.S. dollars, and (2) the use of the wrong mathematical sign in the calculation of physical adjustments. We also discovered that we did not calculate and adjust for the credit expenses of U.S. sales in our preliminary results. We have taken these expenses into account in our calculations for these final results. For the same reasons we recalculated general and administrative and non-operating expenses, we have adjusted the calculated company profit figure.

Comment 14: Mitsubishi Electric Corporation requests that the Department clear up any misimpression that may arise from the Department's reference to Mitsubishi in the preliminary results. The preliminary results, while noting that Mitsubishi had no shipments during the period, assigned to it a rate of 6.7 percent, leaving the impression that at some earlier time Mitsubishi had sales at less than fair value. Mitsubishi notes that it was not involved in the fair value investigation and that it has not shipped at any time since.

Department's Position: We agree and have deleted Mitsubishi from the list of manufacturers/exporters. This is not a revocation of the order with respect to this firm. Should Mitsubishi begin exporting large electric motors covered by the order to the U.S., we shall treat it as a new exporter.

Final Results of the Review

After analysis of the comments received and on our own initiative, we have changed the margins for three of the firms and we have eliminated Mitsubishi from these final results. For the remaining firms, the final results of review are the same as those presented in the preliminary results and we determine that the following weighted-average margins exists:

Manufacturer/exporter	Time period	Margin (percent)
Fuji Electric Co., Ltd.	12/1/80–11/30/81	6.40
Hitachi Limited	12/1/80–11/30/81	[1] 6.7
Meidensha/Toyo Menka Kaisha, Ltd.	12/1/80–11/30/81	6.40
Toshiba Corp.	04/1/81–03/30/82	6.40
Yaskawa Co.	12/1/80–11/30/81	2.02

[1] No shipments during the period.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required on all shipments of Japanese large electric motors from these firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. For any further shipments from a new exporter not covered in this or prior reviews, whose first shipments occurred after November 30, 1981, and who is unrelated to any covered firm, a cash deposit of 6.40 percent shall be required. These deposit requirements shall remain in effect until publication of the final results of the next administrative review. The Department intends to begin immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information during 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 35;3.53).

Dated: August 8, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-21655 Filed 8-14-84; 8:45 am]

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[A-122-047]

Elemental Sulphur From Canada; Preliminary Results of Administrative Review of Antidumping Finding and Intent to Revoke in Part

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Finding and Intent to Revoke in Part.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on elemental sulphur from Canada. The review covers 44 of the 48 known manufacturers and/or exporters of this merchandise to the United States currently coverd by the finding and generally the period December 1, 1981 through November 30, 1982. The review indicates the existence of dumping margins during the period for certain firms.

As a result of the review, the Department has preliminarily determined to assess dumping duties

equal to the calculated differences between United States price and foreign market value on each of their sales during the period. Where company-supplied information was inadequate, we used the best information available for assessment and estimated antidumping duties cash deposit purposes.

The Department intends to revoke the finding with respect to the following companies: Tiger Chemicals, Ltd., Pan Canadian Petroleum, Ltd., Amoco Canada Petroleum Company, Ltd., Imperial Oil Ltd./Exxon Chemical Americas, Inc., Canterra Energy, Ltd. (formerly known as Aquitaine Company of Canada, Ltd.), CDC Oil & Gas, Ltd. and Dome Petroleum, Ltd.

Interested parties are invited to comment on these prelimimary results and intent to revoke in part.

EFFECTIVE DATE: August 15, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On December 27, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 57544) preliminary results of administrative review and tentative determination to revoke in part the antidumping finding on elemental sulphur from Canada (38 FR 34655, December 17, 1973).

On November 28, 1983, the Department published in the **Federal Register** (48 FR 53592) the final results of that review and announced its intent to conduct the next administrative review. 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, currently classifiable under item 415.4500 of the Tariff Schedules of the United States Annotated.

The review covers 44 of the 48 known manufacturers and/or exporters of Canadian elemental sulphur to the United States currently covered by the finding and generally the period December 1, 1981 through November 30, 1982.

Twenty-three firms did not ship Canadian elemental sulphur to the United States during the period. The estimated antidumping duties cash deposit rated for those firms will be the most recent rate for each firm. One firm, Drummond (formerly known as Union Texas), failed to provide an adequate response to our questionnaire. For that non-responsive firm we used the best information available to determine the assessment and estimated antidumping duties cash deposit rates. The best information available is the most recent rate for that firm.

We are deferring our review of Rampart Resources, Mobil Oil Canada, Ltd., Union Oil Company and Home Oil Company. We will cover those four firms in a subsequent review.

One firm, Canadian Bright Sulphur, is no longer in business. We are excluding that firm from this and future section 751 reviews. This is not a proposal to revoke the finding with respect to Canadian Bright Sulphur. Should Canadian Bright Sulphur begin exporting the covered merchandise to the United States we shall treat it as a new exporter.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the packed, delivered price to an unrelated purchaser in the U.S., or to an unrelated trading company for export to the U.S. with adjustments, where applicable, for U.S. and Canadian inland freight, U.S. Customs duties, and a commission to unrelated parties. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, when sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. The Department used the price to unrelated purchasers in a third country (Morocco) as defined in section 773(a)(1)(B) of the Tariff Act, for one firm, when there were insufficient quantities of such or similar merchandise sold in the home market. Home market price was based on the packed, delivered price with adjustments, where applicable, for Canadian inland freight. Third-country price was based on the packed, delivered price with adjustments, where applicable, for Canadian inland freight, ocean freight, commissions to unrelated parties, and differences in the physical characteristics of the merchandise. No other adjustments were claimed or allowed.

Preliminary Results of the Review and Intent To Revoke in Part

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Amerada Minerals	12/01/81-11/30/82	[1] 28.90
Amoco Canada Petroleum Company, Ltd	12/01/81-12/27/82	0
Brimstone	12/01/81-11/30/82	0
BP/Canamex	12/01/81-06/30/82	0
Canamex	07/01/82-11/30/82	0
Canterra/Brimstone	12/01/81-11/30/82	[1] 26.95
Canterra/Canamex	12/01/81-11/30/82	[1] 5.56
Canterra Energy, Ltd. (formerly Aquitaine Company of Canada, Ltd.)	12/01/81-12/27/82	0
Canadian Reserve	12/01/81-11/30/82	[1] 19.05
Canadian Reserve/Canamex	12/01/81-11/30/82	[1] 15.24
CDC Oil & Gas, Ltd	12/01/81-12/27/82	[1] 0
Cities Service	10/01/79-11/30/80	0
	12/01/80-11/30/81	
	12/01/81-11/30/82	
Cornwall Chemicals	12/01/81-11/30/82	[1] 3.84
Delta Marketing	12/01/81-11/30/82	0
Delta/Canamex	12/01/81-06/30/82	0
Dome Petroleum, Ltd	12/01/81-12/27/82	[1] 0
Drummond (formerly known as Union Texas, Ltd.)	12/01/81-11/30/82	5.56
Fanchem	12/01/81-11/30/82	[1] 0
Home Oil/Canamex	12/01/81-06/30/82	0
Hudson's Bay/Canamex	12/01/81-06/30/82	0
Hudson's Bay/Sulbow	12/01/81-11/30/82	[1] 0
Imperial Oil	12/01/81-11/30/82	0
Imperial Oil Ltd./Exxon Chemical Americas, Inc	12/01/81-12/27/82	0
Interedec	12/01/81-12/31/82	0
Koch Oil	12/01/81-11/30/82	[1] 0
Marathon Oil	12/01/81-11/30/82	[1] 0
Marathon Oil/Canamex	12/01/81-11/30/82	[1] 15.24
Mobil/Canamex	12/01/81-06/30/82	0
Pan Canadian Petroleum, Ltd	12/01/81-12/27/82	0
Pan Canadian/Canamex	12/01/81-06/30/82	0
Petro-Canada	12/01/81-11/30/82	1.98
Petro-Canada/Canamex	12/01/81-06/30/82	0
Petrogas Processing	12/01/81-11/30/82	[1] 0
Petrosul	12/01/81-11/30/82	[1] 0
Rampart Resources/Sulbow Minerals	12/01/81-11/30/82	[1] 0
Real International	12/01/81-11/30/82	0
Sulbow Minerals	12/01/81-11/30/82	[1] 0
Sulpetro	12/01/81-11/30/82	[1] 28.90
Suncor, Inc	12/01/81-11/30/82	[1] 26.95
Suncor/Canamex	12/01/81-11/30/82	[1] 20.28
Texaco Canada Resources	12/01/81-11/30/82	[1] 28.90
Tiger Chemicals, Ltd	12/01/81-12/27/82	0
Western Decalta	12/01/81-11/30/82	[1] 28.90
Westcoast Transmission	12/01/81-11/30/82	[1] 28.90

[1] No shipments during the period.

As a result of our review we intend to revoke the finding on elemental sulphur from Canada with respect to Tiger Chemicals, Ltd., Pan Canadian Petroleum, Ltd., Amoco Canada Petroleum Company, Ltd., Imperial Oil Ltd./Exxon Chemical Americas, Inc., Canterra Energy, Ltd. (formerly known as Aquitane Company of Canada, Ltd.), CDC Oil & Gas, Ltd., and Dome Petroleum, Ltd. Tiger, Pan Canadian, Amoco, Imperial Oil/Exxon Chemical and Canterra made all sales at not less than fair value through December 27, 1982, the date of our tentative

determination to revoke with respect to those firms. There have been no known shipments of Canadian elemental sulphur to the U.S. by CDC Oil and Gas, Ltd. from the date of the finding through December 27, 1982.

Dome Petroleum did not ship Canadian elemental sulphur to the U.S. from the date of the finding through November 30, 1980 and all sales by Dome during the period December 1, 1980 through November 30, 1981 were made at not less than fair value. Dome also did not ship this merchandise to the U.S. during the period December 1, 1981 through December 27, 1982.

As provided for in § 353.54(e) of the Commerce Regulations, the firms have agreed in writing to an immediate suspension of liquidation and reinstatement in the finding under circumstances as specified in the written agreements. If the finding is revoked with respect to these firms, it will apply to all entries of Canadian elemental sulphur manufactured and/or exported to the United States by Tiger Chemicals, Ltd., Pan Canadian Petroleum, Ltd., Amoco Canada Petroleum Company, Ltd., Imperial Oil Ltd./Exxon Chemical Americas, Inc., Canterra Energy, Ltd. (formerly known as Aquitaine Company of Canada, Ltd.), CDC Oil & Gas, Ltd. and Dome Petroleum, Ltd., and entered, or withdrawn from warehouse, for consumption on or after December 27, 1982.

Interested parties may submit written comments on these preliminary results and intent to revoke in part 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 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 determine, and the Customs Service shall assess, dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the most recent of the above margins shall be required for those firms. For any shipment from a new exporter not covered in this or prior reviews, whose first shipments of Canadian elemental sulphur occurred after December 31, 1982, and who is unrelated to any reviewed firm, a cash deposit of 1.98 percent shall be required. These deposit requirements are effective for all shipments of Canadian elemental sulphur entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

This administrative review, intent to revoke in part, 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 and 353.54).

Dated: August 8, 1984

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR. Doc 84-21656 Filed 8-14-84; 8:45 am]
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[A-558-056]

Melamine in Crystal Form From Japan; Final Results of Administrative Review of Antidumping Finding and Determination Not To Revoke

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding and Determination Not To Revoke.

SUMMARY: On May 29, 1984, the Department of Commerce published the preliminary results of its administrative review and tentative determination to revoke on its own intitiative the antidumping finding on melamine in crystal form from Japan. The review covered the five known exporters of this merchandise to the United States, and the period February 1, 1983 through January 31, 1984 There were not known shipments of thismerchandise to the United States during the period and there are no known unliquidated entries.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results and tenative determination. We received comments from the petitioner and a U.S. purchaser. Based on the comments submitted by the petitioner, we determine and not to revoke the antidumping finding on melamine in crystal form from Japan.

EFFECTIVE DATE: August 15, 1984.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk or Susan Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On May 29, 1984, the Department of Commerce ("the Department") published in the Federal Register (49 FR 22366) the preliminary results of its administrative review and a tentative determination to revoke on its own initiative the antidumping finding on melamie in crystal form from Japan (42 FR 23683, February 2, 1977). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of melamine in crystal form, a fine white crystalline powder used to manufacture melamine formaldehyde resins, currently classifiable under item 452.1020 of the Tariff Schedules of the United States Annotated.

The review covered the five known manufacturers and/or exporters of Japanese melamine to the United States and the period February 1, 1983 through January 31, 1984. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

Analysis of Comments Received.

We invited interested parties to comment on the preliminary results and tenatative determination to revoke. The petitioner, Melamine Chemicals, Inc. ("MCI"), and a U.S. purchaser, Plastics Manufacturing Company, submitted comments.

Comment: MCI objects to our intention to revoke this finding. The firm argues that the present market conditions remain unchanged from those when the Treasury Department and the International Trade Commission conducted their original investigations and found sales at less than fair value and injury. MCI agrees that the first requirement under the Commerce Regulations, that there no longer are sales at less than fair value is eliminated by the absence of any imports. However, MCI contends that sales at less than fair value are likely to resume if we revoke the finding since there is excess production capacity Japan, a need to export, and Japanese home

market prices are still well above the prevailing U.S. price.

Plastics Manufacturing Company points out that in two recent antidumping proceedings on melamine from Europe and Brazil, the International Trade Commission found no injury to the U.S. industry.

Department's Position: Since the Department has no data contradicting petitioner's argument, we will not revoke the finding.

Final Results of the Review

Based on our analysis of the comments received, we determine not to revoke the finding on Japanese melamine in crystal form.

As provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties equal to the following percentages of the entered value shall be required for these firms.

Japanese exporter	Cash deposit (percent)
Nosawa & Co., Ltd	[1] 60.0
Nichimen Co., Ltd	[1] 60.0
Mitsui Toatsu Chemicals, Inc	[1] 70.22
C. Itoh & Co., Ltd	[1] 60.0
Nissan Chemical Industries, Ltd	[1] 60.0

[1] No shipments during the period.

For any future entries from a new exporter not covered in this or prior reviews, whose first shipments occurred after January 31, 1984 and who is unrelated to any reviewed firm, a cash deposit of 70.22 percent shall be required. These deposit requirements are effective for all shipments of Japanese melamine entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review. We intend to begin immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information.

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 § 53.53 of the Commerce Regulations (19 CFR 353.53).

Dated: August 8, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-21658 Filed 8-14-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-075]

Perchlorethylene From France; Final Results of Administrative Review and Revocation of Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review and Revocation of Antidumping Finding.

SUMMARY: On June 22, 1984, the Department of Commerce published the preliminary results of its administrative review and intent to revoke the antidumping finding on perchlorethylene from France. The review covers the one known exporter of this merchandise to the United States and the period May 19, 1983 through August 19, 1983.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results and intent to revoke. We received no comments. Based on our anlaysis, the final results of our review are the same as the preliminary results, and we revoke the antidumping finding on perchlorethylene from France.

EFFECTIVE DATE: August 15, 1984.

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) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On June 22, 1984, the Department of Commerce ("the Department") published in the Federal Register (49 FR 25650) the preliminary results of its administrative review and intent to revoke the antidumping finding on perchlorethylene from France (44 FR 29045, May 18, 1979). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of perchlorethylene including technical grade and purified grade perchlorethylene. Perchlorethylene is a clear water-white liquid at ordinary temperature with a sweet odor and is completely capable of being mixed with organic liquids. It is a chlorinated solvent mainly for drycleaning of clothing, but is also used in other applications such as vapor degreasing of metals. Such merchandise is currently classifiable under item 429.3400 of the Tariff Schedules of the United States Annotated.

The review covers the one known exporter of French perchlorethylene to the United States, Atochem, and the period May 19, 1983 through August 19, 1983, the date of our tentative determination to revoke the finding.

Final Results of the Review and Revocation

We invited interested parties to comment on the preliminary results and intent to revoke. We received no comments or requests for a hearing. Based on our analysis, the final results of our review are the same as those presented in the preliminary results. For the reasons set forth in the preliminary results we are satisfied that there is no likelihood of resumption of sales at less than fair value. Accordingly, we revoke the antidumping finding on perchlorethylene from France. This revocation applies to all unliquidated entries of French perchlorethylene entered, or withdrawn from warehouse, for consumption on or after August 19, 1983.

This administrative review, revocation, and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act of 1930 (19 U.S.C. 1675 (a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated: August 6, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-21660 Filed 8-14-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-429-009; A-485-010; A-461-011]

Pig Iron From Romania, the U.S.S.R., and East Germany; Preliminary Results of Administrative Review of Antidumping Findings and Tentative Determinations to Revoke

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Findings and Tentative Determinations To Revoke.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping findings on pig iron from Romania, the U.S.S.R., and East Germany. The review covers the three known exporters of this merchandise to the United States and the period October 1, 1982, through September 30, 1983. There were no known shipments of

this merchandise to the United States during the period and there are no known unliquidated entries.

As a result of the review, the Department has tentatively determined to revoke the findings. There have been no shipments of this merchandise to the United States for at least fifteen years. Interested parties are invited to comment on these preliminary results and tentative determinations to revoke.

EFFECTIVE DATE: August 15, 1984.

FOR FURTHER INFORMATION CONTACT: Susan M. Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On January 10, 1984, the Department of Commerce ("the Department") published in the Federal Register (49 FR 1261-62) the final results of its last administrative review of the antidumping findings on pig iron from Romania, the U.S.S.R., and East Germany (33 FR 15904, October 29, 1968) and announced its intent to conduct the next administrative review. 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 pig iron, which is used in steel production and in the iron foundry industry for making iron castings such as pipe, automobile castings, and machine parts. Such merchandise is currently classifiable under items 606.1300 and 606.1500 of the Tariff Schedules of the United States Annotated.

The review covers the three known exporters of Romanian, Soviet, and East German pig iron to the United States, Metalimport (Romania), Promsyimport (U.S.S.R.), and Deutsche Stahl Metal (East Germany), and the period October 1, 1982, through September 30, 1983. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

Preliminary Results of the Review and Tentative Determinations To Revoke

There have been no shipments of this merchandise to the United States for fifteen years. We are satisfied that there is no likelihood of resumption of sales of this merchandise at less than fair value. In accordance with § 353.54(c) of the Commerce Regulations, we tentatively determine on our own initiative to revoke the findings on pig iron from Romania, the U.S.S.R., and East Germany. If these revocations are made final they will apply to all entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. The Department shall instruct the Customs Service to continue to suspend liquidation of entries pending the Department's final determination of whether or not to revoke the findings.

Interested parties may submit written comments on these preliminary results and tentative determinations to revoke 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 date of publication or the first workday thereafter. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

This administrative review, tentative determinations 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).

Dated: August 5, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-21661 Filed 8-14-84; 8:45 am]

BILLING CODE 3510-05-M

[A-122-050]

Racing Plates (Aluminum Horseshoes) From Canada; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding.

SUMMARY: On May 14, 1984, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on racing plates (aluminum horseshoes) from Canada. The review covers the three known manufacturers and/or exporters of this merchandise to the United States and the period February 1, 1983 through January 31, 1984.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results. We received one comment from one exporter. Based on our analysis of the comment received, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: August 15, 1984.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or Susan M. Crawford, Office of Compliance, International Trade Administration, Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-5255/1130.

SUPPLEMENTARY INFORMATION:

Background

On May 14, 1984, the Department of Commerce ("the Department") published in the Federal Register (49 FR 20352-3) the preliminary results of its administrative review of the antidumping finding on racing plates (aluminum horseshoes) from Canada (39 FR 54388, February 27, 1974). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of racing plates (aluminum horseshoes) that are used on race horses, polo, jumping, hunting, and other performing horses, as differentiated from pleasure, and work horses, are made of aluminum, may have cleats or caulks, and come in a variety of sizes. Racing plates are currently classifiable under item 652.4200 of the Tariff Schedules of the United States Annotated.

The review covers the three known manufacturers and/or exporters of Canadian racing plates (aluminum horseshoes) to the United States and the period February 1, 1983 through January 31, 1984.

Analysis of Comment Received

We gave interested parties an opportunity to present oral or written comments on the preliminary results. We received the following comment from Niagara Forge Inc., an exporter.

Comment: Niagara argues that the Department's use of 6.77 percent as its estimated antidumping duties cash deposit rate based on the best information available is contrary to the Department's policy on establishing cash deposit rates.

Department's Position: We used Niagara's most recent rate as best

information available because that rate was higher than the current rate for responding firms with shipments in the period. The use of 6.77 percent as the estimated antidumping duties cash deposit rate for Niagara is consistent with the Department's policy.

Final Results of the Review

Based on our analysis of the comment received, the final results of our review are the same as those presented in the preliminary results of review, and we determine that the following margins exist for the period February 1, 1983 through January 31, 1984:

Manufacturer/exporter	Margin (percent)
Canadian Racing Plate Co., Ltd	[1] 31.94
Equine Forgings Limited	0
Niagara Forge Inc	6.77

[1] No shipments during the period.

The Department shall determine, and the Customs Service shall assess, dumping duties on all appropriate entries. The Department will issue appraisement 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 based on the above margin shall be required for those firms.

No cash deposit shall be required for any future shipments from a new exporter not covered in this or prior reviews, whose first shipments occurred after January 31, 1984, and who is unrelated to any reviewed firm. These deposit requirements shall become effective on the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information. The Department intends to begin immediately the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: August 8, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-21657 Filed 8-14-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-044]

Stainless Steel Wire Rods From France; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on stainless steel wire rods from France. The review covers the one known exporter of this merchandise to the United States currently covered by the finding, Ugine Aciers, certain U.S. sales deferred from the last administrative review, and the period August 1, 1982 through July 31, 1983. The review indicates the existence of dumping margins for the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value on each of the sales during the period of review.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 15, 1984.

FOR FURTHER INFORMATION CONTACT: Phyllis Derrick or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 1984, the Department of Commerce ("the Department") published in the Federal Register (49 FR 22844) the final results of its last administrative review of the antidumping finding on stainless steel wire rods from France (38 FR 22961, August 28, 1973) and announced its intent to conduct the next administrative review. 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 stainless alloy steel wire rods, tempered, treated, or partly manufactured, currently classifiable under item 607.4300 of the Tariff Schedules of the United States Annotated.

The review covers the one known exporter of French stainless steel wire rods currently covered by the finding, Ugine Aciers, certain U.S. sales deferred from the last administrative review, and the period August 1, 1982 through July 31, 1983.

United States Price

In calculating United States price the Department used purchase price or exporter's sales price, both as defined in section 772 of the Tariff Act, as appropriate. Purchase price and exporter's sales price were based either on the c.i.f., duty-paid price or the f.o.b. warehouse price to the first unrelated purchaser in the United States. Where applicable, we made deductions for U.S. customs duties, U.S. entry and port charges, ocean freight, marine insurance, loading charges, foreign inland freight, and the U.S. subsidiary s selling expenses. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the delivered price, with adjustments, where applicable, for inland freight, insurance, differences in the physical characteristics of the merchandise, and differences in credit costs. We also made an adjustment for indirect selling expenses to offset U.S. selling expenses for ESP calculations. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for Ugine Aciers:

Period	Margin (percent)
07/01/81—07/31/82	3.21
08/01/82—07/31/83	3.51

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 date of publication or the first workday thereafter. Any request for an administrative protective order must be made within 5 days of 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 Customs Service shall assess, dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement 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 3.51 percent, based on the most recent of the above margins, shall be required on all shipments of French stainless steel wire rods from Ugine Aciers. For any future entries from a new exporter not covered in this or prior reviews, whose first shipments occurred after July 31, 1983, and who is unrelated to any covered firm, a cash deposit of 3.51 percent shall be required. These deposit requirements are effective for covered shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this 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).

Dated: August 9, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-21659 Filed 8-14-84; 8:45 am]

BILLING CODE 3510-05-M

National Bureau of Standards, et al; for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importaion Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.. 84-231. Applicant: National Bureau of Standards, Building 221, Rm. B-250, Washington, DC 20234. Instrument: Photoelectron Spectrometer, Model ESMKII. Manufacturer: V.G. Instrutments, Inc., United Kingdom. Intended use: Studies will be done on the surfaces of metal oxides, metals and other materials that could be or presently are used in various types of chemical gas sensors and other thin film sensing devices. The primary objective of the investigations is to develop a fundamental understanding of the processes that occur at a surface which can produce a measurable signal to indicate the presence and quantity of a gaseous chemical. Application received by Commissioner of Customs: April 10, 1984.

Docket No.. 84-248. Applicant: Lehigh University, Sinclair Laboratory #7, Bethlehem, PA 18015. Instrument: Electron Loss Spectrometer, Model ELS 22. Manufacturer: Leybold-Heraeus, West Germany. Intended use: Study catalyst surfaces that activate the combustion and partial oxidation of methane. Initially, clean palladium single crystals will be studies. Palladium single crystal surface modified by chlorinated hydrocarbons will be studied since surfaces modified in this way affect the distribution of oxygenated products of the methane oxidation. Application received by Commissioner of Custom: July 9, 1984.

Docket No.. 84-249. Applicant: Colorado State University, Fort Collins, CO 80523. Instrument: Electron Microscope, Model JEM-1200 EX with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: Study of the structure and function of male and female gametes, developing embryos and the ovary and testis during different reproductive states. Cell and/or tissue samples will be derived from cattle, sheep, horses, dogs, cats, mice and rats. Application received by Commissioner or Customs: July 9, 1984.

Docket No.. 84-250. Applicant: University of Colorado, Boulder, Cooperative Institute for Research in Environmental Sciences (CIRES), Campus Box 449, Boulder, CO 80309. Instrument: Mass Spectrometer, Model 7070 EQHF with Model 11/250 Data System. Manufacturer: VG Analytical Ltd., United Kingdom. Intended use: Studies of the analytical chemistry of selective electron capture sensitization in gas chromatography and selective sorption on polymer surfaces; physical chemistry of the stereochemical reaction dynamics and collision physics of ionmolecule encounters; chemical stabilization of laser dyes; and toxicity of organophosphates. Other research includes studies of the photochemistry of organic molecules; synthetic chemistry of epoxidation reactions using catalysts; topologically novel compounds and metal sulfur complexes; predictive toxicology and defense against chemical and biological agents. Application received by Commissioner of Customs: July 9, 1984.

Docket No.. 84-251. Applicant: Michigan State University, 111 Giltner Hall, East Lansing, MI 48824. Instrument: NMR Spectrometer, Model AM-400 with Accessories. Manufacturer: Bruker Instruments, Inc., West Germany. Intended use: Studies of cell and tissue metabolism of small animals, isolated perfused organs, cell cultures, and chemical solutions. Experiments will be conducted to verify and define physiological models, and to develop new knowledge which ultimately will be of use in clinical medicine. The objective of the work is to develop a better understanding of cell and tissue metabolism. Application received by Commissioner of Customs: June 26, 1984.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-21665 Filed 8-14-84; 8:45 am]

BILLING CODE 3510-DS-M

Purdue University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.. 84-174. Applicant: Purdue University, Lafayette, IN 47907 Instrument: Heating Specimen Holder, Model SHTH. Manufacturer: JEOL Ltd., Japan. Intended use: See notice at 49 FR 20349.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer.

The National Institutes of Health advises in its memorandum dated July 10, 1984 that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the instrument.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-21634 Filed 8-14-84; 8:45 am]

BILLING CODE 3510-DS-M

Texas Tech University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-185. Applicant: Texas Tech University, Lubbock, TX 79409. Instrument: Two (Modified) Respiration Gas Meters, Model 59. Manufacturer: Gesellschaft fur Geratebau, West Germany. Intended use: See notice at 49 FR 20351.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is capable of in situ mechanical measurement of ventilation volume (oxygen consumption) of a miner where the potential of gas explosions prohibits the use of electrically operated devices. The National Institutes of Health advises in its memorandum dated July 10, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-21633 Filed 8-14-84; 8:45 am]

BILLING CODE 3510-DS-M

Washington State University; Decision of Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 83-214R. Applicant: Washington State University, Pullman, WA 99164-1020. Instrument: Gas Chromatograph-Mass Spectrometer, 7070-EHF-11/250 and Accessories. Original notice of this resubmitted application was published in the Federal Register of June 20, 1983.

Comments: None received.

Decision: Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (December 17, 1982).

Reasons: This application is a resubmission of Docket Number 83-214 which was denied without prejudice to resubmission for informational deficiencies. The foreign instrument provides high resolution (25000; 10% valley definition). The National Bureau of Standards advises in its memorandum dated July 19, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purposes and (2) it knows of no domestic manufacturer both willing and able to provide an instrument with the required feature at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument." The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purposes of comparison with foreign instrument. The applicant, in this case, received no response to a formal request for quotation from Nuclide Corporation, the only known domestic manufacturer of comparable mass spectrometers. Thus, Nuclide was either not willing or not able to produce an instrument of equivalent scientific value to the foreign instrument. Accordingly, the Department of Commerce finds that no domestic manufacturer was both "able and willing" to manufacture a domestic instrument of equivalent scientific value to foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-21636 Filed 8-14-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-333-401]

Certain Textiles and Textile Products From Turkey; Initiation of a Countervailing Duty Investigation

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Turkey of certain textiles and textile products, as described in the "Scope of Investigation" section below, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If our investigation proceeds normally, we will make our preliminary determination on or before October 15, 1984.

EFFECTIVE DATE: August 15, 1984.

FOR FURTHER INFORMATION CONTACT: Laura Winfrey, Office of Investigations, Import Administration, International Trade Administration, United States

Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 377-0160.

SUPPLEMENTARY INFORMATION:

Petition

On July 20, 1984, we received a petition from the American Textile Manufacturers Institute, the Amalgamated Clothing the Textile Workers Union, and the International Ladies' Garment Workers' Union on behalf of the U.S. industry producing certain textiles and textile products. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Turkey of certain textiles and textile products receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 (a)(1) and (b)(1) of the Tariff Act of 1930, as amended (the Act).

Turkey is not a "country under the Agreement" within the meaning of section 701(b) of the Act; therefore, section 303 of the Act applies to this investigation. Since the merchandise is dutiable, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products cause or threaten material injury to a U.S. industry.

Initiation of the Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on certain textiles and textile products from Turkey and we have found that the petition meets the requirements.

Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Turkey of certain textiles and textile products, as described in the "Scope of Investigations" section of this notice, receive bounties or grants. If our investigation proceeds normally, we will make our preliminary determination by October 12, 1984.

Scope of Investigation

The products covered by this investigation are textiles and textile products. The merchandise is currently classified under the Tariff Schedules of the United States Annotated (TSUSA) item numbers as listed in Appendix A to this notice.

Allegations of Bounties or Grants

The petition alleges that manufacturers, producers, or exporters in Turkey of certain textiles and textile products receive the following benefits which constitute bounties or grants:

- Export Tax Rebate Program
- Preferential Short-Term Credits for Exports
- General Incentives Program
- Deduction from Taxable Income for Export Revenues
- Retention of Foreign Exchange Earnings
- Preferential Access to Foreign Exchange
- Export Trading Companies
- Free Trade Zones at Mersin and Antalya
- Financial Assistance by the Turkish Government to the two textile firms of Guney Sanayi and Mulli Mensucat.

We have determined not to initiate on the following allegation:

- With respect to the World Bank loan, petitioners allege that the Turkish government had targeted a portion of a World Bank loan which petitioners believe to have been granted on preferential terms to Sumerbank state-owned textile concern. Section 303 of the Act (19 U.S.C. 1303) permits the assessment of countervailing duties only when a country, dependency, colony, province, or other political subdivision or government, person, partnership, association, cartel, or corporation pays or bestows a bounty or grant upon the manufacture, production or export of any article or merchandise manufactured or produced in such country, dependency, colony, province, or other political subdivision of government. Since the merchandise under investigation is produced in Turkey, a loan provided by the World Bank is not countervailable.

Dated: August 9, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

Appendix A—Imports of textiles and Textile Products From Turkey in 1983 Subject to the Petition

Tariff Schedule Numbers of Imports Subject to Petition

Yarns							
301.1100	301.2000	301.3000	301.4000	02.1022	302.1024	303.2042	307.6810
307.6830	307.6850	310.0214	310.4027	310.6038	310.9000	310.9120	
Fabric							
320.1038	321.4028	322.2084	336.6447	338.1570			
Special construction Fabrics							
346.6050							
Textile Furnishings							
360.0600	360.1020	360.1515	360.1520	360.4215	360.4815	360.4825	360.4855
360.7000	360.7900	360.8400	361.0510	361.2405	361.4500	361.4800	361.5000
361.5420	361.5426	361.5630	361.5650	361.5660	363.1040	363.2580	363.5130
363.6540	363.7500	364.1300	364.2300	365.7825	366.1880	366.2180	366.2460
366.2480	266.2780	366.4600	366.7925	366.7930	376.3424	367.3428	367.4500
Apparel							
370.8440	372.1020	372.1030	372.1040	372.1050	372.1540	372.3500	372.4500
372.6520	373.1000	373.2200	374.3530	374.3550	374.5040	374.6040	378.1030
378.1540	379.3915	379.3925	379.3930	379.4020	379.4030	379.4050	379.4060
379.4110	379.4140	379.4640	379.4670	379.4910	379.4920	379.5520	379.5545
379.5550	379.5565	379.6620	379.6240	379.7605	379.7620	379.8355	379.9020

Tariff Schedule Numbers of Imports Subject to Petition—Continued

379.9665	383.0210	383.0215	383.0218	383.0233	383.0305	383.0308	383.0390
383.0505	383.0615	383.0630	383.0805	383.0820	383.0841	383.0860	383.1320
383.1610	383.2205	383.2305	383.2706	383.2707	383.2708	383.2709	383.2720
383.2725	383.2730	383.2731	383.2750	383.2751	383.2810	383.2815	383.2820
383.2820	383.2835	383.2910	383.3010	383.3020	383.3030	383.3040	383.3050
383.3060	383.3090	383.3200	383.3445	383.3448	383.3465	383.3466	383.3710
383.3770	383.4200	383.4300	383.4702	383.4705	383.4709	383.4711	383.4721
383.4730	383.4747	383.4761	383.4763	383.4816	383.4821	383.4825	383.5030
383.5035	383.5072	383.5073	383.5090	383.5395	383.6310	383.6330	383.6345
383.6360	383.6371	383.6395	383.7000	383.7205	383.7510	383.7510	383.7540
383.7750	383.7560	383.7590	383.7768	383.7764	383.7782	383.7864	383.7863
383.7872	383.7882	383.8004	383.8045	383.8070	383.8073	383.8300	383.8400
383.8620	383.8663	383.9015	383.9025	383.9050	383.9060	383.9225	
Miscellaneous							
386.0600	386.5045	388.4000	389.6265	702.0600	702.8000	704.2000	704.6500
704.8550	704.9000	706.3400	706.3850	706.4106	706.4111		

[FR Doc. 84-21693 Filed 8-14-84; 8:45am]
BILLING CODE 3510-05-M

[C-357-404]

Certain Textiles and Textile Products From Argentina—Initiation of Countervailing Duty Investigation

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of initiation of countervailing duty investigation.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers or exporters in Argentina of certain textiles and textile products, as described in the "Scope of Investigation" section below, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If our investigation proceeds normally, we will make our preliminary determination on or before October 15, 1984.

EFFECTIVE DATE: August 15, 1984.

FOR FURTHER INFORMATION CONTACT: Terry Link, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-0189.

SUPPLEMENTARY INFORMATION:

Petition

On July 20, 1984, we received a petition from counsel for the American Textile Manufacturers Institute, the Amalgamated Clothing and Textile Workers Union, and the International Ladies' Garment Workers Union, on behalf of the U.S. industry producing certain textiles and textile products. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Argentina of certain textiles and textile products receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Argentina is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the merchandise being investigated is dutiable. Therefore, section 303 (a)(1) and (b) of the Act applies to this investigation. Accordingly, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products cause or threaten to cause material injury to a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on certain textiles and textile products from Argentina and we have found that the petition meets the requirements.

Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Argentina of certain textiles and textile products, as described in the "Scope of the Investigation" section of this notice, receive bounties or grants. If our investigation proceeds normally, we will make our preliminary determination by October 15, 1984.

Scope of the Investigation

The products covered by this investigation are certain textiles and textile products which are described in Appendix A, which is attached to this notice.

Allegations of Bounties or Grants

The petition alleges that manufacturers, producers, or exporters in Argentina of certain textiles and textile products receive the following benefits which constitute bounties or grants:

- Income Tax Exemption for Exports
- Excessive Tax Rebates on Exports Under the Reembolso Program
- Regional Tax Incentives
- Incentives for Exports from Southern Ports
- Pre-Financing of Exports through One-Percent Loans
- Post-Financing of Exports
- Low-Cost Loans for Projects Outside Buenos Aires
- Industrial Parks
- Refunds on Patagonian Exports
- Tax Reductions for Investors

We are not investigating the following: Petitioners argue that the Department must include in this investigation men's and boy's woolen apparel. Since a countervailing duty order was issued in 1978 and is still in effect on men's and boy s woolen

apparel from Argentina (43 FR 53421), we are not investigating the following Tariff Schedule numbers which are subject to that order, 372.1050, 379.7620, 379.7630, 379.7650, and 379.8355.

Dated: August 9, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

Appendix A

The products covered by this investigation are certain textiles and textile products. The merchandise is currently classified under the item numbers of the *Tariff Schedules of the United States Annotated* (TSUSA) listed below.

List of TSUSA codes under which there were imports from Argentina into the U.S. during 1983

		Yarns		
301.0000	301.3000	302.1024	302.2024	303.2042
301.1000	302.0024	302.1026	302.3022	307.6810
301.2000	302.1020	302.2020	302.3026	307.6850
		Fabric		
323.1092	336.6251	336.6257	336,6451	338.1570
335.9500	336.6253	336.6441	337.9035	338.5021
336.6247	336.6255	336.6447	338.1530	338.5048
336.6249				
		Special Construction Fabrics		
		346.6065		
		Textile Furnishings		
336.2420	336.2440	336.2460	366.2780	
		Apparel		
372.7540	379.9545	383.1620	383.4761	383.7210
374.2500	379.9540	383.1920	383.4825	383.7510
374.3530	379.9585	383.2005	383.5049	383.7540
374.6500	383.0206	383.2016	383.5090	383.7550
376.2830	383.0233	383.2050	383.5326	383.7560
379.0640	383.0306	383.2709	383.5830	383.7590
379.0645	383.0335	383.2720	383.6310	383.7560
379.4050	383.0350	383.2725	383.6330	383.7590
379.4060	383.0390	383.2730	383.6340	383.8043
379.4670	393.0610	383.2730	383.6350	383.8073
379.5550	383.0805	383.2750	383.6360	383.8125
379.6240	383.0844	383.2750	383.6371	383.8300
379.9030	383.0855	383.3465	383.6372	383.9015
379.9035	383.1000	383.4709	383.6385	383.9245
379.9035	383.1320	383.4747	383.7000	
		Miscellaneous Textile Products		
385.5500		388.4000		390.4000
385.6120		389.6265		704.6500

[FR Doc. 84-21697 Filed 8-14-84; 8:45 am]

BILLING CODE 3910-DS-M

[C-560-401]

Certain Textiles and Textile Products From Indonesia: Initiation of Countervailing Duty Investigation

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Indonesia of certain textiles and textile products, as described in the "Scope of the Investigation" section below, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If our investigation proceeds normally, we will make our preliminary determination on or before October 15, 1984.

EFFECTIVE DATE: August 15, 1984.

FOR FURTHER INFORMATION CONTACT: Steven Morrison, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-3003.

SUPPLEMENTARY INFORMATION:

Petition

On July 20, 1984, we received a petition from counsel for the American Textile Manufacturers Institute, the Amalgamated Clothing and Textile Workers Union, and the International Ladies Garment Workers Union on behalf of the U.S. industry producing certain textiles and textile products. The scope of the petition was amended, explained and supported by further documentation submitted by the petitioner on August 2. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Indonesia of certain textiles and textile products receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Since Indonesia is not a "Country under the Agreement" within the meaning of section 701(b) of the Act, section 303 (a)(1) and (b) of the Act apply to this investigation. Since the merchandise which is the subject of this petition is dutiable, the petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether imports of these products cause or threaten to cause material injury to a U.S. industry.

Initiation of the Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on certain textiles and textile products from Indonesia and we have found that the petition meets these requirements.

Therefore, we are initiating a countervailing duty investigation on certain textiles and textile products from Indonesia to determine whether the manufacturers, producers, or exporters

in Indonesia of certain textiles and textile products, as described in the "Scope of Investigation" section of this notice receive bounties or grants. If our investigation proceeds normally, we will make our preliminary determination by October 15, 1984.

Scope of the Investigation

The products covered by this investigation are textiles and textile products. The merchandise is currently classified under the Tariff Schedules of the United States Annotated (TSUSA) item numbers as listed in Appendix A of this notice.

Allegations of Bounties or Grants

The petition alleges that manufacturers, producers, or exporters in Indonesia of certain textiles & textile products receive the following benefits which constitute bounties or grants:

- Textile Export Incentive Program (Cash Grants).
- Government Marketing Services Associated with Counter Trade Program.
- Government Investment in Fiber Mills.
- Preferential Short-Term Financing to Non-Oil Exporters.
- Preferential Financing under Domestic Investment Law.
- Preferential Financing from Development Bank of Indonesia.
- Preferential Financing from Indonesian Development Finance Corporation.
- Tax Holidays, Accelerated Depreciation and Other Tax Exemption.
- Incentives in the Form of Tax Benefits for Firms Becoming Publicly Owned.
- Free Trade Zones.
- Industrial Estates (Regional Development).

We are including, in the initiation, the allegations of a compulsory countertrade (barter) program of the Government of Indonesia and a program according personal income tax benefits to holders of dividend paying stocks of publicly held companies. It is unclear, based on information supplied, whether such programs constitute a bounty or grant even if the factual allegations are accurate.

We are not investigating the following because, as described in the petition, they are not bounties or grants:

- Subsidized Raw Material (Cotton-Marketing for Small Growers).

Dated: August 9, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

Appendix A

The products covered by this investigation are certain textiles, and textile products. The merchandise is currently classified under the item numbers of the Tariff Schedules of the United States Annotated (TSUSA) listed below.

List of TSUSA Codes in Which Indonesia Participated in Imports of the United States in 1983 or 1984

Yarns							
310.0250	310.5049						
Fabric							
320.0001	320.0002	320.0003	320.0036	320.0038	320.1038	322.1034	322.3032
322.3094	322.4092	322.4094	322.5092	322.8094	325.8092	320.1058	326.3026
326.3032	326.3092	332.4040	338.5021	338.5024	338.5032	338.5035	338.5036
338.5039	338.5064	338.5069					
Special Construction Fabrics							
347.3380							
Textile Furnishings							
361.4500	363.4500	363.5115	365.7825	365.786	366.2740		
366.2780	366.4600	366.4700	366.7925	366.7930			
Apparel							
372.1060	372.1540	372.1560	372.2000	372.7000	372.7520	378.1540	379.0220
379.0620	379.0640	379.0645	379.0810	379.2350	379.2630	379.3120	379.3940
379.4010	379.4020	379.4040	379.4050	379.4330	379.4630	379.4640	379.4650
379.4660	379.4670	379.5210	379.5220	379.5510	379.5520	379.5525	379.5530
379.5535	379.5540	379.5545	379.5550	379.5560	379.5565	379.5800	379.6210
379.6220	379.6230	379.6240	379.6250	379.6470	379.6915	379.9025	379.9030
379.9040	379.9250	379.9530	379.9535	379.9540	379.9545	379.9550	379.9555
379.9570	379.9575	379.9580	379.9585	379.9641	379.9650	383.0215	383.0221
383.0225	383.0250	383.0260	383.0265	383.0305	383.0335	383.0355	383.0505
383.0506	383.0520	383.0610	383.0611	383.0615	383.0616	383.0620	383.0630
383.0805	383.0835	383.0838	383.0841	383.0856	383.0859	383.0860	383.1305
383.1802	383.1803	383.1807	383.1820	383.1841	383.1910	383.1915	383.1920
383.1925	383.1930	383.2005	383.2013	383.2014	383.2020	383.2025	383.2035
383.2040	383.2050	383.2052	383.2058	383.2060	383.2205	383.2210	383.2215
383.2225	383.2230	383.2235	383.2240	383.2245	383.2250	383.2305	383.2315
383.2320	383.2325	383.2330	383.2335	383.2340	383.2350	383.2352	383.2354
383.2356	383.2360	383.2535	383.2535	383.2550	383.2590	383.2707	383.2703
383.2709	383.2720	383.2725	383.2730	383.2731	383.2815	383.2830	383.2835
383.2910	383.3030	383.3040	383.3060	383.3080	383.3090	383.3200	383.3430
383.3435	383.3445	383.3446	383.3448	383.3450	383.3460	383.3465	383.3466
383.3770	383.4015	383.4300	383.4702	383.4704	383.4705	383.4707	383.4709

List of TSUSA Codes in Which Indonesia Participated in Imports of the United States in 1983 or 1984—Continued

383.4711	383.4715	383.4720	383.4721	383.4730	383.4747	383.4749	383.4753
383.4755	383.4761	383.4763	383.4765	383.4821	383.4825	383.4900	383.5030
383.5035	383.5036	383.5039	383.5049	383.5050	383.5062	383.5072	383.5078
383.5082	383.5084	383.5086	383.5088	383.5090	383.5295	383.5395	383.6371
383.7882	383.8002	383.8003	383.8004	383.8005	383.8043	383.8044	383.8045
383.8047	383.8070	383.8073	383.8115	383.8135	383.8145	383.8160	383.8605
383.8620	383.8635	383.8645	383.8660	383.8663	383.8669	383.8670	383.8810
383.9005	383.9010	383.9015	383.9020	383.9025	383.9030	383.9050	383.9051
383.9060	383.9065	383.9070	383.9210	383.9220	383.9225	383.9235	383.9240
383.9245	383.9255	383.9267	383.9270	383.9276	383.9290	383.9291	
Miscellaneous							
386.1500	386.4000	386.5045	389.3000	389.7000	702.1400	704.4010	704.4025
704.4504	704.4506	704.4508	704.5015	706.3400	706.3640	706.3650	706.3680
706.4106	706.4111	706.4140	706.4150	727.8630			

[FR Doc. 84-21690 Filed 8-14-84; 8:45 am]
BILLING CODE 3510-DS-M

[C-471-401]

Initiation of a Countervailing Duty Investigation; Certain Textiles and Textile Products From Portugal

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Portugal of certain textiles and textile products, as described in the "Scope of the Investigation" section below, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If our investigation proceeds normally, we will make our preliminary determination on or before October 15, 1984.

EFFECTIVE DATE: August 15, 1984.

FOR FURTHER INFORMATION CONTACT: Alain Letort, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 377-5050.

SUPPLEMENTARY INFORMATION:

Petition

On July 20, 1984, we received a petition from counsel for the American Textile Manufacturers Institute (ATMI), the Amalgamated Clothing andTextile Workers Union (ACTWU), and the International Ladies' Garment Workers Union (ILGWU), filed on behalf of the domestic textile and textile products industry. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers,producers, or exporters in Portugal of certain textiles and textile products receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Portugal is not a "country under the Agreement" within the meaning of section 701(b) of the Act. Therefore, section 303 of the Act applies to this investigation. Because the merchandise under investigation is dutiable, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this product cause or threaten material injury to a U.S.industry.

Initiation of the Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on certain textiles and textile products,and we have found that the petition meets those requirements.

Therefore, we are initiating a countervailing duty investigation to determine whether the manufacturers, producers, or exporters in Portugal of certain textiles and textile products, as described in the "Scope of the Investigation" section of this notice, receive benefits which constitute bounties or grants. If our investigation proceeds normally, we will make our preliminary determination by October 15, 1984.

Scope of the Investigation

The products covered by this investigation are certain textiles and textile products, which are fully described in the Appendix to this notice.

Allegations of Bounties or Grants

The petition lists a number of practices by the government of Portugal which allegedly confer bounties or grants on manufacturers, producers, or exporters in Portugal of certain textiles and textile products. We will initiate a countervailing duty investigation on the following allegations:

- Export financing at preferential rates,
- Export tax incentives,
- Integrated investment incentive system:
  - —General regime,
  - —Regional/sectoral priority regime,
  - —Simplified regime for small projects,
  - —Extraordinary regime of capital donations,
  - —Tax incentive regime for merging and cooperating firms,
  - —Subsidy regime for research and technical development,
- Countertrade,
- Incentive program for direct foreign investment leading to exports,
- Domestic business incentives:
  - —Decree-law 51/75 (February 7, 1975),
  - —Ruling 316/78 (November 30, 1978),
  - —Decree 353-E/77 (August 29, 1977),
  - —Decree 24/77 (April 1, 1977),
  - —Rulings 197/80 and 1/81,
  - —Decree-law 416/80 (September 27, 1980).

Dated . August 9, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

Appendix

The products coverd by this

investigation are certain textiles and textile products, which are currently classified under the items numbers of the *Tariff Schedules of the United States, Annotated (TSUSA)* listed below.

List of TSUSA Codes Which Covered Portugal's Exports of Certain Textiles and Textile Products to the United States in 1983

Yarns and Threads

300.6028	301.9000	302.0022	302.0024	302.1024	302.5026	303.2040
303.2042	305.1000					

Cordage

315.4000	316.5500	316.5800

Woven Fabrics

320.1092	321.2044	322.1018	322.1046	322.1058	322.1072	322.1074
322.1076	322.1092	322.1094	322.2044	322.2046	322.2072	322.2074
322.2080	322.2092	322.2094	322.5092	325.0072	325.0074	325.0076
325.0078	325.1072	325.1074	325.1076	325.1078	325.1084	325.1086
325.1092	325.1094	325.2072	325.2074	325.2084	325.2092	325.2094
325.3072	325.3084	325.3092	325.4092	325.6094	328.1064	328.1092
328.5094	331.1058	331.1064	331.2072	331.2086	331.2094	331.5094
335.6000	335.9500	336.6243	336.6247	336.6249	336.6251	336.6253
336.6447	338.1530	338.5006	338.5009	338.5010	338.5021	338.5024
338.5026	338.5033	338.5036	338.5043	338.5046	338.5064	338.5069

Special Construction Fabrics

345.1040	346.3200	346.3530	346.3550	346.5200	347.6040	348.0065
348.0075	348.0565	348.0575	348.0580	351.6010	353.5052	353.5063
355.4530	355.4590	357.1500	357.7060			

Textile Furnishings

360.1015	360.1515	360.1520	360.4215	360.4225	360.4815	360.4825
360.4855	360.7000	361.4200	361.4500	361.4600	361.4800	361.5000
361.5420	361.5426	363.0120	363.0140	363.0510	363.0515	363.0520
363.0525	363.0530	363.2562	363.2564	363.2575	363.2580	363.3010
363.3020	363.3030	363.3040	363.3500	363.4500	363.6030	363.6540
363.7500	363.8512	363.8515	363.8545	364.0700	364.1300	364.2300
364.3000	365.7817	365.7865	365.8300	365.8620	365.8670	365.8680
366.1840	366.2420	366.2460	366.2480	366.2720	366.2760	366.2780
366.3600	366.3900	366.4200	366.4600	366.5100	366.5400	366.6500
366.7500	366.7700	366.7930	367.6025	367.6040		

Wearing Apparel

370.0400	370.0800	370.1200	370.2100	370.8000	370.8420	370.8440
370.8820	372.1030	372.1040	372.1520	372.1540	372.7000	372.7520
372.7540	373.1000	373.1500	373.2200	373.2700	374.4000	374.4500
374.5020	374.5040	376.5609	376.5612	376.5623	378.0550	378.0576
378.1520	378.1530	378.1535	378.1540	379.0220	379.0230	379.0240
379.0250	379.0260	379.0610	379.0615	379.0620	379.0630	379.0640
379.1720	379.2320	379.3120	379.3180	379.3190	379.3905	379.3925
379.3930	379.3940	379.3950	379.4020	379.4030	379.4040	379.4050
379.4060	379.4140	379.4330	379.4640	379.4670	379.4920	379.5220
379.5221	379.5510	379.5520	379.5530	379.5535	379.5545	379.5550
379.5565	379.6210	379.6230	379.6240	379.6270	379.6280	379.6410
379.6450	379.6470	379.7250	379.7510	379.7530	379.7605	379.7620
379.7630	379.7650	379.7850	379.7900	379.8311,	379.8318	379.8351
379.8355	379.8360	379.8420	379.8735	379.9020	379.9030	379.9035
379.9510	379.9530	379.9555	379.9565	379.9575	383.0210	383.0215
383.0218	383.0221	383.0233	383.0305	383.0320	383.0335	383.0350
383.0390	383.0505	383.0506	383.0520	383.0615	383.0805	383.0810
383.0820	383.0825	383.0855	383.0860	383.1310	383.1315	383.1320
383.1340	383.1620	383.1807	383.1820	383.1857	383.1860	383.1910
383.2005	383.2013	383.2016	383.2035	383.2050	383.2060	383.2215
383.2230	383.2305	383.2315	383.2330	383.2335	383.2350	383.2360
383.2365	383.2706	383.2708	383.2709	383.2720	383.2725	383.2730
383.2731	383.2750	383.2810	383.2815	383.2820	383.2830	383.2835
383.2836	383.2910	383.2920	383.3010	383.3020	383.3030	383.3040
383.3060	383.3065	383.3070	383.3075	383.3080	383.3090	383.3445
383.3448	383.3465	383.4015	383.4300	383.4702	383.4705	383.4709
383.4711	383.4730	383.4761	383.4763	383.4814	383.4821	383.4823

List of TSUSA Codes Which Covered Portugal's Exports of Certain Textiles and Textile Products to the United States in 1983—Continued

383.4825	383.5035	383.5062	383.5072	383.5073	383.5086	383.5088
383.5090	383.5204	383.5212	383.5222	383.5226	383.5304	383.5308
383.5326	383.5395	383.5830	383.6200	383.6310	383.6340	383.6345
383.6371	383.6372	383.6395	383.6510	383.6520	383.6610	383.6630
383.6640	383.7000	383.7205	383.7210	383.7540	383.7550	383.7590
383.7868	383.8004	383.8006	383.8043	383.8045	383.8070	383.8073
383.8114	383.8115	383.8116	383.8125	383.8126	383.8146	383.8400
383.8620	383.8621	383.8622	383.8640	383.8645	383.8650	383.8665
383.8670	383.9015	383.9030	383.9050	383.9211	383.9225	383.9230
383.9245	383.9265	383.9290				

Miscellaneous

385.6120 386.0430 386.5045 389.6265

Headwear

702.0600 702.5600 702.7500 703.0500 703.1000

Gloves

704.1520

Luggage & Handbags

0706.3640 706.4106 706.4150

[FR Doc. 84-21700 Filed 8-14-84; 8:45 am]
BILLING CODE 3510-DS-M

[C-542-401]

Initiation of a Countervailing Duty Investigation; Certain Textiles and Textile Products From Sri Lanka

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Sri Lanka of certain textiles and textile products, as described in the "Scope of the Investigation" section below, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If our investigation proceeds normally, we will make our preliminary determination on or before October 15, 1984.

EFFECTIVE DATE: August 15, 1984.

FOR FURTHER INFORMATION CONTACT: Laura Campobasso, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-5403.

SUPPLEMENTARY INFORMATION:

Petition

On July 20, 1984, we received a petition from counsel for the American Textile Manufacturers Institute, the Amalgamated Clothing and Textile Workers Union, and the International Ladies' Garment Workers Union, filed on behalf of the domestic textile and textile products industry. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Sri Lanka of certain textiles and textile products receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Sri Lanka is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the merchandise under investigation is dutiable. Therefore, section 303 (a)(1) and (b) of the Act applies to this investigation. Under this section, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this product cause or threaten material injury to a U.S. industry.

Initiation of the Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on certain textiles and textile products, and we have found that the petition meets those requirements.

Therefore, we are initiating a countervailing duty investigation to determine whether the manufacturers, producers, or exporters in Sri Lanka of certain textiles and textile products, as described in the "Scope of the Investigation" section of this notice, receive benefits which constitute bounties or grants. If our investigation proceeds normally, we will make our preliminary determination by October 15, 1984.

Scope of the Investigation

The products covered by this investigation are certain textiles and textile products, which are fully described in the Appendix attached to this notice.

Allegations of Bounties or Grants

The petition lists a number of practices by the Government of Sri Lanka which allegedly confer bounties or grants on manufacturers, producers, or exporters in Sri Lanka of certain textiles and textile products. We will initiate a countervailing duty investigation on the following allegations:

- Investment promotion zone programs

- Export development board
- Export development fund
- Textile self-sufficiency programs

We will not initiate a countervailing duty investigation on the following allegations:

- Subsidized textile mills and textiles
- Subsidized cotton growers
- United Nations training institute

Dated: August 9, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.a

Appendix A

The products covered by this investigation are certain textiles and textile produces. The merchandise is currently classified under the item numbers of the *Tariff Schedules of the United States Annotated* (TSUSA) listed below:

Imports of Textiles and Textile Products From Sri Lanka in 1983 Subject to the Petition

Textile Furnishings							
3630520	3633040	3635015	3635115	3635130	3641800	3657865	
3661865	3661880	3662740	3662760	3662780	3664600	3667925	3676040

Apparel							
3762430	3762830	3765408	3765609	3765612	3765630	3790215	3790615
3790620	3790630	3790640	3790645	3792320	3792350	3793110	3793120
3793905	3794020	3794030	3794050	3794060	3794140	3794330	3794610
3794650	3794660	3794670	3795220	3795520	3795530	3795535	3795540
3795545	3795550	3795560	3795565	3796210	3796220	3796230	3796240
3796250	3796260	3796270	3796445	3796470	3797250	3797620	3797630
3798340	3798735	3799030	3799035	3799220	3799520	3799525	3799530
3799540	3799550	3799555	3799575	3799580	3799585	3799643	3799650
3830210	3830215	3830233	3830260	3830505	3830506	3830520	3830610
3830611	3830615	3830616	3830620	3830805	3830820	3830841	3830850
3830860	3832005	3832052	3832205	3832225	3832305	3832340	3832352
3832360	3832706	3832707	3832708	3832709	3832720	3832725	3832730
3832731	3832750	3832820	3832830	3832835	3833040	3833050	3833200
3833405	3833415	3833435	3833445	3833446	3833448	3833450	3833460
3833465	3833466	3833770	3834015	3834300	3834702	3834704	3834705
3834709	3834711	3834715	3834720	3834721	3834730	3834747	3834749
3834753	3834755	3834761	3834763	3834765	3834818	3834825	3835035
3835036	3835038	3835039	3835047	3835049	3835052	3835062	3835072
3835078	3835082	3835086	3835088	3835090	3835304	3835830	3836345
3836360	3836371	3836640	3837210	3837540	3837550	38375607	3837703
3838002	3838004	3838005	3838043	3838045	3838073	3838110	3838114
3838145	3838160	3838620	3838665	3839010	3839015	3839020	3839025
3839030	3839035	3839040	3839041	3839050	3839051	3839060	3839065
3839070	3839071	3839225	3839235	3839245	3839270	3839273	3839276
3839290	3839291						

Miscellaneous							
3855300	3865045	7044010	7044025	7044504	7044506	7044508	7045015
7048520	7048550	7049000	7063640	7064111			

[FR Doc. 84-21698 Filed 8-14-84; 8:45 am]
BILLING CODE 3510-DS-M

[C-549-401]

Initiation of Countervailing Duty Investigation; Certain Textiles and Textile Products From Thailand

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether producers, manufacturers, or exporters in Thailand of certain textiles and textile products, as described in the "Scope of Investigation" section below, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If our investigation proceeds normally, we will make our preliminary determination on or before October 15, 1984.

EFFECTIVE DATE: August 15, 1984.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, 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) 377-3530.

SUPPLEMENTARY INFORMATION:

Petition

On July 20, 1984, we received a petition from the American Textile Manufacturers Institute (ATMI), the Amalgamated Clothing and Textile Workers Union (ACTWU), and the International Ladies' Garment Workers Union (ILGWU) on behalf of the domestic textiles and textile products industry. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that producers, manufacturers, or exporters in Thailand of certain textiles and textile products receive, directly or indirectly, bounties or grants within the meaning of section

303 of the Tariff Act of 1930, as amended (the "Act"). Thailand is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the merchandise being investigated is dutiable. Therefore, section 303 (a)(1) and (b) of the Act applies to this investigation. Accordingly, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products cause or threaten to cause material injury to a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necesary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on certain textiles and textile products and we have found that that the petition meets these requirements.

Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Thailand of certain textiles and textile products, as listed in the "Scope of the Investigation" section of the notice, receive benefits which constitute bounties or grants. If our investigation proceeds normally, we will make our preliminary determination by October 15, 1984.

Scope of the Investigation

The products covered by this investigation are textiles and textile products. The merchandise is currently classified under the *Tariff Schedules of the United States Annotated* (TSUSA) item numbers as listed in Appendix A to this notice.

Allegations of Bounties or Grants

The petition alleges that producers, manufacturers, or exporters in Thailand of certain textiles and textile products receive benefits under the following programs that constitute bounties or grants:

A. Investment Promotion Act
B. Export Processing Zone
C. Preferential Financing
- Financing for imports necessary for export industries
- Export credits
- Financing for raw material purchases and
- Industrial Finance Corporation of Thailand (IFCT)

D. Customs Department Exemptions
E. Electricity Discounts for Exporters
F Tax Certificates for Exports
G. Incentives for International Trade Firms
- Exemption from import duties and business taxes on imported raw materials used to produce export goods
- Deduction from taxable income of 200 percent of advertising and marketing costs
- Financial support from the Bank of Thailand and
- Permission to open foreign-currency deposit accounts

We are not initiating on the following allegation:

Small Industry Finance Office

Petitioners allege that the Small Industry Finance Office (SIFO) provides financing to small industries and that the financing may be at below market rates. The provision of financing only to small industries does not confer a countervailable benefit, because such financing is not limited to a specific enterprise or industry or group thereof. Moreover, petitioners have not provided any evidence that this financing is granted on anything other than commercial terms.

Dated: August 9, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

Appendix A

The products covered by these investigations are certain textiles and textile products. The merchandise is currently classified under the item numbers of the Tariff Schedules of the United States Annotated (TSUSA) listed below.

Yarns					
300.6026	300.6028	303.2040	303.2042	308.5500	310.0209
320.1109	310.1110	310.1135	310.4047	310.5030	310.5047
310.5049	310.9120	310.9140			

Cordage					
Fabric					
320.0008	320.0038	320.1006	320.1008	320.1038	320.1044
320.1054	320.1058	320.1092	320.2030	320.2032	320.2054
320.2092	320.3028	320.3032	320.5094	322.1092	322.2094
322.4026	322.4092	326.1038	326.2026	326.2032	326.3026
326.3032	326.3038	326.3042	326.3046	326.3094	326.6028
327.3028	327.4094	328.3026	328.3028	328.4094	335.9500
336.6447	337.9025	337.9035	338.5006	338.5035	338.5036
338.5039	338.5045	338.5046	338.5049	338.5069	

Special Construction Fabrics				
347.2600	347.5000	353.5042	355.0200	

Textile Furnishings					
360.1015	360.1515	360.1520	360.2000	360.4825	360.4855
360.7000	360.7800	361.4500	363.0120	363.0515	363.0520
360.0525	363.3020	363.5115	363.5130	363.6015	363.8000
364.1300	365.7825	365.7865	366.1520	366.1820	366.1840
366.1865	366.1880	366.2160	366.2420	366.2460	366.2480
366.2720	366.4600	366.4700	366.6500	366.7700	366.7930
367.4500	367.6040	367.6080			

Apparel					
372.1560	373.2000	373.2200	376.2430	376.2830	376.5609
376.5612	379.0220	379.0240	379.0615	379.0620	379.0630
379.0640	379.0645	379.2320	379.2360	379.2630	379.3120
379.3130	379.3140	379.3190	379.3540	379.3925	379.3940
379.3950	379.4020	379.4030	379.4040	379.4050	379.4060
379.4330	379.4615	379.4670	379.5520	379.5530	379.5540
379.5545	379.5550	379.5560	379.5565	379.6210	379.6115
379.6220	379.6230	379.6240	379.6250	379.6260	379.6280
379.6450	379.6470	379.6942	379.6992	379.7250	379.7620
379.7630	379.8735	379.8906	379.8910	379.8911	379.8915
379.8930	379.8935	379.8940	379.9010	379.9020	379.9030
379.9035	379.9040	379.9100	379.9250	379.9410	379.9515
379.9525	379.9530	379.9540	379.9550	379.9555	379.9470
379.9575	379.9580	379.9585	379.9645	379.9650	379.9825
383.0015	383.0205	383.0210	3830215.	383.0218	383.0221
383.0225	383.0233	383.0240	383.0305	383.0335	383.0350
383.0505	383.0520	383.0610	383.0615	383.0620	383.0805
383.0820	383.0835	383.0838	383.0841	383.0856	383.0860

383.1200	383.1320	383.1802	383.1803	383.1807	383.1808
383.1820	383.1841	383.1842	383.1860	383.1910	383.1925
383.1930	383.1935	383.1940	383.2005	383.2013	383.2035
383.2040	383.2050	383.2052	383.2058	383.2205	383.2210
383.2225	383.2245	383.2305	383.2310	383.2320	383.2325
383.2335	383.2340	383.2352	383.2365	383.2570	383.2575
383.2590	383.2706	383.2707	383.2708	383.2709	383.2720
383.2725	383.2730	383.2731	383.2750	383.2820	383.2835
383.2910	383.3020	383.3030	383.3040	383.3050	383.3065
383.8090	383.3405	383.3415	383.2335	383.3445	383.3448
383.3465	383.3466	383.3600	383.3770	383.4300	383.4702
383.4704	383.4705	383.4709	383.4711	383.4715	383.4720
383.4721	383.4730	383.4747	383.4749	383.4753	383.4755
383.4761	383.4763	383.4814	383.4821	383.4825	383.5035
383.5036	383.5047	383.5049	383.5050	383.5052	383.5072
383.5080	383.5082	383.5088	383.5090	383.6000	383.6200
383.6310	383.6340	383.6260	383.6271	383.7810	383.7804
383.7868	383.7872	383.7874	383.7878	383.7882	383.8002
383.8003	383.8004	383.8005	383.8043	383.8044	383.8045
383.8047	383.8070	383.8073	383.8108	383.8110	383.8114
383.8115	383.8117	383.8125	383.8135	383.8140	383.8145
383.8146	383.8160	383.8300	383.8605	383.8620	383.8645
383.8650	383.8660	383.8663	383.8667	383.8660	383.8670
383.9005	383.9010	383.9015	383.9020	383.9025	383.9030
383.9035	383.9040	383.9041	383.9050	383.9051	383.9065
383.9070	383.9071	383.9210	383.9225	383.9230	383.9235
383.9240	383.9245	383.9255	383.9265	383.9270	383.9290
383.9291	383.9525				

Miscellaneous

385.5500	385.6140	386.1430	386.1500	386.4000	386.4034
387.3700	389.3000	389.5000	389.6255	389.6265	704.1020
704.3220	704.3240	704.4010	704.4025	704.4055	704.4504
704.4506	704.4508	704.4555	704.8520	704.8550	706.3640
706.3650	706.3680	706.3840	706.3850	706.3900	706.4106
706.4111	706.4121	706.4140	706.4150	(727.8610)	

[FR Doc. 84-21699 Filed 8-14-84; 8:45 am]
BILLING CODE 3510-DS-M

[No. C-557-401]

Initiation of Countervailing Duty Investigation: Certain Textiles and Textile Products Ffrom Malaysia

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether producers, manufacturers, or exporters in Malaysia of certain textiles and textile products, as described in the "Scope of Investigation" section below, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If our investigation proceeds normally, we will make our preliminary determination on or before October 15, 1984.

EFFECTIVE DATE: August 15, 1984.

FOR FURTHER INFORMATION CONTACT: Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-1778.

SUPPLEMENTARY INFORMATION:

Petition

On July 20, 1984, we received a petition from the American Textile Manufacturers Institute (ATMI) the Amalgamated Clothing and Textile Workers Union (ACTWU), and the International Ladies' Garment Workers Union (ILGWU) on behalf of the domestic textiles and textile products industry. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that producers, manufacturers, or exporters in Malaysia of textiles and textile products receive, directly or indirectly, bounties or grants within the meaning of section 303 of the Tariff Act 1930, as amended (the "Act"). Malaysia is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the merchandise being investigated is dutiable. Therefore, section 303 (a)(1) and (b) of the Act applies to this investigation. Accordingly, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products cause or threaten to cause material injury to a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on certain textiles and textile products and we have found that the petition meets these requirements.

Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Malaysia of certain textiles and textile products, as listed in Appendix A to this notice, receive benefits which constitute bounties or grants. If our investigation proceeds normally, we will make our preliminary determination by October 15, 1984.

Scope of the Investigation

The products covered by this investigation are textiles and textile products. The merchandise is currently classified under item numbers of the *Tariff Schedules of the United States Annotated* (TSUSA) listed in Appendix A.

Allegations of Bounties or Grants

The petition alleges that producers, manufacturers, or exporters in Malaysia of certain textiles and textile products receive the following benefits that constitute bounties or grants:

Tax Incentives for Exporters.
Building Allowances.
Free Trade Zones.

Industrial Estates.
Preferential Financing.
(1) Export Credit Refinancing Facility.
(2) Preshipment Refinancing Facility.
Export Credit Insurance.
Locational Incentives Program.
Increased Capital Allowance.
Reinvestment Allowance.
Labor Utilization Relief.
Investment Tax Credits.
Preferential Financing for Bumiputras.

We are not initiating on the following allegation:

Petitioners alleged that exporters in certain industries benefit from tax relief, including income, development and excess profit tax administered under the Pioneer Status Program. The list of Pioneer industries and products approved under the Investment Incentives Act does not include textiles or textile products.

Dated: August 9, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

Appendix A

List of TSUSA codes in which Malaysia participated in imports to the United States in 1983.

			Yarns and Threads				
310.4047	310.5049						
			Woven Fabrics				
320.0002	320.0008	320.0036	320.0058	320.1008	320.1038	320.1040	320.1058
320.2038	321.1054	322.1054	322.1094	322.4028	323.1054	323.1092	325.1054
325.8092	325.8094	326.3042	326.3046	326.4092	326.6028	327.1044	327.2092
327.3054	327.3058	327.4092	328.0092	328.1058	328.1064	328.1092	328.2044
328.2058	328.2064	328.2092	328.2094	328.3018	328.3028	328.3046	328.3092
328.4058	328.4092	328.4094	328.5058	328.5068	328.9088	328.9092	330.2092
331.1092	331.2092	331.4092	331.7094	338.5009	338.5010	338.5021	338.5024
338.5032	338.5035	338.5036	338.5039	338.5041	338.5043	338.5044	338.5045
338.5046	338.5054	338.5069					
			Textile Furnishings				
366.4700	366.6500						
			Apparel				
370.0800	372.1540	372.1560	372.7520	374.4000	374.5020	376.2425	376.5408
376.5412	378.0550	378.1535	379.0240	379.0620	379.0640	379.0645	379.2320
379.2360	379.2630	379.2650	379.3120	379.3905	379.3930	379.4020	379.4030
379.4040	379.4050	379.4060	379.4070	379.4330	379.4615	379.4620	379.4650
379.4660	379.4670	379.5220	379.5510	379.5520	379.5525	379.5530	379.5535
379.5545	379.5550	379.5555	379.5560	379.5565	379.5800	379.6210	379.6215
379.6220	379.6230	379.6240	379.6250	379.6260	379.6270	379.6280	379.6450
379.6470	379.7400	379.7610	379.7620	379.7630	379.7640	379.8311	379.8355
379.8635	379.8915	379.8930	379.8940	379.9010	379.9020	379.9030	379.9035
379.9040	379.9250	379.9505	379.9525	379.9530	379.9535	379.9540	379.9545
379.9550	379.9555	379.9560	379.9565	383.0210	383.0215	383.0221	383.0225
383.0335	383.0350	383.0505	383.0506	383.0520	383.0605	383.0610	383.0615
383.0616	383.0632	383.0805	383.0841	383.0856	383.1807	383.1820	383.1841
383.1842	383.1910	383.1935	383.1940	383.2040	383.2052	383.2056	383.2205
383.2210	383.2220	383.2352	383.2356	383.2365	383.2706	383.2708	383.2709
383.2720	383.2725	383.2730	383.2731	383.2750	383.2751	383.2810	383.2820
383.2830	383.2835	383.2836	383.2910	383.2920	383.3030	383.3040	383.3050
383.3060	383.3065	383.3070	383.3200	383.3415	383.3435	383.3445	383.3448
383.3450	383.3452	383.3465	383.3466	383.4200	383.4300	383.4702	383.4704
383.4705	383.4707	383.4709	383.4711	383.4720	383.4721	383.4730	383.4747
383.4749	383.4753	383.4755	383.4757	383.4761	383.4763	383.4765	383.4821
383.4825	383.5035	383.5052	383.5072	383.5086	383.5090	383.5830	383.6200
383.6310	383.6340	383.6360	383.6371	383.6372	383.7550	383.7882	383.8002
383.8003	383.8004	383.8005	383.8043	383.8044	383.8045	383.8047	383.8073
383.8110	383.8117	383.8140	383.8160	383.8660	383.8663	383.8669	383.8670
383.9010	383.9015	383.9025	383.9030	383.9035	383.9040	383.9050	383.9051
383.9065	383.9070	383.9210	383.9215	383.9225	383.9270	383.9290	383.9291
			Miscellaneous				
702.1200	703.1600	704.3220	704.4010	704.4025	704.4502	704.4504	389.6265
704.4506							
704.4508	704.8520	704.8550	705.8520	706.3640	706.3680	706.3900	706.4106

[FR Doc. 84-21694 Filed 8-14-84; 8:45 am]
BILLING CODE 3510-DS-M

[A-580-404]

Radial Ply Tires for Passenger Cars From the Republic of Korea: Initiation of Antidumping Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form within United States Department of Commerce, we are initiating an antidumping investigation to determine whether radial ply tires for passenger cars (radial ply tires) from Korea are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before September 4, 1984, and we will make ours on or before December 27, 1984.

EFFECTIVE DATE: August 15, 1984.

FOR FURTHER INFORMATION CONTACT: Frank Crowe, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-4087

SUPPLEMENTARY INFORMATION:

The Petition

On July 20, 1984, we received a petition in proper form filed on behalf of the Armstrong Rubber Company, Cooper Tire & Rubber Company, the Firestone Tire & Rubber Company, the B.F Goodrich Company, and the Goodyear Tire & Rubber Company. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioners alleged that the imports of the subject merchandise from Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act), and that these imports materially injure, or threaten material injury to, a United States industry.

Petitioners based United States price on price lists circulated in the trade in the United States by the Korean companies. In a few instances, the price is based on reports of prices, which were gathered by various of the petitioner's sales staffs. These prices

were adjusted by subtracting therefrom: The Federal Excise Tax ("FET"), the mark-up of the second unrelated purchaser in the U.S., the exporter's sales expenses, U.S. inland freight costs, CIF costs from port of exportation to port of importation, and U.S. import duty. The prices were then increased by the amount of value added tax and other duties and taxes rebated or not collected by reason of export.

Petitioners estimated Korean domestic tire prices by estimating wholesale prices based on ex-factory price lists of two manufacturers and from wholesale prices reported in the Korean publication *Price Data*. In comparing alleged U.S. prices with alleged Korean domestic prices, there are apparent dumping margins ranging from eight percent to 121 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to these petitioners supporting the allegations. We have examined the petition on radial ply tires, and we have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping investigation to determine whether radial ply tires from Korea are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally we will make our preliminary determination by December 27, 1984.

Scope of Investigation

The merchandise (radial ply tires for passenger cars) is currently provided for in the Tariff Schedules of the United States Annotated (TSUSA) under item 772.5109, "New (not including recapped) passenger car tires: Radial."

Notification to ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 4, 1984, whether there is a reasonable indication that imports of radial ply tires from Korea materially injure, or threaten material injury to, a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Dated: August 9, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-21605 Filed 8-14-84; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, Commerce, NOAA.

The Gulf of Mexico Fishery Management Council will convene its Ad Hoc Shrimp/Stone Crab Advisory Panel to consider modification of zoning rules for the next shrimp/stone crab season. The public meeting will convene at 9:30 a.m., on August 17, 1984, and adjourn at approximately 5 p.m., and will be held at the Pasco/Hernando Community College, 3125 U.S. Highway 98, North, Brooksville, FL 33512. For further information contact the Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609; telephone: (813) 228-2815.

Dated: August 9, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-21620 Filed 8-14-84; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Performance Review Boards List of Members

Below is a listing of additional individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force Senior Executive Appraisal and Award System.

Air Force Systems Command (AFSC)

Lt Gen Bernard P Randolph

BG Philippe O. Bouchard

Air Force Logistics Command (AFLC)

BG Eric B. Nelson

Harry C. Waters

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 84-21617 Filed 8-14-84; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Academic Advisory Board to the Superintendent United States Naval Academy; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Academic Advisory Board to the Superintendent, United States Naval Academy, will meet on September 4, 1984, in Rickover Hall, Room 301, United States Naval Academy, Annapolis, Maryland. The meeting will commence at 8:30 a.m. and terminate at 3:00 p.m.

The purpose of the meeting is to advise and assist the Superintendent of the Naval Academy concerning the education of midshipmen. To accomplish this objective, the Board will review academic policies and practices of the Naval Academy and will submit their proposals to the Superintendent to aid him in improving educational standards and in solving Academy problems. The meeting will be open to the public for observation to the extent that space is available.

For further information concerning this meeting contact: Major D. L. Smith, USMC, Military Secretary to the Academic Advisory Board, Office of the Academic Dean, United States Naval Academy, Annapolis, Maryland 21402, Telephone No. (301)-267-2500.

Dated: August 8, 1984.

William F. Roos, Jr.,

LT, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84-21651 Filed 8-14-84; 8:45 am]

BILLING CODE 3810-AE-M

Performance Review Board Membership

Pursuant to 5 U.S.C. 4314(c)(4), the Department of the Navy (DoN) announces the appointment of members to the DoN's numerous Senior Executive Service (SES) Performance Review Boards. The purpose of the Boards is to provide fair and impartial review of the Senior Executive Service performance appraisals prepared by the senior executive's immediate and second level supervisors' to make recommendations to the Secretary of the Navy regarding

acceptance or modification of the performance rating, transfer, reassignment, or removal from the SES of any senior executive whose performance is considered to be unsatisfactory; and to make nominations for financial performance awards. Composition of particular Boards will be determined on an ad hoc basis from among those individuals listed below.

DEPARTMENT OF THE NAVY

Nominees for Performance Review Board Membership

Dr. J. E. Andrews
Mr. E.E. Anschutz
Mr. O.R. Ashe
Dr. D.F. Barbe
Mr. R.J. Barnett
RADM J.D. Beecher, USN
Dr. T.G. Berlincourt
Mr. J.J. Bettino
Mr. J.A. Bizup
RADM W.D. Bodensteiner, USN
Mr. J.T. Bolos
Mr. J.H. Brown
Mr. R.S. Buffum
Mr. F.J. Burchfield
Mr. R.C. Burow
Mr. G.A. Cann
Mr. R.J. Cauley
Mr. C.H. Clark
RADM G. Clark, USN
Dr. T. Coffey
The Honorable R.H. Conn
RADM P.C. Conrad, USN
RADM D.L. Cooper, USN
Dr. E.D. Cooper
Dr. L.A. Cox, Jr.
Mr. F Davidson III
Mr. G.C. Dilworth
Dr. A.J. DiMascio
Dr. A.M. Diness
Mr. A.R. DiTrapani
Mr. H.L. Dixson
COMO W.J. Finneran, USN
Mr. H.L.C. Fleck
Mr. A.G. Forssell
Mr. L.S. Freeman
COMO R.D. Friichtenicht, USN
RADM A.A. Gallotta, USN
Mr. R.G. Garant
CAPT K.P Garland, USN
Mr. H.E. Goldstein
Mr. C.V Gorsey
Mr. E.C. Grayson, Jr.
Mr. R.L. Haas
Mr. K.B. Hancock
Mr. J.W. Hardman
Ms. M.H. Harris
Mr. P W. Hayes, Jr.
Mr. B.W. Hays
Dr. L.L. Hill
Mr. P.M. Hitch
RADM E.J. Hogan, Jr., USN
Mr. W.R. Hunt
Dr. T.A. Jacobs
Mr. M.D. Jensen
Mr. R.V. Johnson
Dr. G.B. Joiner
RADM W.A. Kearns, Jr., USN
Mr. E.T. Kinney
Mr. H. Kitson, Jr.
Mr. L.R. Klein
CAPT R.W. Klementz, USN
Mr. N. Kobitz
Dr. A.F Kwitnieski
Mr. J.H. Lannen, Jr.
Dr. R.A. LeFande
Mr. K.I. Lichti
Mr. J.F. Lynch
Mr. J.A. Macmillan
Mr. A.C. Magruder
Mr. W.H.J. Manthorpe
Mr. J.W. Marsh
RADM J.C. McArthur, USN
Mr. C.C. McClelland
BGEN J. Mead, USMC
Mr. E.L. Messere
Mr. R.E. Metrey
Mr. J.P Mills, Jr.
CAPT G.M. Monteath, USN
RADM J.B. Mooney, Jr., USN
RADM V.W. Moore, Jr., USN
Dr. M.K. Moss
Mr. R.A. Nagelhout
Mr. C.P Nemfakos
COMO M. Nielubowicz, USN
Ms. M.A. Olsen
Mr. H. O'Neill
The Honorable M.R. Paisley
Mr. P.M. Palermo
Mr. F.A. Phelps
COMO S.F Platt, USN
Dr. A. Powell
Mr. A.S. Prince
Dr. J.H. Probus
The Honorable E.A. Pyatt
Dr. A.B. Rechnitzer
Mr. J.L. Reed
Mr. D.W. Rehorst
Mr. R.P. Rhode
COMO M.V Ricketts, USN
COMO G.L. Riendeau, USN
Mr. R.R. Rojas
Mr. R.L. Rumpf
Dr. F.E. Saalfeld
Dr. J.S. Saia
Dr. A.I. Schindler
Dr. P.A. Selwyn
Mr. R.L. Shaffer
Dr. J.J. Shepard
Mr. J.N. Shrader
Mr. W.T. Skallerup
Mr. F.W. Swofford
Mr. W.H. Tarbell
Mr. J.K. Taussig, Jr.
Mr. D. Turner
Mr. J.C. Turnquist
Dr. J.W. Tweeddale
The Honorable C.G. Untermeyer
Dr. B. Wald
Mr. H. Wang
RADM J.H. Webber, USN
Mr. A.R. Weiss
Mr. H.J. Wilcox
RADM J.B. Wilkinson, USN
Mr. G.P. Williams
Mr. W.N. Williams
Mr. R.S. Winokur
Dr. M. Yachnis
Mr. J. Genovese
Mr. R.M. Hillyer
CAPT J.A. McMorris, II, USN
CAPT G.T. Phelps, USN

For additional information contact: Mr. Vincent J. Prantl, Executive Personnel Section (OP-145C) Office of the Chief of Naval Operations, Department of the Navy Washington, D.C. 20350, Telephone: (202) 694-5760.

Dated: August 10, 1984.

W.F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.

[FR Doc. 84-21652 Filed 8-14-84; 8:45 am]
BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Conservation and Renewable Energy Office

National Energy Extension Service Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: National Energy Extension Service Advisory Board

Date and time:

Tuesday, September 11, 1984—1:30 p.m.-5:30 p.m.
Wednesday, September 12, 1984—8:30 a.m.-5:30 p.m.
Thursday, September 13, 1984—8:30 a.m.-12:15 p.m.

Place: LBJ Hilton Hotel, 4801 LBJ Freeway, Dallas, Texas 75234.

Contact: Ron Santoro, U.S. Department of Energy, Forrestal Building, Room 6A-081, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone: 202-252-8298.

Purpose of the Board: The Board was established to carry on a continuing review of the National Energy Extention Service and the plans and activities of each State in implementing Energy Extension Service programs.

Tentative agenda:

Tuesday, September 11, 1984

Welcome by Ralph J. Knobel, NEESAB Chairman
Status EES Programs for FY85
Open Discussion
Public Comment (10 minute rule)

Wednesday, September 12, 1984

Follow-up on NEESAB's Fifth Annual Report and Recommendations
Open Discussions
Public Comment (10 minute rule)

Thursday, September 13, 1984

Working Session-Planning for Sixth Annual Report

Public Comment (10 minute rule)

Public participation: The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his/her judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ron Santoro at 202/252-8298. Requests must be received at least 5 days prior to the meeting and reasonable provison will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on August 9, 1984.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 84-21612 Filed 8-14-84; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

United Independent Oil Co., Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to United Independent Oil Company (United). This Proposed Remedial Order charges United with entitlements violations in the amount of $404,323.00, plus interest, in connection with United's reporting of its crude oil receipts and runs to stills under the Entitlements Program during the reporting period of May 1977.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from James Solit, Office of Special Counsel, ERA, Washington, D.C., (202) 252-6500. Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Room 6E-055, Washington, D.C. 20585, in accordance with 10 CFR 205.193.

Issued in Washington, D.C. on the 27th day of July 1984.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 84-21611 Filed 8-14-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP84-572-000]

ANR Pipeline Company; Application

August 10, 1984.

Take notice that on July 13, 1984, ANR Pipeline Company (Applicant), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP84-572-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a transportation service of up to 50,000 dt equivalent of natural gas per day for Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), and, incident thereto, the construction and operation of compression and metering facilities necessary to effectuate the delivery of gas for Tennessee's account, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to provide the transportation service through January 31, 1998. Applicant states that the gas to be transported is gas that Tennessee has acquired from reserves in the Whitney Canyon-Carter Creek areas of Wyoming and is being transported through the Trailblazer System. Applicant states that it would receive Tennessee's gas from Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), at the existing point of interconnection between the pipeline systems of Applicant and Northern at Janesville, Wisconsin, or from Midwestern Gas Transmission Company (Midwestern) at the existing point of interconnection between the pipeline systems of Applicant and Midwestern at Marshfield, Wisconsin. It is submitted that Applicant would transport and deliver or cause to be delivered equivalent volumes to Midwestern and/or Tennessee at either of the interconnections of the pipeline systems of Midwestern and Applicant in Will County, Illinois, or Spencer County Indiana, or for Tennessee's account at the tailgate of The Superior Oil Company's Lowry Plant, Cameron Parish, Louisiana.

To accomplish the receipt and delivery of gas for Tennessee, Applicant proposes to construct, install and operate:

(i) One 1,700 horsepower class compressor unit and appurtenant facilities at Applicant's Janesville, Wisconsin, compressor station; and

(ii) Additional gas measurement facilities at the existing interconnection of the pipeline systems.

It is stated that these facilities are estimated to cost $4,533,270 and would be financed initially with treasury funds, retained earnings and other funds generated internally together with borrowings from banks under short-term lines of credit, as required.

Applicant proposes to charge Tennessee a monthly demand charge of $2.24 per Mcf of contract demand for the transportation service.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 30, 1984 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21589 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-601-000]

ANR Pipeline Company; Application

August 10, 1984.

Take notice that on July 25, 1984, ANR Pipeline Company, 500 Renaissance Center, Detroit, Michigan 48243 (Applicant), filed in Docket No. CP84-601-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the relocation of compressor facilities, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant states that by Commission orders issued September 6, 1974, and January 8, 1976, in Docket No. CP74-213, it was authorized, among other things, to construct and operate over 12,000 horsepower of compression in Oconto County, Wisconsin (the Mountain station). It is also stated that the Mountain station comprises a single General Electric Frame 3 compressor unit which serves to transport natural gas supplies received by Applicant at Crystal Falls, Michigan, from Great Lakes Gas Transmission Company (Great Lakes) for delivery to Applicant's Wisconsin distributor companies. During winter design operations, Applicant indicates, the gas volumes received at Crystal Falls are maximized in order to minimize the need for reinforcement on other portions of its transmission system. Applicant states that with only one compressor unit available at the Mountain station, any type of outage during the winter period would directly reduce its ability to satisfy fully the Wisconsin market area requirements. Therefore, in order to afford protection against service outage in Wisconsin, Applicant proposes to remove one of two 9,100 horsepower class units from its St. Martinville Station, St. Martin Parish, Louisiana, and relocate it at the Mountain station. Applicant states that this unit, which has been on stand-by, has become available because of declining production from some of its older sources in the Gulf Coast area.

Applicant states that the cost of relocating the 9,100 horsepower class unit from St. Martinville Station to the Mountain station is estimated at $3,887,620, including filing fees. Applicant proposes to finance this project with funds which it presently has on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 30, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21590 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP79-234-004]

Algonquin Gas Transmission Company; Petition To Amend

August 10, 1984.

Taken notice that on July 11, 1984, Algonquin Gas Transmission Company (Petitioner), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP79-234-004 a petition to amend the Commission's order issued May 30, 1980, in Docket No. CP79-234-000, as clarified, pursuant to section 7(c) of the Natural Gas Act so as to authorize an extension to December 31, 1989, for the transportation of 40,000 MMBtu of gasified LNG per day, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that under the existing authorization, it is authorized to deliver up to 40 billion Btu of gasified LNG per day, received at Everett, Massachusetts, to or for the account of The Brooklyn Union Gas Company, Connecticut Light and Power Company, Providence Gas Company, and South Jersey Gas Company under Petitioner's Rate Schedule T-X, for a five-year term, until December 31, 1984. It is explained that the deliveries are mostly accomplished by changes, i.e., each of the customers purchases LNG and arranges for the LNG to be delivered to Petitioner at Everett and Petitioner then delivers thermally equivalent quantities by exchange. In addition, a small amount of LNG may be delivered from Everett by truck to an LNG Storage facility in Providence, Rhode Island, owned by Algonquin LNG, Inc., a subsidiary of Petitioner, it is submitted. This LNG would also be delivered to customers under Rate Schedule T-X, it is stated.

The authorization for the services listed above expires on December 31, 1984, and Petitioner requests authorization to extend this term for an additional five years, through December 31, 1989. Petitioner proposes to make adjustments in its Rate Schedule T-X to conform with its current rate schedule format. Specifically, the fuel reimbursement provision would be placed in Rate Schedule T-X and clarification of Sections 1 and 4 would indicate that gas tendered may be by the buyer or for the buyer's account, it is asserted. All other provisions of the proposed service agreement would remain unchanged, it is stated.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 30, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 of 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a

proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth P. Plumb,

Secretary.

[FR Doc. 84-21591 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-567-000]

Arkansas Louisiana Gas Company, a Division of Arkla, Inc.; Application

August 10, 1984.

Take notice that on July 12, 1984, Arkansas Louisiana Gas Compnay, a division of Arkla, Inc. (Applicant), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP84-567-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for an existing industrial customer, Aluminum Company of America (Industrial Customer), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has instituted a transportation program for various of its existing larger idustrial customers called the ECOSHARE plan. Applicant indicates that the ECOSHARE plan was developed as part of a settlement in general retail rate increase proceeding at the Arkansas Public Service Commission involving Applicant's Rate Schedule No. 4. It is stated that under the ECOSHARE program instead of buying all its plant requirements from Applicant, the customer may purchase spot gas from other suppliers which would be transported by Applicant to the customer's plant. It is further stated that Applicant would continue to sell a substantial part of the plant's gas requirements and that the total volume of gas delivered by Applicant to the plant, including both transported volumes and sales volumes, may not exceed the maximum daily quantity of gas specified in Applicant's Arkansas Public Service Commission Rate Schedule No. 4 service agreement covering the plant. It is said that Applicant under the ECOSHARE program has the option to purchase for its own system supply 50 per cent of the spot gas arranged for by the large industrials.

Specifically, Applicant proposes to transport on a firm basis natural gas for Industrial Customer from two delivery points in Haskell County, Oklahoma, one point in Pittsburg County, Oklahoma, and one point in Logan County, Arkansas, to Industrial Customer's Bauxite, Arkansas, industrial plant. Applicant also requests blanket authorization for the addition and deletion of delivery points as necessary. The transportation service for Industrial Customer is proposed for a term ending on May 1, 1987

Applicant proposes to charge Industrial Customer $0.3484 per million Btu for gas delivered directly into Applicant's gathering facilities from a well already connected to Applicant's system. Applicant proposes to charge Industrial Customer $0.5338 per million Btu for gas delivered into Applicant's gathering facilities from a well not connected to the gathering system. It is said that these charges are based on the methodology and billing determinants used in designing rates to recover the transmission, storage, and gathering costs in Applicant's presently effective Gas Rate Schedule Nos. X-26 and G-2. Applicant indicates that volumes tranported under the ECOSHARE program would mean reduced sales volumes and that Applicant's proposed tranportation rates are designed to continue to recover Applicant's unit systemwide transmission, storage and gathering costs associated with transporting a portion of a plant's requirements instead of selling that gas to the plant. It is also indicated that under Applicant's Arkansas Public Service Commission Rate Schedule No. 4, the ECOSHARE transportation service may be terminated unless Applicant's costs are fully recoverable by it and are not required to be credited to Account 191.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 30, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21592 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP79-169-012]

ANR Pipeline Co.; Petition To Amend

August 9, 1984.

Take notice that on July 13, 1984, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP79-169-012 a petition to amend the order issued September 25, 1979, as amended, in Docket No. CP79-169-000 pursuant to section 7(c) of the Natural Gas Act, so as to authorize an extension through October 31, 1988, for the transportation of natural gas for Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner submits that by order issued August 9, 1979, as amended, Midwestern Gas Transmission Company (Midwestern) was authorized in Ecomonic Regulatory Administration (ERA) Docket No. 79-04-NG to import 114,000,000 Mcf of natural gas from Canada. By subsequent ERA orders, Midwestern's import authorization has been extended for a term ending October 31, 1984, it is explained.

Petitioner further submits that by order issued July 11, 1979, in ERA Docket No. 78-011-NG, Great Lakes Gas Transmission Company (Great Lakes) was authorized to import 18,000,000 Mcf of natural gas from Canada and that by subsequent ERA orders, Great Lakes's import authorization has been amended to extend the term until October 31, 1984.

It is stated that by orders issued by the Commission on September 25, 1979,

in Docket Nos. CP79-141 and CP-79-161 Great Lakes and Midwestern, respectively, were authorized to import from Canada a total of 132,000,000 Mcf of natural gas for a period ending October 31, 1984.

It is further stated that approximately 67,000,000 Mcf of this gas have been imported and sold and that, to enable the balance of the authorized quantity to be imported and sold, Midwestern and Great Lakes on June 8, 1984, filed a joint petition with both the Commission and the ERA to amend their authorizations.

Petitioner alleges that Midwestern sells the imported volumes to Tennessee and ANR provides a related transportation service which enables Tennessee to receive such gas.

Petitioner submits that the existing authorization to provide the transportation service would expire on October 31, 1984, and Petitioner proposes to continue the transportation service for Tennessee through October 31, 1986.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 29, 1984 file with the Federal Energy Regulatory Commission, Washington, D.C., a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21573 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP81-107-009 and CP81-108-007]

Boundary Gas, Inc.; Amendment to Application

August 9, 1984.

Take notice that on June 29, 1984, Boundary Gas, Inc. (Boundary), 110 Tremont Street, Boston, Massachusetts 02108, filed in Docket Nos. CP81-107-009 and CP81-108-007 its third amendment to its applications filed in Docket Nos. CP81-107-000 and CP81-108-000 on December 19, 1980, pursuant to Sections 3 and 7 of the Natural Gas Act to reflect certain changes in the said dockets, all as more fully set forth in the third amendment which is on file with the Commission and open to public inspection.

In the third amendment Boundary states that as a result of and in order to reflect the Commission's certification of Phase 1 of the Boundary project on February 2, 1984 (24 FERC ¶ 61,114), it has entered into a new precedent agreement with TransCanada Pipelines Limited (TransCanda) (designated the Phase 2 Precedent Agreement) and has also modified its gas purchase contract and gas sales agreement to reflect the implementation of the Phase 1 sales and the continued pendency of the Phase 2 proceeding at the Commission. Boundary also states that its Stockholders' Memorandum of Agreement has been amended to reflect the certification of Phase 1; the assignment of the Boundary stock and purchase entitlements of Bay State Gas Company to its subsidiary, Granite State Gas Transmission, Inc., and the assignment of a portion of the Boundary stock and purchase entitlements of National Fuel Gas Supply Corporation (National Fuel) to a new repurchaser, Connecticut Natural Gas Corporation (CNG). Boundary states that in all other respects, the Phase 2 precedent agreement is not materially different from the original Precedent Agreement between Boundary and TransCanada.

Boundary states that after the National Fuel/CNG assignment, the Phase 2 percentage and daily purchase entitlements of the Boundary repurchasers are as follows:

Repurchaser	Percentage entitlements	Daily entitlements (Mcf)
The Brooklyn Union Gas Company	.3240	29,970
Granite State Gas Transmission, Inc	.1351	12,500
New Jersey Natural Gas Company	.1163	10,760
Boston Gas Company	.1131	10,460
The Connecticut Light and Power Company	.1023	9,460
Consolidated Edison Company of New York, Inc	.0540	5,000
National Fuel Gas Supply Corporation	.0270	2,500
Long Island Lighting Company	.0270	2,500
Connecticut Natural Gas Corporation	.0216	2,000
Essex County Gas Company	.0174	1,610
Manchester Gas Company	.0168	1,550
Gas Service, Inc	.0168	1,550
Valley Gas Company	.0115	1,060
Berkshire Gas Company	.0114	1,050
Fitchburg Gas and Electric Light Company	.0057	530
Total	1.0000	92,500

Any person desiring to be heard or to make any protest with reference to said amendment should on or before August 29, 1984 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21574 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-570-000]

Consumers Power Co., Filing

August 9, 1984.

The filing Company submits the following:

Take notice that on July 30, 1984, Consumers Power Company (Consumers) tendered for filing Consumers' Supplemental Agreement No. 3 to the Coordinated Operating Agreement with the City of Lansing, Michigan dated as of February 1, 1981.

Supplemental Agreement No. 3 adds a new schedule, Service Schedule F—Specific Capacity and Energy available from surplus capacity of the other party's system for a period of not less than five nor more than twelve calendar months.

The extent and use of Specific Capacity and Energy among the parties for the next twelve months is not known at the present time as such transactions will only be scheduled from time to time as load and capacity conditions on either system dictate. Accordingly, it is not possible to estimate the transactions for such period.

Consumers requests an effective date of August 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served on the City of Lansing, Michigan and on the Michigan Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211,

395.214). All such motions or protests should be filed on or before August 23, 1984. Protests will be considered by the Commission in determining the appropriate action to be talken, 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. 84-21575 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-14-001]

Couch Gas Storage Co., Amendment to Application

August 9, 1984.

Take notice that on June 28, 1984, Couch Gas Storage Company (Applicant), One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP84-14-001 an amendment to its application in Docket No. CP84-14-000 pursuant to section 7(c) of the Natural Gas Act requesting authorization for Washington 28 Gas Storage Company (Washington 28) (a general partnership of Couch Gas Storage Limited Partnership (Couch Limited) (partnership between Couch Gas Storage Company, the initial applicant in this docket, and Couch Ranch) and ANR Michigan Storage Company (ANR Michigan), as successor in interest to Couch Gas Storage Company, to render a gas storage service to ANR Storage Company (ANR) for the account of Transcontinental Gas Pipe Line Corporation (Transco) pursuant to a partnership between Couch Limited and ANR Michigan, and to do so by developing and operating the gas storage field and appurtenant facilities for which authorization has been previously applied for in these proceedings, as amended herein, drilling and operating certain wells, and construction and operating certain other facilities, all as more fully described in the amendment which is on file with the Commission and open to public inspection.

It is stated that the purpose of this amendment is to reflect ANR Michigan's and Couch limited's formation of a partnership, Washington 28 Gas Storage Company, for the joint development and operation of the Washington 28 storage field and the provision therefrom of 10 Bcf of storage service to ANR so that ANR may provide 10,000,000 Mcf of storage service to Transco. It is explained that Washington 28 is the successor to Couch Gas Storage Company as applicant in these proceedings and that upon receipt of the herein requested certificate and the commencement of the storage service proposed herein, Washington 28 would become a natural gas company subject to the jurisdiction of the Commission under the Natural Gas Act.

It is indicated that in order to provide for the economical and expeditious development of 10,000,000 Mcf of storage service for Transco, Couch Limited and ANR Michigan have agreed to develop and operate jointly the Washington 28 field as a gas storage field and to provide therefrom 10,000,000 Mcf of gas storage service to ANR, so that ANR may provide gas storage service to Transco pursuant to the gas storage agreement between ANR and Transco dated May 22, 1984 (the Gas Storage Agreement). ANR would be responsible for the construction and operation of the Washington 28 field, it is submitted.

The amendment shows that as a result of the foregoing, Washington 28 has entered into a gas storage agreement (Storage Agreement) with ANR and that the storage agreement provides that in 1987 and subsequent summer periods (April 1–October 31), ANR would deliver to Washington 28 for storage up to 10,000,000 Mcf of natural gas, at daily volumes up to 75,000 Mcf, at the proposed interconnection of Washington 28's facilities and Michigan Consolidated Gas Company's (Michigan Consolidated) facilities in Washington Township, Macomb County, Michigan (Romeo delivery point), together with a volume of gas for compressor fuel usage equal to 1.0 percent of the volumes so delivered. During the 1987–1988 and subsequent winter periods (November 1–March 31), Washington 28 would redeliver to ANR at the Romeo delivery point for ultimate redelivery to Transco such volumes of the previously stored gas as Transco would request at daily rates up to 150,000 Mcf, less a volume of gas for compressor fuel usage equal to 0.25 percent of the volumes so redelivered, it is asserted.

It is further explained that provision has been made in the Storage Agreement for excess daily deliveries and redeliveries and for out-of-period deliveries of such daily quantities of gas as are mutally agreeable and for ANR to defer the redelivery of all or any part of the gas stored thereunder from one winter period to the next and that provisions has also been made for deliveries and redeliveries of such volumes in excess of 10,000,000 Mcf of gas during any contract year as are mutually agreeable at the charge for such excess deliveries and with the compressor fuel requirements set forth in the storage agreement.

It is stated that as consideration for providing the storage service, Washington 28 would charge ANR a monthly fee based on the estimated cost of constructing, owning and operating the facilities for initial development of 10,000,000 Mcf of working storage capacity and that such monthly fee is estimated at $799,000. It is asserted that the storage agreement provides for a one time adjustment of this fee, upward or downward, not later than six months prior to the commencement of storage service to reflect the then current estimate of the cost of providing such storage service and that the term of the storage agreement between ANR and Washington 28 would be twenty years commencing on April 1, 1987, or such other date as specified in the storage agreement and is identical to that for the gas storage agreement between ANR and Transco.

In order to render the storage service proposed herein, Washington 28 proposes to acquire, develop and operate the Washington 28 gas field, Washington Township, Macomb County, Michigan, for an initial 10,000,000 Mcf of working storage capacity. Such field can be developed to an ultimate working storage capacity of 15,000,000 Mcf, it is alleged. In order to develop and operate the subject storage field, Washington 28 proposes to acquire eighteen existing wells, to rehabilitate six of these wells for injection/withdrawal, to plug two wells, to replug three wells, to convert seven wells to observation, to drill and complete seven new injection/withdrawal wells, and to construct a gathering system and other appurtenances. Washington 28 further proposes to construct and operate a 4,000 horsepower class compressor station along with gas metering and regulating facilities, and other appurtenant facilities. Total base gas requirements would be 2,562,000 Mcf, it is stated.

The cost of facilities associated with the proposed 10,000,000 Mcf development is estimated to be $35,815,000.

It is explained that the subject amendment to application is a companion to the amendment to the application filed by ANR in Docket No. CP82-420-002 and will affect applications made by Transco in Docket No. CP82-503-001 and Algonquin Gas Transmission Company in Docket No. CP82-119-002. Furthermore, it is indicated that amendments to applications will be filed by Great Lakes

Gas Transmission Company in Docket No. CP82-428-002 for authorization to transport gas for Transco and by Michigan Consolidated for authorization to transport gas for ANR for the account of Transco in Docket No. CP82-502-002.

Applicant submits that the storage service proposed herein is and would be required by the present and future public convenience and necessity in that Transco requires additional volumes of gas and storage thereof as detailed in its applications discussed above.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before August 29, 1984 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commissions's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21576 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-575-000]

Duke Power Co., Filing

August 9, 1984.

The filing Company submits the following:

Take notice that on August 1, 1984, Duke Power Company (Duke) tendered for filing Supplmenetal Agreement No. 2, dated July 31, 1984, to the contract between Duke and the United States of America, Department of Energy, acting by and through the Southeastern Power Administration (SEPA) dated October 26, 1981. The amendment contains a proposed change in Duke's transmission rate for wheeling power and energy from the reservoir projects constructed by the Department of the Army in the Savannah River Basin, known as the Hartwell and Clark Hill Projects, to certain performance customers of the United States government located in Duke's service area in North Carolina and South Carolina. The rate proposed is $1.62/kw over the $1.51 contained in the present contract. Based on a 12-month period ending September 30, 1984, Duke estimates that the proposed change in transmission rate will increase annual revenues from SEPA by $156,420. The amendment also contains a proposed change in SEPA's rate for capacity sold to Duke and an extension of the expiration date of the contract from October 20, 1984 to a date no later than July 1, 1985.

Duke states that the proposed wheeling rate is a rate required by Duke to recover fully its transmission costs.

Duke requests an effective date of October 1, 1984.

Copies of the filing were served on the Southeastern Power Administration, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, 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 August 23, 1984. 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. 21577 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1765-001]

Elio Argentati; Application

August 9, 1984.

Take notice that on August 6, 1984, Elio Argentati filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Chairman of the Board and President, Director—Upper Peninsula Power Company

President, Director—Upper Peninsula Generating Company.

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 and 385.214). All such motions or protests should be filed on or before August 31, 1984. 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. 84-21578 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL84-28-000]

Florida Power and Light Co. et al; Motion To Consolidate

August 9, 1984.

In the matter of Florida Power and Light Co., Florida Public Service Commission, and Florida Power Corp., Motion to Consolidate.

Take notice that on July 26, 1984, Florida Power Corporation (FPC) submitted for filing its motion to consolidate Docket Nos. EL84-27-000 and EL84-28-000.

FPC moves to consolidate the above docketed proceedings, which arise on petitions for declaratory orders to determine whether jurisdiction over the rates for transmission in Florida of energy generated at cogeneration or small power production facilities is vested in the Federal Energy Regulatory Commission or in the Florida Public Service Commission.

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 Procedures (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 30, 1984. 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. 84-21579 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-50-002]

Granite State Gas Transmission, Inc.; Amendment to Application

August 9, 1984.

Take notice that on June 29, 1984, Granite State Gas Transmission, Inc. (Granite State), 120 Royal Street, Canton, Massachusetts 02021, filed in Docket No. CP84-50-002 an amendment pursuant to section 7(c) of the Natural Gas Act to its application in Docket No. CP84-50-000 for a certificate of public convenience and necessity so as to reflect an increase in the firm daily sales of natural gas to its affiliated distribution company customers, Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities), on or about November 1, 1986, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Granite State states that is is a stockholder-repurchaser of Boundary Gas, Inc., owning a 13.51 percent interest, that Boundary Gas has pending in the consolidated proceedings in Docket No. CP81-107-000, *et al.* (Phase 2), a proposal to purchase from TransCanada PipeLines Limited up to 92,500 Mcf of gas per day, beginning on or about November 1, 1986, and to receive such gas at a point of importation near Niagara Falls, New York, and that Granite State's interest entitles it to repurchase up to 12,500 Mcf of the daily volumes that would be purchased and imported by Boundary Gas.

Granite State further states that it has executed a precedent agreement with Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), to transport repurchases from Boundary Gas to delivery points in Massachusetts where Granite State receives gas from Tennessee into its own system for resale to Northern Utilities or at off-system points for resale to Bay State.

Granite State further states that is is currently authorized to provide firm daily deliveries of up to 18,226 Mcf a day to Northern Utilities and, beginning November 1, 1986, to provide firm daily deliveries of up to 80,566 Mcf a day to Bay State (both at 14.73 psia), the latter authorization for Bay State resulting from the gas supply arrangements in the Stage 2 step in the Phase 1A stipulation and agreement approved by the Commission on June 18, 1984. (*Consolidated Gas Supply Corporation, et al.*, Docket Nos. CP83-403-001, 27 FERC ¶ 61,426).

Granite State also states that it is one of the four so-called firm initial service purchasers which would begin to purchase gas from Boundary Gas on or about November 1, 1984, as a result of the Phase 1 stipulation and agreement in the Boundary Gas proceeding, approved by the Commission on February 2, 1984 (26 FERC ¶ 61,114); and pursuant to that settlement, Granite State would receive up to 9,814 Mcf of gas per day from Boundary Gas through a transportation arrangement with Tennessee. Granite State notes that the increase in the available supply from Boundary Gas proposed in Phase 2 of the Boundary Gas proceeding, from 9,814 Mcf per day to 12,500 Mcf per day, would enable it to provide an increase in its firm daily deliveries to Bay State and Northern Utilities above those presently authorized. It is further stated that 10 percent of the Boundary Gas volume would be allocated to Northern Utilities and the balance to Bay State, after allowing for proportionate sharing by each in the fuel and use requirements for Tennessee's transportation service. Therefore, Granitie State requests that, coincident with the availability of the increased purchases form the Phase 2 Boundary Gas proposal, it be authorized to increase firm daily deliveries to Northern Utilities from 18,226 Mcf of gas per day to 19,438 Mcf of gas per day and to Bay State from 80,566 of gas per day to 81,662 Mcf of gas per day (all volumes at 14.73 psia). Granite State also states that it will not require any additional facilities to increase its firm daily deliveries to Bay State and Northern Utilities as proposed in its petition for an amendment to its certificate.

Granite State also requests (1) authorization to include the cost of gas purchased from Boundary Gas in its purchased gas cost adjustments applicable to its rates for sales to Bay State and Northern Utilities; (2) waivers of §§ 154.38(d)(3) and 154.63 of the Commission's Regulations under the Natural Gas Act to the extent necessary to track changes in the rates and charges for the transportation service rendered by Tennessee; (3) relief from the reduced purchased gas cost requirement of the Commission's incremental pricing regulations, § 282.501, *et seq.*, and § 282.601, *et seq.* similar to the relief it was granted in the Phase 1 stipulation and agreement (26 FERC, page 61,284).

Any person desiring to be heard or to make any protest with reference to said amendment should on or before August 29, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determing the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,
Secretary

[FR Doc. 84-21580 Filed 8-14-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER84-574-000]

Holyoke Water Power Co. and Holyoke Power and Electric Co.;

August 9, 1984.

The filing Company submits the following:

Take notice that on July 31, 1984, Holyoke Water Power Company (HWP) and Holyoke Power and Electric Company (HP&E) (referred to herein together as the Companies) tendered for filing amendments to the three power contracts under which the net capactiy of the Mt. Tom fossil-fired generating plant in Holyoke, Massachusetts is sold at wholesale. Under the first of the three agreements, HWP sells the entire output of the plant to HP&E, its wholly-owned subsidiary, and in turn HP&E sells 39% of the output back to HWP. Under the second Mt. Tom power contract HP&E Sells approximately 23% of the output to Western Massachusetts Electric Company (WMECO), an affiliate of HWP and HP&E and HP&E in the Northeast Utilities system. Under the third contract. HP&E sells the remaining 38% of Mt. Tom's output to New England Power Company (NEPCO), which is not affiliated with the Northeast Utilities system.

HWP and HP&E tendered for filing Amendment No. 6 to each of the three power contracts. These power contracts are designated HWP Rate Schedule FPC No. 2 and HP&E Rate Schedule FPC No. 3, which is the HWP/HP&E contract referred to above; HP&E Rate Schedule FPC No. 2, which is the WMECO contract; and HP&E Rate Schedule FPC

No. 1, which is the NEPCO contract. The Companies propose that the amendments become effective on September 30, 1984.

The Companies state that the amendment to the HWP/HP&E contract and the amendment to the WMECO contract have been consented to by the purchasing utilities. In addition, the First National Bank of Boston, as successor to Old Colony Trust Company, is party to the three power contracts and has consented to the amendments. The Companies also state NEPCO has not consented to the amendment to its power contract.

The proposed amendment to three contracts will result in a total increase of $5,381,229 or 16.41% in Period II (calendar year 1984) revenues. The increase under the HP&E/HWP power contract is $2,113,354. The increase under the WMECO power contract is $1,232,792. The increase under the NEPCO power contract is $2,035,083.

The Companies state that the rate schedule amendments to the three contracts revise and add several provisions relating to the recovery of specific costs and the changes are required to assure that HWP and HP&E recover their costs of operating and selling power from the Mt. Tom Facility.

HWP and HP&E requests an effective date of September 30, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon The First National Bank of Boston, WMECO, NEPCO and the Massachusetts Department of Public Utilities.

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 August 23, 1984. 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. 84-21581 Filed 8-14-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ID-2123-000]

Richard P. Eide; Application

August 9, 1984.

Take notice that on August 3, 1984, Richard P. Eide filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director, Vice President, Cliffs Electric Service Company
Director, Upper Peninsula Generating Company

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, 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 protest should be filed on or before August 29, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-21582 Filed 8-14-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP81-296-008]

Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., Amendment to Application

August 9, 1984.

Take notice that on June 29, 1984, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP81-296-008 an amendment to its pending application filed in Docket No. CP81-296-000 for a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act to reflect the proposed construction and operation of facilities in the states of New Jersey, Pennsylvania, Massachusetts, Connecticut, and New Hampshire, and the transportation of natural gas, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Tennessee states that in its pending application filed in Docket No. CP81-296-000 on April 22, 1981, as amended on August 9, 1982, and May 2, 1983, Tennessee requested authority to render a transportation service for fourteen gas companies (Boundary Gas Customers) which are shareholders of Boundary Gas, Inc. (Boundary), and to construct and operate certain pipeline loop, compression, and measurement facilities in order to enable Tennessee to receive natural gas which Boundary proposes to import from Canada at a point near Niagara Falls, New York, and to transport such supplies, less fuel and shrinkage, to the Boundary Gas Customers.

Tennessee states that by order issued February 2, 1984, in *Boundary Gas, Inc., et al.* (26 FERC ¶ 61,114), the Commission, *inter alia*, authorized Tennessee in Phase 1 of the instant proceeding to render firm initial service to four of the fourteen Boundary Gas Customers commencing November 1, 1984, and to construct and operate a portion of the facilities applied for that purpose.

Tennessee states that the instant amendment is filed to show the facilities that Tennessee now seeks authority to construct and operate in light of the aforementioned Commission certificate issued in Phase 1 and to request authority to transport gas for a new Boundary Gas Customer, Connecticut Natural Gas Corporation (Connecticut Natural). Tennessee states that Connecticut Natural proposes to purchase 2,000 Mcf of gas per day of the 4,500 Mcf per day previously proposed to be purchased by National Fuel Gas supply Corporation (National Fuel) from Boundary. Accordingly, Tennessee's amendment reflects a reduction in the volumes Tennessee proposes to transport for National Fuel.

The maximum daily volumes which Tennessee seeks authority to transport are the volumes which Boundary proposes to resell to each of the Boundary Gas Customers, less fuel and use volumes. As more fully shown in the amended application, the total daily maximum transportation volume for the fifteen Boundary Gas Customers is 89,869 Mcf.

In order to render the above transportation service, Tennessee proposes to construct and operate 78.6 miles of 30-inch main line loop, 25.9 miles of lateral line loop, a total of 16,300 of compressor horsepower, and regulating facilities, as set forth more fully in the amended application. Tennessee states that the total estimated direct and indirect cost for the above facilities is $88,183,000.

Tennessee states that all of the above facilities have been evaluated in the Final Environmental Impact Statement

for the Tennessee/Boundary Looping Project in Docket No. CP81-296-000.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before August 29, 1984 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21583 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-567-000]

Wisconsin Power and Light Co.; Filing

August 9, 1984.

The filing Company submits the following:

Take notice that on August 1, 1984, Wisconsin Power and Light Company (Wisconsin) tendered for filing proposed changes in its W-1, W-2, and W-3 Electric Service Tariffs, Wholesale For Resale. The Company has proposed interim changes which would increase revenues from W-1 Customers by $157,000, from W-2 Customers by $0, and from W-3 Customers by $1,706,000 for the period the rates are collected subject to refund based on the 12-month period ending December 31, 1985. In addition, the Company is seeking permanent annual increases in W-1 revenues of $989,000, in W-2 revenues of $1,721,000 and $7,172,000 in W-3 revenues based on the same 12-month period ending December 31, 1985.

Wisconsin states that the proposed rate increase is necessary to meet rising operating costs. By its filing, the Company is requesting that the interim changes become effective on January 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon the public utility's jurisdictional customers and the Public Service Commission of Wisconsin.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, 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 August 24, 1984. 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. 84-21584 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP84-586-000, CP84-587-000, CP84-588-000, CP84-589-000, CP84-590-000, CP84-591-000, CP84-592-000, CP84-593-000, CP84-594-000]

Columbia Gas Transmission Corp., Applications

August 10, 1984.

Take notice that on July 20, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket Nos. CP84-586-000, CP84-587-000, CP84-588-000, CP84-589-000, CP84-590-000, CP84-591-000, CP84-592-000, CP84-593-000 and CP84-594-000 applications pursuant to section 7(c) of the Natural Gas Act for certificates of public convenience and necessity authorizing Columbia to transport gas on behalf of Marion Power Shovel Company, Federal Glass, Division of Federal Paper Board Company, Inc., Mansfield Sanitary, Inc., Whitacre-Greer Fireproofing Co., Transue & Williams Steel Forging, Division of Standard Alliance Industries, Inc., International Harvester Co., Lancaster Colony Corp., TRW, Inc. and National Heat Treating Service Co., Inc., respectfully, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Columbia states that by letter dated June 1, 1977, Columbia notified the Federal Power Commission that it would commence certain transportation in its jurisdictional facilities of natural gas produced and consumed entirely in the State of Ohio for customers located in that State (Ohio intrastate transportation) without first obtaining authorization to commence and continue such transportation from the Commission. It is explained that on June 10, 1977, the Commission issued a notice of Columbia's intention to initiate such Ohio intrastate transportation and requested comments or suggestions as to the propriety of Columbia's proposed operations under the Natural Gas Act and other matters. Comments were filed by Columbia, Commission Staff and numerous other parties. Columbia states that it notified the Commission of 49 Ohio intrastate transportation arrangements, all of which have been docketed by the Commission in Docket No. RP77-101. Columbia indicates that seventeen of these arrangements are still in existence and 4 of the 17 have been previously converted by Columbia to transportation under Federal authority.

It is explained that a public settlement conference was held on June 28, 1984, and that the offer of settlement filed jointly with the certificate applications is supported by all parties attending that settlement conference. Columbia submits that under the offer of settlement, Columbia agrees to convert the remaining thirteen of these transportation arrangements to transportation under Federal authority and that four of these arrangements, on behalf of distributors for system supply, would be converted to transportation under § 284.102 of the Commission's Regulations. Columbia says that the remaining nine arrangements, on behalf of end-users, would be converted to transportation under Section 7 of the Natural Gas Act. The certification applications are to effectuate the offer of settlement as to transportation arrangements for these nine end-users, it is asserted.

Columbia indicates that the docket numbers for the nine end-users are as follows:

End-users	Certificate application docket Nos.	Settlement docket nos.
Marion Power Shovel Co.	CP84-586-000	RP77-101-001
Federal Glass, Div. of Federal Paper Board Co., Inc.	CP84-587-000	RP77-101-004
Mansfield Sanitary, Inc.	CP84-588-000	RP77-101-016
Whitacre-Greer Fireproofing Co.	CP84-589-000	RP77-101-020
Transue & Williams Steel Forging, Div. of Standard Alliance Industries, Inc.	CP84-590-000	RP77-101-026
International Harvester Co.	CP84-591-000	RP77-101-031
Lancaster Colony Corp.	CP84-592-000	RP77-101-035
TRW, Inc.	CP84-593-000	RP77-101-047
National Heat Treating Service Co.	CP84-594-000	RP77-101-043

Columbia requests authorization to transport gas on behalf of the nine end-

users which are continuing to receive Ohio intrastate transportation.

Any person desiring to be heard or to make any protest with reference to said applications should on or before August 30, 1984 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding(s). Any person wishing to become a party to a proceeding(s) or to participate as a party in any hearing(s) therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no motion to intervene is filed within the time required herein, if the Commission on its own review of these matters finds that grants of the certificates are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21595 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-603-000]

Columbia Gas Transmission Corp., Request Under Blanket Authorization

August 10, 1984.

Take notice that on July 25, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP84-603-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes to transport natural gas on behalf of Bally Ribbon Mills (Bally) under the authorization issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Columbia proposes to transport up to 100 million Btu equivalent of natural gas per day for Bally for a term of one-year. Columbia states that the gas to be transported would be purchased from Trans-Continental Energy Corp. (Trans-Continental) and would be used as process gas and boiler fuel in Bally's Bally, Pennsylvania, plant.

It is indicated that Bally has made arrangements to purchase this gas from Trans-Continental and Columbia states that it would receive the gas from Trans-Continental and redeliver the gas to UGI Corporation (UGI), the distribution company serving Bally, near Bally, Pennsylvania. Further, Columbia states that depending upon whether its gathering facilities are involved, it would charge either: (1) 40.11 cents per dt equivalent for storage and transmission, exclusive of company-use and unaccounted-for gas, or (2) 44.93 cents per dt equivalent for storage, transmission and gathering, exclusive of company-use and unaccounted-for gas, as set forth in Columbia's Rate Schedule TS-1. Columbia states that it would retain 2.85 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas, as set forth in Columbia's Rate Schedule TS-1.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21596 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-607-000]

Columbia Gas Transmission Corp., Request Under Blanket Authorization

August 10, 1984.

Take notice that on July 26, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP84-607-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes to transport natural gas on behalf of Yenkin-Majestic Point Corporation (Yenkin-Majestic) under the authorization issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Columbia proposes to transport up to 70 million Btu of natural gas per day for Yenkin-Majestic for a term of one year. It is stated that the gas to be transported would be purchased from Energy Management, Inc. (EMI), and would be used as boiler fuel in Yenkin-Majestic's Columbus, Ohio, plant.

The gas purchase agreement between EMI and Yenkin-Majestic indicates that Columbia released certain gas supplies of EMI. It is stated that these supplies are subject to the ceiling provisions of Sections 103, 107 and 108 of the Natural Gas Policy Act of 1978. It is indicated that Yenkin-Majestic has purchased this released gas from EMI. It is further indicated that Columbia would receive the gas from EMI and deliver it to Columbia Gas of Ohio, Inc., the distributor serving Yenkin-Majestic, near Columbus, Ohio.

It is stated that depending upon whether its gathering facilities are involved, Columbia would charge either: (1) 40.11 cents per dt equivalent for storage and transmission, exclusive of company-use and unaccounted-for gas, or (2) 44.93 cents per dt equivalent for storage, transmission and gathering, exclusive of company-use and unaccounted-for gas. Columbia states that it would retain 2.85 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural

Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21597 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-615-000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

August 10, 1984.

Take notice that on July 27, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP84-615-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes to transport natural gas on behalf of Teledyne Ohio Steel (Teledyne) under the authorization issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Columbia proposes to transport up to 1.5 billion dekatherm equivalent of natural gas per day for Teledyne through October 31, 1984. Columbia states that the gas to be transported would be purchased from Berea Oil and Gas Corp. (Berea) and would be used as process gas and boiler fuel in Teledyne's Lima, Ohio, plant.

It is indicated that Teledyne has made arrangements to purchase this gas from Berea. Columbia states that it would receive the gas from Berea and redeliver the gas to West Ohio Gas Company (West Ohio), the distribution company serving Teledyne, near Lima, Ohio. Further, Columbia states that depending upon whether its gathering facilities are involved, it would charge either: (1) 40.11 cents per dt equivalent for storage and transmission, exclusive of company-use and unaccounted-for gas, or (2) 44.93 cents per dt equivalent for storage, transmission and gathering, exclusive of company-use and unaccounted-for gas, as set forth in Columbia's Rate Schedule TS-1. Columbia states that it would retain 2.85 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas, as set forth in Columbia's Rate Schedule TS-1.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn with 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21598 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-452-015]

Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co., Petition To Amend

August 10, 1984.

Take notice that on July 24, 1984, Columbia Gas Transmission Corporation (Columbia Gas), P.O. Box 1273, Charleston, West Virginia 25325, and Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, (referred to jointly as Petitioners) filed in Docket No. CP83-452-015 a joint petition to amend the order issued November 10, 1983, in Docket No. CP83-452-000 as to extend the special marketing program (SMP) authorized is the November 10, 1983, order from October 31, 1984, to October 31, 1985, and to amend certain provisions in the SMP, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners state that on August 1, 1983, they filed an application in Docket No. CP83-452-000 for authorization to transport gas for Exxon Corporation (Exxon) to end-users on Petitioners' systems for a period ending October 31, 1984. Petitioners further state that on November 10, 1983, the Commission authorized them to transport the subject gas for Exxon. It is also stated that the Commission authorized all producer suppliers of Petitioners and producer suppliers of other pipelines and distributors to sell and have gas transported by Petitioners as part of the SMP established in the order. Furthermore, it is asserted the Commission authorized distribution companies to buy released gas under the SMP.

Petitioners assert that they have implemented their SMP in two ways. First, it is asserted, they have agreed to transport gas sold directly by a producer to an end-user or distributor, consistent with their Phase I and Phase II transportation programs, provided that the parties agree to abide by all conditions of the SMP orders. Second, Petitioners state they have commended transporting SMP gas under the pooled concept, whereby Petitioners act as agent for participating producers to sell gas to participating eligible end-users and distributors and establish monthly posted prices to producers based upon a uniform city gate price.

Petitioners state that in April 1984, they delivered an average of approximately 52,000 dt equivalent of gas per day under their SMP for 101 end-users. It is asserted that in May, the average daily volumes and number of end-users increased to approximately 70,900 dt and 123, respectively, and that in June 1984, Petitioners delivered an average of 130,064 dt per day for 138 end-users and four distribution customers. Based upon the rising utilization of their SMP, Petitioners project that the SMP quantities sold and transported and the number of distribution companies and end-users participating in the program would continue to increase in the coming months.

Petitioners assert that the Commission's primary purposes in implementing the experimental SMPs were

(1) To encourage the recapture of lost national gas markets and the development of new gas markets and reserves;

(2) To prevent the loss of existing markets;

(3) To promote competitive prices for gas while controlling the detrimental impact such competition may have on established markets in light of the existing regulatory environment; and

(4) To assure that gas sold under the SMPs would be equally accessible to all pipelines and potential customers.

Petitioners estimate that through June 1984 they would receive take-or-pay relief due to the release of gas into the SMP amounting to $19.0 million. In addition, for gas supplies released from other pipelines into its SMP through June 1984, Petitioners estimate receiving

minimum bill relief amounting to $8.3 million.

Petitioners assert their SMP has displaced an estimated 5,500,000 million Btu of alternative fuels through June. Petitioners state that of the 138 end-users which participated in this program in June, 126 were using SMP gas in lieu of alternative fuels or for new requirements. In addition, it is claimed one of Petitioners' customers is purchasing SMP gas for sale to approximately 190 end-users for the displacement of alternative fuels.

Petitioners assert that some producers have show increased willingness to reduce their prices in order to participate in Petitioners' SMP Through June 1984, Petitioners state, they estimate that their on-system producers would have reduced their aggregate contract prices by more than $5.0 million for volumes sold into the SMP, whereas off-system producers would have reduced their contract prices by more than $789,000 for the volumes which they have sold into Petitioners' SMP

Petitioners assert that established markets have not been disturbed. Petitioners also state that they have limited the eligible purchasers to those served by their own customers. It is stated that they have not raided the core markets of other pipelines.

Petitioners further assert that the SMP has been operated in a fashion to make it accessible to all pipelines and potential customers. It is asserted that gas released by other pipelines is being sold and transported under Petitioners' SMP Furthermore, Petitioners state that 14 of their customers are now participating in the SMP Petitioners assert that they have encouraged all of their customers to participate in this program under Phase II.

Petitioners assert that there are ample reasons to support the continuation of their SMP for an additional 12 months as being consistent with the present and future public convenience and necessity. First, Petitioners assert they continue to project a substantial surplus of gas supply for the contract year ending Octber 1985. It is stated that the most recent projections indicate a surplus of gas amounting to 564,000,000 Mcf for this contract year, of which 339,000,000 Mcf are below Petitioners' aggregate take-or-pay and minimum bill volumes with their producer and pipeline suppliers.

Petitioners assert that there is every indication that they can increase producer, customer and end-user participation under their SMP. It is stated that SMP volumes sold and transported have increased by approximately 150 percent from April to June 1984, and Petitioners anticipate increased quantities during the remaining months of the SMP Petitioners state they have recently initiated their Phase II transportation program, where they have agreed to transport up to 40,000,000 dt equivalent of gas, exclusive of retainage, on a one-time basis for their customers' system supply through July 1985. Petitioners believe that most of this gas would be supplied from on-system producers and state that certain of the authorizations necessary to accomplish such transportation require an extension of the SMP

Petitioners also assert that they anticipate greater participation from their non-affiliated southwest producers in the SMP when their reduced transportation rates in Docket Nos. RP84-74-000 and RP84-75-000 go into effect on November 1, 1984. It is asserted that the new transportation rates would decrease the cost of transporting gas from offshore areas to Petitioners' market by as much as 40.0 cents per dt. It is further asserted that this would increase the netback prices available to Petitioners' on-system producers, thus encouraging additional participation in the SMP. It is stated that it would also, in all likelihood, lower city gate prices to Petitioners' customers and end-users.

In order to treat Petitioners equally with other pipelines and to provide them with the incentive to continue the transportation of gas under the SMP, Petitioners assert that the Commission should delete Ordering Paragaph (H) of the November 10, 1983, order to permit them to retain all revenues from SMP transportation. Petitioners speculate that the apparent reason for the inclusion of Paragraph (H) was that Petitioners' rate filings in Docket Nos. RP82-119-000 and RP82-120-000 did not include representative transportation volumes or revenues. However, Petitioners state their rate filings in Docket Nos. RP84-74-000 and RP84-75-000, which go into effect on November 1, 1984, include both representative transportation volumes and revenues. Under such circumstances, Petitioners assert, they should be permitted to retain all revenues from the SMP transportation.

Petitioners state that their rate filings in Docket Nos. RP84-74-000 and RP84-75-000 have based transportation rates upon the methodology established in the recent *Tempro* (25 FERC ¶ 61,398) and *PanMark* (26 FERC ¶ 61,341) orders. It is further stated that these rates are scheduled to go into effect on November 1, 1984, the first day of this proposed extension of the SMP It is proposed that these rates be applied to all transportation under the SMP, subject to the ultimate determination in those dockets.

Petitioners also propose that the Commission revise its computation of Petitioners' weighted average cost of gas (WACOG) to eliminate their pipeline suppliers' demand charges and minimum bill commodity charges from the computation. It is asserted that both the WACOG concept and the manner in which it was computed would create a severe disincentive for their producer suppliers to participate in the SMP. It is stated that in the month of June 1984, 56 percent of their SMP volumes came from supplies released by other pipelines. It is explained that of the remaining 44 percent supplied by on-system producers, 42,710 dt equivalent of gas per day, or 66 percent of the total on-system supply, is being supplied by Petitioners' affiliate, Columbia Gas Development Corporation. Therefore, it is asserted that only 15 percent of the total volumes sold under the SMP during June came from on-system, non-affiliated producers. It is stated that this is contrary to one of the primary purposes of the SMPs, to maximize take-or-pay relief to Petitioners and their customers.

It is asserted that the present computation of the WACOG is inconsistent with the Commission's reasons for including Ordering Paragraph (C) in the November 10, 1983, order. Petitioners assert that the Commission included the WACOG condition in their SMP in order to assure that the release and sale of gas under this program would not cause Petitioners' sales rates to increase. It is stated that an increase would occur if the average cost of gas released by Petitoners and sold under the SMP were less than Petitioners' average avoidable cost of gas. Petitioners assert that fixed charges paid by Petitioners to their pipeline suppliers in their WACOG should not be included, since they cannot be avoided, and that they would be paid by Petitioners regardless of the volumes sold or transported under the SMP Therefore, it is stated, only those gas purchase costs which vary with the amount of gas purchased should be included in Petitioners' WACOG.

Petitioners assert that a modification of the computation of Petitioner's WACOG is also justified in order to allow them to compete on a non-discriminatory basis with other pipeline SMP's.

It is asserted that Petitioners' SMP must compete with the SMPs and other transportation programs of pipelines which do not buy gas from other pipelines. It is stated that the

Commission has recently approved an SMP for Texas Eastern Transmission Corporation (Texas Eastern), a pipeline which serves several joint markets with Petitioner. It is asserted that Texas Eastern is a high-cushion pipeline company, primarily because of its warranty contract with Gulf Oil Corporation. As a result, it is stated, Texas Eastern's WACOG is so low as to permit it to release and sell all Natural Gas Policy Act of 1978 (NGPA) Section 103 gas under its SMP Petitioners state that this places them and their producer-suppliers at a severe disadvantage, because the artificially high computation of Petitioners' WACOG permits them to release very little Section 103 gas into the SMP. It is stated that producers are willing to sell section 103 gas under an SMP at a lower price than NGPA section 102 or section 107 gas, since the price discount for section 103 gas is not nearly as large as for the other categories. Therefore, it is asserted Texas Eastern which already has a sales advantage over Petitioners would also have a transportation advantage through the present WACOG computation as applied to Petitioners.

Petitioners assert that revision of the WACOG computation would reduce their WACOG from $3.43 per dt equivalent of gas to $3.04 per dt, at their currently effective rates. Petitioners assert that the reduction would make more on-system production available to their SMP, would enable Petitioners' SMP to compete on a more equal basis with the SMP's of other pipelines, and would serve to lower the cost of SMP gas to distibutors and end-users on Petitioners' system, while protecting their sales customers from increased prices as the result of this program.

Petitioners also request a clarification of Ordering Paragraph (J), the core market condition of their SMP Petitioners state their concern in this regard is occasioned by the recent orders which restrict SMP purchases to customers or end-users in the sales service areas of these pipelines. Such a restriction, it is stated, if applied to Petitioners' SMP would be wholly inappropriate, because it would inhibit Petitioners and their suppliers from releasing high-cost gas to serve noncore markets in several instances. Petitioners state they have reached an agreement in principle with Texaco Inc., for the release of gas priced above-WACOG for sale to Bridgeline Gas Distribution Company, an intrastate pipeline affiliate of Texaco Inc. Petitioners state they have entered into, or plan to enter into, similar arrangements with other producers in the southwest. It is asserted that these arrangements would not displace core market sales by any other pipeline. Petitioners state these releases provide take-or-pay relief to Petitioner and allow it to purchase less relatively high-cost gas, thereby decreasing their overall cost of gas. Petitioners state that as long as the price of gas to Petitioner is above their WACOG and no core markets of other pipelines are being displaced, these types of arrangements are in the public interest. It is also stated that, without this SMP, such arrangements could go forward on a self-implementing basis under Section 284.102 of the Commission's Regulations. Petitioners assert that there is no reason to prevent such releases of above-WACOG gas for transportation and sale to non-core market customers through the restriction described above.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 30, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21594 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-550-000]

Columbia Gulf Transmission Co.; Application

August 10, 1984.

Take notice that on July 5, 1984, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP84-550-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that pursuant to their transportation agreement, Columbia Gulf would transport, on an interruptible best-efforts basis, 2,000 Mcf of natural gas per day produced from New Ulm Field, Austin County, Texas, from nearby Superior Oil's Processing Plant to Tennessee's ten-inch pipeline also in Austin County. Columbia Gulf would utilize its six-inch pipeline facilities for transporting these gas supplies, it is asserted.

Columbia Gulf states it will charge a rate of 0.99 cent per Mcf of gas received for transportation and that the service will continue for an initial period of four years and yearly thereafter.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 30, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Columbia Gulf to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21599 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-555-000]

Dow Intrastate Gas Co., Application

August 10, 1984.

Take notice that on June 29, 1984, Dow Intrastate Gas Company (Dow Intrastate), Route 1, Box 35, Plaquemine, Louisiana 70764, filed in Docket No. CP 84-555-000 an application pursuant to § 284.127 of the Commission's Regulations and section 311(a) of the Natural Gas Policy Act of 1978 for authorization to transport gas on behalf of Energy Gathering, Inc. (EGI), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Dow Intrastate proposes to transport on behalf of EGI, a Louisiana Hinshaw pipeline, volumes of gas that The Dow Chemical Company (Dow Chemical) proposes to purchase from EGI for use in its petrochemical plant in Plaquemine, Louisiana. It is explained that under the terms of a June 29, 1984, gas transportation agreement Dow Intrastate would transport up to 30 billion Btu of natural gas per day, on a best-efforts basis, from a point of delivery located in section 55, Township 11 South, Range 4 East, Vermilion Parish, Louisiana, and redeliver for the account of EGI thermally equivalent volumes to a point of redelivery in Plaquemine, Iberville Parish, Louisiana. The proposed transportation service is projected to continue for a primary term of five years from initial delivery and from year to year thereafter unless cancelled upon sixty days written notice by either party. It is maintained that the subject volumes can only be delivered to Dow Chemical by utilizing facilities owned by Dow Intrastate or other intrastate pipelines.

It is further stated that EGI would pay Dow Intrastate a transportation charge of 15.0 cents per million Btu as a fair and equitable charge for the service rendered. It is asserted that this rate was previously approved by the Commission in orders issued on August 12, 1981, in Docket No. ST81-268-000, 16 FERC ¶ 61,129, and on July 30, 1982, in Docket Nos. CP82-356-000 and ST82-322-000, 20 FERC ¶ 61,126, for transportation through Dow Intrastate's system.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 30, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21600 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-573-000]

Kentucky West Virginia Gas Co., Application

August 10, 1984.

Take notice that on July 13, 1984, Kentucky West Virginia Gas Company (Applicant), Plaza Bank Building, P.O. Box 1388, Ashland, Kentucky 41101, filed in Docket No. CP84-573-000 a notice of the transfer of certain natural gas producing properties or in the alternative an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon such properties, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it intends to transfer certain natural gas production properties, appurtenances and the service rendered thereby to its affiliate, KEPCO, Inc. (KEPCO). Applicant further states that it does not believe the transfer requires abandonment authorization pursuant to section 7(b) of the Natural Gas Act since KEPCO is concurrently filing an application for a certificate pursuant to section 7(c) of the Natural Gas Act to continue the identical service. Applicant requests that the Commission find that Applicant's alternative application for abandonment authorization is moot. Applicant avers that to the extent that the Commission determines that abandonment authorization is required, Applicant states that it is applying to the Commission for the grant of such authorization pursuant to section 7(b) of the Natural Gas Act.

Applicant states that the transfer of properties to KEPCO is in furtherance of a general corporate reorganization of Applicant's operations along functional lines. Applicant explains that the properties to be conveyed include all of Applicant's production properties that are committed or dedicated to interestate commerce within the meaning of the Natural Gas Policy Act of 1978 (NGPA) and which are not excluded from the Commission's Natural Gas Act jurisdiction by operation of the NGPA. Applicant explains further that upon completion of the transfer all exploration, development and production facilities and operations in the Applicant's organization would be in KEPCO, while all interstate transportation facilities and operation would remain in Applicant.

It is stated that the net book value of the transferred properties is $2,037,317.17 Applicant avers that the proposed restructuring would not require the construction of any facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 30, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21601 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-151-002]

Panhandle Eastern Pipe Line Co., Amendment to Application

August 10, 1984.

Take notice that on July 25, 1984, Panhandle Eastern Pipe Line Company (Panhandle), Post Office Box 1642, Houston, Texas 77001, filed in Docket No. CP84-151-002 an amendment to its pending application filed in Docket No. CP84-151-000 pursuant to section 7(c) of the Natural Gas Act to reflect the continued operation of facilities at the receipt point in Kingfisher County, Oklahoma, for the proposed transportation service for Kansas Power and Light Company (KP&L), all as more fully set forth in the amendment to the pending application which is on file with the Commission and open to public inspection.

Panhandle indicates that its pending application in Docket No. CP84-151-000 requested authorization to transport gas for KP&L pursuant to its August 12, 1983, transportation contract with KP&L. Panhandle indicates that it commenced the transportation service for KP&L on August 15, 1983, pursuant to Part 284 of the Regulations and constructed metering and appurtenant facilities at the Kingfisher County, Oklahoma, receipt point to carry out that service. Panhandle by its amendment now proposes to continue to operate the Kingfisher County, Oklahoma, facilities pursuant to Section 7(c) of the Natural Gas Act.

Panhandle indicates that KP&L would reimburse Panhandle for the $300,000 cost of constructing and installing the facilities.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before August 30, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21602 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-152-002]

Panhandle Eastern Pipe Line Co., Amendment to Application

August 10, 1984.

Take notice that on July 25, 1984, Panhandle Eastern Pipe Line Company (Panhandle), Post Office Box 1642, Houston, Texas 77001, filed in Docket No. CP84-152-002 an amendment to its pending application filed in Docket No. CP84-152-000 pursuant to section 7(c) of the Natural Gas Act to reflect the continued operation of facilities at the receipt point in Kiowa County, Kansas, for the proposed transportation service for Kansas Power and Light Company (KP&L), all as more fully set forth in the amendment to the pending application which is on file with the Commission and open to public inspection.

Panhandle indicates that its pending application in Docket No. CP84-152-000 requested authorization to transport gas for KP&L pursuant to its October 13, 1983, transportation contract with KP&L. Panhandle indicates that it commenced a transportation service for KP&L on January 26, 1984, pursuant to Part 284 of the Regulations and constructed metering and appurtenant facilities at the Kiowa County, Kansas, receipt point to carry out that service. Panhandle by its amendment now proposes to continue to operate the Kiowa County, Kansas, facilities pursuant to section 7(c) of the Natural Gas Act.

Panhandle indicates that KP&L would reimburse Panhandle for the $20,000 cost of constructing and installing the facilities.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before August 30, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21603 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-152-002]

Panhandle Eastern Pipe Line Co.; Amendment To Application

August 10, 1984.

Take notice that on July 25, 1984, Panhandle Eastern Pipe Line Company (Panhandle), Post Office Box 1642, Houston, Texas 77001, filed in Docket No. CP84-153-002 an amendment to its pending application filed in Docket No. CP84-153-000 pursuant to section 7(c) of the Natural Gas Act to reflect the continued operation of facilities at the receipt point in Dewey County, Oklahoma, for the proposed transportation service for Kansas Power and Light Company (KP&L), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Panhandle indicates that its pending application in Docket No. CP84-153-000 requested authorization to transport gas for KP&L pursuant to its August 23, 1983, transportation contract with KP&L. Panhandle states that it constructed the facilities at the Dewey County, Oklahoma, receipt point under its budget authorization to purchase gas from Fitkin Petroleum Corporation (Fitkin). Panhandle now indicates that the gas previously purchased from Fitkin has now been released by Panhandle and is currently being purchased by KP&L. Panhandle now seeks authorization to continue to operate the facilities to implement its proposed transportation service for KP&L.

Panhandle indicates that it costs $40,000 to construct and install the Dewey County, Oklahoma, facilities.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before August 30, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR

157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21560 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP81-162-001]

Panhandle Eastern Pipe Line Co., Petition To Amend

August 10, 1984.

Take notice that on July 11, 1984, Panhandle Eastern Pipe Line Company (Panhandle), Post Office Box 1648, Houston, Texas 77001, filed in Docket No. CP81-162-001 a petition to amend the order issued August 27, 1981, in Docket No. CP81-162-000 pursuant to section 7(b) of the Natural Gas Act so as to authorize the abandonment by sale to Consumers Power Company (Consumers), of a gas regulating station located in Oakland County, Michigan, all as more fully set forth in the petition to amend which is on file with the Commission and open the public inspection.

Panhandle states that the subject station is Panhandle's Clawson main line regulating station No. J3-707A which is located in Oakland County, Michigan. Panhandle indicates that in its filing in Docket No. CP81-162-000, it requested authority to abandon by sale to Consumers certain facilities and that the request was approved by order issued August 27, 1981. Panhandle states that subsequently it discovered that the Clawson station, which should have been included in the facilities authorized to be abandoned by sale in Docket No. CP81-162-000, was inadvertently omitted. Panhandle requests abondonment authorization in order to sell the Clawson station to Consumers for the sum of $24,351 pursuant to a letter agreement between Consumers and Panhandle dated May 24, 1984.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 384.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21561 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-599-000]

Panhandle Eastern Pipe Line Co., Request Under Blanket Certificate

August 10, 1984.

Take notice that on July 25, 1984, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP84-599-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas (18 CFR 157.205) that Panhandle proposes to transport natural gas on behalf of R.-R. Donnelley & Sons Company (Shipper), under authorization issued in Docket No. CP83-83-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Panhandle proposes to transport up to 900 Mcf of natural gas per day and up to 219,000 Mcf of natural gas per year on behalf of Shipper. It is asserted that Panhandle would receive the gas at an existing point of interconnection with Union Texas Products Corporation, the seller, in Major County, Oklahoma, and deliver equivalent volumes (less four percent reduction for fuel) to Central Illinois Public Service Company in Douglas County, Illinois, which in turn would make the ultimate delivery to Shipper in Matton, Illinois. In addition, Panhandle requests "flexible authority" to add and delete sources of supply or receipt/delivery points. It is asserted that Panhandle would file additional information to insure that any changes in sources or receipt/delivery points would be on behalf of the same end-user at the same location and under the same terms and conditions as would be authorized in Docket No. CP84-599-000. It is further asserted that Panhandle's transportation charge would be based upon Panhandle's Rate Schedule OST and there is no 5-cent added incentive charge proposed.

Shipper would utilize the gas transported for boiler and press-dryer use, it is stated. Panhandle further states that it would not construct or add to its existing facilities to provide this transportation service. The term of this proposed service would be from the date automatic authorization expires until the earlier of (1) 18 months from the effective date of the service, (2) termination of the authorization as provided by Subpart F of 18 CFR Part 157, or (3) termination of the service by any of the parties, it is explained.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21562 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-618-000]

Panhandle Eastern Pipe Line Co.; Request Under Blanket Certificate

August 10, 1984.

Take notice that on July 30, 1984, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP84-618-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Panhandle proposes to transport natural gas for Anderson, Clayton, & Company (Shipper) under the authorization issued in Docket No. CP83-83-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Panhandle proposes to transport up to 3,000 Mcf of natural gas per day and up to 825,000 Mcf of natural gas per year on behalf of Shipper. It is stated, Shipper is purchasing gas from Union Texas

Products Corporation at the tailgate of the Union Texas Petroleum Plant which is attached to Panhandle's system in Major County, Oklahoma. From that point Panhandle proposes to transport and deliver equivalent volumes (less four precent reduction for fuel) to Shipper in Morgan County, Illinois. Panhandle attests that Shipper is an existing direct industrial sales customer. Panhandle also requests "flexible authority" to add and delete sources of supply or receipt/delivery points. It is asserted, Panhandle would file additional information to insure that any changes in source or receipt/delivery points would be on behalf of the same end-user at the same location and under the same terms and conditions as would be authorized in Docket No. CP84-618-000. It is further asserted that Panhandle's transportation charge would be based upon Panhandle's Rate Schedule OST and there is no 5-cent added incentive charge proposed.

Shipper would utilize the natural gas transported for essential agricultural use in feedstock, process, plant protection and boiler fuel use, it is stated. Panhandle further states that it would not construct or add to its existing facilities to provide this transportation service. The term of the proposed service would be from the date automatic authorization expires until the earlier of: (1) Eighteen months from the May 17, 1984, date of the transportation agreement, (2) termination of authorization as provided by Subpart F of 18 CFR, Part 157, or (3) termination of the service by any of the parties, it is explained.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21563 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-625-000]

Panhandle Eastern Pipe Line Co., Request Under Blanket Certificate

August 10, 1984.

Take notice that on July 31, 1984, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642 Houston, Texas 77001, filed in Docket No. CP84-625-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Panhandle proposes to transport natural gas for B. F. Goodrich Company (Shipper) under the authorization issued in Docket No. CP83-83-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport up to 4,200 Mcf of natural gas per day and up to 912,500 Mcf of natural gas per year on behalf of Shipper. It is stated that Shipper is purchasing gas from Union Texas Products Corporation (Union Texas) at the existing interconnection of Union Texas' products plants and Panhandle's system in Major County, Oklahoma, and from Yankee Resources, Inc., at the tailgate of the Oklahoma Natural Gas Company plant which is attached to Panhandle's system in Dewey County, Oklahoma. From those points, Panhandle proposes to transport and deliver equivalent volumes (less four percent reduction for fuel) to Central Illinois Light Company (CILCO) at an existing sales station located in Tazewell County. CILCO in turn would make the ultimate delivery to Shipper's plant located in Henry, Illinois, it is stated. Panhandle also requests "flexible authority" to add and delete sources of supply or receipt/delivery points. It is asserted that Panhandle would file additional information to insure that any changes in sources or receipt/delivery points would be on behalf of the same end-user at the same location and under the same terms and conditions as would be authorized in Docket No. CP84-625-000. It is further asserted that Panhandle's transportation charge would be based upon Panhandle's Rate Schedule OST and there is no 5-cent added incentive charge proposed.

Shipper would utilize the gas transportated for steam generation and process heating, it is stated. Panhandle further states that it would not construct or add to its existing facilities to provide this transportation service. The term of the proposed service would be from the date automatic authorization expires until the earlier of: (1) Eighteen months from the July 5, 1984, date of the transportation agreement, (2) termination of the authorization as provided by Subpart F of 18 CFR Part 157, or (3) termination of the service by any of the parties, it is explained.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21564 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-300-001]

Texas Eastern Transmission Corp.; Petition To Amend

August 10, 1984.

Take notice that on July 26, 1984, Texas Eastern Transmission Corporation (Petitioner), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP83-300-001 a petition to amend the order issued October 6, 1983, in Docket No. CP83-300-000 pursuant to section 7(c) of the Natural Gas Act so as to authorize the installation of measuring and regulating facilities at a location other than the location authorized in the October 6, 1983, order, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that in Docket No. CP83-300-000 it was authorized to sell natural gas to the City of Kennett, Missouri (Kennett), in lieu of Associated Natural Gas Company (Associated) and to construct and operate a sales measuring facility to establish a separate sales delivery point to Kennett at a location immediately adjacent to Petitioner s existing Measuring Station No. 079 which would continue to be used for sales to certain of Associated's remaining customers. The new measuring facility was to be located entirely within Arkansas Power and

Light Company's (Arkansas Power) "Jim Hill Power Plant" property site, it is explained.

Petitioner avers that at the time the application was filed, it did not anticipate that there would be any problems in negotiating a favorable lease with Arkansas Power regarding the proposed measuring station site. However, subsequent to receipt of authorization, Arkansas Power submitted a proposed lease agreement which allegedly contained provisions that were unfavorable to the interests of both Petitioner and Kennett. As a result of its unsuccessful efforts to negotiate a favorable agreement with Arkansas Power, Petitioner is requesting authorization herein to construct and operate the Kennett sales measuring facility on an existing fenced scraper barrel receiver site located on its existing Line No. 1-0. It is explained that the proposed new site is located immediately north of the site approved by the Commission's order of October 6, 1983.

Petitioner states that the estimated cost of constructing the measuring and regulating facilities at the new site is the same as the estimated cost reflected in Exhibit K of its original application for the Arkansas power site. Additionally, Petitioner avers that from an environmental viewpoint, the new location is as suitable as the Arkansas Power site previously approved by the Commission.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 30, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-21565 Filed 8-14-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP84-584-000]

Texas Gas Transmission Corp., Request Under Blanket Authorization

August 10, 1984.

Take notice that on July 20, 1984, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP84-584-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Texas Gas proposes to transport natural gas on behalf of the Georgia-Pacific Corporation (Georgia-Pacific), under authorization issued in Docket No. CP82-407-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas states that it proposes to receive from Georgia-Pacific up to 1,600 Mcf per day of natural gas on an interruptible basis and redeliver equivalent volumes to the Cincinnati Gas & Electric Company for the account of and for further delivery to Georgia-Pacific at its plant in Franklin, Ohio. Texas Gas states that it is possible for 584,000 Mcf to be transported on an annual basis.

Texas Gas states that the term of the transportation agreement would continue in effect until June 30, 1985, or until the expiration of the term of any extension of the experimental transportation program set up by the Commission in Order No. 234-B.

Texas Gas proposes to charge for its services the rate provided in its Rate Schedule T-1/Z-4 on file with the Commission, plus to the extent applicable an added incentive charge of 5.0 cents per million Btu. Texas Gas would also retain 4.56 percent of the volumes received as reimbursement for fuel gas.

Texas Gas indicates that the proposed transportation would be rendered through the use of its existing facilities and that the proposed service would not require the construction of any new facilities.

Texas Gas also indicates that the gas would be used for boiler fuel for steam generation at Georgia-Pacific's plant in Franklin, Ohio. Texas Gas also states that Georgia-Pacific has purchased its gas supplies from Fuel Services, Inc. (Fuel Services), and McConathy Production Company (McConathy) and that there are no intermediaries participating in the subject transaction.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-21566 Filed 8-14-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP82-503-002]

Transcontinental Gas Pipe Line Corporation; Amendment

August 10, 1984.

Take notice that on June 29, 1984, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP82-503-002 pursuant to section 7(c) of the Natural Gas Act an amendment to its pending application filed in Docket No. CP82-503-000 so as to reflect: (1) A reduction in the rates for service under Rate Schedule T-NSS, (2) additional commitments for this service, and (3) the phased construction of Canadian transportation facilities, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

It is explained that on August 20, 1982, Transco filed an application in Docket No. CP82-503-000 requesting authority to render the Transco-Niagara Storage Service consisting of 40,000,000 Mcf of top storage capacity and up to 600,000 Mcf of gas per day of withdrawal capacity. Transco states that on May 2, 1983, it filed an amendment in Docket No. CP82-503-001 which reduced by 50 percent the amount of storage service to be rendered by Transco resulting from the January 27, 1983, decision of the National Energy Board of Canada (NEB) reducing by one-half the authorized export quantities of Canadian gas.

Subsequently, the estimated costs to expand Transco's Leidy Line and market area facilities, which are necessary to deliver Transco's Canadian storage quantities to its customers, have been reduced, it is asserted, and, in addition, it is further asserted that the upstream

storage and transportation services have been changed resulting in a reduction in the proposed charges for these services. Therefore, Transco states that the combination of the reduced estimated costs of facility construction and the reduced proposed charges for upstream services necessitated this amendment to reflect a change in the proposed initial rates for Transco's storage service to be provided under Rate Schedule T-NSS. Transco now proposes a monthly demand charge of $11.21 per dt equivalent of contract demand, a monthly capacity charge of 3.4 cents per dt equivalent of annual capacity, and injection and withdrawal charges of 7.6 cents dt equivalent.

Furthermore, Transco states that, in a recent survey of its customers, additional commitments for service under Rate Schedule T-NSS have been received. Therefore, Transco amends its proposal to reflect the following new storage customers (in dekatherms):

Customer	Capacity	Daily demand
City of Bowman	6,000	100
Gas Light Company	5,000,000	100,000
Piedmont Natural Gas Company, Inc	1,500,000	50,000
Social Circle, Georgia	6,000	200
South Jersey Gas Company	1,000,000	10,000

Transco also states that Sugar Hill, Georgia, has withdrawn its commitment for 6,000 dt of capacity and 100 dt of daily demand under the Transco-Niagara Storage Service. Consequently, Transco also amends its proposal deleting its request for authorization to render the proposed storage service to Sugar Hill, Georgia. However, Transco states that, as a result of these additional commitments, the demand for the Transco-Niagara Storage Service exceeds the level of service for which Transco has requested authorization. Transco states that its intention is to secure additional storage capacity and withdrawal capability to meet these new commitments. Such additional storage service will be the subject of a separate filing by Transco.

Finally, Transco states that TransCanada PipeLines Limited (TransCanada) has filed an application with the NEB for authorization to construct the facilities necessary to deliver to Transco, as well as others, the quantities of Canadian natural gas which has been authorized for export to the United States. Transco states that TransCanada's proposal reflects a three-year construction program whereby 50 percent of Transco's storage quantities would be available during the 1987-88 winter with 100 percent of the storage volumes available November 1, 1988. Therefore, Transco amends its proposal to commence the Transco-Niagara Storage Service on these dates.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before August 30, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Persons having heretofore filed need not do so again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21557 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-598-000]

Transcontinental Gas Pipe Line Corporation; Request Under Blanket Authorization

August 10, 1984.

Take notice that on July 24, 1984, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP84-598-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Transco proposes to transport natural gas for an eligible end-user under the authorization issued in Docket No. CP82-426-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco proposes to transport up to 38,502 dt equivalent of natural gas per day for the account of United States Steel Corporation (U.S. Steel) pursuant to a gas transportation service agreement (Agreement) dated June 12, 1984. The proposed transportation service would be for an initial term expiring on June 30, 1985, it is stated.

Transco states that the gas is purchased by U.S. Steel from Delhi Gas Pipeline Corporation. It is indicated that Transco would receive the gas at existing interconnects with Columbia Gulf Transmission Company (Columbia Gulf) in Evangeline Parish and Terrebonne Parish, Louisiana, and would redeliver equivalent quantities less compressor fuel and line loss make-up to an existing interconnect between Transo and Philadelphia Electric Company (PECO) in Bucks County, Pennsylvania. Further, it is stated that PECO would transport and deliver such gas to U.S. Steel's Fairless Works in Fairless Hills, Pennsylvania. Transco indicates U.S. Steel is considering alternatives in its source of supply of natural gas for its Fairless Works. Such alternatives may involve different suppliers and/or changes in receipt/delivery points. Therefore Transco is requesting flexible authority for additions or deletions of receipt and/or delivery points.

Transco states that it would charge U.S. Steel pursuant to Transco's Rate Schedule T-11. In addition Transco indicates PECO would charge U.S. Steel in accordance with its "TS" Gas Transportation Service and the Tariff of the Company (Gas-PA. P.U.C. No. 25). Transco states that PECO indicates PECO has sufficient capacity to perform its part of the transportation service without detriment or disadvantage to its other customers. Transco indicates U.S. Steel would use this gas for blast furnace feedstock, open hearth and soaking pits primarily.

Any person or the Commission s staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (13 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21558 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-585-000]

United Gas Pipe Line Company; Request Under Blanket Authorization

August 10, 1984.

Take notice that on July 20, 1984, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77001, filed in Docket No. CP84-585-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that United proposes to construct and operate a sales tap to provide natural gas service through a distributor to an end-user under the authorization in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that service would be provided to Tyler Asphalt Company (Tyler), an industrial end-user, served through Entex, Inc. (Entex), United's Existing distributor-customer. United states that it currently sells gas to Entex pursuant to a service agreement between the parties dated December 13, 1979, under Rate Schedule DG-N. United proposes to install a 2-inch sales tap on its 6-inch Tyler-Lindale pipeline in Smith County, Texas. United proposes to supply approximately 2,160 Mcf of gas per day and states that the tap would not increase the contractual minimum daily quantity to Entex nor would it cause an increase in Entex's allocated entitlement under United's curtailment plan. United further states that it has sufficient capacity to provide gas service to the proposed sales tap without detriment or disadvantage to its other existing customers.

As proposd, Entex would reimburse United for all costs connected with the construction of the proposed tap.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21569 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-609-000]

United Gas Pipe Line Company; Request Under Blanket Authorization

August 10, 1984.

To notice that on July 27, 1984, as supplemented August 1, 1984, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77001, filed in Docket No. CP84-609-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that United proposes to construct and operate a 1-inch sales tap to supply an estimated 100 Mcf of natural gas annually to the residence of Mr. Rich McDaniel through Entex, Inc. (Entex) under its Rate Schedule DG-N, under the authorization issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that United was authorized in Docket No. G-232 to sell natural gas to Entex for resale and distribution through Entex's distribution system serving Arp, Texas, and the surrounding environs. It is further stated that the currently effective service agreement between United and Entex covering such service is dated December 13, 1979. It is averred that the proposed sales tap would be located on United's Latex-Ft. Worth 16-inch line, located in the J.C. Davis Survey, Tarrant County, Texas. It is further averred that the proposal would cause no increase in Entex's contractual maximum daily quantity nor its entitlement under United's curtailment plan. It is stated that United has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to the authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21570 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-621-000]

United Gas Pipe Line Company; Request Under Blanket Authorization

August 10, 1984.

Take notice that on July 30, 1984, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77001, filed in Docket No. CP84-621-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that United proposes to construct and operate a 1-inch sales tap to supply an estimated 100 Mcf of natural gas annually to Liberty Hill Baptist Church through Entex, Inc. (Entex), under the authorization issued in Docket No. CP82-430-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that United currently sells natural gas to Entex pursuant to a service agreement between the parties dated December 13, 1979, under United's Rate Schedule DG-N. It is futher stated that such service was authorized by order dated November 10, 1942, in Docket No. G-232. It is averred that United would construct a 1-inch sales tap on its 18-inch Latex-Ft. Worth pipeline located in H.E. Watson Survey, Wood County, Texas. It is further averred that the end use of gas sold to Entex is for residential purposes and that the proposed tap would not affect the contractual maximum daily quantity to Entex nor would it cause an increase in Entex's allocated entitlement under United's curtailment program currently in effect. It is stated that United has sufficient capacity to provide gas service to the proposed sales tap without detriment or disadvantage to its other existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the

time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21571 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-494-000]

Western Gas Interstate Company; Application

August 10, 1984.

Take notice that on June 15, 1984, Western Gas Interstate Company (Western), 900 United Bank Tower, 400 West 15th Street, Austin, Texas 78701, filed in Docket No. CP84-494-000 an application pursuant to sections 7(c) of the National Gas Act for a certificate of public convenience and necessity authorizing the continued operation of certain transmission facilities, continuation of a sale for resale and delivery of natural gas to Southern Union Gas Company (SUG), continuation of natural gas exchanges with Phillips Petroleum Company (Phillips), the addition of three delivery points and deletion of one delivery point under the Phillips exchange agreements, and granting blanket authority to add and delete delivery points under the Phillips exchange agreements, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Western states that it has exchanged natural gas with Phillips in the Texas and Oklahoma Panhandles since 1969 pursuant to three gas exchange agreements. Western states that it previously believed its participation in the exchanges was not subject to the Commission's jurisdiction under the Natural Gas Act. An in-depth review by Western of the exchange agreements has raised questions whether the exchanges and the existing facilities used in the exchanges are subject to the Commission's jurisdiction, it is explained. Western states that it is engaged in two exchanges with Phillips under three contracts, Contract Nos. 8010, 14179 and 8026. Western states that the history of these exchanges shows that SUG and Western Gas Service Company viewed its participation in the exchanges as surrogates for gathering. It is further stated that when Western acceded to the arrangements, the previous understanding of the nature of the exchanges, as well as perceived ambiguity concerning what constituted gathering as opposed to transmission, led to Western's continued participation in the exchanges on a non-jurisdictional basis. Western states that it would include the exchange agreements with Phillips as part of its FERC Gas Tariff upon grant of the certification requested.

Western states that in conjunction with one of the Phillips exchanges, Western has sold and continues to sell gas to SUG at Borger, Texas, and at various line camps in the Texas Panhandle since December 29, 1972. Western previously considered these sales to be non-jurisdictional but now believes the sales are subject to the Commission's jurisdiction, it is explained. Western states that when viewed as a whole, the exchange is a transportation of gas in interstate commerce for a sale-for-resale, subject to the Commission's jurisdiction. Therefore, Western states that it must receive certificate authority to continue the transport and sale of this gas. Western proposes that the continued sales at Borger be included under Western's Rate Schedule G-N.

Western also requests authorization to add three delivery points to one of the exchange agreements and to delete one delivery point from one of the exchange agreements. Two of the delivery points would be used for new sales to SUG and the remaining delivery point would be used to correct exchange imbalances, it is explained. Western further requests blanket-type authorization to add and delete delivery points under the exchange agreements with Phillips.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 30, 1984, file with the Federal Energy Regulatory Commission, Washington, DC, 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Proceduce (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Western to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21572 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-580-000]

Arkansas Louisiana Gas Company, a Division of Arkla, Inc.; Application

August 10, 1984.

Take notice that on July 17, 1984, Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Applicant), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP84-580-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for an existing industrial customer, International Paper Company (Industrial Customer), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has instituted a transportation program for various of its existing large industrial customers called the ECOSHARE plan. Applicant indicates that the ECOSHARE plan was developed as part of a settlement in general retail rate increase proceeding at the Arkansas Public Service Commission involving Applicant's Rate Schedule No. 4. It is stated that under the ECOSHARE program instead of buying all its plant requirements from Applicant, the customer may purchase spot gas from other suppliers which would be transported by Applicant to the customer's plant. It is further stated that Applicant would continue to sell a substantial part of the plant's gas requirements and that the total volume of gas delivered by Applicant to the

plant, including both transported volumes and sales volumes, may not exceed the maximum daily quantity of gas specified in Applicant's Arkansas Public Service Commission Rate Schedule No. 4 service agreement covering the plant. It is said that Applicant under the ECOSHARE program has the option to purchase for its own system supply 50 percent of the spot gas arranged for by the large industrials.

Specifically, Applicant proposes to transport on a firm basis natural gas for Industrial Customer from four delivery points in Franklin County, Arkansas, and two points in Johnson County, Arkansas, to Industrial Customer's, Camden, Arkansas, industrial plant. Applicant also requests blanket authorization for the addition and deletion of delivery points and necessary. The transportation service for Industrial Customer is proposed for a term ending on May 1, 1987.

Applicant proposes to charge Industrial Customer $0.3484 per million Btu or gas delivered directly into Applicant's gathering facilities from a well already connected to Applicant's system. Applicant proposes to charge Industrial Customer $0.5338 per million Btu for gas delivered into Applicant's gathering facilities from a well not connected to the gathering system. It is said that these charges are based on the methodology and billing determinants used in designing rates to recover the transmission, storage, and gathering costs in Applicant's presently effective FERC Gas Rate Schedule Nos. X-26 and G-2. Applicant indicates that volumes transported under the ECOSHARE program would mean reduced sales volumes and that Applicant's proposed transportation rates are designed to continue to recover Applicant's unit systemwide transmission, storage and gathering costs associated with transporting a portion of a plant's requirements instead of selling that gas to the plant. It is also indicated that under Applicant's Arkansas Public Service Commission Rate Schedule No. 4, the ECOSHARE transportation service may be terminated unless Applicant's costs are fully recoverable by it and are not required to be credited to Account 191.

Applicant states that the ECOSHARE transportation program offers opportunities to alleviate take-or-pay supply arrangements on its system, while at the same time benefiting the industrial customer involved, the producer involved and the other customers on Applicant's system.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 30, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21715 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP84-435-000 and CP84-436-000]

Arkansas Louisiana Gas Co. and Southern Natural Gas Co., Intent To Prepare an Environmental Assessment and Request for Comments on Environmental Issues

August 10, 1984.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission will prepare an environmental assessment on the facilities proposed in the above-referenced dockets. The applicants are seeking certificates of public convenience and necessity authorizing the sale of natural gas in interstate commerce and the construction and operation of natural gas pipeline facilities.

More specifically, Arkansas Louisiana Gas Company (ARKLA) proposes to sell up to 300,000 Mcf per day to Southern Natural Gas Company (Southern); to be phased-in over a three year period beginning with 100,000 Mcf per day on November 1, 1985, and increasing by 100,000 Mcf per day on the two folowing anniversary dates, with provisions for overrun sales. Deliveries would continue for a period of 15 years.

To carry out the sale, both companies propose to augment their pipeline systems by constructing the facilities identified in table 1 and shown on the accompanying map (figure 1).[1] A total of 291.8 miles of 24-inch, 30-inch, and 36-inch diameter pipeline would be installed. A majority (179.8 miles) of the proposed pipeline facilities are "looping" projects, whereby a new segment of pipeline would be installed parallel and adjacent to the applicant's existing pipeline right-of-way. The remaining 112 miles of 30-inch pipeline would follow a new route connecting ARKLA's Beirne Compressor Station site (also to be known as the Clark County Compressor Station) near Gurdon in Clark County, Arkansas with Southern's North Main Line near Perryville in Ouachita Parish, Louisiana. Approximately 34 miles of this route would parallel an existing powerline right-of-way in Union County, Arkansas and Union Parish, Louisiana. The proposed pipelines would require a 60-foor wide right-of-way which would be cleared of trees and shrubs, and graded as necessary to facilitate the pipeline construction. Along the proposed looping sections and where adjacent to the powerline, 30-foot of the existing right-of-way would be utilized and only an additional 30-foot wide strip would require clearing. The 78 miles of new pipeline right-of-way in Arkansas and Louisiana would occupy the full 60-foot width. The applicants also propose to install a total of 37,300 horsepower of compression at six different sites in Oklahoma, Arkansas, and Mississippi, and to install or modify regulator and/or metering facilities at four sites in Arkansas and Louisiana. Two of the six compressor station projects would be on new sites not previously used for natural gas facilities. The 6,750 horsepower Clark County Compressor Station, however, would occupy approximately 2.5 acres immediately adjacent to ARKLA's existing Beirne

[1] The attachments are not being published in the Federal Register, but are included on copies of the notice distributed by the Commission.

Compressor Station while the new 9,000 horsepower Ada Mainline Compressor Station would be built on a 10 acre site adjacent to ARKLA's pipeline near Ada in Pontotoc County, Oklahoma

A copy of this notice has been distributed to Federal, state, and local environmental agencies, parties to the proceeding, and the public. Comments on specific issues or suggested alternatives should contain supporting documentation or rationale and should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Written comments should be submitted by September 15, 1984, and reference Docket No. CP84-435-000. The staff is conducting an independent review of the proposal to determine whether it would result in significant environmental impact. The information gathered from this review along with any comments received from other agencies or interested individuals will be used in deciding whether an environmental impact statement will need to be prepared and circulated for public comment. Additional information about the proposals, construction procedures, including more detailed maps of the individual facility locations, is available from Mr. Lonnie Lister, Project Manager, Environmental Evaluation Branch, Office of Pipeline and Producer Regulation, telephone (202) 357-8883.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21716 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 5248-999, et al.]

West Slope Power Co., et al., Request for Comment and Notice of Availability

August 10, 1984.

Pursuant to section 306 of the Energy and Water Appropriation Act of 1983 (Pub. L. 98-50), the staff of the Federal Energy Regulatory Commission has prepared a comprehensive water resources analysis covering Merced, Mariposa, Madera and Fresno Counties, California. This analysis has generated two documents: A Draft Environmental Impact Analysis of Small-scale Hydroelectric Development in Selected Watersheds in the Upper San Joaquin River Basin and the Middle San Joaquin Valley Basin Appraisal Report.

The Draft Environmental Impact Analysis Report discusses the impacts of 12 hydroelectric projects on selected target resources in watersheds of the Upper San Joaquin River Basin. The geographical scope of the report is limited to creeks specifically cited in section 306 of Pub. L. 98-50 and to creeks in adjacent areas. The Draft Environmental Impact Analysis Report is structured to: (1) Describe the projects under study and alternatives; (2) describe important target resoruces in the study area; (3) describe anticipated impacts on those resources and mitigative measures to eliminate or lessen those impacts; and (4) describe unavoidable adverse impacts on target resources. This report contains a high level of detail and will serve as a basis for any mitigative measures recommended to the Commission by staff to ensure the protection and enhancement of target resources in the area.

Interested agencies, organizations, or individuals are invited to file comments on the Draft Environmental Impact Analysis Report by September 17, 1984. Any comments, conclusions or recommendations that draw upon studies, reports or other working papers for substance should be supported by appropriate documentation. Written comments should be sent to Mr. Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, with a corresponding copy to Mr. Thomas N. Russo, RM 308, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Comments should be appropriately titled and include the following caption: West Slope Power Co. *et al.*, Project No. 5248-999.

The Middle San Joaquin Valley Basin Appraisal Report provides an inventory of existing and future water development projects in Fresno, Madera, Mariposa and Merced Counties, California. The report outlines, in general form, the water resources in the basin and discusses the utilization of water resources for agricultural, flood control, hydroelectric, and municipal purposes in the four county area. Although copies of this Report are available to the public, due to the very general nature of this Report, comments are *not* being requested.

Copies of either document may be ordered from: Division of Public Information, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington D.C. 20426. For further information, please contact Thomas N. Russo (202) 376-9255 or George C. O'Connor, Jr. (202) 357-5630.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-21717 Filed 8-14-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Assistant Secretary for International Affairs and Energy Emergencies

International Atomic Energy Agreements; Proposed Subsequent Arrangement; European Atomic Energy Community and Switzerland

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Nuclear Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government Switzerland Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above mentioned agreements involves approval of the following retransfer: RTD/EU(SD)-52, for the retransfer of 3,682 grams of uranium, containing 12 grams of U-235, and 42 grams of plutonium, in the form of two fuel rods, for destructive post-irradiation examination from Switzerland to the Federal Republic of Germany. At the conclusion of the examination, the materials will be placed in storage for ultimate disposition as waste.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.
Dated . August 9, 1984.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-21610 Filed 8-14-84; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Proposed Subsequent Arrangements; Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above mentioned agreement involves approval for the conversion of uranium enriching service agreements to the new utilities services contracts. The following Japanese utilities and facilities are involved:

Japan

Hokuriku Electric Power Company, Hokuriku Units 1, 2, and 3. Kyushu Electric Power Company, Genkai Units 1 and 2, Kyushu Unit 5, and Sendai Units.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 9, 1984.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-21609 Filed 8-14-84; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreement; Proposed Subsequent Arrangement; Japan and Sweden

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Sweden Concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangements to be carried out under the above mentioned agreements involve approval for the conversion of uranium enriching service agreements to the new utilities services contracts. The following utilities and facilities are involved:

Japan

The Japan Atomic Power Company, Tsurga 1 and 2, and Tokai 2. The Tokyo Electric Power Company, Fukushima 1, 2, 3, 4, 5, and 6, Fukushima II-1, 2, 3; and 4, Kashiwazaki-Kariha 1, and Tokyo 12, 14, 16, and 19.

Sweden

Barseback 1 and 2.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 9, 1984.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-21608 Filed 8-14-84; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Proposal To Implement the Industrial Incentive Rate for the Direct-Service Industrial Customers of the Bonneville Power Administration

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Proposed Industrial Incentive Rate Implementation. *BPA File Number:* DSI/IR-1.

SUMMARY: On August 2, 1984, BPA proposed implementation of the Industrial Incentive Rate for BPA's direct-service industrial customers (DSI's) as provided in BPA's 1983 Wholesale Power Rate Schedules. The market price for aluminum has deteriorated since the beginning of 1984 to the point where several DIS's have curtailed from earlier production levels. In an effort to arrest or potentially reverse this trend, BPA investigated the appropriateness of implementing the Industrial Incentive Rate. In this investigation, BPA conducted a study which used the Nonfirm Revenue Analysis Program and the Aluminum Smelter Model to determine whether BPA's revenues would rise as a result of implementation of the Industrial Incentive Rate. Based on the results of this study, BPA has proposed an Incentive Rate approximately equivalent to a 5 mill/kilowatthour discount off the Standard Industrial Rate. If adopted, the Industrial Incentive Rate would become effective for a 6-month period beginning September 1, 1984, and would be applied to DSI's on a take-or-pay basis. BPA has proposed to implement the Industrial Incentive Rate only if the DSI's commit to purchase approximately 2700 average megawatts of Industrial Firm Power. BPA already has provided notice of this proposed action to its customers as required in BPA's General Rate Schedule Provisions (GRSPs).

Responsible Official: Janet W McLennan, Assistant Power Manager for Natural Resources and Public Services, is the official responsible for implementation of the DSI Incentive Rate.

DATES: A Public Information and Comment Forum on this proposal will be held from 1-4 p.m., Wednesday, August 15, in Room 464, BPA Headquarters, 1002 NE. Holladay, Portland, Oregon. Comments on this proposal must be received by the Responsible Official no later than August 24, 1984.

ADDRESSES: Address comments to Ms. Janet W. McLennan, BPA, Routing PG, P.O. Box 3621, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: The Public Involvement office, at the address listed above, 503-230-3478. Oregon callers may use 800-452-6429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551

Mr. Earl C. Schoer, Acting 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, 406-329-3060.

Mr. Ronald K. Rodenwald, Wenatchee 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, 206-442-4131.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-434-6226, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite

245, 1109 Main Street, Boise, Idaho 83707, 208-334-9137

SUPPLEMENTARY INFORMATION:

I. Background

The Industrial Incentive Rate is a reduced rate which was designed to increase BPA's revenues during periods of adverse market conditions for the aluminum industry over those revenues which would otherwise be expected to result from application of the Standard Industrial Rate. The rate was also intended to stimulate industrial production in the Pacific Northwest. Under the terms of the General Rate Schedule Provisions (GRSP's), the Industrial Incentive Rate can be offered to the DSI's only if BPA can demonstrate that the net result of implementing the rate would be greater total BPA rvenues than would otherwise be expected to occur. BPA has conducted a feasibility study which concludes that it is appropriate to propose implementing the Industrial Incentive Rate.

Since January, the U.S. market price of aluminum has fallen from a level of slightly more than 77 cents per pound to its present level of approximately 56 cents per pound. In response to redued prices for their products and high worldwide inventories, several of BPA's DSI customers have recently curtailed production. BPA is concerned about the effect of such curtailment on its revenues and believes that implementation of the Industrial Incentive Rate may arrest, and possibly reverse, this trend before it seriously erodes BPA's revenues.

BPA has conducted a feasibility study which concludes that it is appropriate to propose implementing the Industrial Incentive Rate.

II. Proposal

BPA proposes a 5 mill/kilowatthour discount from the Standard Industrial Rate. BPA is proposing that the Industrial Incentive Rate be in effect for 6 months, beginning September 1, 1984. The proposal provides that any offer of the Industrial Incentive Rate will be conditioned on a total DSI commitment level of approximately 2700 average megawatts. Copies of both the feasibility study and the draft contract are available from the BPA Public Involvement office listed in the address section and from the Responsible Official.

III. Receipt of Comments

BPA is now accepting public comment on its proposed implementation of the Industrial Incentive Rate. BPA will accept verbal coment at a Public Information and Comment Forum listed under DATES. BPA will accept written comment through August 24, 1984, at the addrss listed above. Comments must be received by the Responsible Official no later than close of business August 24 in order to be considered in determining whether the DIS Incentive Rate will be implemented. BPA will consider the comments it receives on its proposal in making its Incentive Rate offer to the DSI's the week of August 27, 1984.

Issued in Portland, Oregon, on August 9, 1984.

Peter T. Johnson,

Administrator.

[FR Doc. 84-21635 Filed 8-14-84; 11:18 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00181; FRL-2653-2]

Administrator's Pesticide Advisory Committee; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Administrator's Pesticide Advisory Committee (APAC) will hold a meeting to continue its consideration of improvements to the pesticide reregistration process for existing chemicals. General activities of the Office of Pesticide Programs (OPP) may also be discussed. The meeting will be open to the public.

DATE: The meeting will take place on Friday, September 7, 1984, at 9:00 a.m. and adjourn by 4:30 p.m.

ADDRESS: The meeting will be held in: Rm. M-3906-3908, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Betty Winter, Executive Secretary, Administrator's Pesticide Advisory Committee (TS-788), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-636, 401 M St., SW., Washington, D.C. 20460, (202-382-7801).

SUPPLEMENTARY INFORMATION: The APAC will begin with opening remarks by Dr. Sam Gusman, Chairperson for the APAC. Then Dr. John A. Moore, Assistant Administrator for Pesticides and Toxic Substances, will present background information on the options to be discussed by the Committee. The Committee will consider and evaluate Agency alternatives to the current reregistration process. The Committee will also consider options for improving the current process, including proposals for eliminating data gaps in reevaluating active ingredients in pesticides previously registered. A more detailed agenda will be available at a later date.

The meeting will be open to the public, and time will be set aside for public comments concerning the issues to be discussed at the meeting. Any member of the public wishing to present an oral or written statement relating to the Committee's topics of discussion for this meeting should contact the APAC Executive Secretary at the address or telephone number listed above.

Dated: August 8, 1984.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 84-21647 Filed 8-14-84; 8:45 am]

BILLING CODE 6560-50-M

[PF-387; OPP-FRL-2652-1]

Shell Oil Co.; Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide and feed additive petitions relating to the establishment of tolerances for residues of the insecticide cyano-(3-phenoxyphenyl)methyl-4-choloro-alpha-(1-methylethyl) benzeneacetate in or on certain commodities.

ADDRESS: By mail submit comments identified by the document control number [PF-387] and the petition number, attention Product Manager (PM-17), at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written

comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:.

Timothy A. Gardner (PM-17), Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 207, CM No. 2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and feed additive (FAP) petitions from Shell Oil Co., 1025 Connecticut Ave., NW., Washington, D.C. 20036, proposing to amend 40 CFR Part 180 and 21 CFR Part 193 by establishing tolerances for residues of the insecticide cyano-(3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl) benzeneacetate in or on certain commodities as follows:

Petition ID	CFR affected	Commodities	Parts per million (ppm)
PP 4F3003	40 CFR 180.379	Alfalfa	30.0
		Alfalfa hay	30.0
		Eggs	1.0
		Fat of cattle, goats, hogs, horses, poultry, and sheep.	2.0
		Meat of cattle, goats, hogs, horses, poultry, and sheep.	0.5
		Meat-by-products of cattle, goats, hogs, horses, poultry, and sheep.	2.0
		Milk	0.4
		Milk fat	10.0
PP 4F3004	do	Grass (pasture and rangeland)	50.0
		Grass hay	50.0
PP 4F3120	do	Sugar beets	0.5
		Sugar beet tops	10.0
FAP 4H5419	21 CFR 193.97	Sorghum grain	8.0
		Sorghum milled products	45.0
		Sorghum fodder and forage	50.0
FAP 4H5437	do	Sugar beet pulp dehydrated	5.0

The proposed analytical method for determining residues is gas chromatography.

(Secs. 408(d)(2) 68 Stat. 512, (21 U.S.C. 346a(d)(2)); 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(11)))

Dated: July 31, 1984.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-21260 Filed 8-14-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

A Closed Circuit Test of the Emergency Broadcast System During the Week of August 27, 1984

July 30, 1984.

A test of the Emergency Broadcast System (EBS) has been scheduled during the week of August 27, 1984. Only ABC, CBS, MBS, NBC, NPR, AP Radio and UPI Audio Radio Network affiliates will receive the Test Program for the Closed Circuit Test. The ABC, CBS, NBC and PBS television networks are not participating in the Test.

Network and press wire service affiliates will be notified of the test procedures via their network approximately 30 to 45 minutes prior to the test.

Final evaluation of the test is scheduled to be made about one month after the Test.

This is a closed circuit test and will not be broadcast over the air.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-21671 Filed 8-14-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Barry International Forwarding, Inc. et al; Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

Barry International Forwarding, Inc.
280 Eastern Avenue, Chelsea, MA 02150
Officers:
Leo J. Barry, Jr., President/Treasurer
Patricia Berry, Director

General Forwarding Services, Inc.
Suite K, 5420 I-55 North, Jackson, MS 39211
Officers:
Carolyn W. Hust, President
Cecil M. Phillips, Secretary

Midwest Overseas Trading Corporation
6416 West Capitol Drive, Milwaukee, WI 53216
Officers:
Norman Carl Littel, President
Larry Allen Littel, Vice President

Fred Jaime dba Bluesea Cargo International Freight Forwarding
530 Biscayne Blvd., #204, Miami, FL 33132

Seariders International, Inc.
2637 Casablanca Drive, Miramar, FL 33023
Officers:
Albert J. Redlhammer, President
Joan M. Redlhammer, Vice President

Allpoints Shipping Ltd.
6338 North Leavitt Street, Chicago, IL 60659
Officer: Udo Lenze, President/Director

Dated: August 10, 1984.

By the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-21639 Filed 8-14-84; 8:45 am]

BILLING CODE 6730-01-M

Lombard Shipping and Forwarding, Inc., et al; Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No., name and address	Date revoked
2644 Lombard Shipping & Forwarding, Inc., Two Allen Center, suite 3070, Houston, TX 77002.	July 30, 1984.
2504 Roy Leon & Company, Inc., 7516 N.W. 70th Street, Miami, FL 33159.	Aug. 1, 1984.
2578 Janel International Forwarding Co., Inc. of Florida, 6403 N.W. 36th Street, Miami, FL 33166.	Aug. 10, 1984

Robert G. Drew,
Director, Bureau of Tariffs.
[FR Doc. 84-21638 Filed 8-14-84; 8:45 am]
BILLING CODE 6730-01-M

United American Freight, Inc.; Ocean Freight Forwarder License; Reissuance of License

Notice is hereby given that the following ocean freight forwarder licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No., Name and address	Date reissued
1960 United American Freight, Inc., 9324 Harrison Road, Romulus, MI 48174.	Aug. 2, 1984.

Robert G. Drew,
Director, Bureau of Tariffs.
[FR Doc. 84-21637 Filed 8-14-84; 8:45 am]
BILLING CODE 6730-01-M

Items Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following items have been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.). Requests for information, including copies of the collection of information and supporting documentation, may be obtained from Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Room 11101, Washington, D.C., 20573, telephone number (202) 523-5725. Comments may be submitted to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the Federal Register in which this notice appears.

Summary of Items Submitted for OMB Review

46 CFR Part 540—Security for the Protection of the Public

FMC requests an extension of clearance for 46 CFR Part 540 which provides procedures whereby persons in the United States who arrange, offer, advertise or provide passage on a vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports shall establish their financial responsibility or, in lieu thereof, file a bond or other security to meet liabilities for nonperformance of voyage, or for injury or death to passengers or other persons on voyages to or from U.S. ports. Related application form FMC-131 must also be completed. Estimates for the respondent universe of 60 are as follows: For 46 CFR Part 540, 154 annual responses and 639 manhour burden; for related application form FMC-131, 50 annual responses and 300 manhour burden. Total cost to the Federal Government is estimated at $54,400; total cost to respondents is estimated at $54,200.

46 CFR Part 559—Exemption of Certain Agreements From the Requirements of Section 15, Shipping Act, 1916

FMC requests an extension of clearance for 46 CFR Part 559 which requires that nonexclusive transshipment agreements involving cargo movement in the domestic offshore commerce of the United States by one carrier from an origin port with transfer to another carrier at an intermediate port for delivery to a final destination be filed with the Commission as required by section 15 of the Shipping Act, 1916. The Commission estimates a respondent universe of 25 with an estimated 100 annual responses and 280 manhour burden and 25 manhours annually for recordkeeping requirements. Total cost to the Federal Government is estimated at $600; total cost to respondents is estimated at $4700.

46 CFR Part 530—Truck Detention at the Port of New York

FMC requests an extension of clearance for 46 CFR Part 530 which provides procedures for the expeditious processing by terminals of trucks laden with cargo for vessels to reduce congestion and delay in the Port of New York. The Commission estimates a respondent universe of 14 with an estimated 14 annual responses and 28 manhour burden. Total cost to the Federal Government is estimated at $100; total cost to respondents is estimated at $375.

46 CFR Part 504—Procedures for Environmental Policy Analysis

FMC requests an extension of clearance for 46 CFR Part 504 which implements the National Environmental Policy Act of 1969. That Act requires that agencies complete an assessment of potential environmental impacts of all major regulatory actions not excluded categorically from consideration. The Commission estimates an annual respondent universe of 20 with an estimated 191.5 manhour burden. Total cost to the Federal Government is estimated at $200,000; total cost to respondents is estimated at $5,000.

Francis C. Hurney,
Secretary.
[FR Doc. 84-21639 Filed 8-14-84; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

August 9, 1984.

Background

Notice is hereby given of the submission of porposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the OMB desk officer listed in the notice. OMB's usual practice is not to take any action on a proposed information collection until at least ten working days after notice in the Federal Register, but occasionally the public interest requires more rapid action.

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 Desk Officer—Judith McIntosh—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:* Reports of Condition and Income
Agency form number: FFIEC 031-0034
OMB Docket number: 7100-034
Frequency: Quarterly
Reporters: State member banks
Small businesses are affected.
General description of report: Respondent's obligation to reply is mandatory [12 U.S.C. 324]; a pledge of confidentiality is partially promised.

Detailed schedules of assets, liabilities, and capital accounts in the form of a condition report, and summary statement; detailed schedule of

operating income and expense, sources and disposition of income, and changes in the equity capital in the form of an income statement; and a variety of supporting schedules. (The deletion of Memoranda items 3.a, 3.b, and 3.c on Schedule RC–E relating to deposits that are subject to fixed federal interest rate ceilings and their replacement with two memoranda items "Super NOW" accounts, and money market deposit accounts (MMDAs). In addition, new memoranda items are being added to Schedule RC–E that strike totals of deposits, demand deposits and time and savings deposits, and two new items are being added to Schedule RC–O for state nonmember banks that have been authorized by the Federal Reverve to act as pass-through correspondents. These items have been added to simplify the identification of information required for the calculation of FDIC insurance assessments.)

The Federal Reserve has requested that OMB provide a decision to this request for approval within ten days.

Board of Governors of the Federal Reserve System, August 9, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84–21631 Filed 8–14–84; 8:45 am]

BILLING CODE 6210–01–M

Eagle Financial Corp., et. al., Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. 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 is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. 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.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 6, 1984.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Eagle Financial Corp.*, Cedar Falls, Iowa; to become a bank holding company by acquiring 80 percent of the voting shares of Aredale State Bank, Aredale, Iowa.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Grapeland Bancshares, Inc.*, Grapeland, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of First State Bank, Grapeland, Texas, Grapeland, Texas.

2. *Texas Capital Bancshares, Inc.*, Houston, Texas; to acquire 100 percent of the voting shares of Westwood Bank, Houston, Texas.

Board of Governors of the Federal Reserve System, August 9, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84–21630 Filed 8–14–84; 8:45 am]

BILLING CODE 6210–01–M

Sovran Financial Corp.; Application to Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 22521(a)), to engage *de novo* through a national bank subsidiary in the making of commercial loans, and other activities specified below. The proposed subsidiary will not engage in deposit-taking transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of this application, under established Board policy the record of the application will not be regarded as complete and the Board will not act on the application unless and until a preliminary charter for the proposed national bank subsidiary has been submitted to the Board.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing 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.

Comments regarding the application must be received at the Federal Reserve Bank or the offices of the Board of Governors not later than September 6, 1984.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sovran Financial Corporation*, Norfolk, Virginia; to engage through a national bank subsidiary, Sovran Bank (Maryland), N.A., Rockville, Maryland, in the activities of commercial and consumer lending, acceptance of time and savings deposits (excluding NOW accounts), and other banking services, but not in the acceptance of demand deposits; in Rockville, Maryland, and surrounding areas.

Board of Governors of the Federal Reserve System, August 9, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84–21629 Filed 8–14–84; 8:45 am]

BILLING CODE 6210–01–M

GENERAL SERVICES ADMINISTRATION

DEPARTMENT OF DEFENSE

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

POSTAL SERVICE

Uniform Federal Accessibility Standards

Correction

In FR Doc. 84–20831 beginning on page 31528 in the issue of Tuesday, August 7, 1984, make the following corrections:

1. On page 31528, in the middle column, ninth line from the bottom, "Department" should read "Departments"

2. On page 31529, in the first column, the thirteenth line from the top, *"Alternations"* should read *"Alterations"*

3. On the same page, in the middle column, the fifth line from the bottom, "Business" should read "business"

4. On the same page, in the third column, the fourth complete paragraph, the second line, "specaifically" should read "specifically"

5. In the same paragraph, the twelfth line, "as" should read "are"

6. On page 31530, in the first column, the third complete paragraph, the fourteenth line, "cope" should read "scope"

7 In the same paragraph, the sixteenth line, "of" should read "on"

8. In the same column, the fourth complete paragraph, the twelfth line, "determination" should read "determinations"

9. On the same page, in the middle column, the sixth line, "charter" should read "character"

10. In the same column, the second complete paragraph, the fifth line, "transportaion" should read "transportation"

11. In the same column, the fourth complete paragraph, the ninth line, "be" should read "by"

12. On the same page, the third column, the third line, "pecent" should read "percent"

13. In the same column, the sixth line, "adapatable" should read "adaptable"

14. In the same column, the first complete paragraph, the sixteenth line, "relativie" should read "relative"

15. On page 31531, in the middle column, the third complete paragraph, the second line, "exlcude" should read "exclude"

16. In the same paragraph, the sixth line, "decisoins" should read "decisions"

17 On the same page, in the third column, the first complete paragraph, the seventh line, "Rehabilitiation" should read "Rehabilitation"

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 81N-0393; DESI 6514]

Drugs for Human Use; Drug Efficacy Study Implementation; Prescription Drugs Offered for Relief of Symptoms of Cough, Cold or Allergy; Withdrawal of Approval of New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of pertinent parts of the new drug application (NDA's) for five "Phenergan" expectorants. FDA is withdrawing approval because these combination drug products lack substantial evidence of effectiveness in the relief of symptoms of cough, cold, or allergy. Reformulations of the products have been approved as safe and effective.

EFFECTIVE DATE: Septemer 14, 1984.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 6514 and directed to the Division of Drug Labeling Compliance (HFN-310), Center for Drugs and Biologics, Food and Drug Administration, 5640 Nicholson Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: David T. Read, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice of opportunity for hearing published in the Federal Register of May 25, 1982 (47 FR 22610), FDA proposed to withdraw approval of the NDA's for the drug products described below. The basis of the proposal was that the products lack substantial evidence of effectiveness as combination drugs (21 CFR 300.50). In response to the notice, the holder or the NDA's submitted hearing requests and proposed to reformulate four of the five products.

1. Phenergan Expectorant with Codeine (NDA 8-306) containing 5 milligrams (mg) promethazine hydrochloride, 0.0104 milliliter (mL) ipecac fluidextract, 43.8 mg potassium guaiacolsulfonate, 60 mg citric acid, 197.2 mg sodium citrate, and 10 mg codeine phosphate per 5 mL, Wyeth Laboratories, Inc., Division of American Home Products Corp., P.O. Box 8299, Philadelphia, PA 19101.

2. Phenergan VC Expectorant Plain (NDA 8-604, misidentified in certain previous notices as NDA 8-306) containing 5 mg promethazine hydrochloride, 0.0104 mL ipecac fluidextract, 43.8 mg potassium guaiacolsulfonate, 60 mg citric acid, 197.2 mg sodium citrate, and 5.5 mg phenylephrine hydrochloride per 5 mL; Wyeth Laboratories.

3. Phenergan VC Expectorant with Codeine (NDA 8-306) containing 5 mg promethazine hydrochloride, 0.0104 mL ipecac fluidextract, 43.8 mg potassium guaiacolsulfonate, 60 mg citric acid, 197.2 mg sodium citrate, 5.5. mg phenylephrine hydrochloride, and 10 mg codeine phosphate per 5 mL, Wyeth Laboratories.

4. Pediatric Phenergan Expectorant with Dextromethorphan (NDA 11-265) containing 5 mg promethazine hydrochloride, 0.0104 mL ipecac fluidextract, 44 mg potassium guaiacolsulfonate, 60 mg citric acid, 197 mg sodium citrate, and 7.5 mg dextromethorphan hydrobromide per 5 mL, Wyeth Laboratories.

5. Phenergan Expectorant Plain (NDA 8-604) containing 5 mg promethazine hydrochloride, 0.0104 mL ipecac fluidextract, 44 mg potassium guaiacolsulfonate, 60 mg citric acid, and 197 mg sodium citrate per 5 mL, Wyeth Laboratories.

In a notice published in the Federal Register of February 2, 1984 (49 FR 4151), FDA announced conditions for approval and marketing of four reformulated Phenergan products that were found to be effective. FDA subsequently approved the supplemental applications providing for the four reformulated products described in the 1984 notice.

Wyeth Laboratories has since withdrawn its hearing request for the old formulations described above. Accordingly, FDA is not withdrawing approval of pertinent parts of the following new drug applications:

1. NDA 8-306—those parts pertaining to Phenergan Expectorant with Codeine and Phenergan VC Expectorant with Codeine, both described above.

2. NDA 8-604—those parts pertaining to Phenergan VC Expectorant with Codeine and Phenergan Expectorant Plain, both described above.

3. NDA 8-265—those parts pertaining to Pediatric Phenergan Expectorant with Dextromethorphan, described above.

Any drug product that is identical, related, or similar to the five products listed immediately above and is not the subject of an approved new drug application is covered by the new drug applications reviewed and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this

notice should write to the Division of Drug Labeling Compliance (address above).

The Director of the Center for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053 as amended (21 U.S.C. 355)) and under authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to the drug products, evaluated together with the evidence available to him when the applications were approved, there is a lack of substantial evidence that the combination products will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, pursuant to the foregoing finding, approval of those parts of NDA 8–306 that provide for Phenergan Expectorant with Codeine and Phenergan VC Expectorant with Codeine, those parts of NDA 8–604 that provide for Phenergan VC Expectorant Plain and Phenergan Expectorant Plain, and those parts of NDA 11–265 that provide for Pediatric Phenergan Expectorant with Dextromethorphan, and all the amendments and supplements for those products, is withdrawn effective September 14, 1984. Shipment in interstate commerce of these products or any identical, related, or similar products that are not the subject of an approved new drug application will then be unlawful.

Dated: August 9, 1984.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 84-21605 Filed 8-14-84; 8:45 am]

BILLING CODE 4160-01-M

Health Professional Organizations' Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming meeting with health professional organizations to be chaired by the Commissioner of Food and Drugs.

DATE: The Meeting will be held from 2 p.m. to 5:30 p.m. on Thursday, September 20, 1984.

ADDRESS: The meeting will be held in the Conference Rm. 703A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington DC 20201.

FOR FURTHER INFORMATION CONTACT: Robert Veiga, Office of Health Affairs (HFY–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–54709.

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs meets periodically with representatives of national health organizations to discuss mutual concerns and facilitate dissemination of FDA proposals and decisions affecting health care and professional practice. Agenda items for discussion at this meeting include the agency's programs, missions, and relations with the health professional community. Other agenda items will provide information on the current status of FDA's activities relating to Acquired Immune Deficiency Syndrome (AIDS) and current issues in device regulation.

Dated: August 8, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-21606 Filed 8-14-84; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Application Announcement, Funding Preferences and Grant Orientation Conferences for the Health Careers Opportunity Program

The Bureau of Health Professions, Health Resources and Services Administration, announces that applications for Fiscal Year 1985 Health Career Opportunity Program (HCOP) grants are now being accepted under the authority of Section 787 of the Public Health Service Act.

Section 787 authorizes the Secretary to make grants to schools of medicine, osteopathy, public health, dentistry, veterinary medicine, optometry, pharmacy, podiatry and allied health and other public or private nonprofit health or educational entities to carry out programs which assist individuals from disadvantaged backgrounds to enter and graduate from health professions schools. The assistance authorized by the section includes: Recruitment, preliminary education, retention in the health professions schools, counseling and advice on financial aid.

Based on the President's budget request and projected commitments for currently active projects requiring continued support, an estimated $6 million will be available for competitive HCOP awards in Fiscal Year 1985. This amount may be changed by final action on the Fiscal Year 1985 appropriation.

At least 80 percent of the funds appropriated in any fiscal year must be obligated for grants or contracts to institutions of higher education. Also, no more than five percent of the funds appropriated in any fiscal year can be awarded to projects having information dissemination as their primary purpose.

To receive support, applicants must meet the requirements of the program regulations which are located at Title 42 of the Code of Federal Regulations, Part 57, Subpart S.

Requests for grant application materials and questions regarding grants policy should be directed to: Grants Management Officer (D18), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6857

The application deadline date is November 2, 1984. Applications shall be considered as meeting the deadline if they are either (1) *received* on or before the deadline date, or (2) postmarked on or before the deadline and received in time for submission to the independent review group. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

This program is listed at 13.822 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal programs or 45 CFR Part 100.

Funding Preferences

The following funding preferences will govern the distribution of grant awards to approved HCOP grant applicants for Fiscal Year 1985. These preferences were published for public comment and finalized in Federal Register notices dated September 1, 1983 (48 FR 39700) and September 12, 1983 (48 FR 40958).

An applicant may request consideration in one of the following five funding preferences:

(1) Health professions school(s) which have Educational Assistance Agreement(s) (EAA) with no more than five undergraduate institutions that separately or collectively satisfy the definition of a feeder institution and who are requesting HCOP support only for:

a. The feeder institution(s) or equivalent to provide individuals from disadvantaged backgrounds with preliminary education; and

b. Either the health professions school or the feeder institution to facilitate the entry of individuals from disadvantaged backgrounds into health professions schools; and

c. The health professions school(s) to provide individuals from disadvantaged backgrounds who are enrolled in their institution(s) with counseling or other retention services.

(2) A feeder institution requesting HCOP support only for:

a. Providing individuals from disadvantaged backgrounds with preliminary education; and

b. Facilitating the entry of individuals from disadvantaged backgrounds into health professions schools.

(3) A health professions school requesting HCOP support only for:

a. Facilitating the entry of individuals from disadvantaged backgrounds into its health professions schools; and

b. Providing the students who are individuals from disadvantaged backgrounds with counseling or other retention services.

(4) A joint application from two to five institutions of higher education, which, as a group: (1) Has a student body more than 20 percent of which are individuals from disadvantaged backgrounds; (2) has 20 or more graduates annually (as averaged over the last three years) who are disadvantaged individuals and who are accepted into health professions schools; and (3) is requesting HCOP support only for:

a. Providing individuals from disadvantaged backgrounds with preliminary education; and

b. Facilitating the entry of individuals from disadvantaged backgrounds into health professions schools.

(5) A training center for allied health professions requesting HCOP support only for:

a. Facilitating the entry of individuals from disadvantaged backgrounds into allied health training centers; and

b. Providing its students who are individuals from disadvantaged backgrounds with counseling or other retention services.

Greatest weight will be given to applicants in funding preference Number 1 decreasing, respectively, to funding preference Number 5.

The five preferences do not preclude funding of other eligible approved applications. Accordingly, entities which do not qualify for the preferences are encouraged to submit applications.

The applicant *must indicate on the upper right-hand corner of page one of the application* the funding preference in which the applicant wishes consideration. However, the final determination of the category of funding preference will be based on a staff assessment of the contents of the proposal. An applicant may apply for consideration under only one preference. A feeder institution which is identified in an EAA may not apply as a primary grantee to support the same type of HCOP activities. Consideration will be given to assure that funded projects represent a reasonable proportion of the health professions specified in the legislation. However, full consideration will also be given to ensure that final funding decisions include appropriate support of proposals and students representative of the targeted populations served by HCOP.

Definitions

As used in this notice:

"Educational Assistance Agreement (EAA)" means a formal agreement between the grantee and another school or entity to assure continuity of training through health or allied health professions schools. This agreement must provide for financial or other support (excluding direct student aid) for this purpose and support may include funds from the grant awarded under this program, also joint use of facility, staff, and faculties. An EAA must:

a. Contain the names of the participating institutions;

b. Identify the prime grantee, subcontractors, and other participating institutions;

c. State the HCOP purposes addressed by each participating institution;

d. Identify the specific activities to be performed by the grantee, including a description of program activities and administrative responsibilities;

e. Identify the specific activities to be performed by all collaborating institutions, including a description of program activities;

f. Contain a detailed description of proposed expenditures for each participating institution;

g. Contain a description of how facilities, faculty, and staff will be shared, including times, places, and dates;

h. State the duration of the EAA;

i. Contain the terms for amending the EAA; and

j. Be signed by the President, Chancellor, Dean, or equivalent official from all participating institutions and health or educational entities.

"Feeder Institution" means an institution of higher education meeting the requirements of section 435 of the Higher Education Act, as amended, Pub. L. 89-239 (20 U.S.C. 1085(b)), which:

a. Has a student body more than 20 percent of which are individuals from disadvantaged backgrounds; and

b. Had ten or more graduates annually (as averaged over the last three years) who are disadvantaged and who are accepted into health professions schoools.

"Health Professions Schools" means schools of medicine, dentistry, osteopathy, pharmacy, optometry, veterinary medicine, podiatry, public health, or graduate programs in health administration, as defined in section 701(4) of the Public Health Service Act.

"Individual from a disadvantaged background" means an individual who: (a) Comes from an environment that has inhibited the individual from obtaining the knowledge, skills and abilities required to enroll in and graduate from a health professions school or from a program providing education or training in an allied health profession, or (b) comes from a family with an annual income below a level based on low income thresholds according to family size, published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index and adjusted by the Secretary for use in all health professions program, 42 CFR 57.1804(b)(2).

The following income figures determine what constitutes a low income family for purposes of these Health Careers Opportunity Program grants for Fiscal Year 1985:

	Income level [2]
Size of parents' family: [1]	
1	6,700
2	8,700
3	10,300
4	13,200
5	15,600
6 or more	17,500

[1] Includes only dependents listed on Federal income tax forms.

[2] Adjusted gross income for calendar year 1983, rounded to $100.

"Training Center for Allied Health Professions" means a junior college, or college, or university, as defined in section 795 of the Public Health Service Act, which:

(a) provides educational programs leading to an associate, baccalaureate, or higher degree needed to practice as one of the following:

Doctoral Degree:
- Clinical Psychologist

Master's Degree:
- Speech Pathologist/Audiologist

Bachelor's Degree:
- Dental Hygienist
- Dietitian (Coordinated undergraduate program)
- Community Health Educator
- Health Sevices Administrator
- Medical Records Administrator
- Medical Technologist
- Occupational Therapist
- Physical Therapist

Primary Care Physician Assistant
Sanitarian (Environmental Health)
Associate Degree:
Clinical Dietetic Technician
Cytotechnologist
Dental Assistant
Dental Hygienist
Dental Laboratory Techician
Medical Assistant
Medical Laboratory Technician
Medical Records Technician
Occupational Therapy Assistant
Ophthalmic Medical Assistant
Optometric Techician
Physical Therapy Assistant
Radiologic Technologist
Respiratory Therapist
Sanitarian Technician

(b) Provides training for no fewer than 20 persons in the substantive health portion, including clinical experience as required for employment, in three or more of the disciplines listed in paragraph (a) of this definition and has a minimum of six full-time students in that portion of each curriculum by October 15 of the fiscal year of application.

(c) Has a teaching hospital as part of the grantee institution or is affiliated with a teaching hospital by means of a formal written agreement. The term "teaching hospital" includes other settings which provide clinical or other health services if they fulfill the requirement for clinical experience specified in an allied health curriculum.

Grant Orientation Conferences

Grant applications and program information for the Health Careers Opportunity Program also will be provided through three program technical assistance conferences. The conferences, scheduled during September 1984, are for the benefit of potential applicants and current grantees.

Each of the three conferences will be two days in length and at the following locations:

September 6–7, 1984—Quality Inn Hotel—Downtown, 125 Calhoun Street, Charleston, South Carolina 29403

September 10–11, 1984—Federal Office Building, Room 2007 (2nd floor), 420 Golden Gate Avenue, San Francisco, California 94102

September 13–14, 1984—Pontchartrain Hotel, 2 Washington Boulevard, Detroit, Michigan 48226

Agenda items will include: Clarification of the legislation; application requirements; and grants management information. The conferences will discuss case studies and include analysis of strengths apparent in funded projects and weaknesses noted in unapproved applications. There will be small work groups to critique specific points in development of applications including evaluation considerations which arise in the review process. Individual technical assistance will also be available.

To obtain specific information regarding the conferences and programmatic aspects of this grant program, direct inquiries to: Mr. William J. Holland, Chief, Program Coordination Branch, Division of Disadvantaged Assistance, Bureau of Health Professions, HRSA, Parklawn Building, Room 8–20, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–4493.

Dated: August 9, 1984.

Robert Graham,

Administrator, Assistant Surgeon General.

[FR Doc. 84–21653 Filed 8–14–84; 8:45 am]

BILLING CODE 4160–16–M

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1984:

Name: National Council on Health Planning and Development.

Date and Time: September 13–14, 1984, 9:00 a.m.

Place: Auditorium, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201.

The entire meeting is open.

Purpose: The National Council on Health Planning and Development is responsible for advising and making recommendations with respect to: (1) the development of national guidelines under section 1501 of Pub. L. 93–641, (2) the implementation and administration of Title XV and XVI of Pub. L. 93–641, and (3) an evaluation of the implications of new medical technology for the organization, delivery and equitable distribution of health care services. In addition, the Council advises and assists the Secretary in the preparation of general regulations to carry out the purposes of section 1122 of the Social Security Act and on policy matters arising out of the implementation of it, including the coordination of activities under that section with those under other parts of the Social Security Act or under other Federal or federally assisted health programs. The Council considers and advises the Secretary on proposals submitted by the Secretary under the provisions of section 1122(d)(2) that health care facilities or health maintenance organizations be reimbursed for expenses related to capital expenditures notwithstanding that under section 1122(d)(1) there would otherwise be exclusion or reimbursement for such expenses.

Agenda for the meeting: As the health care industry becomes increasingly cost conscious, the cost of uncompensated care has emerged as an important public policy issue. In fact, the impact of such a changing health environment on access to care may be a greater concern today than ever before.

In order to gain a better understanding of this most critical issue, the Council will hold a forum on September 13, 14, 1984, entitled "Uncompensated Care in a Competitive Environment: Whose Problem Is It?"

A public comment period will be held each day. A detailed agenda may be obtained after August 20 by writing or telephoning Mrs. Diane A. McMenamin.

Anyone requiring information regarding the subject council should contact Ms. Diane McMenamin, Executive Secretary, National Council on Health Planning and Development, Bureau of Health Maintenance Organizations and Resources Development, Room 9A–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6377.

Agenda items are subject to change as priorities dictate.

Date: August 10, 1984.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 84–21662 Filed 8–14–84; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Coast Indian Community; Plan for the Use and Distribution of the Coast Indian Community Judgment Funds in Case Numbered 850–71 Before the United States Court of Claims

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

The Act of October 19, 1973 (Pub. L. 93–134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use or distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on November 8, 1978, in satisfaction of the award granted to the Coast Indian Community in United States Court of Claims case numbered 850–71. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated November 7, 1983, and was received (as recorded in the Congressional Record) by the Senate on November 15, 1983, and by the House of Representatives on November 14, 1983. The plan became effective on March 30, 1984, as provided by the 1973, Act, as amended by Pub. L. 97–458, since a joint

resolution disapproving it was not enacted.

The plan reads as follows:

"The funds appropriated on November 8, 1978, in satisfaction of an award granted to the Coast Indian Community by the United States Court of Claims in Case Numbered 850-71, including all interest and investment income accruing thereto, shall be utilized as herein provided.

"The Coast Indian Community of Resighini Rancheria's latest approved membership roll shall be brought current, in accordance to the membership criteria of the tribe's constitution and bylaws, to the effective date of this plan.

"Eighty (80) percent of the funds shall be distributed in the form of per capita payments, in a sum as equal as possible, to all tribal members born on or prior to and living on the effective date of this plan. Any amount remaining after the per capita payment to the enrollees shall revert to the tribe for use in the programing aspect of this plan.

"Twenty (20) percent of the funds shall be programed. $3,702.38 shall be utilized to develop a water system for the Resighini Rancheria. The remaining funds shall be utilized to cover twenty (20) percent of the purchase of an eight-passenger van with wheelchair ramp made available through a California Department of Transportation grant and a fifty (50) percent matching share of the operating expenses for said vehicle, subject to the approval of the Secretary.

"The per capita shares of living, competent adults shall be paid directly to them. The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR, Part 4, Subpart D. Per capita shares of legal incompetents and minors shall be handled as provided in the Act of October 19, 1973, 87 Stat. 466, as amended January 12, 1983, by Pub. L. 97-458, and implementing regulations.

"None of the funds distributed per capita or made available under this plan for programing shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares in excess of $2,000, any Federal or federally assisted programs."

John W. Fritz,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 84-21610 Filed 8-14-84; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[Serial Nos. I-1542, I-2835]

Idaho; Termination of Classification for Multiple-Use Management

Correction

In FR Doc. 84-12630 beginning on page 19906 in the issue of Thursday, May 10, 1984, make the following correction:

On page 19907, first column, the twenty-eighth line should read as follows:

"Sec. 91, NW¼NE¼, N½NW¼."

BILLING CODE 1505-01-M

[Exchange CA-14313]

California: Realty Action Eureka Resource Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, exchange of public lands, Humboldt County, California.

SUMMARY: The following described public land has been determined to be suitable for disposal under the provisions Section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756).

Humboldt Meridian

T. 1S., R. 5E.,
Section 10, NE¼NW¼, N½NE¼;
Section 15, NW¼SW¼.

Containing 160.0 acres.

Paul Orban, c/o Carlotta Lumber Company, P.O. Box 8, Carlotta, California 95528, has applied to acquire the above described lands in exchange for the following described privately owned lands.

Humboldt Meridian

The Southwest Quarter of the Southwest Quarter of section 5; the West Half of the Northwest Quarter and the Northwest Quarter of the Southwest Quarter of Section 8; in Township 1 South, Range 6 East, According to the Official Plat thereof.

Contining 160.0 acres.

A mineral evaluation has been requested on the public land. If any minerals are identified, a reservation of identified minerals will be made to the United States. If no minerals are identified, the mineral estate of the public land will be conveyed with the surface. The mineral estate of the privately owned land will be conveyed with the surface, unless previously reserved.

The publication of this notice in the Federal Register shall segregate the applied for public land from all other forms of appropriation under the public land laws, including the mining laws, for a period of two years. The exchange is expected to be consummated before the end of that period.

The value of the lands to be exchanged is approximately equal and money will be used to equalize the values upon completion of the final appraisal of the lands.

There will be reserved to the United States in the applied for lands, a right-of-way thereon for ditches and canals constructed by the authority of the United States (43 U.S.C. 945).

The purpose of the exchange is to acquire nonfederal lands within the Six Rivers National Forest for more effective management. The public lands were previously classified in a Withdrawl Review, S-5137, for exchanges in the KING Range National Conservation Area, but it has been decided that they are suitable for this exchange with Paul Orban.

Detailed information concerning the exchange, including the environmental assessment and the record of nonfederal participation, is available for review at the Eureka Resource Area Office, BLM, 1585 J Street, P.O. Box II, Arcata, California 95521.

DATE: For a period of 45 days from the first publication of this notice interested parties may submit comments.

ADDRESS: Comments and suggestions should be sent to: State Director, California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825.

Comments will be evaluated by the California State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination for the Bureau of Land Management.

Dated: August 3, 1984.

Van W. Manning,

District Manager, Bureau of Land Management, Ukiah District P.O. Box 940 555 Leslie Street Ukiah, California 95482.

[FR Doc. 84-21690 Filed 8-14-84; 8:45 am]

BILLING CODE 4310-84-M

Bureau Forms Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Copies of the proposed information collections requirement and related forms and explanatory material may be obtained by contacting the Bureau of Land Management's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and the Office of Management and Budget Reviewing Official at 202-395-7340.

Title: 43 CFR 2540

"Conveyances Affecting Color or Claim of Title"

Bureau Form Number: 2540-2
Frequency: Once
Description of Respondents: Individuals applying for conveyance or claims of public lands under the "Color-of-Title" Act.
Annual Responses: 50
Annual Burden Hours: 50
Bureau Clearance Officer (alternate): Linda Gibbs at 202-653-8853

Dated: June 25, 1984.

James M. Parker,

Acting Director.

[FR Doc. 84-21691 Filed 8-14-84; 8:45 am]

BILLING CODE 4310-84-M

Bureau Forms Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Copies of the proposed information collections requirement and related forms and explanatory material may be obtained by contacting the Bureau of Land Management's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and the Office of Management and Budget Reviewing Official at 202-395-7340.

Title: 43 CFR 2540

"Color-of-Title Application"

Bureau Form Number: 2540-1
Frequency: Once
Description of Respondents: Individuals applying for conveyance or claims of public lands under the "Color-of-Title" Act.
Annual Responses: 50
Annual Burden Hours: 25
Bureau Clearance Officer (alternate): Linda Gibbs at 202-653-8853

Dated: June 25, 1984.

James M. Parker,

Acting Director.

[FR Doc. 84-21692 Filed 8-14-84; 8:45 am]

BILLING CODE 4310-84-M

[C-39289]

Colorado; Proposed Withdrawal; Opportunity for Public Hearing

Correction

The following land descriptions published in FR Doc. 84-20379, appearing at page 30801 in the issue of Wednesday, August 1, 1984, are reprinted for clarification:

Ute Principal Meridian

Cheney Reservior

* * * * *

Sec. 12, SW¼ SW¼ NW¼, and W½ W½ SW¼;

* * * * *

Sec. 14, N½ N½ NE¼, and NE¼ NE¼ NW¼.

Sixth Principal Meridian

* * * * *

Lucas Mesa

* * * * *

Sec. 30, lot 1, N½ NE¼, and N½ NE¼ NW¼.

* * * * *

BILLING CODE 1505-01-M

[ES 31021, Missouri]

Proposed Reinstatement of Terminated Oil and Gas Lease; Missouri

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed Reinstatement of a Terminated Oil and Gas Lease.

SUMMARY:

1. Federal oil and gas lease ES 31021 terminated automatically by operation of Law on June 1, 1984. (30 U.S.C. 188).

2. A petition for reinstatement of ES 31021 was filed by Shiloh Resources, Inc. (Lessee) under section 31 D of the Mineral Leasing Act of 1920, as amended by the Federal Oil and Gas Royalty Management Act of 1982, (96 Stat. 2447).

3. These Lessee has met all the following requirements of reinstatement:

(a) $500—Reimbursement of Department Administrative Cost.

(b) $13,300—Back Rental Payments.

(c) $130—Estimated Publication Cost.

4. The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $10.00 per acre year, and royalty shall be payable at a rate of not less than 16⅔ percent, computed on a sliding scale 4 percentage points greater than the competitive royalty schedule attached to the lease, beginning June 1, 1984.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia C. Ledwell, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, (703) 235-2851.

G. Curtis Jones, Jr.,

State Director.

[FR Doc. 84-21753 Filed 8-14-84; 8:45 am]

BILLING CODE 4310-GJ-M

Office of Surface Mining and Reclamation and Enforcement

Receipt of Complete Petition for Designation of Lands as Unsuitable for Surface Coal Mining Operations: Washington

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

ACTION: Notice of receipt of a complete petition for designation of lands as unsuitable for surface coal mining operations and request for comments.

SUMMARY: Notice is given that the Office of Surface Mining Reclamation and Enforcement (OSM) has received a complete petition to designate certain lands adjacent to Black Diamond, Washington, as unsuitable for surface coal mining operations, pursuant to section 522 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272) and sections 30 CFR 947.764(a) and 764.13(b) of the regulations. Interested persons are requested to submit relevant information and comment on the issues raised in the petition.

DATE: Information on which to base analyses of the issues raised by the petitioner is being sought from all interested parties. In order to be considered in a timely manner, comments should be received by September 11, 1984.

ADDRESS: Comments should be sent to: Office of Surface Mining, Western Technical Center, Attn: Charles Albrecht, Brooks Towers, 2nd floor, 1020 15th Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Charles Albrecht at the address listed above (telephone: (303) 844-5656).

SUPPLEMENTARY INFORMATION: Under section 522 of the Surface Mining

Control and Reclamation Act of 1977 (SMCRA) and its implementing regulations, persons with interests which are or may be adversely affected by surface coal mining operations may petition OSM to have an area of land designated as unsuitable for all or certain types of mining. A petition, submitted by Citizens Concerned About Strip Mining (CCASM) on April 6, 1984, alleges that approximately 800 acres of land in secs. 6, 7, and 8, T. 21 N., R. 7 E., and sec. 11 and 12, T. 21 N., R. 6 E., in the State of Washington near the town of Black Diamond, should be designated unsuitable for surface coal mining operations because these lands constitute natural hazard and fragile lands and because they are close to human populations. CCASM included in its petition area large portions of Pacific Coast Coal Company's proposed John Henry No. 1 mine permit area located in secs. 11 and 12, T. 21 N., R. 6 E.

On May 25, 1984, OSM decided not to process the petition as it relates to that portion of the petition area that coincides with Pacific Coast Company's proposed John Henry No. 1 mine permit area. In making that decision, OSM exercised discretion, in accordance with 30 CFR 947.764(a) and 764.15(a)(7), not to process a petition pertaining to lands for which an administratively complete mine permit application had been filed and on which the first newspaper notice on the permit application's completeness had been published. OSM's completeness determination and the publication of the newspaper notice for the John Henry No. 1 mine were done on January 11, 1984. OSM has received a petition for reconsideration of the May 25, 1984, decision. OSM has not yet made a final decision on inclusion of the John Henry mine site into the petition area.

OSM determined the unsuitability petition to be complete on July 13, 1984. OSM will process the petition in accordance with the procedures set forth in 30 CFR 947.764(a) of OSM's Federal program regulations for the State of Washington.

Copies of the petition and a map showing the petition area and proposed mine permit area may be obtained upon request from OSM at the address listed above. The public record on the petition, including a copy of the petition and the map, is available for public review during normal working hours at the OSM office listed above and at the Office of Surface Mining, Attn: Bob Flowers, c/o U.S. Fish and Wildlife Service, 2625 Parkmont Lane, SW., Building B3, Olympia, Washington 98502 (telephone: (206) 753-9440).

After reviewing and analyzing available information, OSM will issue a draft evaluation document which will be available for public review. This will be followed by a public hearing held near the area covered by the petition. The time and place of the hearing will be announced at a later date.

After completion of the analyses and public hearing, the Department of the Interior may designate the entire petition area or a portion thereof as unsuitable for all or certain types of surface coal mining operations.

Dated: August 9, 1984.

Brent Wahlquist,

Assistant Director, Technical Services and Research.

[FR Doc. 84-21628 Filed 8-14-84; 8:45 am]

BILLING CODE 4310-05-M

Office of the Secretary

Garrison Diversion Unit Commission; Initial Commission Organizational Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463), announcement is made of the following Commission meeting:

Name: Garrison Diversion Unit Commission.

Date of Meeting: Thursday, August 30, 1984.

Time of Meeting: 8:30-11:30 A.M., and if needed, 1:00-5:00 P.M.

Place: Department of Transportation—Nassif Building, Room 4234, 400 7th Street SW, Washington, D.C.

Contact Person: James C. Wiley, Staff Director (202) 343-4787.

Purpose: Initial organizational meeting of the Commission. The Commission will consider staff organization plans, draft work plans, a draft schedule for future Commission business and public participation, and other business at the discretion of the Commission Chairman.

Public Participation: Any interested person may attend and observe the meeting, and file written statements with the Commission, at the meeting.

Transcripts: A transcript of the meeting will be available for public review at the Commission offices: Room 603, 300 7th Street SW, Washington, D.C. between 8:30 A.M. and 4:00 P.M.. Information on obtaining copies may be obtained from the Contract Person named above.

Dated: August 14, 1984.

James C. Wiley,

Commission Staff Director.

[FR Doc. 84-21872 Filed 8-14-84; 10:00 am]

BILLING CODE 4310-09-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

PURPOSE OF INFORMATION COLLECTION: The proposed information collection is for use by the Commission in connection with investigation No. 332-185, Assessment of the Effects of Barter and Countertrade Transactions on U.S. Industries, instituted under the authority of section 332(b) of the Tariff Act of 1983 (19 U.S.C. 1332(b)).

Summary of proposals:

(1) Number of forms submitted: One.

(2) Title of form: Assessment of the Effects of Barter and Countertrade.

Transactions on U.S. Industries—Questionnaire for U.S. manufacturers:

(3) Type of request: New.

(4) Frequency of use: Nonrecurring.

(5) Description of respondents: Firms manufacturing products in the United States that have negotiated barter or countertrade agreements with foreign organizations.

(6) Estimated number of respondents: 320.

(7) Estimated total number of hours to complete the form: 8,000.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional information or comment: Copies of the proposed form and supporting documents may may be obtained from Charles Ervin, the USITC clearance officer (tel. No. 202-523-4463). Comments about the proposals should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Ms. Francine Picoult, Desk Officer for the U.S. International Trade Commission. If you anticipate commenting on the form but find that time to prepare comments will prevent you from submitting them promptly you should advise OMB of your intent as soon as possible. Copies of any comments should be provided to Charles Ervin (United States

International Trade Commission, 701 E Street N.W., Washington, D.C. 20436).

Issued: August 6, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-21712 Filed 8-14-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-165]

Certain Alkaline Batteries; Commission Decision To Review Initial Determination, Commission Hearing, and Schedule for Filing Written Submissions; Notice of More Complicated Investigation; Request for Briefing by Other Interested Persons

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined to review part of the presiding officer's initial determination that there is a violation of section 337 in the above-captioned investigation.

AUTHORITY: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53–210.56 of the Commission's Rules of Practice and Procedure (19 CFR § 210.53–210.56, as amended by 48 FR 20026, May 5, 1983).

SUPPLEMENTARY INFORMATION: On July 10, 1984, the presiding officer issued an initial determination that there is a violation of section 337 in the importation and sale of certain alkaline batteries. One respondent has petitioned for review of various parts of the initial determination pursuant to § 210.54(a) of the Commission's rules. The complainant and the Commission investigative attorney have opposed the petition.

After examining the petition for review, briefs in support of the petition, and the responses thereto, the Commission has concluded that this case presents certain issues that affect Commission policy and therefore warrant review. Specifically, the Commission will review the following issues:

1. Violation of section 337 by reason of infringement of U.S. Trademark Registration No. 793,273, misappropriation of trade dress, and false designation of origin by certain imported alkaline batteries. The Commission will specifically examine whether there is a violation of section 337 in the unauthorized importation of genuine "Duracell" alkaline batteries where complainant, Duracell, Inc., has licensed the use of the "Duracell" trademarks and trade dress to its Belgian subsidiary for use on products to be sold only in the European market.

2. Whether imports of genuine Duracell batteries have caused substantial injury to Duracell, Inc. The Commission will specifically consider whether a parent company is injured by sales lost to imported batteries produced by its wholly-owned Belgian Subsidiary.

The Commission review will be limited to the above issues. No other issues will be considered.

More Complicated Investigation

Because of the complex nature of the legal issues in this case and the relatively short period remaining before expiration of the original one-year deadline, the Commission under section 337(b)(1) and section 210.15 of the Commission's Rules of practice and procedure, 19 CFR 210.15, has designated this investigation more complicated and extended the deadline for completion of the investigation by 31 days, i.e., until October 22, 1984.

Commission Hearing

The Commission will hold a public hearing on September 17, 1984, in the Commission's Hearing Room, 701 E Street NW., Washington, D.C. 20436, beginning at 10:00 a.m. The hearing will be divided into two parts. First, the Commission will hear oral arguments on those portions of the presiding officer's initial determination selected for review. Second, the Commission will hear presentations concerning appropriate relief, the effect that such relief would have upon the public interest, and the proper amount of the bond in the event that the Commission determines that there is a violation of section 337 and that relief should be granted. These matters will be heard on the same day in order to facilitate the completion of this investigation within time limits established under law and to minimize the burden upon the parties.

Oral Arguments

Parties to the investigation and interested Government agencies may present oral arguments concerning those portions of the presiding officer's initial determination being reviewed. That portion of a party's or an agency's total time allocated to oral argument may be used in any way the party or agency making argument sees fit, i.e., a portion of the time may be reserved for rebuttal or devoted to summation. The oral arguments will be held in the following order: complainant, respondents, Government agencies, and the Commission investigative attorney. Persons making oral arguments are reminded that such argument must be limited to the issues being reviewed by the Commission and must be based upon the evidentiary record certified to the Commission by the presiding officer.

Oral Presentations on Relief, Bonding, and the Public Interest

Following the oral arguments on the presiding officer's initial determination, parties to the investigation, Government agencies, public-interest groups, and interested members of the public may make oral presentations on the issues of relief, bonding, and the public interest. This portion of the hearing is quasi-legislative in nature; presentations need not be confined to the evidentiary record certified to the Commission by the presiding officer, and may include the testimony of witnesses. Oral presentations on relief, bonding, and the public interest will be heard in this order: complainant, respondents, Government agencies, the Commission investigative attorney, public interest groups, and interested members of the public.

If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders which could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in hearing presentations which address the form of relief, if any, which should be ordered.

If the Commission finds that a violation of section 337 has occurred and orders some form of relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in hearing presentations concerning the amount of the bond, if any, which should be imposed.

Public Interest Consideration

If the Commission concludes that a violation of section 337 has occurred and contemplates some form of relief, it must consider the effect of that relief upon the public interest. The factors

which the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have upon: (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those which are the subject of the investigation, and (4) U.S. consumers.

Time Limit for Oral Argument and Oral Presentation

Complainant, respondents (taken together) the Commission investigative attorney, and Government agencies will be limited to a total of 30 minutes (exclusive of time consumed by questions from the Commission or its advisory staff) for making both oral argument on violation and oral presentations on remedy, bonding, and the public interest. Persons making presentations solely on remedy, bonding, and the public interest will be limited to 10 minutes (exclusive of time consumed by questions from the Commission and its advisory staff). The Commission may in its discretion expand the aforementioned time limits upon receipt of a timely request to do so.

Written Submissions

In order to give greater focus to the hearing, the parties to the investigation and interested Government agencies are encouraged to file briefs on the issues on review and on the issues of remedy, bonding, and the public interest. Complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or a proposed cease and desist order for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding. Written submissions of the issues selected for review must be filed not later than the close of business on August 24, 1984, and submissions on remedy, the public interest and bonding must be filed not later than the close of business on August 31, 1984. During the course of the hearing, the parties may be asked to file posthearing briefs.

Request for Submission of Amicus Briefs From Other Interested Persons

The Commission is requesting amicus briefs from other interested persons on the issue of whether the unauthorized importation of trademarked merchandise is unfair under section 337 where the imported merchandise originates from complainant's wholly-owned Belgian subsidiary which has been authorized by complainant to use the trademark on products to be sold only in the European market. These supplemental briefs must be filed at the Office of the Secretary, U.S. International Trade Commission, not later than the close of business on August 24, 1984.

Notice of Appearance

Written requests to appear at the commission hearing must be filed with the Office of the Secretary by September 10, 1984.

Additional Information

Persons submitting briefs and/or written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by the presiding officer. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Secretary's Office.

Notice of this investigation was published in the Federal Register of September 21, 1983 (48 FR 43106).

Copies of the nonconfidential version of the presiding officer's initial determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: William E. Perry, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0499.

Issued: August 10, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-21704 Filed 8-14-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-82A]

Certain Headboxes and Papermaking Machine Forming Sections for the Continuous Production of Paper, and Components Thereof; Termination of Investigation and Issuance of Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice is herby given that the Commission has terminated the above-captioned investigation and issued a consent order.

Authority: The investigation was conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Termination of an investigation on the basis of a consent order settlement is governed by §§ 210.51(d) and 211.20(b)-211.22 of the Commission's Rules of Practice and Procedure (19 CFR 210.51(d) and 211.20(b)-211.22

SUPPLEMENTARY INFORMATION: The investigation initially was conducted in 1981 to determine if there was violation of section 337 of the Tariff Act of 1930 in the importation and sale of papermaking machine apparatus alleged to infringe certain claims of U.S. Letters Patents RE 28,269 ('269 patent) and 3,923,593 ('593 patent). See 46 FR 34437 (July 1, 1981). The investigation resulted in the issuance of a limited exclusion order based on a Commission determination that a violation existed with respect to certain multi-ply headboxes and forming sections. See 46 FR 57774 (November 25, 1981). the Commission had found both patents to be valid and infringed, and had concluded that such infringement had a tendency to substantially injure a domestic industry.

On July 7, 1983, the exclusion order was revoked and the investigation was reopened in response to a judgment by the U.S. Court of Appeals for the Federal Circuit (CAFC), which reversed the Commission's findings in part, vacated them in part, and remanded the case to the Commission for reconsideration. See 48 FR 32094 (July 13,1983). Although the CAFC affirmed the validity and infringement of the '269 patent, the '593 patent was held invalid. The CAFC vacated the Commission s injury finding and remanded the case to the Commission for reconsideration of the definition of the domestic industry and the question of injury, in light of the court's ruling on the patents. See *Aktiebolaget Karlstads Mekaniska Werkstad and KMW-Johnson, Inc. v. USITC and Beloit Corp.*, 705 F. 2d 1565 (Fed. Cir. 1982).

On May 23, 1984, the parties moved for termination of the investigation on the basis of a consent order settlement. (Motion No. 82A-1C.) The settlement agreement and proposed consent order state that respondents Aktiebolaget Karlstads Mekaniska Werkstad (KMW) of Karlstads, Sweden and its U.S. subsidiary KMW Corp. will not import headboxes infringing the '269 patent. The agreement and proposed consent order also contain complainant Beloit Corporation's express acknowledgement that KMW's "Fixed Rigid Vane" multi-ply headboxes are noninfringing and may be imported freely.

Notice of the proposed termination and consent order was served on other Federal agencies and was published in the Federal Register of June 27, 1984, 49 FR 23618. Although the Commission solicited written comments, none were received.

After reviewing the record of the investigation, the Commission concluded that the proposed termination and consent order would not have an adverse impact upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers. For that reason, on August 6, 1984, the Commission determined to grant the motion and issue the proposed consent order.

Copies of the Commission's action and order of termination, the consent order, and all nonconfidential documents filed in connection with this investigation (including the public version of the settlement agreement) are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) Monday-Friday in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0471.

FOR FURTHER INFORMATION CONTACT: P N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0350.

Issued: August 8, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-21709 Filed 8-14-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-151 (Final)]

Certain Hot-Rolled Carbon Steel Plate From the Republic of Korea

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines,[2] pursuant 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673(b)), that an industry in the United States is materially injured by reason of imports from the Republic of Korea of carbon steel plate other than in coils, provided for in item 607.66 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective April 12, 1984, following a preliminary determination by the Department of Commerce that imports of the subject carbon steel plate from Korea were being sold in the United States at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing it in the Federal Register on May 2, 1984 (49 FR 18792). The hearing was held in Washington, D.C., on June 29, 1984, and all persons who requested the opportunity were permitted to appear in appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 9, 1984. The views of the Commission are contained in USITC Publication 1561 (August 1984), entitled "Investigation No. 731-TA-151 (Final), Certain Hot-Rolled Carbon Steel Plate from the Republic of Korea."

Issued: August 9, 1984.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-21702 Filed 8-14-84; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairwoman Stern dissenting.

[Investigation No. 337-TA-183]

Certain Indomethacin; Commission Decision To Review Initial Determination; Affirmation of Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined to review on its own motion an initial determination (ID) granting a motion for a summary determination and termination of the investigation as to respondent Agvar Chemicals, Inc. (Agvar). The Commission has determined to review the ID and affirm the decision of the presiding officer with respect to his determination that the investigation should be terminated as to Agvar.

Authority: The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.55 and 210.56 of the Commission's Rules of Practice and Procedure (19 CFR 210.55-210.56).

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation in response to a complaint filed by Merck & Co. Inc. of Rahway, New Jersey to determine whether there is a violation of section 337 in the importation of certain indomethacin into the United States, or in its sale. The notice named Agvar as one of twenty-three respondents. (49 FR 6810, February 23, 1984.

On July 2, 1984, the presiding officer issued an ID (Order No. 20) terminating Agvar as a rescondent. No petitions for review of the ID were received from any party and no comments were received from any Government agency. However, the Commission determined that there were certain issues of law that warranted review of the ID and initiated review on its own motion.

Copies of the public version of the ID, the Commission's action and Order and its Memorandum Opinion (when available), and all other nonconfidential documents on the record of this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone (202) 523-0161.

FOR FURTHER INFORMATION CONTACT: Hannelore V.M. Hasl, Esq., Office of General Counsel, U.S. International Trade Commission, tel. (202) 523-0359.

Issued: August 7, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-21711 Filed 8-14-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-75]

Certain Large Video Matrix Display Systems and Components Thereof; Commission Decision Not To Review Portions of Initial Determination and To Suspend the Remainder of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review those portions of the presiding officer's initial determination finding no infringement of claim 12 of U.S. Letters Patent 3,495,762. In addition, the Commission has decided to suspend the remainder of the above-captioned investigation until the U.S. Court of Appeals for the Federal Circuit issues an opinion regarding the validity of U.S. Letters Patent 3,941,926, in a case currently pending before the court.

Authority: The authority for the Commission's disposition of this matter is contained in section 337, 19 U.S.C. 1337, and in §§ 210.15, 210.53(a) and 210.53(h) of the Commission's Rules of Practice and Procedure. 47 FR 25134, June 10, 1982; to be codified at 19 CFR 210.15, 210.53 (a) and (h).

SUPPLEMENTARY INFORMATION: On June 13, 1984, the administrative law judge (AJL) issued an initial determination (ID) in the above-captioned investigation finding, *inter alia*, that the accused imported system. does not infringe claim 12 of U.S. Letters Patent 3,594,762 under the doctrine of equivalents; there was no inequitable conduct in the prosecution of U.S. Letters Patent 3,594,762, there was inequitable conduct in the prosecution of U.S. Letters Patent 4,009,335, and by operation of law U.S. Letters Patent 3,941,926 is rendered unenforceable.

Complainant Stewart-Warner and the Commission investigative attorney filed petitions for review which were opposed by respondent SSIH Equipment, S.A. of Bienne, Switzerland. In addition, both Stewart-Warner and the Commission investigative attorney presented arguments regarding the pending appeal before the U.S. Court of Appeals for the Federal Circuit of a collateral patent suit, *Stewart-Warner Corp., v. City of Pontiac*. The issue on appeal is the validity of U.S. Letters Patent 3,941,926.

Having reviewed the ID, the petitions for review, and the oppositions to the petitions for review, the Commission has determined not to review those portions of the ID pertaining to the infringement of U.S. Letter Patent 3,594,762, and inequitable conduct with respect to that patent. In addition, the Commission has decided to suspend the remainder of this investigation until 30 days after the U.S. Court of Appeals for the Federal Circuit has issued a decision regarding the alidity of U.S. Letters Patent 3,941,926. At that time, the Commission, upon review of the Court's opinion, will decide whether or not to review the ID on the issues of inequitable conduct in the prosecution of U.S. Letters Patent 4,009,335, and enforceability of the U.S. Letters Patent 3,941,926.

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Catherine R. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 523-0189.

Issued: August 6, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-21714 Filed 8-14-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-172]

Certain Shearing Machines; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: U.S. Amada, Ltd. (U.S. Amada) and Amada Company, Ltd. (Amada Japan).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on August 6, 1984.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the Federal Register. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

Issued: August 6, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-21713 Filed 8-14-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-173]

Certain Valves; Commission Decision Not To Review Initial Determination Terminating the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review an initial determination (I.D.) to terminate this investigation. Termination of the investigation is based on a settlement agreement between complainant Clow Corporation and respondents Vanessa S.p.A and Vanessa Valve Corporation.

Authority: 19 U.S.C. 1337; 19 CFR 210.51 (a) and (c); 19 CFR 210.53 (a), (c) and (h).

SUPPLEMENTARY INFORMATION: Notice of the I.D. was published in the Federal Register of July 18, 1984, 49 FR 29165. No petitions for review were filed nor were any comments from Government agencies or the public received.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0079.

Issued: August 9, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-21706 Filed 8-14-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-176]

Certain Vinyl-Covered Foam Blocks; Commission Determination Not To Review Initial Determination Terminating Respondent on the Basis of a Consent Order; Issuance of Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: The Commission has determined not to review an initial determination (ID) to terminate this investigation as to respondent Talbot Toys, Inc., on the basis of a consent order.

Authority: 19 U.S.C. 1337; 19 CFR 210.51(d) and 211.21.

SUPPLEMENTARY INFORMATION: Notice of the ID was published in the Federal Register of July 18, 1984 (49 FR 29166). The Commission has received neither a petition for review of the ID nor comments from the public or from other Government agencies.

Termination of the investigation as to respondent Talbot Toys on the basis of the consent order furthers the public interest by conserving Commission resources and those of the parties involved.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, telephone 202-523-0311.

Issued: August 6, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

FR Doc. 84-21701 Filed 8-14-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-174]

Certain Woodworking Machines; Commission Decision To Review Initial Determination; Affirmation of Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined to review on its own motion an initial determination (ID) granting a motion to terminate Tauco Manufacturing (PTY) Ltd. (Tauco) as a respondent in this investigation. The Commission has determined to review the ID and to affirm the decision of the presiding officer that Tauco should be terminated as a respondent.

Authority: The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.55 and 210.56 of the Commission's Rules of Practice and Procedure (19 CFR 210.55-210.56).

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation in response to a complaint filed by Rockwell International Corp. of Pittsburgh, Pennsylvania to determine whether there is a violation of section 337 in the importation of certain woodworking machines into the United States, or in their distribution and sale. The notice names Tauco as one of twenty-two respondents. (48 FR 55786, December 15, 1983).

On June 29, 1984 the presiding officer issued an ID (Order No. 21) terminating Tauco as a respondent. No petitions for review of the ID were received from any party and no comments were received from any government agency. However, the Commission determined that there were certain issues of law that warranted review of the ID and initiated review on its own motion.

Copies of the public version of the ID, the Commission's Action and Order and its Memorandum Opinion (when available), and all other nonconfidential documents on the record of this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone (202) 523-0161.

FOR FURTHER INFORMATION CONTACT: Hannelore V. M. Hasl, Esq., Office of General Counsel, U.S. International Trade Commission, tel. (202) 523-0359.

Issued: August 7, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-21710 Filed 8-14-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 751-TA-9]

Drycleaning Machinery From West Germany

AGENCY: U.S. International Trade Commission.

ACTION: Institution of a review investigation concerning the Commission's affirmative determination in investigation No. AA1921-99, Drycleaning Machinery from West Germany.

SUMMARY: Notice is hereby given that the United States International Trade Commission has initiated an investigation pursuant to section 751(b) of the Tariff Act of 1930 (U.S.C. 1675(b)) to review its determination in investigation No. AA1921-99. The purpose of the investigation is to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of drycleaning machinery from West Germany if the antidumping order regarding such merchandise were to be modified or revoked. Drycleaning machinery is provided for in item 670.41 of the Tariff Schedules of the United States.

SUPPLEMENTARY INFORMATION: On September 29, 1972, the commission determined that an industry in the United States was injured within the meaning of the Antidumping Act of 1921, by reason of imports of drycleaning machinery from West Germany determined by the Secretary of Treasury to be sold or likely to be sold at less than fair value (LTFV).

On November 8, 1972, the Department of the Treasury issued a finding of dumping (T.D. 72-311) and published notice of the dumping finding in the Federal Register (37 FR 23715).

On October 28, 1981, the Commission received a request to review its affirmative determination in investigation No. A1921-99. The request was filed pursuant to section 751(b) of the Tariff Act of 1930 by Barnes, Richardson & Colburn on behalf of Bowe Machinenfabrik, GmbH, a West German exporter of drycleaning machinery, and American Permac, Inc., a related U.S. importer of such merchandise. On

February 10, 1982, the Commission issued a notice of dismissal of the request to institute a section 751(b) review investigation concerning the affirmative determination in investigation No. AA1921-99, Drycleaning Machinery from West Germany (47 FR 6119).

On May 18, 1984, the Commission received another request to review its affirmative determination in investigation No. AA1921-99. The request was filed pursuant to section 751(b) of the Tariff Act of 1930 by Barnes, Richardson & Colburn on behalf of Bowe Machinenfabrik, GmbH, a West German exporter of drycleaning machinery, and American Permac, Inc. and Bowe Systems & Machinery, Inc., both of which are related U.S. importers and sellers of such merchandise. On June 6, 1984, the Commission requested written comments in the Federal Register (49 FR 23462) as to whether the changed circumstances alleged by the petitioner were sufficient to warrant a review investigation.

On August 9, 1984 the Commission determined that the alleged changed circumstances were sufficient to warrant a review investigation. No comments opposing institution of the investigation were received.

The investigation will be conducted in accordance with § 207.45(b) of the Commission's Rules of Practice and Procedure (19 CFR 207.45(b)). The purpose of the investigation is to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of drycleaning machinery from West Germany if the antidumping order regarding such merchandise were to be revoked.

Dates

Pursuant to § 207.45(b) of the Commission's Rules of Practice and Procedure, the 120-day period for completion of this investigation begins on the date of publication of this notice in the Federal Register.

Written Submissions

Any person may submit to the Commission written statements of information pertinent to the subject matter of the investigation on or before October 24, 1984. A signed original and fourteen true copies of such statements must be submitted in accordance with § 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8).

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential business data." Confidential submissions must conform with the requirements of § 201.6 of the Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except confidential business data, will be available for public inspection. A staff report containing preliminary findings of fact will be available to all interested parties on October 17, 1984.

Public Hearing

The Commission will hold a public hearing in connection with this investigation on October 31, 1984, in the Hearing Room of the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436, beginning at 10:00 a.m., e.s.t. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m., e.d.t.), October 12, 1984. All persons desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m., e.d.t., on October 17, 1984, in Room 117 of the U.S. International Trade Commission Building, and may file prehearing briefs on or before October 24, 1984. For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A, C, and E (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

FOR FURTHER INFORMATION CONTACT: Vera Libeau, Supervisory Investigator, Office of Investigations, U.S. International Trade Commission, (202-523-0368) or Jack Simmons, Esq., Office of the General Counsel, U.S. International Trade Commission, (202-523-0493).

Issued: August 10, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-21705 Filed 8-14-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-201 (Preliminary)]

Egg Filler Flats From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

EFFECTIVE DATE: August 3, 1984.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-201 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry is materially retarded, by reason of imports from Canada of molded egg filler flats of pulp, but not of paper or of paperboard, provided for in item 256.70 of the Tariff Schedules of the United States (TSUS), which are allegedly sold in the United States at Less Than Fair Value (LTFV).

FOR FURTHER INFORMATION CONTACT: Judith Zeck (202-523-0339), or Cynthia Wilson (202-523-0291), U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on August 3, 1984, by Keyes-Fibre Co., Stamford, CT, and Packaging Corp. of America, Evanston, Ill. The Commission must make its determination in this investigation within 45 days after the date of the filing of the petition, or by September 17, 1984 (19 CFR 207.17).

Participation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than seven (7) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairwoman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service of Documents

The Secretary will compile a service list from the entries of appearance filed in this investigation. Any party submitting a document in connection with the investigation shall, in addition to complying with § 201.8 of the Commission's rules (19 CFR 201.8), serve a copy of each such document on all other parties to the investigation. Such service shall conform with the

requirements set forth in § 201.16(b) of the rules (19 CFR 201.16(b)).

Written Submissions

Any person may submit to the Commission on or before August 29, 1984, a written statement of information pertinent to the subject matter of this investigation (19 CFR 207.15). A signed original and fourteen (14) copies of such statements must be submitted (19 CFR 201.8).

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on August 24, 1984, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact Judith Zeck (202-523-0339) or Cynthia Wilson (523-0291), not later than 12:00 noon, August 23, 1984, to arrange for their appearance. Parties in support of the imposition of antidumpting duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Public Inspection

A copy of the petition and all written submissions, except for confidential business data, will be available for public inspection during regular hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and B (19 CFR Part 207), and Part 201, subparts A through E (19 CFR Part 201).

This notice is published pursuant to section 207.12 of the Commission's rules (19 CFR 207.12).

Issued: August 9, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-21708 Filed 8-14-84; 8:45 am]

BILLING CODE 7020-02-M

[332-188]

The Internationalization of the Automobile Industry and Its Effects on the U.S. Automobile Industry

AGENCY: United States International Trade Commission.

ACTION: Institution of an investigation under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)) for the purpose of presenting information on the internationalization of the world automobile industry and its effects on the U.S. automobile industry.

EFFECTIVE DATE: August 6, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Jim McElroy of Ms. Deborah Ladomirak, Machinery and Equipment Division, Office of Industries, United States International Trade Commission, Washington, D.C. 20436 (telephone 202-523-0258 and 202-523-0131, respectively).

Background and scope of investigation: The Commission instituted the investigation on its own motion in recognition of the changes that are occurring in world automotive component production and automotive assembly operations and how those changes are affecting the U.S. automobile industry.

This study will provide a broad overview of the current and historical relationships between automobile producers throughout the world and the effects the growing internationalization have had on the U.S. automobile industry, including the U.S. automobile worker.

The Commission expects to complete its study by April 1985.

Public Hearing

A public hearing in connection with the investigation will be held in Detroit, Michigan, beginning at 10:00 a.m., e.s.t., on December 4, 1984, to be continued on December 5, 1984, if required. At least 60 days prior to the hearing, a Federal Register notice will be posted giving the exact location in Detroit, Michigan. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, not later that noon, November 28, 1984.

Written Submissions

Interested person are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on November 30, 1984. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

Issued: August 9, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-21707 Filed 8-14-84; 8:45 am]

BILLING CODE 7020-02-M

Request for Public Comment on Termination of Countervailing Duty Investigation Concerning Unwrought Zinc From Spain

AGENCY: U.S. International Trade Commission.

ACTION: Request for comments on proposed termination of countervailing duty investigation under section 104(b) of the Trade Agreements Act of 1979.

FOR FURTHER INFORMATION CONTACT: Mrs. Vera Libeau, Office of Investigations, telephone 202-523-0368.

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979, subsection 104(b)(1), requires the Commission in the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930, upon the request of a government or group of exporters of merchandise covered by the order, to conduct an investigation to determine whether an industry in the United States would be materially injured, or threatened with material injury, or whether the establishment of such industry would be materially retarded, if the order were to be revoked. On April 23 1982, the Commission received a request from the Government of Spain for the review of

the countervailing duty order on unwrought zinc from Spain (T.D. 77-103), notice of which was published on April 8, 1977 in the Federal Register (41 FR 18587).

The Commission received a letter on August 3, 1984 from counsel to the Lead-Zinc Producers Committee, the original petitioner for the countervailing duty order, stating that it withdraws its request for the imposition of countervailing duties under the above-referenced countervailing duty order.

The legislative history of section 704(a) of the Tariff Act of 1930, as amended by the Trade Agreements Act, indicates that the Commission should solicit public comment prior to termination of an investigation and appove the termination only if it is in the public interest. In light of the Commission's duty fo consider the public interest, the Commission requests written comments from persons concerning the proposed termination of the investigation on unwrought zinc from Spain. These written comments must be filed with the Secretary to the Commission no later than 30 days after publication of this notice in the Federal Register.

Issued: August 10, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-21703 Filed 8-14-84; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30470]

Tenneco, Inc., Packaging Corp. of America, Corinth and Counce RR Co., ABCO Cartage Co., and B.F. Biaggini

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts (1) the continuance in control of the Corinth and Counce Railroad Company and Packaging Corporation of America by Tenneco, Inc., and (2) Mr. B.F. Biaggini from 49 U.S.C. 11322 with regard to his holding interlocking positions on the board of directors of Tenneco and of the Santa Fe Southern Pacific Corporation.

DATES: This exemption will be effective on September 14, 1984. Petitions to stay must be filed by August 27, 1984, and petitions for reconsideration must be filed by September 4, 1984.

ADDRESSES: Send pleadings to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423

(2) Petitioner's representative: Daniel C. Sullivan, 180 N. Michigan Avenue, Suite 1700, Chicago, IL 60601

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan Area) or toll free (800) 424-5403.

Decided by: July 27, 1984.

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

James H. Bayne,

Secretary.

[FR Doc. 84-21642 Filed 8-14-84; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL COMMUNICATIONS SYSTEM

Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee; Meeting

A meeting of the Industry Executive Subcommittee (IES) of the National Security Telecommunications Advisory Committee (NSTAC) will be held beginning at 9 a.m., Tuesday, September 11, 1984. The meeting will be held at The MITRE Corporation, 1820 Dolley Madison Boulevard, McLean, Virginia 22102. The agenda is as follows:

A. Opening remarks.

B. Review of NSTAC recommendations and charges and prior IES instructions.

C. Status briefing on the activities of the Funding and Regulatory Working Group (FRWG) regarding funding mechanisms for NSTAC initiatives.

D. Briefings from task force leaders on the objectives, plans of action, and progress of reports for NSTAC IV.

E. Planning for next IES meeting and NSTAC IV.

Any person desiring information about the meeting may telephone (202) 692-9274 or write the Manager, National Communications System, Washington, D.C. 20305

D.C. Brown,

Captain, USN, NCS Joint Secretariat.

[FR Doc. 21600 Filed 8-14-84; 8:45 am]

BILLING CODE 3610-05-M

NUCLEAR REGULATORY COMMISSION

Draft Generic Technical Position on Licensing Assessment Methodology for High-Level Waste Geologic Respositories; Availability of Draft Technical Position

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) has completed the draft generic technical position, "Draft Generic Technical Position on Licensing Assessment Methodology for High-Level Waste Geologic Respositories."

DATE: Comments to this notice must be received by October 15, 1984.

ADDRESS: Copies of this document may be obtained free of charge upon written request to Nancy Still, Docket Control Center, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail-Stop 623-SS, Washington, D.C. 20555, Telephone number (301) 427-4426.

FOR FURTHER INFORMATION CONTACT: John J. Linehan, Section Leader, Repository Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone number (301) 427-4672.

SUPPLEMENTARY INFORMATION: The Nuclear Waste Policy Act of 1982 (Public Law 97-425) and Commission Regulation 10 CFR Part 60 promote interaction between Department of Energy (DOE) and NRC prior to submittal of a license application for a geologic repository. These interactions are to fully inform DOE about the level of information that must be provided in a license application to allow a licensing decision to be made by the NRC. Guidance to DOE is provided in NRC Site Characterization Analyses (SCA's) which document staff reviews of DOE Site Characterization Plans submitted according to the Nuclear Waste Policy Act and 10 CFR Part 60. Supplementary guidance is presented in staff technical positions on both generic and site-specific issues. Generic Technical Positions establish the staff's position on technical issues that would be applicable to any site.

This announcement notices availability and solicits comment on a draft Generic Technical Position, "Draft Generic Technical Position on Licensing Assessment Methodology for High-Level Waste Geologic Repositories." Guidance is provided to DOE on what the staff considers to be necessary elements of an acceptable licensing assessment and performance assessment methodology for deep geologic disposal of high-level

nuclear waste. The staff considers that licensing and performance assessments need to be carried out throughout the site characterization process, including the development of site-specific designs; the intent of the Generic Technical Position is to provide guidance to the Department that is applicable throughout the site characterization period. Development and initial implementation of a sound methodology is an essential early step in developing a logical program for site characterization and design development and in identifying technical questions that must be addressed by the license application. The Technical Position summarizes guidance which has been given to DOE through technical correspondence, documented technical meetings and other mechanisms provided by the NRC/DOE Procedural Agreement (48 FR 38701). The staff considers that licensing assessment methodology must be addressed in the Site Characterization Plans for each site.

Dated at Silver Spring, Maryland, this 3rd day of August, 1984.

For the Nuclear Regulatory Commission.

John J. Linehan,

Section Leader, Repository Projects Branch, Division of Waste Management/NMSS.

[FR Doc. 84-21688 Filed 8-14-84; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Record Keeping 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 submision, new, revision or extension: Revision.

2. The title of the information collection: "Requirements for Fitness for Duty for Personnel with Access to Vital Areas of Nuclear Power Stations."

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: NRC licensees.

6. An estimate of the number of responses: 280 responses per year.

7. An estimate of the total number of hours needed annually to complete the requirement or request: 1400 hours per year.

8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: If it appears to the holder of an operating license for a nuclear power unit that any NRC or other Government employee is unfit for duty when in the vital areas of the nuclear power plant, that person shall be provided immediate, escorted access and the license holder shall immediately notify the appropriate NRC Regional Administrator or other Government official.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., 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 9th day of August 1984.

For the Nuclear Regulatory Commission.

Michael L. Springer,

Acting Director, Office of Administration.

[FR Doc. 84-21689 Filed 8-14-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-396]

University of Virginia; Consideration of Application for Renewal of Facility License; Correct

In FR Doc. 84-20506 beginning on page 31017 in the issue of Thursday, August 2, 1984, make the following correction:

On page 31017, first column, fourth paragraph, first line, "August 29, 1984" should have read "September 4, 1984"

Dated: August 10, 1984.

John C. Hoyle,

Assistant Secretary.

[FR Doc. 84-21606 Filed 8-14-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322-OL-4 (Low Power)]

Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1); Order

Following the conclusion of evidentiary hearings held July 30 through August 7, 1984 in this low-power exemption proceeding, the evidentiary record was closed on August 7 as to all issues except the separately scheduled security proceedings. The parties are directed to file proposed findings of fact and conclusions of law by 1:00 p.m. Friday, August 31, 1984. Such findings shall be in separately numbered paragraphs, nonargumentative and factual in nature. Arguments may be provided in separately filed brief. All filings shall be simultaneous. The Applicant as the party with the burden of proof may have seven (7) days to file a reply to the filings of the other parties.

In addition to the foregoing, the parties are given notice that a conference with counsel will be held at 9:30 a.m. on Thursday, August 16, 1984, at the U.S. Nuclear Regulatory Commission Hearing Room, located at 4350 East/West Highway, 5th Floor, Bethesda, Maryland. The purpose of this conference is to hear closing arguments by counsel on all issues involved in the July 30-August 7 evidentiary hearing. Arguments will also be heard on the security matter issue and schedule, and any other motions.

It is so ordered.

For the Atomic Safety and Licensing Board.

Dated at Bethesda, Maryland this 9th day of August 1984.

Marshall E. Miller,

Chairman, Administrative Judge.

[FR Doc. 84-21687 Filed 8-14-84; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-21216; File No. SR-MCC-84-6]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Clearing Corp.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 23, 1984, the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

A new Rule 5 will be added to Article IV of the MCC Rules as follows:

Additions italized—[Deletions Bracketed]

Securities Loans and Specialists' Accounts, Market Makers' Accounts and Trading Accounts

Any securities loan between a Participant and another Participant's specialist account, market maker account or trading account that is transacted outside the Corporation's Automatic Securities Loan program must be recorded and settled as a Member to Member Securities Loan.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change would require that securities loans to a Midwest Stock Exchange (MSE) member specialist, market maker or trading account at MCC must be cleared and settled as a Member to Member Securities Loan. The rule change will improve surveillance by MSE's Market Regulation Department, enhancing the monitoring of outstanding stock loans. Additionally, the rule change will allow MCC's Midwest Clearing Department (MCD) to perform its research activities more efficiently.

The rule change will reduce MCD's activity in reviewing and researching trader's Stock Record Reports. Currently, traders may borrow stock through MCC's ex-CNS stock loan program to cover stock positions in the Continuous Net Settlement System (CNS). Under ex-CNS, the trader or MCD arranges the stock loan on a Member to Member basis which is reflected in the trader's Net Position Report as a trade-for-trade open transaction. The ex-CNS loan balances with the short position on the trader's Profit and Loss Report (P&L Report). When a trader closes the transaction, the Net Position and P&L Reports show no position.

Many traders, however, have chosen not to use ex-CNS, instead having their short positions covered by lenders who deliver in shares by Depository Delivery Instruction (DDI). These transactions are never reflected in trade-for-trade on the Net Profit Report, although they are correctly shown on the P&L Report as a short position. However, after the member transfers the stock by DDI, the trader's Net Profit Position Report shows no position, while his P&L Report continues to correctly show a short position, since it will not reflect the DDI book-entry movement.

MCD presently reviews traders' Stock Record Reports and researches the out-of-balance items. When a trader's P&L Report is out of balance with his Net Position Report, a weekly Stock Record Report is generated. MCD then researches the out of balance items, which may arise from due bill trading on a stock split, reorganizations or erroneous input. Trader's short positions covered by DDI transfers without a corresponding ex-CNS entry, cause out of balance items, resulting in the generation of unnecessary Stock Record Reports.

The proposed rule change would eliminate this out of balance problem. When a trader's short position is closed, his P&L Report and his Net Position Report show no position. Since the positions in both reports would be in balance, no unnecessary Stock Record Reports would be created.

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 and the rules thereunder in that it provides for the adequate clearance and settlement of securities transactions. The rule change will allow MCC, and its parent, MSE, to more effectively review Participants' stock loan activities. Additionally, MCC's reports will be more accurate, enhancing monitoring by both MCC and its Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Clearing Corporation does not believe that the proposed rule change will impose any burdens on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were solicited by MST System Administrative Bulletin No. B-84/3371, dated June 6, 1984. No comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 5, 1984.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 6, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-21721 Filed 8-14-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21227; File Nos. SR-MCC-84-5 and SR-MSTC-84-5]

Self-Regulatory Organization; Order Approving Proposed Rule Changes of Midwest Clearing Corp. and Midwest Securities Trust Co.

August 9, 1984.

I. Introduction

On June 8, 1984, Midwest Clearing Corporation and Midwest Securities Trust Company (together, "Midwest") filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), (the "Act") and Rule 19b-4 thereunder, proposed rule changes that would authorize a dial-up telecommunications option for Midwest participants.

Notice of the proposals was published in Securities Exchange Act Release No. 21072 (June 20, 1984), 49 FR 26666 (June 28, 1984). No letters of comment were received by the Commission.

II. Description

The proposals would amend Midwest's procedures to authorize dial-up access to Midwest's MST Communications System (the "MST System").[1] Dial-up access would be an alternative to use of dedicated telephone lines.

Under the proposals, Midwest participants using dial-up access to the MST System would be able to use the same terminal functions as participants using dedicated telephone lines. Specifically, participants could: (1) Retrieve daily activity and position reports, (2) inquire about current positions and activity, and (3) enter instructions for same-day security and cash movements.

In their filings, Midwest recognized that dial-up access to the MST System would present a greater risk of unauthorized access than use of dedicated telephone lines.[2] Accordingly, Midwest proposed an elaborate system of safeguards to prevent unauthorized access via dial-up connections. The proposals require use of a password system to identify each user, computer, printer and terminal function. If users enter all passwords correctly and within specified time limits, the MST System automatically will terminate the telephone connection and will call the user back at a predetermined telephone number.[3] The MST System also will automatically monitor and record password errors and time limit violations, enabling Midwest to detect possible security problems and to contact participants.

III. Midwest's Rationale for the Proposals

Midwest believes that the proposals are consistent with Section 17A of the Act because the proposals would increase industry automation and would improve Midwest participants' ability to manage funds and securities safely and efficiently. More specifically, Midwest believes the proposals would provide smaller, lower-volume participants a direct automated communication option more economical than use of dedicated telephone lines. Midwest also believes that the proposals are consistent with the Act because the proposals contain sufficient safeguards against unauthorized access to securities, funds, and data.

IV Discussion

The Commission believes that Midwest's proposals should be approved. The Commission reaches this conclusion after careful consideration and balancing of potential benefits and risks of dial-up access to the MST System.

The Commission agrees with Midwest that dial-up access should provide an economical alternative to use of dedicated telephone lines, and therefore should increase the number of Midwest participants using automated communication equipment. In particular, the Commission recognizes that the proposals should enable Midwest's smaller-volume participants to enjoy efficiencies provided by automated communication methods.

The Commission, however, is concerned that dial-up access to clearing agency processing systems poses a special risk of unauthorized access. Nevertheless, the Commission believes that the proposals' elaborate safeguards, including a password system, reinforced by time limits for responses, automatic call back of users, and automatic monitoring of failed access attempts, should adequately protect funds, securities and data from that risk. Moreover, the Commission urges Midwest to monitor closely the adequacy of the dial-up system's safeguards and to implement necessary system changes expeditiously.

IV Conclusion

On the basis of the foregoing, the Commission finds the proposals consistent with Section 17A of the Act because they facilitate the prompt, accurate and safe clearance and settlement of securities transactions.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes be, and they hereby are, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-21723 Filed 8-14-84; 8:45 am]

BILLING CODE 8010-01-M

[1] The MST System is a computerized communication system linking Midwest's participants to Midwest.

[2] Midwest noted that, in a previous Commission Order relating to terminal systems, the Commission expressed concerns about unauthorized access to securities, funds, and data through use of dial-up computer connections. *See* Securities Exchange Act Release No. 20519 (December 30, 1983), 49 FR 966 (January 6, 1984).

[3] The call back feature assures that the user is calling only from the authorized location.

[Release No. 21222; File No. SR-PSDTC-84-6]

Self-Regulatory Organization; Pacific Securities Depository Trust Co., Order Approving Proposed Rule Change

August 9, 1984.

I. Introduction

On May 29, 1984, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Commission a proposed rule change under the Securities Exchange Act of 1934 (the "Act") that would establish a Units Program ("Program"). Under the Program, PSDTC would offer participants depository services for eligible unit issues, which are combinations of two to four component securities that are issued and traded as a single security for a specifice period. The Commission solicited comment on the proposed rule change in Securities Exchange Release No. 21086.[1] No letters of comment were received. As discussed below, the Commission is approving the proposed rule change.

II. Description

The proposed rule change would provide PSDTC participants with an opportunity to maintain units within a depository book-entry environment as either a unit issue or as component parts. The Program would establish general procedures governing the deposit, withdrawal and transfer of eligible unit issues [2] and/or their

[1] 49 FR 26850 (June 29, 1984).

[2] PSDTC's unit eligibility criteria include: the unit and its component parts must be assigned CUSIP numbers; each unit must consist of no more than four component parts; none of the component parts may contain fractional shares or debentures that are not an integral multiple of $1,000.

component parts to or from participants' classified, unclassified or loan free positions. In particular, participants with positions in unit issues and/or component parts would be permitted to utilize PSDTC's full range of service for those issues or components.

Unit issues have separation dates after which their component securities become separately transferable and the unit ceases to be transferable as a unit by the issuer's agent. Thus, under the Program, deposits and withdrawals after the separation date would be limited to component parts of eligible unit issues. Nonetheless, if the market in a particular unit issue remained active after the separation date, PSDTC participants, if they so desired, would be able to carry the component securities as unit positions at PSDTC and deliver those unit positions, by book-entry, to other PSDTC participants.

On or after a unit's separation date, participants would be allowed to combine component parts into a unit issue or separate a unit issue into its component parts by submitting the appropriate unit swingover instructions. Upon receipt of unit swingover instructions, PSDTC would make the appropriate book-entry movements to the submitting participant's classified, unclassified or loan free positions. These adjustments would be reflected in the participant's "Position and Cash Report"

Under the Program, PSDTC would institute a $3.00 charge for each book-entry movement effected pursuant to a unit swingover instruction. In addition, unit swingover instructions will be billed at a rate of $2.00 per line item.

III. Discussion

PSDTC states in its filing that the proposed rule change is consistent with the Act in general and with Sections 17A(b)(3)(F) and 17A(b)(3)(D) of the Act in particular. PSDTC maintains that the proposed rule change is consistent with section 17A(b)(3)(F) in that the Program will facilitate the safeguarding of securities on deposit at PSDTC, thereby helping to protect investors and the public interest. PSDTC also states that the imposition of fees for book-entry movements pursuant to the Program is consistent with section 17A(b)(3)(D) of the Act because it provides for the allocation of reasonable dues, fees, and charges among PSDTC's participants.

As described more fully below, the Commission is approving the proposed rule change. The Commission believes that the proposal is consistent with the Act in general and with section 17A(b)(3)(F) in particular.

IV Discussion

The Commission believes that the Program will allow PSDTC participants to more efficiently and effectively manage their security positions. Specifically, to the extent that units are traded in that form before and after the applicable separation dates, the Program will permit participants to maintain depository positions compatible with their internal records.

The Program also would give PSDTC participants a flexible and efficient way of handling unit issues and their component securities in the depository environment. For example, participants would be able to pledge unit issues for loans through a single book-entry movement. At the same time, however, PSDTC participants, depending on their particular needs and requirements, would be able to pledge two components securities of a unit issue for a loan and leave the remaining component securities in their accounts at PSDTC.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder, and, in particular, the requirements of Section 17A of the Act.

Accordingly, it is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-PSDTC-84-6) be, and hereby is, approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-21722 Filed 8-14-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21221; SR-Phlx-84-10]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

August 8, 1984.

The Philadelphia Stock Exchange, Inc. ("Phlx"), 1900 Market Street, Philadelphia, PA 19103, submitted on May 2, 1984, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to amend its rules concerning the responsibilities of Phlx floor brokers, definitions of the kinds of orders received on the Phlx options floor, obligations and restrictions applicable to Phlx specialists and registered options traders, and the application and registration processes for becoming an options floor broker. The proposed rule changes are designed, in part, to address the Commission's request that Phlx promulgate a rule that would impose on its floor brokers the obligation to exercise due dilgence in executing a customer order.[1] Accordingly, the proposed changes establish a series of rules pertaining to the responsibilities of Phlx floor brokers, including their responsibility to exercise due diligence in executing customer orders.

Notice of the proposed rule change, together with the terms of substance of the proposed rule change, was given by the issuance of a Commission Release (Securities Exchange Act Release No. 20998, May 29, 1984) and by publication in the Federal Register (49 FR 23273, June 5, 1984). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-21720 Filed 8-14-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23389; 70-7000]

Georgia Power Co.; Proposal To Amend Charter

August 8, 1984.

Georgia Power Company ("Georgia"), 333 Piedmont Avenue, N.E., Atlanta, Georgia, 30303, an electric utility subsidiary of The Southern Company, a registered holding company, has proposed a transaction pursuant to sections 6, 7 and 12(e), of the Public Utility Holding Company Act of 1935 ("Act") and Rules 62 and 65 thereunder.

Georgia's Charter presently provides, in effect, that, except for limited specified purposes or except with the affirmative vote in favor thereof of the holders of at least a majority of the total

[1] *See* letter dated November 3, 1982, from Douglas Scarff, Director, Division of Market Regulation, to Mr. Nicholas A. Giordano, President, Phlx.

number of shares of Georgia's Preferred Stock, stated value $100 per share ("$100 Preferred Stock"), and Class A Preferred Stock, stated value $25 per share ("$25 Preferred Stock") ("$100 Preferred Stock and the $25 Preferred Stock being collectively referred to herein as the "Preferred Stock") at the time outstanding (each share of $100 Preferred Stock being counted as one and each share of $25 Preferred Stock being counted as one quarter), the total principal amount of securities representing unsecured indebtedness having maturities of less than ten years as defined in the Charter which Georgia may issue or assume shall not exceed 10% of its other capitalization, namely the sum of: (a) The total principal amount of all bonds and other securities representing secured indebtedness issued or assumed by Georgia and then to be outstanding and (b) the capital and surplus of Georgia (paid-in, earned and other, if any) as stated on the books of account of Georgia.

The current wording of such provision requires that unsecured indebtedness with an initial maturity of more than ten years ("long-term debt") becomes unsecured indebtedness having a maturity of less than ten years ("short-term debt"), subject to the restrictions of the aforesaid Charter provisions, ten years from the maturity date. For example, a 15-year debenture would be included in the calculation of short-term debt after the fifth year from its date of issuance. The proposed Charter amendment would provide that long-term debt is not included in the calculation of short-term debt until three years from the maturity date. Thus, the 15-year debenture used as an example above would not be included in the calculation of short-term debt, subject to the aforesaid Charter restrictions, until after the twelfth year from its date of issuance. Such amendment would be consistent with the limitations on the issuance or assumption of securities representing unsecured debt set forth in the Commission's Statement of Policy Regarding Preferred Stock Subject to the Act (HCAR No. 13106, February 16, 1956).

On April 30, 1980, the holders of a majority of the then outstanding shares of Georgia's Preferred Stock authorized Georgia, until July 1, 1985, to issue or assume unsecured short-term debt (as above-defined) in excess of such 10% limitation, provided that (a) none of such additional short-term debt outstanding on July 1, 1985 shall mature on or after January 1, 1986, and (b) Georgia's total indebtedness represented by unsecured securities shall at no time exceed 20% of its other capitalization (HCAR No. 21471, March 10, 1980).

Georgia now proposes to submit to the holders of its outstanding Preferred Stock a proposal that Georgia be authorized to issue or assume until July 1, 1992, securities representing unsecured indebtedness having maturities of less than ten years ("short-term debt") in excess of 10% of capital, surplus and secured debt, provided that (a) none of such additional short-term debt outstanding on July 1, 1992, shall mature on or after January 1, 1993 and (b) Georgia's total indebtedness represented by unsecured securities shall at no time exceed 25% of capital, surplus and secured debt ("other capitalization"). Georgia states that its need to increase short-term debt is necessary in order to finance its construction program, primarily for Vogtle Units 1 and 2 and Scherer Units 3 and 4.

Georgia further proposes to amend its Charter so as to modify the provisions relating to the limitation on the payment of common stock dividends and the calculation of net income available for dividends and gross income available for interest in meeting coverage requirements in connection with the issuance of additional shares of Preferred Stock, without prior stockholder approval.

Presently, the Charter limits cash dividends on common stock to 50% of net income for a prior period of twelve months if the ratio of common stock equity to total capitalization, including surplus, adjusted to reflect the payment of the proposed dividend, is below 20%, and to 75% of net income if such ratio is 20% or more but less than 25%.

The Charter also limits the issuance of additional shares of Preferred Stock without prior approval of the holders of a majority of the total number of outstanding shares of Preferred Stock, unless (i) net income available for dividends for a prior period of twelve months is at least equal to two times the annual dividend requirements on all shares of Preferred Stock and senior or equally ranking stock to be outstanding and (ii) gross income available for interest for a prior period of twelve months is at least equal to one and one-half times the aggregate of annual interest requirements and annual dividend requirements on all shares of Preferred Stock and senior or equally ranking stock to be outstanding.

In computing net income available for dividends and gross income available for interest in connection with the foregoing provisions, a deduction is required of the greater of (i) the total amount, if any, by which the aggregate of the charges to income or earned surplus since December 31, 1940, to the end of the period in question for repairs, maintenance and provisions for depreciation shall have been less than 16% of gross operating revenues derived subsequent to December 31, 1940 and prior to the end of such period, after deduction of the aggregate cost of purchased power, and (ii) the amount, if any, by which the aggregate of the charges to income or earned surplus since December 31, 1961, to the end of the period as provision for depreciation shall have been less than the sum of amounts equal to the product of the applicable percentage (presently 2.1% and increasing to 2.25%) and the mathematical average of the amounts of depreciable property at the opening of business on the first day and at the close of business on the last day of each calendar year (and, proportionately, of each period of months which is less than a calendar year) subsequent to December 31, 1961, and prior to the end of such period, up to but not exceeding that part of the applicable deficiency, if any, arising during such period. A similar deduction is also required in computing surplus under the dividend limitation.

The proposed Charter amendment would, in each instance, eliminate the 16% maintenance requirement but would retain the replacement requirement and would fix the applicable percentage at 2.5% or such other percentage as may be authorized by the Commission.

The reason for this proposed Charter amendment is related to the impact of recovery of fuel costs on Georgia's revenues. Georgia's fuel costs have risen sharply in the last several years, and these costs have been passed on to customers through rate tariffs. As a result, Georgia's gross operating revenues have increased disproportionately such that a maintenance requirement based thereon is considered to be no longer appropriate. Georgia believes that fuel costs and related earnings test deductions may, under the terms of the Charter, increase to the point so that Georgia might be unable to meet the coverage requirements for the issuance of additional Preferred Stock in coming years. Calculation of the earnings test under the proposed Charter amendment would result in a higher coverage ratio, thereby increasing the possibility that Georgia could satisfy the earnings test in connection with future issues of Preferred Stock. Furthermore, a replacement requirement based upon a

percentage of depreciable property establishes a more appropriate standard for determining the expenditures required in order to maintain the value of Georgia's property than a maintenance requirement based upon fluctuating revenues.

Similarly, for the reasons described above, the requirement of a deduction of 16% of gross operating revenues in computing net income available for dividends and surplus in the provisions relating to dividends may have the effect of imposing an increasingly high limitation on the payment of common stock dividends.

Georgia proposes to submit the proposed Charter amendments at a special meeting of its stockholders planned to be held on November 1, 1984 and, in connection therewith, to solicit proxies from the holders of the Preferred Stock.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 6, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-21725 Filed 8-14-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23388; 70-7006]

New England Electric System; Proposed Issuance and Sale of Common Stock

August 8, 1984.

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts, 01581, a registered holding company, has proposed a transaction pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder.

NEES and its subsidiaries intend to establish the NEES Goals Plan (the "Plan"). The Plan is intended to qualify as a qualified trust under section 401(a) of the Internal Revenue Code of 1954, as amended. The purpose of the Plan is to provide incentive for employees to achieve specific corporate goals. Each participating subsidiary will contribute to the Plan, on behalf of its participating employees, a percentage of their annual compensation. Such percentage will be determined by the level of the corporate goals achieved. Employees may elect to have all or a portion of contributions made on their behalf invested in, among other investment alternatives, NEES common shares. For this purpose, NEES proposes to issue and sell through December 31, 1988, a maximum of 500,000 shares of its authorized but unissued common shares, $1 par value, pursuant to the Plan. NEE common shares purchased under the Plan will generally come from authorized but unissued common shares. NEES reserves the right, however, to instruct the Trustee to purchase NEES shares on the open market. The price of NEES common shares purchased from NEES will be based upon the average of the high and low prices of NEES common shares on the New York Stock Exchange-Composite Transactions as reported in the Wall Street Journal for the 5 consecutive trading days ending with the applicable Investment Date. Each participant or beneficiary shall have the right to direct the Trustee on how to exercise the voting rights with respect to all the whole and fractions of NEES common shares allocated to his account. The Trustee shall vote shares for which it does not receive voting instructions in the same proportions as it votes the shares held by it under the Plan for which it does receive such instructions. NEES has requested an exception from the competitive bidding requirements of Rule 50.

The proceeds from the sale of common shares will be added to the general frunds of NEES and will be used for any or all of the following purposes:

(i) Investment in subsidiaries, through loans to such subsidiaries, purchases of additional shares of their capital stocks, or capital contributions, (ii) payment of indebtedness of NEES, or (iii) other corporate purposes of NEES.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 4, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-21724 Filed 8-14-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14090; 812-5879]

Oppenheimer Adjustable Rate Preferred Fund and Oppenheimer Investor Services Inc.; Application

August 8, 1984.

Notice is hereby given that Oppenheimer Investor Services, Inc. ("OIS") a registered broker-dealer under the Securities Exchange Act of 1934, and Oppenheimer Adjustable Rate Preferred Fund (the "Fund"), Two Broadway, New York, New York, 10004, an open-end, registered, diversified, management investment company (collectively with OIS "Applicants"), filed an application on June 25, 1984, for an order pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicants and all dealers who have selling agreements with OIS relating to shares of the Fund from the provisions of section 22(d) of the Act to permit shareholders and former shareholders to repurchase Fund shares without a sales charge. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable statutory authority.

Applicants state that the Fund is designed to be an investment vehicle for the cash balances of corporations and other entities taxable as such ("corporate taxpayers"). Applicants further state that the investment objective of the Fund is to provide high after-tax income which qualifies for the corporate dividends received deduction under the Federal Internal Revenue Code ("Code"). The Fund will primarily

invest in adjustable rate preferred stocks. Such stocks have variable dividends, Applicants state, generally determined according to a formula based on a specified premium or discount to the yield on specified debt securities issued by the United States Treasury.

The Fund's shares will be offered by OIS at a maximum sales charge of 2½% of the offering price, reduced on sales over $250,000, with a minimum initial investment of $25,000 and subsequent investments in increments of $1,000 or more. Applicants acknowledge that appropriate management of corporate cash balances may require frequent redemptions of shares on which a sales charge was paid. Imposition of a sales charge on repurchases, Applicants assert, would inhibit appropriate management and thereby either deter the initial investment in Fund shares or alternatively, adversely affect proper shareholder cash management.

Applicants propose to offer shareholders and former shareholders of the Fund the privilege of reinvesting in Fund shares at net asset value (without a sales charge) in an amount of shares not to exceed the number of full shares previously owned by the shareholder at any time, including shares acquired on the reinvestment of dividends and distributions ("Reinvestment Privilege"). The privilege will also be available to corporate taxpayers which are successors (by merger or other reorganization) of shareholders or former shareholders.

Section 22(d) of the Act provides, in principal part, that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person except at a current offering price described in the prospectus. The offering of Fund shares, pursuant to the Reinvestment Privilege, at net asset value to shareholders and former shareholders of the Fund may, Applicants state, be in violation of section 22(d).

Applicants assert that the Reinvestment Privilege is necessary for the Fund to be a viable investment alternative for shareholders taxed as corporations under the Code, notwithstanding the dividends received deduction, because the cash balance management of corporate accounts may require frequent redemptions and repurchases of Fund shares.

Applicants submit that section 22)d) of the Act is intended to ensure the orderly distribution of open-end investment company shares and to prevent discrimination or preferential treatment in price among members of the public. Applicants assert that the Reinvestment Privilege would have no effect on the orderly distribution of shares and that there would be no preferential treatment because all shareholders or former shareholders have the same privilege. Moreover, Applicants contend that the Reinvestment Privilege would not lend itself to trading based on anticipated market condition changes with possible adverse effects to the Fund as a consequence of a high redemption rate since adjustable rate preferred stocks are responsive to interest rate fluctuations.

Applicants state that they may not rely on Rule 22d-2 since their proposal does not meet all of the conditions of the Rule. Rule 22d-2 permits the reinvestment at net asset value of redemption proceeds. Applicants submit that their proposal meets the conditions of the Rule requiring that a reinvestment privilege be pursuant to a uniform offer described in the prospectus, that the redemptions do not involve a refund of sales charges pursuant to section 27(d) or 27(f) of the Act and that sales personnel and dealers receive no compensation based on the reinvestment.

The first difference between Rule 22d-2 and Applicants' Reinvestment Privilege is that, while that Rule provides that the no-load sale must not exceed the amount of the reinvestment proceeds, the proposed privilege would permit repurchase of shares up to the highest number of full shares previously owned at any time. (If a single purchaser maintains its shares of the Fund in multiple accounts, the privilege of repurchasing shares at net asset value will be limited to the highest number of full shares previously held in each separate account.) Applicants submit that the reason for this provision of that Rule is that such Rule was designed to provide relief for investors who redeemed for mistaken or uninformed reasons and thus to place them in substantially the position in which they would have been in had they not redeemed, so that for the Rule to provide for reinvestment of more than the redemption proceeds would be inappropriate to achieve this objective. The purpose of the Reinvestment Privilege, however, is not to provide such relief but rather to permit Fund shares to be a viable investment alternative for the cash balances of corporate taxpayers.

The other differences between Rule 22d-2 and the Reinvestment Privilege are that, in substance, the Rule permits only one such no-load sale to a shareholder of a particular investment company and requires that the sale be effected within 30 days after the redemption. Applicants submit that the conditions of the Rule are designed not only so the Rule would not be more extensive than necessary to provide for the relief for mistaken or uninformed redemptions but also, so that the privilege provided for in the Rule could not be used as a vehicle for playing the market, with possible adverse consequences to the investment company in question. Applicants submit that, for the reasons described above, an investment in Fund shares is unlikely to be used as such a vehicle, irrespective of whether the Reinvestment Privilege is available to shareholders.

Applicants assert that the proposed Reinvestment Privilege is fair and equitable to shareholders of the Fund in that there is no preferential treatment of shareholders and is appropriate in the public interest and consistent with purposes intended by the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 4, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-21726 Filed 8-14-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region IX Advisory Council Meeting

The Small Business Administration, Region IX Advisory Council, located in the geographical area of San Francisco, will hold a public meeting at 10:00 a.m., Tuesday, September 11, 1984, 211 Main Street—5th Floor—Conference Room 543, San Francisco, California, to discuss such matters as may be presented by

members, staff of the Small Business Administration, or others present.

For further information, write or call Lawrence J. Wodarski, District Director, U.S. Small Business Administration, 211 Main Street—4th Floor, San Francisco, California 94105, (415) 974-0642.

Dated: August 9, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-21586 Filed 8-14-84; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council Meeting

The Small Business Administration, Regin III Advisory Council, located in the geographical area of Clarksburg, West Virginia, will hold a public meeting at 1:00 p.m., Tuesday, September 11, 1984, in the Mayor's Conference Room, City Hall, Parkersburg, West Virginia, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Marvin P. Shelton, District Director, U.S. Small Business Administration, P.O. Box 1608, Clarksburg, West Virginia 26302-1608 or call (304) 622-6601.

Dated: August 9, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-21587 Filed 8-14-84; 8:45 am]

BILLING CODE 8025-01-M

Extension of Illinois Plan Pilot Project

AGENCY: Small Business Administration.

ACTION: Notice.

The Small Business Administration authorized a pilot program that is designed to increase the access of Illinois small businesses to fixed rate loans. This program is fully described in the Federal Register at 48 FR 36553 (August 11, 1983) and amended at 49 FR 16916 (April 20, 1984).

The August 11, 1983, announcement provided that SBA may extend the pilot program for six months after its scheduled termination. At the request of the Illinois Small Business Growth Corporation, SBA will extend the Pilot Project in the State of Illinois until March 31, 1985.

For Further Information Contact: James W. Hammersley, Financial Analyst, Small Business Administration, Room 800C, 1441 L St., NW, Washington, D.C. 20426, 202-653-5954.

(Catalog of Federal Domestic Assistance Programs, 59.012, Small Business Loans)

Date: August 8, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-21739 Filed 8-14-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2164]

Nevada; Declaration of Disaster Loan Area

Clark County in the State of Nevada constitutes a disaster area because of damage caused by severe storms and flooding which occurred on July 22, 1984, through July 28, 1984. Applications for loans for physical damage may be filed until the close of business on October 9, 1984, and for economic injury until the close of business on May 8, 1985, at the address listed below: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Sacramento, CA 95825, or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Business (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 216406 for physical damage and for economic injury the number is 612000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 8, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-21738 Filed 8-14-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/756]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Radio Communications; Meeting

The Working Group on Radio Communications of the Subcommittee on Safety of Life at Sea will conduct a delegation meeting at 9:30 a.m. on September 5, 1984 in Room 8334-8336 at the Department of Transportation, 400 Seventh Street, SW., Washington, DC.

The purpose of the meeting is to prepare positions concerning documents which were received from the International Maritime Organization (IMO) since the July 12 Working Group Meeting. The delegation will also hear briefings concerning recent actions of the IMO Subcommittees on Navigation and Standards of Training and Watchkeeping. In particular the Working Group will discuss the following topics:

Maritime Distress System
Digital Selective Calling
Satellite Emergency Position Indicating Radio Beacons (EPIRBs)
Preparations for the International Telecommunication Union (ITU) World Administrative Radio Conference (WARC) for Mobil Telecommunications
Preparations for International Radio Consultative Committee (CCIR) Study Group 8

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. Richard Swanson, U.S. Coast Guard Headquarters (G-TPP-3/63), 2100 Second Street, SW., Washington, DC 20593. Telephone: (202) 426-1231.

Dated: July 31, 1984.

Samuel V. Smith,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 84-21613 Filed 8-14-84; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-84-15]

Petitions for Exemption; Summary of Petitions Received, of Dispositions Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the applications, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number

involved and must be received on or before September 5, 1984.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ——, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e) and (g) of § 11.27 Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on August 10, 1984.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
23730	Japan Air Lines	14 CFR 61.77(d)(i)(i) 63.23(d)(i)(i)	To allow petitioner's crewmembers, who hold special purpose airmen licenses to operate, to and from, or within the United States any U.S.-registered boeing 747-200-F aircraft, which is leased to petitioner as a ferry flight or to operate the aircraft in flight crew training at Moses Lake, Washington.
24176	Age of Englightenment Aviation	14 CFR § 91.303	To allow petitioner to operate one Stage 1 Boeing 707 in noncompliance with the operating noise limits.

DISPOSITIONS FOR PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
24038	IBM Corporation	14 CFR 21.181, 91.27, & 91.29	To allow petitioner to operate three S.korsky S.76A. helicopters using a minimum equipment list. *Granted 8/3/84.*
24013	Hispaniola Airways	14 CFR 91.303	To allow petitioner to operate Boeing 707/720 and DC-8 aircraft through December 31, 1987, in noncompliance with the operating noise limits. *Denied 8/9/84.*
24002	Air Transport Int'l	14 CFR 91.303	To allow petitioner to operate two DC-8-55 aircraft in noncompliance with the operating noise limits until "hust kits" can be installed. *Denied 8/9/84.*
23983	Aeronaves del Peru S. A.	14 CFR 91.303	To allow petitioner to operate three DC-8 aircraft until January 1, 1988, in noncompliance with the operating noise limits. *Denied 8/9/84.*
24011	Connie Kalitta Services, Inc.	14 CFR 91.303	To allow petitioner to operate DC-8 aircraft in noncompliance with the operating noise limits until "hush kits" are installed. *Denied 8/9/84.*
23992	Tradewinds Airways	14 CFR 91.303	To allow petitioner to operate three Boeing 707 aircraft until December 31, 1987, in noncompliance with the operting noise limits. *Denied 8/9/84.*
24004	American Trans Air	14 CFR 91.303	To allow petitioner to operate eight Boeing 707 aircraft in noncompliance with the operating noise limits until "hush kits" can be installed. *Denied 8/9/84.*
23996	Zantop Int'l. Airlines	14 CFR 91.303	To allow petitioner to operate DC-8 and CV888 aircraft in noncompliance with the operating noise limits through December 31, 1987. *Denied 8/9/84.*

[FR Doc. 84-21650 Filed 8-10 2:14 pm]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

The Advisory Committee on the International Monetary System; Continuation

Pursuant to the Federal Advisory Committee Act of October, 6, 1972, (Pub. L. 92-463, 86 Stat. 770-776, 5 U.S.C. App. 2, as amended) the Department of the Treasury announces the continuation of the following advisory committee:

Title: The Advisory Committee on the International Monetary System.

Purpose: The Committee, composed of representatives from banking, industry, labor and the academic community, as well as former government officials, discusses major issues concerning the effective functioning of the international monetary system and potential areas for improvement, advising the Secretary of the Treasury on these questions in the International Monetary Fund and in other forums.

Statement of Public Interest: The world economy is in a period of significant change affecting, among other things, the operations of the international monetary system. It is important that the Secretary of the Treasury continue to receive the advice and recommendations of the Advisory Committee in this period. The depth and breadth of the members's experience in international monetary affairs cannot be duplicated from sources within the Treasury nor from another existing advisory committee.

Authority for this committee will expire two years from the date the charter is approved and filed, unless formally extended by the Secretary of the Treasury.

Dated: August 8, 1984.

Beryl W. Sprinkel,

Under Secretary for Monetary Affairs.

[FR Doc. 84-21633 Filed 8-14-84; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 9, 1984.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 535-6020. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7316, 1201 Constitution Avenue, N.W., Washington, D.C. 20220.

Comptroller of the Currency

OMB Number: 1557-0081

Form Number: FFIEC 031-034

Type of Review: Revision

Title: Reports of Condition and Income (Interagency Call Report)
OMB Reviewer: Judy McIntosh (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Joseph Maty,
Departmental Reports Management Office.

[FR Doc. 84-21632 Filed 8-14-84; 8:45 am]
BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such submission. USIA is requesting approval of an information collection for a new American Participants (AmParts) Questionnaire.

DATE: Comments must be received by September 17, 1984.

Copies: copies of the request for clearance (SF-83), supporting statement, instructions, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA Clearance Officer. Comments on the item listed should be submitted to the Office of Information and Regulatory Affiars of OMB, Attention Desk Officer for USIA.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer,Charles N. Canestro, United States Information Agency, M/M, 301 Fourth Street, SW., Washington, D.C. 20547, telephone (202) 485-8676. And OMB review; Michael Weinstein, Office of Informtion and Regulatory Affiars, Office of Management and Budget, Wahington, D.C. 20503, telephone (202) 395-4814.

SUPPLEMENTARY INFORMATION: American Participants Program, AmParts Questionnaire.

Abstract:

This information collection is intended to help USIA keep abreast of the long-term effectiveness of its American Participants lecturers after they return from overseas tours. Expereince indicates that former grantees initiate continuing cultural exchange relationships with professional colleagues in countries visited. Information obtained will be used for program evaluation.

Dated: August 10, 1984.

Charles N. Canestro,
Management Analyst, Federal Register Liaison.

[FR Doc. 84-21668 Filed 8-14-84; 8:45 am]
BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains extensions and lists the following information: (1) The Department or Staff Office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: August 8, 1984.

By direction of the Administrator.

Dominick Onorato,
Associate Deputy Administrator for Information Resources Management.

Extensions

1. Department of Veterans Benefits
2. Consumer Sampling Letter—VA Hospital
3. VA Form letter 37-652a
4. On occasion
5. Individuals or households
6. 12,924 responses
7. 2,154 hours
8. Not applicable

1. Department of Veterans Benefits
2. Water-Plumbing Systems Inspection Report (Manufactured Home)
3. VA Form 26-8731a
4. On occasion
5. Individuals or households; Businesses or other for-profit; Small businesses or organizations
6. 1,000 responses
7. 2,000 hours
8. Not applicable

1. Department of Veterans Benefits
2. Fuel and Heating Systems Inspection Report (Manufactured Home)
3. VA Form 26-8731c
4. On occasion
5. Individuals or households; Businesses or other for-profit; Small businesses or organizations
6. 1,000 responses
7. 2,000 hours
8. Not applicable

1. Office of Construction
2. Supplement to SF-129, Solicitation Mailing List Application
3. VA Form 03-6299
4. Annually
5. Businesses or other for-profit; Small businesses or organizations
6. 3,000 responses
7. 500 hours
8. Not applicable.

Extensions

1. Department of Medicine and Surgery
2. Funeral Arrangements
3. VA Form 10-2065
4. One time
5. Individuals or households
6. 55,000 responses
7. 4,583 hours
8. Not applicable

1. Office of Budget and Finance
2. Financial Status Report
3. VA Form 4-5655
4. On occasion
5. Individuals or households
6. 250,000 responses
7. 250,000 hours
8. Not applicable

[FR Doc. 84-21664 Filed 8-14-84; 8:45 am]
BILLING CODE 8320-01-M

Schedule of Cost Studies

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: Under OMB Circular A-76, Performance of Commercial Activities, the Veterans Administration will be conducting cost comparison reviews at various field stations within the Department of Veterans Benefits to determine the feasibility of contracting out centralized transcription activities to private contractors. The following list of stations and schedule of CBD publication dates and bid opening dates is published for the notification of all interested parties.

FOR FURTHER INFORMATION CONTACT: James C. Allen, Chief, Space and Supply Management Division, Department of Veterans Benefits (232B), VA Central Office, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-3255.

Dated: August 8, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Schedule of A-76 Cost Comparisons for CTA's

[Centralized Transcription Activities]

Field station	Initial publication date	Bid opening date
Waco, TX	Sept. 18, 1984	Apr. 23, 1985.
Philadelphia, PA	do	Do.
St. Paul, MN	do	Do.
St. Petersburg, FL	do	Do.
Los Angeles, CA	do	Do.
San Francisco, CA	do	Do.
Detroit, MI	Nov. 14, 1984	June 19, 1985.
Cleveland, OH	do	Do.
Chicago, IL	do	Do.
Atlanta, GA	do	Do.
Winston-Salem, NC	do	Do.
New York, NY	do	Do.
Boston, MA	Mar. 20, 1985	Oct. 23, 1985.
Roanoke, VA	do	Do.
Columbia, SC	do	Do.
Montgomery, AL	do	Do.
Newark, NJ	do	Do.
Buffalo, NY	July 17, 1985	Feb. 19, 1986.
Louisville, KY	do	Do.
St. Louis, MO	do	Do.
Indianapolis, IN	do	Do.
Milwaukee, WI	do	Do.
Muskogee, OK	Nov. 13, 1985	June 18, 1986.

Schedule of A-76 Cost Comparisons for CTA's—Continued

[Centralized Transcription Activities]

Field station	Initial publication date	Bid opening date
Nashville, TN	do	Do.
New Orleans, LA	do	Do.
Phoenix, AZ	do	Do.
Pittsburgh, PA	do	Do.
Jackson, MS	Mar. 12, 1986	Oct. 15, 1986.
Denver, CO	do	Do.
Little Rock, AR	do	Do.
Wichita, KS	do	Do.
San Juan, PR	do	Do.
San Diego, CA	do	Do.
Des Moines, IA	July 16, 1986	Feb. 18, 1987.
Portland, OR	do	Do.
Lincoln, NE	do	Do.
Hartford, CT	do	Do.
Baltimore, MD	do	Do.
Sioux Falls, SD	do	Do.
Huntington, WV	do	Do.
Fargo, ND	Nov. 19, 1986	June 24, 1987.
Boise, ID	do	Do.
Providence, RI	do	Do.
Salt Lake City, UT	do	Do.
Honolulu, HI	do	Do.
Washington, DC	do	Do.
VACO	do	Do.

[FR Doc. 84-21641 Filed 8-14-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 159
Wednesday, August 15, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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	Items
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1

[M-410 Amdt. 2]

CIVIL AERONAUTICS BOARD

ANNOUNCEMENT AMENDMENTS

The CAB will meet: August 8, 1984. Short notice addition of item to the August 9, 1984 Board meeting.

TIME AND DATE: 10:00 a.m. August 9, 1984.

PLACE: Room 1027 (Open) Room 1012 (Closed).

SUBJECT: 5a. Dockets 38883, *et. al.*, Employee Protection Program, Pan American and other carriers. Request for Instructions. (OGC)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary.

[FR Doc. 84-21745 Filed 8-13-84 9:28 am]

BILLING CODE 6320-01-M

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CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 49 No. 152–32152.

PREVIOUSLY ANNOUNCED TIME AND PLACE OF MEETING: Tuesday, August 14, 1984; Place: See Agenda Below.

CHANGES IN THE MEETING: Revised to delete previous item 3, Export Policy, CPSA & FHSA: Proposed Codification (rescheduled to 8/16/84).

Listed below is the revised agenda:

Commission Meeting, Tuesday, August 14, 1984, 10:00 a.m., Third Floor Hearing Room, 1111–18th Street NW., D.C.

Open to the Public

1. Unvented Gas-Fired Space Heaters: Final Revocation
   The Commission will consider a proposed revocation of the Commission's mandatory standard requiring the oxygen depletion sensor on unvented gas-fired space heaters (16 CFR Part 1212).
2. Mattress Standard Amendment: Final Rule
   The Commission will consider final amendments to the Mattress Flammability Standard (16 CFR Part 1632).

For a Recorded Message Containing the Latest Agenda Information, Call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301—492–6800

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 84-21811 Filed 8-13-84; 3:09 pm]

BILLING CODE 6355-01-M

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CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 49 No. 156–32152.

PREVIOUSLY ANNOUNCED TIME AND PLACE OF MEETING: Thursday, August 16, 1984, See below for place.

CHANGES IN THE MEETING: Revised to add new item 2 at 10 a.m. (rescheduled from 8/14/84).

Listed below is the revised agenda:

Commission Meeting, Thursday, August 16, 1984, See Times Below, Third Floor Hearing Room, 1111—18th Street, NW., Washington, D.C.

Open to the Public (8:30 a.m.)

1. Commission Staff Briefing
   The staff and the Commission will discuss various matters.
2. Export Policy, CPSA & FHSA: Proposed Codification (10:00 a.m.)
   The Commission will consider a draft Federal Register notice concerning the Commission's policy with regard to export of non-complying, banned and misbranded products. The draft notice proposes the statement of export policy and the factors to be considered when acting on requests for exception and solicits written comments from all interested parties.

Closed to the Public

3. Enforcement Matter OS# 3520
   The Commission will consider Enforcement Matter OS# 3520.
4. Compliance Status Report
   The staff will brief the Commission on a compliance status report.

For a Recorded Message Containing the Latest Agenda Information, Call: 301—492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301—492–6800

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 84-21812 Filed 8-13-84; 3:10 pm]

BILLING CODE 6355-01-M

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CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 49 No. 152–32152.

PREVIOUSLY ANNOUNCED TIME AND PLACE OF MEETING: Wednesday, August 15, 1984, Place: See Agenda Below.

CHANGES: Agenda revised to redescribe UFAC presentation.

Listed below is the revised agenda:

Commission Meeting, Wednesday, August 15, 1984, 10:00 a.m. Third Floor Hearing Room, 1111—18th Street, NW., Washington, D.C.

Open to the Public

Upholstered Furniture Flammability: Status
The staff will brief the Commission on the status of the upholstered furniture flammability project. Representatives of the Upholstered Furniture Action Council (UFAC) will also present results of independent laboratory tests conducted for UFAC on pre-UFAC furniture.

For a Recorded Message Containing the Latest Agenda Information, Call: 301—492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 84-21813 Filed 8-13-84; 3:10 pm]

BILLING CODE 6355-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:13 p.m. on Thursday, August 9, 1984, the Board of Directors of the Federal

Deposit Insurance Corporation met in closed session, by telephone conference call, to (1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Jackson County National Bank, Tuckerman, Arkansas, which was closed by the Senior Deputy Comptroller for Bank Supervision, Office of the Comptroller of the Currency, on Thursday, August 9, 1984; (2) accept the bid for the transaction submitted by First State Bank of Newport, Newport, Arkansas, an insured State nonmember bank; (3) approve the application of First State Bank of Newport, Newport, Arkansas, for consent to purchase certain assets of and to assume the liability to pay deposits made in Jackson County National Bank, Tuckerman, Arkansas, and for consent to establish the two offices of Jackson County National Bank as branches of First State Bank of Newport; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 5652b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: August 10, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-21789 Filed 8-13-84; 12:20 pm]

BILLING CODE 6714-01-M

6

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 7:10 p.m. on Friday, August 10, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to (1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The Tingley State Savings Bank, Mount Ayr, Iowa, which was closed by the Superintendent of Banking for the State of Iowa on Friday, August 10, 1984; (2) accept the bid for the transaction submitted by Hawkeye Bank & Trust, Mount Ayr, Iowa, an insured State nonmember bank; (3) approve the application of Hawkeye Bank & Trust, Mount Ayr, Iowa, for consent to purchase certain assets of and to assume the liability to pay deposits made in The Tingley State Savings Bank, Mount Ayr, Iowa, and for consent to establish the two offices of The Tingley State Savings Bank as branches of Hawkeye Bank & Trust; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

The Board of Directors also (1) received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Peoples State Bank of Clay County, Poland, Indiana, which was closed by the Director of the Department of Financial Institutions for the State of Indiana on Friday, August 10, 1984; (2) accepted the bid for the transaction submitted by First State Bank, Poland, Indiana, a newly-chartered State nonmember bank subsidiary of Terre Haute First Corporation, Terre Haute, Indiana; (3) approved the applications of First State Bank, Poland, Indiana, for Federal deposit insurance, for consent to purchase certain assets of and to assume the liability to pay deposits made in Peoples State Bank of Clay County, Poland, Indiana, and for consent to establish the sole branch of Peoples State Bank of Clay County as a branch of First State Bank; and (4) provided such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director C.T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: August 13, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-21808 Filed 8-13-84; 3:10 pm]

BILLING CODE 6714-01-M

7

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, August 20, 1984, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum and Resolution re: Planters Trust & Savings Bank of Opelousas Opelousas, Louisiana.

Memorandum re: Amendments to the Corporation's General Travel Regulations.

Memorandum re: Classification of Expenses Related to Liquidation Activities.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Summary Audit Report re: Columbia Pacific Bank and Trust Company, Portland, Oregon, SR-416, (Memo dated July 13, 1984)

Summary Audit Report re: Smith County Bank, Carthage, Tennessee, AP-345 (Memo dated August 1, 1984)

Summary Audit Report re: Summary of Four Liquidation Site Audits (Memo dated July 13, 1984)
Memorandum re: Status of Auditee Corrective Actions
Memorandum re: OCAI Semi-Annual Information Report

Discussion Agenda: No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: August 13, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-21809 Filed 8-13-84; 3:10 pm]

BILLING CODE 6714-01-M

8

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is herby given that at 2:30 p.m. on Monday, August 20, 1984, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension of removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Request for Consent to Retire Subordinated Note Prior to Maturity:

Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8) and (c)(9)(A)(ii)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: August 13, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-21810 Filed 8-13-84; 3:11 pm]

BILLING CODE 6714-01-M

9

FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 31525, August 7, 1984

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Approximately 11:00 a.m., Friday, August 10, following a recess at the conclusion of the open meeting.

CHANGES IN THE MEETING: One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item(s) was added: Issues relating to Federal Reserve notes. (This item was originally announced for a closed meeting on August 6, 1984.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: August 10, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-21743 Filed 8-13-84; 9:23 am]

BILLING CODE 6210-01-M

10

FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon, Monday, August 20, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 10, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-21744 Filed 8-13-84; 9:23 am]

BILLING CODE 6210-01-M

11

INTERNATIONAL TRADE COMMISSION

[USITC SE-84-37A/33A]

"FEDERAL REGISTER" CITATIONS OF PREVIOUS ANNOUNCEMENTS: 49 FR 31797/31798 (8/8/84).

PREVIOUSLY ANNOUNCED TIMES AND DATES OF MEETINGS: Wednesday, August 15, 1984, and Wednesday, August 22, 1984.

CHANGES IN THE MEETING: Rescheduling of agenda item No. 1 (a) [Gremlin characters (Docket No. 1034)] from the agenda for Wednesday, August 15, 1984, and adding it to the agenda for Wednesday, August 22, 1984, as follows:

4. Petitions and complaints: b. Gremlin characters (Docket No. 1034).

In conformity with 19 CFR 201.37(b), Commissioners Stern, Liebeler, Eckes, Lodwick, and Rohr determined by action jacket GC-84-126 that Commission business requires the change in scheduling by deletion of the agenda item from the agenda for Wednesday, August 15, 1984, and adding it to the agenda for Wednesday, August 22, 1984, affirmed that no earlier announcement

of the change to these agenda was possible, and directed the issuance of this notice at the earliest practicable time. There are no other changes to these agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[FR Doc. 84-21855 Filed 8-13-84; 3:59 pm]
BILLING CODE 7020-02-M

federal register

Wednesday
August 15, 1984

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 301

Tax Shelter Registration; Temporary Regulation and Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 7964]

Procedure and Administration; Tax Shelter Registration

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to tax shelter registration. In addition, the text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the Notice of Proposed Rulemaking in the Proposed Rules section of this issue of the Federal Register. Changes to the applicable tax law were made by the Tax Reform Act of 1984. The regulations affect organizers, sellers, investors and certain other persons associated with investments that are considered tax shelters.

EFFECTIVE DATE: The regulations apply to tax shelters in which any interest is first sold after August 31, 1984.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Clark of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3828, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Procedure and Administration Regulations (26 CFR Part 301) to provide rules relating to both tax shelter registration under section 6111 of the Internal Revenue Code of 1954 and the penalties imposed by section 6707 for failure properly to register tax shelters or to furnish the tax shelter registration number. The regulations reflect the addition of sections 6111 and 6707 to the Code by section 141 of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 678).

The temporary regulations have been drafted in question and answer format. No inference should be drawn regarding issues not raised herein or why certain questions and not others are included. The temporary regulations contained in this document will remain in effect until additional temporary or final regulations are published in the Federal Register.

Explanation of Provisions

Section 6111(a), as added by the Tax Reform Act of 1984, requires a tax shelter organizer to register the tax shelter with the Internal Revenue Service by the day on which interests in the tax shelter are first offered for sale. A penalty may be imposed for failure to register a tax shelter timely, unless the failure is due to reasonable cause. The regulations provide a reasonable cause exception for failure to register timely in the case of certain tax shelters. A person who is required to register a tax shelter before October 1, 1984 (*i.e.*, a tax shelter in which the first offering for sale of an interest occurred before September 1, 1984, but in which interests will be sold after August 31, 1984, or a tax shelter in which the first offering for sale of an interest occurs after August 31, 1984, and before October 1, 1984) will have reasonable cause for the failure to register timely if the person registers the tax shelter on or before September 30, 1984. (A-5 of § 301.6707-1 T)

Registration is accomplished by filing a properly completed Form 8264, Application for Registration of a Tax Shelter, with the Internal Revenue Service. The regulations provide supplemental questions and answers relating to instructions to Form 8264. Form 8264 should be completed with reference to the supplemental questions and answers, the printed instructions to Form 8264, and the questions and answers in § 301.6111-1T and § 301.6707-1T.

A tax shelter is any investment that meets the following two requirements, regardless of whether it is marketed or designated as a tax shelter. First, the investment must be one with respect to which a person could reasonably infer, from the representations made or to be made in connection with any offer for sale of any interest in the investment, that the tax shelter ratio for any investor may be greater than 2 to 1 as of the close of any of the first 5 years ending after the date on which the investment is offered for sale. Second, the investment must be (i) required to be registered under a federal or state law regulating securities, (ii) sold pursuant to an exemption from registration requiring the filing of a notice with a federal or state agency regulating the offering or sale of securities, or (iii) a substantial investment.

Section 6111(c)(2) defines the term "tax shelter ratio" as the ratio, with respect to any year, that the aggregate amount of deductions and 200 percent of the credits that are or will be represented as potentially allowable to an investor under subtitle A of the Internal Revenue Code for all periods up to (and including) the close of such year, bears to the investment base as of the close of such year.

For purposes of determining the tax shelter ratio, the regulations clarify that the amount of the deductions means the amount of gross deductions potentially allowable with respect to the investment. The gross deductions are not to be offset by any gross income to be derived or potentially derived from the investment.

The regulations also provide that a deduction or credit is represented as potentially allowable if any statement is made (or will be made) in connection with the offering for sale of an interest in an investment indicating that the deduction or credit is allowable for tax purposes or may be used to reduce federal income tax or federal taxable income for any year. Representations may be oral or written. (A-8) If an explicit representation concerning tax benefits is made (or will be made) with respect to an investment, all deductions or credits typically associated with the investment will be considered as having been represented as potentially allowable. (A-9 of § 301.6111-1T) The fact that statements are also made (or to be made) indicating that a deduction may be offset by income from the investment or that a deduction or credit may be subject to recapture or may be disallowed on audit will not affect the computation of the tax shelter ratio. (A-10 of § 301.6111-1T)

The regulations provide rules for determining whether an investment is required to be registered with a federal agency (A-17 or § 301.6111-1T) or state agency (A-18 of § 301.6111-1T), or sold pursuant to an exemption from registration requiring the filing of a notice with a federal agency (A-19 of § 301.6111-1T) or state agency (A-20 of § 301.6111-1T), or is a substantial investment (A-21 through A-25 of § 301.6111-1T).

Section 6111(c)(3) defines the term "investment base" as the amount of money and the adjusted basis of other property (reduced by liabilities) contributed by the investor as of the close of the year, reduced by the following: (1) Amounts borrowed from any person who participated in the organization, sale or management of the tax shelter (or from a person related (as defined in section 168(e)(4)) to a participating person), unless the amount is unconditionally required to be repaid by the investor by the close of the year (A-14(1) of § 301.6111-1T), (ii) amounts to be held in cash, cash equivalents, or marketable securities (A-14(4) of

§ 301.6111-1T), and (iii) any other amounts as provided in regulations.

The regulations provide that the investment base will also be reduced by the following: (1) Amounts borrowed from a person who has an interest (other than as a creditor) in the tax shelter unless the amount is unconditionally required to be repaid before the close of the year, (2) amounts borrowed from any person that are not unconditionally required to be repaid by the investor before the close of the year if the amount borrowed is arranged by a participating (or related) person, (3) foreign-connected financing, and (4) projected distributions that are to be made without regard to the income of the tax shelter, to the extent that they exceed the amount to be held in cash, cash equivalents, or marketable securities. (A-14 of § 301.6111-1T)

The regulations provide that the sale of an interest in a tax shelter includes the sale of property, or any interest in property, the entry into a leasing arrangement, a consulting, management or other agreement for the performance of services, or the sale or entry into any other plan or arrangement.

Section 6111(d) defines the term "tax shelter organizer," in general, as the person principally responsible for organizing a tax shelter (the "principal organizer"). If the principal organizer has not registered the tax shelter by the day interests in the tax shelter are first offered for sale, any other person who participated in the organization of the tax shelter will be treated as a tax shelter organizer. If neither the principal organizer nor any other person who participated in the organization of the tax shelter has registered the tax shelter by the day interests in the tax shelter are first offered for sale, any person who participates in the management of the tax shelter at a time when the tax shelter is not registered will be treated as a tax shelter organizer. Finally, if a person participates in the sale of a tax shelter at a time when the person knows or has reason to know that the tax shelter has not been registered, that person will be treated as a tax shelter organizer. The regulations provide rules for determining what constitutes participation in the organization (A-28 of § 301.6111-1T), management (A-29 of § 301.6111-1T), or sale (A-31 of § 301.6111-1T of a tax shelter.

The regulations provide that a group of persons who could be treated as tax shelter organizers, including participants in the sale or management of a tax shelter, may enter into a written agreement designating one of them as the person responsible for registering the tax shelter. (A-38 of § 301.6111-1T) The regulations also provide rules relating to when persons who sign a designation agreement are nevertheless required to register a tax shelter. (A-39 of § 301.6111-1T)

Section 6111(b)(1) requires sellers of interests in a tax shelter to furnish purchasers with the registration number of the tax shelter. See A-52 through A-54 of § 301.6111-1T for rules relating to the time and manner in which the registration number must be furnished.

Section 6111(b)(2) requires investors in a tax shelter to report the registration number of the tax shelter on any return on which a tax benefit is claimed. The regulations provide that any person who claims a deduction, loss, credit, or other tax benefit, or reports any income from a tax shelter must report the registration number on the return on which claimed or reported (A-55 of § 301.6111-1T).

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. A general notice of proposed rulemaking is not required for temporary regulations. Accordingly, the temporary regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The collection of information requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under section 3507 of the Paperwork Reduction Act. (Control No. 1545-0865)

Drafting Information

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

List of Subjects in 26 CFR Part 301

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

PART 301—[AMENDED]

Amendments to the Regulations

The amendments to 26 CFR Part 301 are as follows:

Paragraph 1. New §§ 301.6111-1T and 301.6111-2T [1] are added immediately after § 301.6110-7 to read as follows:

§ 301.6111-1T Questions and answers relating to tax shelter registration.

The following questions and answers relate to the tax shelter registration requirements of section 6111 of the Internal Revenue Code of 1954, as added by section 141(a) of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 678).

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[1] Editorial note: Section numbers which end with the letter "T" are temporary regulations. Permanent regulations to the corresponding CFR section, when issued by IRS, will not contain this "T" designator.

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In General

Q-1. What is tax shelter registration?

A-1. Tax shelter registration is a new provision of the Internal Revenue Code that affects organizers, sellers, investors, and certain other persons associated with investments that are considered tax shelters. The new provision imposes the following three requirements. First, a tax shelter must be registered by the tax shelter organizer. (See A-4 of this section for the definition of a tax shelter. See A-25 through A-39 of this section for rules relating to tax shelter organizers. See A-26 of this section for rules regarding when the seller of an interest in a tax shelter is treated as the tax shelter organizer.) Registration is accomplished by filing a properly completed Form 8264 with the Internal Revenue Service. The Internal Revenue Service will assign a registration number to each tax shelter that is registered. Second, any person who sells or otherwise transfers an interest in a tax shelter must furnish the registration number of the tax shelter to the purchaser or transferee of the interest. (See A-51 through A-54 of this section for the time and manner in which the number must be furnished.) Third, any person who claims a deduction, loss, credit, or other tax benefit or reports any income from the tax shelter must report the registration number of the tax shelter on any return on which the deduction, loss, credit, benefit, or income in included. (See A-55 through A-57 of this section for rules relating to the reporting of tax shelter registration numbers.)

Q-2. Are penalties provided for failure to comply with the requirements of tax shelter registration?

A-2. Yes. Separate penalties are provided for failure to satisfy any of the requirements set forth in A-1 of this section. See A-1 of § 301.6707-1T for the penalty for failure to register a tax shelter and A-8 of § 301.6707-1T for the penalty for filing false or incomplete information will respect to the registration of a tax shelter. See A-12 of § 301.6707-1T for the penalty for failure to furnish the tax shelter registration number to purchasers or transferees. See A-13 of 301.6707-1T for the penalty for failure to report the tax shelter registration number on a tax return on which a deduction, loss, credit, income, or other tax benefit is included. In addition, criminal penalties may be imposed for willful noncompliance with the requirements of tax shelter registration. See, for example, section 7203, relating to willful failure to supply information, and section 7206, relating to fraudulent and false statements.

Q-3. Does registration of a tax shelter with the Internal Revenue Service indicate that the Internal Revenue Service has reviewed, examined, or approved the tax shelter or the claimed tax benefits?

A-3. No. Moreover, any representation to prospective investors that states that a tax shelter is registered with the Internal Revenue Service (or that registration is being sought) must include a legend stating that registration does not indicate that the Internal Revenue Service has reviewed, examined or approved the tax shelter or any of the claimed tax benefits. (See A-50 of this section for the form and content of the legend.)

Tax Shelter Defined

Q-4. What investments are tax shelters that are required to be registered with the Internal Revenue Service?

A-4. A tax shelter is any investment that meets the following two requirements:

(I) The investment must be one with respect to which a person could reasonably infer, from the representations made or to be made in connection with any offer for sale of any interest in the investment, that the tax shelter ratio for any investor may be greater than 2 to 1 as of the close of any of the first 5 years ending after the date on which the investment is offered for sale.

(II) The investment must be (i) required to be registered under a federal or state law regulating securities, (ii) sold pursuant to an exemption from registration requiring the filing of a notice with a federal or state agency regulating the offering or sale of securities, or (iii) a substantial investment.

An investment that satisfies these two requirements is considered a tax shelter for registration purposes regardless of whether it is marketed or customarily designated as a tax shelter. See A-5 of this section for the definition of tax shelter ratio. See A-17 and A-18 of this section for the definition of an investment required to be registered under a federal or state law regulating securities. See A-19 and A-20 of this section for the definition of an investment sold pursuant to an exemption from registration requiring the filing of a notice. See A-21 of this section for the definition of a substantial investment.

Tax Shelter Ratio

Q-5. What does the term "tax shelter ratio" mean?

A-5. The term "tax shelter ratio" means, with respect to any year, the ratio that the aggregate amount of deductions and 200 percent of the credits that are or will be represented as potentially allowable to an investor under subtitle A of the Internal Revenue Code for all periods up to (and including) the close of such year, bears to the investment base for such investor as of the close of such year.

Deductions and Credits Represented as Potentially Allowable

Q-6. What do the terms "amount of deductions" and "credits" mean?

A-6. The term "amount of deductions" means the amount of gross deductions and other similar tax benefits potentially allowable with respect to the investment. The gross deductions are not to be offset by any gross income to be derived or potentially derived from the investment. Thus, the term "amount of deductions" is not equivalent to the net loss, if any, attributable to the investment. The term "credits" means the gross amount of credits potentially allowable with respect to the investment without regard to any possible tax liability resulting from the investment or any potential recapture of the credits.

Q-7. What does the term "year" mean for purposes of determining the tax shelter ratio?

A-7 The term "year" means the taxable year of a tax shelter, or if the tax shelter has no taxable year, the calendar year.

Q-8. Under what circumstances is a deduction or credit considered to be represented as being potentially allowable to an investor?

A-8. A deduction or credit is considered to be represented as being potentially allowable to an investor if any statement is made (or will be made) in connection with the offering for sale of an interest in an investment indicating that a tax deduction or credit is available or may be used to reduce federal income tax or federal taxable income. Representations of tax benefits may be oral or written and include those made at the time of the initial offering for sale of interests in the investment, such as advertisements, written offering materials, prospectuses, or tax opinions, and those that are expected to be made subsequent to the initial offering. Representations are not confined solely to statements regarding actual dollar amounts of tax benefits, but also include general representations that tax benefits are available with respect to an investment. Thus, for example, an advertisement stating that "purchase of restaurant includes trade fixtures (5-year write-off and investment tax credit)" constitutes an explicit representation of tax benefits.

Q-9. If a deduction or credit is not explicitly represented as being potentially allowable to an investor may it be inferred as a represented tax benefit that is includible in the tax shelter ratio?

A-9. Yes. Although some explicit representation concerning tax benefits is necessary before an investment may be considered a tax shelter, once an explicit representation is made (or will be made) regarding any tax benefit, all deductions or credits typically associated with the investment will be inferred to have been represented as potentially allowable. Thus, the tax shelter ratio will be determined with reference to those tax benefits that are explicitly represented as being potentially allowable as well as all other tax benefits that are typically associated with the investment. The amount of each deduction or credit that is includible in the tax shelter ratio, if not specifically represented as to amount, should be reasonably estimated based on representations of economic value or economic projections, if any, or on any other information available to the tax shelter organizer. Reasonable estimates of deductions or credits may take into account past experience with similar investments. Reasonable estimates must assume use of the most accelerated allowable basis for cost recovery deductions.

As an example of the application of this A-9, assume that an advertisement explicitly states that a building is eligible for the investment tax credit for rehabilitation of a certified historic structure, but makes no mention of cost recovery deductions, amortization deductions for construction period interest and taxes, real estate taxes after construction, ongoing maintenance expenses, or other deductions or credits typically associated with a building. Reasonable estimates of all such deductions and credits must be included with the investment tax credit explicitly represented in determining the tax shelter ratio associated with any investor's acquisition of an interest in the building.

Q-10. Does the fact that representations are made (or to be made) indicating that a deduction may be offset by income from the investment or that a deduction or credit may be subject to recapture or may be disallowed on audit affect the computation of the tax shelter ratio?

A-10. No. Deductions and credits represented as being potentially allowable are taken into account in computing the tax shelter ratio regardless of whether any qualifying statements are made.

Q-11. Is interest to be paid by an investor with respect to a debt obligation incurred in connection with the acquisition of an interest in the tax shelter included in the aggregate amount of deductions?

A-11. If a deduction for such interest is explicitly represented (or will be represented) as being potentially allowable, the interest is includible in the aggregate amount of the deductions. In addition, any interest to be paid with respect to a debt obligation the proceeds of which reduce the investment base (see A-14 of this section), regardless of whether a deduction for such interest is explicitly represented as being allowable, will be considered a deduction typically associated with the investment (see A-9 of this section). Accordingly, such interest will be considered to be represented as being potentially allowable and must be taken into account in computing the tax shelter ratio. If interest to be paid with respect to a debt obligation the proceeds of which do not reduce the investment base (see A-14 of this section) is not explicitly represented as being potentially allowable, however, such interest will not be considered typically associated with the investment and will not be taken into account in computing the tax shelter ratio.

Q-12. If representations are made that part or all of an amount invested in a tax shelter will be deductible upon the occurrence of an unintended event, will the deduction be included in the aggregate amount of deductions?

A-12. No. Thus, for example, if representations are made that a person's investment in a tax shelter may give rise to a loss deduction if the investment becomes worthless, the amount of the loss deduction will not be included in the aggregate amount of deductions and will not be taken into account in computing the tax shelter ratio. Similarly, if representations are made that the costs of acquiring oil and gas lease interests may be deductible if the lease is proved worthless by abandonment, the amount of any loss deduction will not be included in the aggregate amount of deductions.

Investment Base

Q-13. What does the term "investment base" mean?

A-13. The term "investment base" means, with respect to any year (as defined in A-7 of this section), means the cumulative amount of money and the adjusted basis of other property (reduced by any liability to which such other property is subject) that is unconditionally required to be contributed or paid directly to the tax shelter on or before the close of such year by an investor.

Q-14. What amounts must be eliminated from the investment base?

A-14. The investment base must be reduced by the following amounts:

(1) Any amount borrowed by the investor, even if borrowed on a recourse

basis, from any person who participated in the organization, sale, or management of the investment or who has an interest (other than an interest as a creditor) in the investment ("a participating person") or from any person who is related (as defined in section 168 (e)(4)) to a participating person, unless the amount is unconditionally required to be repaid by the investor before the close of the year for which the determination is being made. An amount will be considered unconditionally required to be repaid by the investor only if any offering material in which the borrowed amount is described and any agreement to be entered into between a participating (or related) person and the investor provide that the amount must be repaid (without exception) by the end of the year for which the determination is being made. An amount that is to be repaid only from earnings of the investment is not an amount that is unconditionally required to be repaid and is thus excluded from the investment base. In addition, an amount is not unconditionally required to be repaid if the amount will be (or is expected to be) reloaned to the investor during the 5-year period ending after the date the investment is offered for sale.

(2) Any amount borrowed by the investor, even if borrowed on a recourse basis, from any person, if the loan is arranged by a participating (or related) person, unless the amount is unconditionally required to be repaid by the investor before the close of the year for which the determination is being made. Any borrowing that is represented (orally or in writing) as being available from a specific source will be treated as arranged by a participating (or related) person, if the participating (or related) person provides information to the lender relating to the investment or otherwise informs the lender about the investment. Financing may be treated as arranged by a participating (or related) person regardless of whether a commitment to provide the financing is made by the lender to the participating or related person.

For example, assume that a tax shelter organizer represents that the purchase of an interest in a tax shelter may be financed with the proceeds of a revolving loan, and the tax shelter organizer provides investors with the names of several banks or other lending institutions to which the tax shelter organizer has provided information about the investment. The proceeds of the revolving loan will be excluded from the investment base because the loan is not unconditionally required to be repaid and it is treated as having been arranged by the tax shelter organizer.

(3) Any amount borrowed, directly or indirectly, from a lender located outside the United States ("foreign-connected financing"), of which a participating (or related) person knows or has reason to know.

(4) Any amounts to be held for the benefit of investors in cash, cash equivalents, or marketable securities. An amount is to be held in cash equivalents if the amount is to be held in a checking account, savings account, mutual fund, certificate of deposit, book entry government obligation, or any other similar account or arrangement. Marketable securities are any securities that are part of an issue any portion of which is traded on an established securities market and any securities that are regularly quoted by brokers or dealers making a market.

(5) Any distributions (whether of cash or property) that will be made without regard to the income of the tax shelter, but only to the extent such distributions exceed the amount to be held as of the close of the year in cash, cash equivalents, or marketable securities.

Tax Shelter Ratio—Miscellaneous

Q-15. Does an investment satisfy the requirement in A-4 (I) of this section ("the tax shelter ratio requirement") if it may be inferred from the representations made or to be made to investors that the tax shelter ratio for some, but not all, of the investors may be greater than 2 to 1 as of the close of any one of the first five years?

A-15. Yes. If the tax shelter ratio for any one investor may be greater than 2 to 1, the investment satisfies the tax shelter ratio requirement and is a tax shelter if it also meets the requirement in A-4 (II) of this section. For the purpose of computing the tax shelter ratio, all persons with interests in the investment, including, for example, a general partner, are considered investors. Moreover, an investment will satisfy the tax shelter ratio requirement even if the tax shelter ratio for a single investor exceeds 2 to 1 as of the close of only one of the first five years.

Q-16. If a person could reasonably infer from the representations made or to be made about an investment that the tax shelter ratio for the investment may be greater than 2 to 1 under one arrangement for financing the purchase of an interest by an investor, but would be 2 to 1 or less under an alternative financing arrangement, does the investment satisfy the tax shelter ratio requirement of A-4 (I) of this section.

A-16. Yes. An investment satisfies the tax shelter ratio requirement of A-4 (I) of this section if a person could reasonably infer from the representations made or to be made that the tax shelter ratio for any person may be greater than 2 to 1 as of the close of any one of the first five years. The tax shelter ratio requirement is met if the tax shelter ratio may exceed 2 to 1 under any type of financing arrangement that is or will be represented as being available to investors.

Investments Subject to Securities Regulation

Q-17 What is an investment that is required to be registered under a federal law regulating securities?

A-17 An investment required to be registered under a federal law regulating securities is any public offering of an investment that is required to be registered under the Securities Act of 1933 (1933 Act), the Investment Company Act of 1940, or any other federal law regulating securities. An investment is required to be registered under the 1933 Act, the Investment Company Act, or any other federal law regulating securities, if failure to register the investment would result in a violations of the applicable federal law, whether or not the investment has in fact been registered and, if proper notice has not been filed, whether or not the investment could have been sold pursuant to an exemption listed in A-19 of this section if such notice had been filed.

Q-18. What is an investment required to be registered under a state law regulating securities?

A-18. An investment required to be registered under a state law regulating securities is any investment required to be registered under a blue sky law or other similar state statute regulating securities. The term "state" includes the 50 states, the District of Columbia, and possessions of the United States.

Q-19. What is an investment sold pursuant to an exemption from registration requiring the filing of a notice with a federal agency regulating the offering or sale of securities?

A-19. An investment sold pursuant to an exemption from registration requiring the filing of a notice with such a federal agency is any investment that is sold pursuant to an exemption from registration requiring the filing or submission of a notice or other document with the Securities and Exchange Commission or any other federal agency regulating the offering or sale of securities, including the following exemptions (and applicable filing):

(1) Regulation A, as promulgated under section (3)(b) of the 1933 Act (Form 1(A)),

(2) Regulation B, as promulgated under section 3(b) of the 1933 Act (Schedules A through F),

(3) Regulation D, as promulgated under sections (3)(b) and 4(2) of the 1933 Act (Form D), and

(4) Any other statutory or regulatory exemption from registration requiring the filing or submission of a notice or other document.

Q-20. What is an investment sold pursuant to an exemption from registration requiring the filing of a notice with a state agency regulating the offering or sale of securities?

A-20. An investment sold pursuant to an exemption from registration requiring the filing of a notice with such a state agency is any investment sold pursuant to an exemption under a blue sky law or other similar state statutory or regulatory scheme that requires the filing or submission of a notice or other document with such a state agency. See A-18 of this section for the definition of state.

Substantial Investments

Q-21. What is a substantial investment?

A-21. An investment is a substantial investment if the aggregate amount that may be offered for sale to all investors exceeds $250,000 and 5 or more investors are expected. The aggregate amount offered for sale is the aggregate amount to be received from the sale of interests in the investment and includes all cash, the fair market value of all property contributed, and the principal amount of all indebtedness received in exchange for interests in the investment, regardless of whether the proceeds of the indebtedness are included in the investment base under A-14 of this section.

Q-22. Will an investment be considered a substantial investment if the investment involves a number of parts each including fewer than 5 investors or an aggregate amount of $250,000 or less?

A-22. Yes, under the circumstances described in this A-22. For purposes of determining whether investments are parts of a substantial investment, similar investments offered by the same person or related persons (as defined in section 168(e)(4)) are aggregated together. Investments are considered similar if they involve similar principal business assets and similar plans or arrangements. Investments that include no business assets will be considered similar if they involve similar plans or arrangements. Similar investments are aggregated solely for the purpose of determining whether investments involving fewer than 5 investors or an aggregate amount of $250,000 or less are substantial investments. For this purpose, similar investments are aggregated even though some, but not all, of the investments are required to be registered under a federal or state law regulating securities or are sold pursuant to an exemption from securities registration requiring the filing of a notice with a federal or state agency offering or sale of securities (*i.e.*, required to be registered whether or not a substantial investment) or are substantial investments without respect to aggregation.

Assume, for example, that a person develops similar arrangements involving 8 different partnerships, each investing in a separate but similar asset (such as a separate master recording or separate piece of similar real estate), each with a different general partner and each with 3 different limited partners. Assume further that the arrangements of all the partnerships are similar. These partnerships involving similar arrangements and similar assets would be aggregated together. Thus, if each partner is expected to invest $11,000, there will be 32 investors (1 general partner plus 3 limited partners times 8 partnerships) and an aggregate investment of $352,000 (32 partners times $11,000). Accordingly, each partnership will constitute part of a substantial investment. If representations are made that $1,000 in tax credits and $3,000 in deductions are available to each limited partner in the first year and $10,000 of the cash invested was expected to be the proceeds of a loan arranged by the organizer, the tax shelter ratio as of the close of the first year (assuming there are no deductions or credits typically associated with such investment, as described in A-9 of this section) would be 5 to 1 ($5,000 in total tax benefits and $1,000 investment base) and the organizer would be required to register the partnerships with the Internal Revenue Service.

Also, for example, assume that an organizer forms Z corporation to provide consulting services in connection with cattle feeding operations (such as providing advice, information, and assistance on the acquisition of cattle and feed, feedyard availability, commercial financing, and management decisions). Z will agree to provide the services only to customers with a minimum of 200 head of cattle. The fee for the consulting services is $20 per head. Feed for the cattle will cost $280 per head. Z represents that the consulting fee and the cost of the feed may be financed by $5,000 of cash and $55,000 of proceeds of a revolving recourse note that Z has arranged to be available. If Z plans to offer its services to approximately 100 customers, there will be an aggregate investment of $6,000,000. Because the individual investments involve similar plans or arrangements, each consulting agreement will constitute part of a substantial investment. If representations are made that the consulting fee and the cost of the feed are tax deductible, the tax shelter ratio (assuming there are no deductions or credits typically associated with such an investment, as described in A-9 of this section) would be 12 to 1 ($60,000 in total tax benefits and $5,000 investment base) and the organizer would be required to register the consulting arrangements as a tax shelter.

Q-23. If an investment involving fewer than 5 investors or an aggregate amount of $250,000 or less is offered for sale and, at the time of the offering, it is not known (and there is no reason to know) that subsequent similar investments will be offered by the person who made the first offering (or a related person), will subsequent similar investments offered by that person (or a related person) be aggregated with the first investment for purposes of determining whether the investments constitute a substantial investment?

A-23. No. However, a tax shelter organizer will be presumed to have known of any similar investments (as defined in A-22 of this section) offered during the 12 months following the first offering of an investment.

Exceptions From Tax Shelter Registration

Q-24. Are there any investments that will not be subject to tax shelter registration even if they satisfy the requirements of a tax shelter (as defined in A-4 of this section)?

A-24. Yes. The following investments are not subject to tax shelter registration:

(1) Sales of residences primarily to persons who are expected to use the residences as their principal place of residence,

(2) Sales or leases or tangible personal property (other than master sound recordings, motion picture or television films, videotapes, lithograph plates, or other property relating to a literary, musical, or artistic composition) by the manufacturer (or a member of an affiliated group, within the meaning of section 1502, including the manufacturer) of the property primarily

to persons who are expected to use the property in their principal active trade or business (see, however, A-32 and A-46 of this section for the additional rules applicable to a purchaser of property described in this A-24 who organizes an investment involving the property),

(3) Any other investment as specified by the Secretary in a rule-related notice, published in the Federal Register.

Persons Required To Register a Tax Shelter

Q-25. Who has the legal obligation to register a tax shelter?

A-25. A tax shelter organizer is obligated to register the tax shelter.

Q-26. What is the definition of tax shelter organizer?

A-26. Several categories of persons may be tax shelter organizers. In general, the term tax shelter organizer means a person principally responsible for organizing a tax shelter. If a person principally responsible for organizing a tax shelter has not registered the tax shelter by the day on which interests in the shelter are first offered for sale, any other person who participated in the organization of the tax shelter will be treated as a tax shelter organizer. If neither a person principally responsible for organizing the tax shelter nor any other person who participated in the organization of a tax shelter has registered the tax shelter by the day on which interests in the tax shelter are first offered for sale, then any person who participates in the management of the tax shelter at a time when the tax shelter is not registered will be treated as a tax shelter organizer. Finally, if a person participates in the sale of a tax shelter at a time when the person knows or has reason to know that a tax shelter has not been registered, that person will be treated as a tax shelter organizer. See A-38 of this section for rules relating to the execution of an agreement among persons who may be treated as tax shelter organizers to designate one person to register a tax shelter.

Q-27 Who is a person principally responsible for organizing a tax shelter?

A-27 A person principally responsible for organizing a tax shelter ("principal organizer") is any person who discovers, creates, investigates, or initiates the investment, devises the business or financial plans for the investment, or carries out those plans through negotiations or transactions with others.

Q-28. What constitutes participation in the organization of a tax shelter?

A-28. Participation in the organization of a tax shelter includes the performance of any act (directly or through an agent) related to the establishment of the tax shelter, including the following:

(1) Preparation of any document establishing the tax shelter (for example, articles of incorporation, a trust instrument, or a partnership agreement);

(2) Preparation of any document in connection with the registration (or exemption from registration) of the tax shelter with any federal, state, or local government body;

(3) Preparation of a prospectus, offering memorandum, financial statement, or other statement describing the tax shelter;

(4) Preparation of a tax or other legal opinion relating to the tax shelter;

(5) Preparation of an appraisal relating to the tax shelter;

(6) Negotiation or other participation on behalf of the tax shelter in the purchase of any property relating to the tax shelter.

Q-29. What constitutes participation in the management of a tax shelter?

A-29. Participation in the management of a tax shelter includes managing the assets of the tax shelter, directing the business activity of the tax shelter, or, depending on the form of the tax shelter, acting as a general partner who actively participates in the management of a partnership, a trustee of a trust, a director or an officer of a corporation (including a corporate general partner of a partnership), or performing activities similar to those performed by such a general partner, a trustee, a director, or an officer.

Q-30. Will the performance of any act described in A-27 through A-29 of this section constitute participation in the organization or management of a tax shelter if the person performing the act is unrelated to the tax shelter (or any principal organizer of the tax shelter) and does not participate in the entrepreneurial risks or benefits of the tax shelter?

A-30. No. The performance of an act desbribed in A-27 through A-29 of this section will not constitute participation in the organization or management of a tax shelter unless the person performing the act is unrelated to the tax shelter (or any principal organizer of the tax shelter) or the person participates in the entrepreneurial risks or benefits of the tax shelter. A person will be considered related to a tax shelter if the person is related to the tax shelter or a principal organizer of the tax shelter within the meaning of section 168(e)(4) or is employed by the tax shelter or a principal organizer of the tax shelter or has an interest (other than an interest as a creditor) in the tax shelter. A person will be considered a participant in the entrepreneurial risks or benefits of a tax shelter if the person's compensation for performing an act described in A-27 through A-29 of this section is contingent on any matter relating to the tax shelter (*e.g.*, the compensation is based in whole or in part upon (i) whether interests in the tax shelter are actually sold or (ii) the number or value of the units in the tax shelter that are sold), or if the person will receive an interest in the tax shelter as part or all of the person's compensation.

For example, assume that A forms Z partnership, a tax shelter for which registration is required. Z hires the X law firm, none of the partners of which is related to the tax shelter, to prepare the documents necessary to register the offering of Z securities with the Securities and Exchange Commission. X charges $100 an hour for its services in connection with the preparation of the necessary documents, and payment of the fee is not contingent. X will not be treated as a participant in the organization of the tax shelter. If, however, X were to charge a fee equal to 1 percent of the value of the units in the tax shelter that are sold, X would be considered a participant in the organization of the shelter.

As another example, assume that individual C is an attorney employed by W corporation, the corporate general partner and principal organizer of Z, and that C prepares the documents necessary to register the tax shelter with the Securities and Exchange Commission. C will be treated as having participated in the organization of the tax shelter regardless of the way in which C's compensation is structured, because C, as an amployee, is related to the principal organizer of the tax shelter.

Q-31. What constitutes participation in the sale of a tax shelter?

A-31. Participation in the sale of a tax shelter includes any marketing activities (directly or through an agent) with respect to an investment, including the following:

(1) Direct contact with a prospective purchaser of an interest, or with a representative or agent of a prospective purchaser, but only if the contract relates to the possible purchase of an interest in the tax shelter;

(2) Solicitation of investors using the mail, telephone, or other means, or by placing an advertisement for the tax shelter in a newspaper, magazine, or other publication or medium;

(3) Instructing or advising salespersons regarding the tax shelter or sales presentations.

Q-32. May persons be treated as tax shelter organizers if such persons do not

make any representations of tax benefits to investors?

A-32. Yes. If a person described in A-26 of this section knows or has reason to know that representations of tax benefits have been made, that person may be treated as a tax shelter organizer. For example, a participant in the sale of a tax shelter may know or have reason to know that representations of tax benefits have been made by the principal organizer or others who participate in the organization of the tax shelter. In addition, a person who acquires property from a manufacturer in a transaction exempt from tax shelter registration under A-24 of this section and who organizes an investment involving the property may know or have reason to know of any representation of tax benefits made by the manufacturer.

Q-33. If a person performs support services such as typing, photocopying, or printing for a tax shelter (or a tax shelter organizer) or performs other ministerial functions for the tax shelter (or a tax shelter organizer), may the person be considered to have participated in the organization, management, or sale of the tax shelter?

A-33. No. Merely performing support services or ministerial functions will not be considered participation in the organization, management, or sale of a tax shelter.

Circumstances Under Which Tax Shelter Organizers Are Required To Register a Tax Shelter

Q-34. When is a principal organizer or a person who participates in the organization of a tax shelter required to register a tax shelter?

A-34. A principal organizer or a person who participates in the organization of a tax shelter (*i.e.*, a person who could be treated as a tax shelter organizer within the meaning of A-26 of this section) is required to register the tax shelter by the day on which the first offering for sale of interests in the tax shelter occurs, unless the person has signed a designation agreement pursuant to A-38 of this section. If a group of persons who could be treated as tax shelter organizers has signed a designation agreement pursuant to A-38 of this section, the designated organizer is required to register the tax shelter by the day on which the first offering for sale of interests in the tax shelter occurs. See A-39 of this section for additional rules applicable to tax shelter organizers (other than a designated organizer) who have signed a designation agreement.

Q-35. When is a person who participates in the management of a tax shelter ("manager") required to register a tax shelter?

A-35. A manager who has not signed a designation agreement pursuant to A-38 of this section must register the tax shelter if the manager participates in the management of the tax shelter on or after the first offering for sale of interests in the tax shelter at a time when the tax shelter has not been properly registered (*i.e.*, the manager is treated as a tax shelter organizer within the meaning of A-26 of this section). Such a manager must register the tax shelter by the day on which the first offering for sale of interests in the tax shelter occurs, or by the day on which the manager's participation in the management of the tax shelter commences, whichever is later. See A-39 of this section for rules applicable to a manager who has signed a designation agreement.

Q-36. When is a person who participates in the sale of a tax shelter ("seller") required to register the tax shelter?

A-36. A seller who has not signed a designation agreement pursuant to A-38 of this section must register the tax shelter if the seller participates in the sale of the tax shelter at a time when the seller knows or has reason to know that the tax shelter has not been properly registered (*i.e.*, the seller is treated as a tax shelter organizer within the meaning of A-26 of this section). A seller who has not signed a designation agreement will be deemed to have reason to know that the tax shelter has not been properly registered if the seller does not receive a copy of the Internal Revenue Service tax shelter registration notice containing the registration number within the 30-day period after the seller first offers interests in the tax shelter for sale. A seller must register the tax shelter as soon as practicable after the seller first knows or has reason to know that the tax shelter has not been properly registered. See A-39 of this section for rules applicable to a seller who has signed a designation agreement.

Q-37 When is a person who acts in more than one capacity with respect to a tax shelter required to register the shelter?

A-37 A person who acts in more than one capacity with respect to a tax shelter (*i.e.*, as two or more of the following: principal organizer, participant in the organization, manager, or seller) must register the tax shelter by the earliest day on which a tax shelter organizer acting in any of the person's several capacities would be required to register the tax shelter.

Q-38. May a group of persons who could be treated as tax shelter organizers under A-26 of this section designate one person to register the tax shelter?

A-38. Yes. A group of persons who could be treated as tax shelter organizers under A-26 of this section may enter into a written agreement designating one person as the tax shelter organizer responsible for registering the tax shelter ("designated organizer"). The designated organizer should ordinarily be a person principally responsible for organizing the tax shelter, but may be any person who participates in the organization of the tax shelter. Although persons who participate only in the sale or management of a tax shelter may sign a designation agreement, they may not be the designated organizer. In addition, the designated organizer may not be a person who is a resident in a country other than the United States. Any person who signs a designation agreement, other than the designated organizer, will not be liable for failing to register the tax shelter and will not be subject to a penalty, even if the designated organizer fails to register the tax shelter, unless the person fails to register the tax shelter when such registration is required under A-39 of this section. See A-7 of § 301.6707-1T for additional rules relating to the reasonable cause exception applicable to persons who sign a designation agreement.

Q-39. Is a tax shelter organizer who has signed a designation agreement and who is not the designated organizer required to register the tax shelter under any circumstances?

A-39. Yes. If a tax shelter organizer who has signed a designation agreement pursuant to A-38 of this section knows or has reason to know on or after the day on which the first offering for sale of interests in a tax shelter occurs that the designated organizer failed to register the tax shelter, such tax shelter organizer must register the tax shelter as soon as practicable after he first knows or has reason to know of the failure. A tax shelter organizer who has signed a designation agreement is deemed to have reason to know that the designated organizer has failed to register the tax shelter if the tax shelter organizer does not receive a copy of the Internal Revenue Service registration notice containing the registration number from the designated organizer within the 60-day period after the day on which the first offering for sale of interests in the

tax shelter occurs (or the person signs the designation agreement, if later). See A-41 of this section for the requirement that the designated organizer provide a copy of the registration notice and number to persons who have signed the designation agreement.

Registration—General Rules

Q-40. By what date must a tax shelter be registered?

A-40. A tax shelter must be registered not later than the day on which the first offering for sale of an interest in the tax shelter occurs.

Q-41. Is a tax shelter organizer (including a designated organizer) who registers a tax shelter responsible for performing any act with respect to tax shelter registration other than registering the tax shelter?

A-41. Yes. A tax shelter organizer (including a designated organizer) who registers a tax shelter must provide a copy of the Internal Revenue Service registration notice containing the registration number within 7 days after the notice is received from the Internal Revenue Service to the principal organizer (if a different person) and to any persons who the tax shelter organizer knows or has reason to know are participating in the sale of interests in the tax shelter (if such persons begin to participate after the registration number is received, they must be provided the notice within 7 days after they commence their participation). In addition, a designated organizer must provide a copy of the notice within 7 days after it is received to all persons who have signed the designation agreement.

Q-42. What is the sale of an interest in a tax shelter?

A-42. The sale of an interest in a tax shelter includes the sale of property, or any interest in property, the entry into a leasing arrangement, a consulting, management or other agreement for the performance of services, or the sale or entry into any other plan, investment, or arrangement.

Q-43. What does the term "offering for sale" mean?

A-43. The term "offering for sale" means making any representation, whether oral or written, relating to participation in a tax shelter as an investor. The term includes any advertisement relating to the tax shelter and any mail, telephonic, or other contact with prospective investors. A representation relating to participation in a tax shelter will be considered an offering for sale of an interest in the tax shelter even though there is included in the representation an explicit statement that the representation does not constitute an offer to sell or a solicitation of an offer to buy an interest in the tax shelter. In determining whether an offering for sale of an interest has occurred, federal and state laws regulating securities are not controlling.

Q-44. After a tax shelter has been registered, must it be registered again each year that it continues to be offered for sale?

A-44. No. Registration is effective for the year in which first accomplished and all subsequent years.

Q-45. If the facts relating to a tax shelter change after the tax shelter has been registered, must the tax shelter be registered again or must an amended application for registration be filed by the tax shelter organizer?

A-45. No.

Q-46. If assets constituting a tax shelter are sold ("original sale") and, subsequently, either the assets or interests in the assets are offered for sale by the purchaser ("resale"), must the purchaser file a new application for registration if the resale is an offering or sale of interests in a tax shelter?

A-46. If the resale constitutes a tax shelter, the purchaser must file a new application for registration, unless the tax shelter organizer with respect to the original sale is also the tax shelter organizer with respect to the resale and the facts pertaining to the resale were reflected in the application for registration filed with respect to the original sale. For example, assume that A intends to sell a building with an estimated fair market value of $2.5 million to a group of 5 investors (*i.e.*, a substantial investment, as defined in A-21 of this section). A also intends to make representations of tax benefits attributable to an investment in the building. Based on these representations and the investment base, the tax shelter ratio attributable to an investment in the building may be greater than 2 to 1. A therefore files an application for registration relating to the building with the Internal Revenue Service. The Internal Revenue Service issues a registration number for the investment, and A furnishes the registration number to each of the 5 investors in accordance with A-53 of this section. In an unrelated transaction, the 5 investors decide to syndicate the building and to offer interests in the syndicate to approximately 500 investors. In connection with this offer, the investors expect to make representations concerning tax benefits with respect to the syndication. If based on these representations and the investment base, the tax shelter ratio may be greater than 2 to 1 for an investor in the syndicate, the 5 investors must file an application for registration for the syndicate before interests in the syndicate may be offered for sale. The investors in the syndicate must be furnished with the new registration number and not the registration number issued with respect to A. On the other hand, if the original sale and the syndication were part of A's plan to sell interests in the building, A is a tax shelter organizer with respect to the syndication. If the facts pertaining to the syndication were reflected on A's application for registration with respect to the original sale, a second application for registration would not be required with respect to the syndication. However, the investors in the syndicate would have to be furnished with the tax shelter registration number issued to A.

Q-47 When is a tax shelter considered registered?

A-47 A tax shelter is considered registered when a properly completed Form 8264, Application for Registration of a Tax Shelter, is filed with the appropriate Internal Revenue Service Center. See A-7 of § 301.6111-2T for rules relating to the information required to be included on the form, and A-8 of § 301.6707-1T for rules relating to the penalty for filing incomplete information.

Q-48. Must a person registering a tax shelter that is a substantial investment only by reason of an aggregation of multiple investments under A-22 of this section complete a separate Form 8264 for each investment constituting part of the substantial investment?

A-48. A separate Form 8264 must be completed for each investment that differs from the other investments in a substantial investment with respect to any of the following:

(1) Principal asset,

(2) Accounting methods,

(3) Federal or state agencies with which the investment is registered or with which an exemption notice is filed,

(4) Methods of financing the purchase of an interest in the investment,

(5) Tax shelter ratio.

Such aggregated investments, however, are part of a single tax shelter.

Q-49. Do the rules of section 7502 of the Internal Revenue Code, regarding timely mailing, apply to the filing of registration forms?

A-49. Yes.

Q-50. After a tax shelter has been registered, may representations that the investment has been registered with the Internal Revenue Service be made to potential investors?

A-50. Investors may be informed that the investment has been registered with

the Internal Revenue Service. Investors also must be informed, however, that registration does not imply that the Internal Revenue Service has reviewed, examined, or approved the investment or the claimed tax benefits. The disclaimer must be substantially in the form provided below:

ISSUANCE OF A REGISTRATION NUMBER DOES NOT INDICATE THAT THIS INVESTMENT OR THE CLAIMED TAX BENEFITS HAVE BEEN REVIEWED, EXAMINED, OR APPROVED BY THE INTERNAL REVENUE SERVICE.

See A-53 of this section for rules relating to the legend that must be included on any statement on which the tax shelter registration number is furnished to investors.

Furnishing Tax Shelter Registration Numbers

Q-51. Who must furnish investors in a tax shelter with the registration number of the tax shelter?

A-51. Any person who sells (or otherwise transfers) an interest in a tax shelter is required to furnish the registration number assigned to that tax shelter to each person who purchases (or otherwise acquires) an interest in that tax shelter from the seller or transferor. For example, X, a tax shelter organizer, sells an interest in a tax shelter to A. One year later A sells A's interest in the shelter to B. X must furnish the tax shelter registration number to A, and A must furnish the number to B. If B sells or otherwise transfers the interest (by gift, for example), B must furnish the number to the purchaser or transferee of B's interest in the tax shelter.

Q-52. When must the registration number of a tax shelter be furnished to purchasers of interests in the tax shelter?

A-52. The person who sells (or otherwise transfers) an interest in a tax shelter must furnish the registration number to the purchaser (or transferee) at the time of the sale (or transfer) of the interest (or, if later, within 7 days after the seller or transferor receives the registration number). If interests in a tax shelter were sold before September 1, 1984, all investors who acquired their interests in the tax shelter before September 1, 1984, must be furnished with the registration number of the tax shelter by December 31, 1984. The statement will be considered furnished to the investor if it is mailed to the investor at the last address of the investor known to the person required to furnish the statement.

Q-53. How is a seller or transferor of an interest in a tax shelter required to furnish the registration number to investors?

A-53. The person who sells (or otherwise transfers) an interest in a tax shelter must furnish the registration number of the tax shelter to the tax shelter to the purchaser (or transferee) on a written statement. The written statement shall show the name, registration number, and taxpayer identification number of the tax shelter, and include a prominent legend in bold and conspicuous type stating that the registration number must be included on any return on which the investor claims any deduction, loss, credit, or other tax benefit, or reports any income, by reason of the tax shelter. The statment must also include a prominent legend in bold and conspicuous type stating that the issuance of the registration number does not indicate that the Internal Revenue Service has reviewed, examined, or approved the investment or the claimed tax benefits. The statement shall be substantially in the form provided below:

You have acquired an interest in [name and address of tax shelter] whose taxpayer identification number is [if any]. The Internal Revenue Service has issued [name of tax shelter] the following tax shelter registration number: [Number]

YOU MUST REPORT THIS REGISTRATION NUMBER TO THE INTERNAL REVENUE SERVICE, IF YOU CLAIM ANY DEDUCTION, LOSS, CREDIT, OR OTHER TAX BENEFIT OR REPORT ANY INCOME BY REASON OR YOUR INVESTMENT IN [NAME OF TAX SHELTER].

You must report the registration number (as well as the name, and taxpayer identification number of [name of tax shelter]) on Form 8271.

FORM 8271 MUST BE ATTACHED TO THE RETURN ON WHICH YOU CLAIM THE DEDUCTION, LOSS, CREDIT, OR OTHER TAX BENEFIT OR REPORT ANY INCOME.

ISSUANCE OF A REGISTRATION NUMBER DOES NOT INDICATE THAT THIS INVESTMENT OR THE CLAIMED TAX BENEFITS HAVE BEEN REVIEWED, EXAMINED, OR APPROVED BY THE INTERNAL REVENUE SERVICE.

This statement may be modified as necessary if the tax shelter is not a separate entity (*e.g.*, certain Schedule F or Schedule C activities) or has no name or taxpayer identification number.

Q-54. If a registration number has not been received by a seller (or transferor) from the person who registered the tax shelter by the time interests in the tax shelter are sold (or otherwise transferred), must the seller (or transferor) of the interests furnish the purchaser (or transferee) with any information regarding the registration?

A-54. Yes. At the time of the sale (or other transfer) the seller (or other transferor) must furnish the purchaser (or transferee) with a written statement in substantially the form prescribed in A-53 of this section, except that the second sentence of the form prescribed in A-53 shall be replaced by a statement in the form provided below:

On behalf of [name of tax shelter], [name of tax shelter organizer who has applied for registration] has applied to the Internal Revenue Service for a tax shelter registration number. The number will be furnished to you when it is received.

Including the Registration Number on Tax Returns

Q-55. Is an investor required to report the registration number of a tax shelter in which the investor has acquired an interest to the Internal Revenue Service?

A-55. Yes. Any person claiming any deduction, loss, credit, or other tax benefit by reason of a tax shelter must report the registration number of the tax shelter on Form 8271, Investor Reporting of Tax Shelter Registration Number, which must be attached to the return on which any deduction, loss credit, or other tax benefit attributable to the tax shelter is claimed. For purposes of determining whether the tax shelter registration number must be reported by an investor, income attributable to an investment, such as a partner's distributive share of income, constitutes a deduction or tax benefit that is claimed, because gross deductions and other tax benefits are included in the net income reported by the investor. Thus, the registration number also must be reported on any return on which an investor reports any income attributable to a tax shelter.

Q-56. What should the investor do if the investor has received a notice that a registration number for the tax shelter has been applied for, but the investor has not received the registration number by the time the investor files a return on which a deduction, loss credit, other tax benefit, or income attributable to the tax shelter is included?

A-56. The investor must attach to the return a Form 8271 with the words "Applied For" written in the space for the registration number and must include on the Form 8271 the name and taxpayer identification number (if any) of the tax shelter and the name of the person who has applied for registration of the tax shelter.

Q-57 Does the requirement to include the tax shelter registration number on a return apply to applications for tentative refund (Form 1045 and Form 1139) and amended returns (Form 1040X, Form 1120X)?

A-57 Yes. A completed Form 8271 must be attached to any such return on which any deduction, loss, credit, other tax benefit, or income relating to a tax shelter is included.

Effective Dates

Q-58. On what date does the requirement to register a tax shelter become effective?

A-58. In general, a tax shelter must be registered if any interest in the tax shelter (other than an interest previously sold to an investor) is sold on or after September 1, 1984 (whether or not interests in the tax shelter were sold or offered for sale before September 1, 1984). The tax shelter must be registered with the Internal Revenue Service not later than the first day after August 31, 1984 on which an interest in the tax shelter is offered for sale.

Q-59. By what date must the tax shelter registration number be furnished to investors who acquired interests before September 1, 1984 in a tax shelter that is required to be registered.

A-59. All investors who acquired their interests in a tax shelter before September 1, 1984 must be supplied with the tax shelter registration number by December 31, 1984. See A-52 of this section for the date by which registration numbers must be furnished to investors who acquire their interests on or after September 1, 1984.

Q-60. What interests will be taken into account in determining whether an investment in which interests were sold before September 1, 1984, is a substantial investment?

A-60. The determination of whether an investment is a substantial investment will be made by taking into account only the interests that are offered for sale on or after September 1, 1984. An investment will be considered a substantial investment if there are expected to be 5 or more investors on or after September 1, 1984, and the aggregate amount offered for sale on or after September 1, 1984 is expected to exceed $250,000. Amounts received from the sale of interests before September 1, 1984, however, are taken into account in computing the amount of the penalty for failure to register.

§ 301.6111-2T Supplemental questions and answers relating to instructions to Form 8264, Application for Registration of a Tax Shelter.

The following questions and answers relate to the instructions to Form 8264, Application for Registration of a Tax Shelter.

General Instructions

Q-1. What form must be used to register a tax shelter?

A-1. Form 8264, Application for Registration of a Tax Shelter. Form 8264 should be completed with reference to these regulations, the printed instructions to the Form 8264 (except where otherwise noted below) and § 301.6111-1T and § 301.6707-1T.

Q-2. May substitute registration forms be used?

A-2. Substitute registration forms may not be used, unless prior approval to use them has been obtained from the Internal Revenue Service.

Q-3. May photocopies of Form 8264 be used?

A-3. No. Because the Form 8264 is designed to be scanned optically by a computer, photocopies of the form may not be used.

Q-4. How is Form 8264 prepared?

A-4. Form 8264 must be prepared by typing or machine printing the information required to be included on the form. No entries may be handwritten except signatures. Before typing any information on the form, use the "typewriter alignment check" to make sure the type will be aligned with the lines and boxes on the form. Otherwise, the form cannot be optically scanned. For pica type, use the boxes marked "pica." For elite type, use the boxes marked "elite." The type is aligned if a letter may be typed in the center of the box.

Q-5. May separate statements be attached to Form 8264 if necessary?

A-5. Except where expressly noted in the printed instructions to the Form 8264 or in this section, every space on the Form 8264 should be completed. However, if the information requested on Form 8264 requires further explanation, does not apply to the tax shelter, or is not known to the tax shelter organizer registering the tax shelter, the tax shelter organizer should attach a statement to the form containing the necessary information or explaining why the information does not apply or why the information is not known.

Q-6. If documents containing information relevant to completion of the Form 8264 have been prepared for the Securities and Exchange Commission or for other purposes, may the person filing Form 8264 incorporate that information in any statements attached to the Form 8264 (see A-5 of this section) by reference to the documents?

A-6. Yes, provided that the documents are attached to the Form 8264 and the page number on which the information appears is specified on the statement to the Form 8264.

Line Item Instructions

Q-7 What information must be included on Form 8264?

A-7 The following information must be included on Form 8264:

Part I—Identifying Information

Enter in the appropriate places in Part I the name, address, taxpayer identification number, and telephone number of both the tax shelter and the tax shelter organizer filing the Form 8264. See A-4 of § 301.6111-1T for the definition of a tax shelter. See A-26 through A-39 of § 301.6111-1T for rules relating to tax shelter organizers. The name of the tax shelter generally will be the name of the tax shelter entity. If the tax shelter consists of Schedule C or Schedue F activities (see Part II, Item 1a) and there is no tax shelter entity other than the tax shelter organizer, the name, address, and taxpayer identification number may be the same for both a person principally responsible for organizing the tax shelter organizer ("principal organizer") and the tax shelter. See item 1b below if similar investment are aggregated as one tax shelter. If the tax shelter organizer registering the tax shelter is not a principal organizer, the tax shelter organizer must check the box in the right-hand corner of Part I and attach a statement to Form 8264 giving the name, address, telephone number, and taxpayer identification number of the principal organizer. See A-27 of § 301.6111-1T for the definition of principal organizer.

Part II—Tax Shelter Information

Item 1a. Check the box corresponding to the form of the tax shelter organization (partnership, trust, S corporation, Schedule C or F activity, other). If the "other" box is checked, the type of organization should be specified in the space provided.

Item 1b. Indicate by checking the appropriate box in item 1b whether the tax shelter is subject to registration because similar investments have been aggregated to form a substantial investment. See A-22 and A-23 of § 301.6111-1T for rules relating to the aggregation of similar investments. A separate Form 8264 must be completed

for each aggregated investment constituting a substantial investment that differs from the other investments with respect to any of the following:

(1) Principal asset (items 3a through 3e),

(2) Accounting methods (item 4),

(3) Federal or state agencies with which the investment is registered or with which an exemption notice is filed (items 5a through 5c),

(4) Methods of financing the purchase of a minimum investment unit (items 7a through 7e), or

(5) Tax shelter ratio (item 9).

Do not file separate Forms 8264 for aggregated investments if the investments do not differ with respect to any of the foregoing. See A-48 of § 301.6111-1T for rules relating to this requirement. The box in item 1b should be checked whether or not separate Forms 8264 are filed for similar investments. In addition, attach a separate statement to each Form 8264 that provides the name, address, and telephone number of all such aggregated investments, whether or not separate Forms 8264 are filed. If possible, all separate forms relating to aggregated investments should be filed together.

Item 2a. Enter in item 2a the proper 4-digit business activity code, as specified in the instructions to the Form 8264, for the principal business activity of the tax shelter. If two or more activities are relevant to the operation of a tax shelter, the proper principal business activity code is the one that most specifically describes the operation of the tax shelter. The second most specific code should be inserted in item 2b.

Item 2b. Enter in item 2b the proper 4-digit business activity code, as specified in the instructions to the Form 8264, for the secondary business activity, if any, of the tax shelter. If no business activity other than the one inserted in item 2a describes any business activity of the tax shelter, item 2b should be left blank and an explanation should be provided on a separate attachment.

Item 3a. A description of the principal asset of the tax shelter (for example, a building, a computer, a patent, or livestock) should be inserted in item 3a. If the tax shelter has more than one asset, the principal asset is the one with the greatest adjusted basis. For purposes of completing item 3a, a building and the underlying land should be treated as one asset. If the tax shelter has no assets, item 3a should be left blank and an appropriate explanation should be provided on an attachment to the Form 8264.

Item 3b. The appropriate box in item 3b should be checked to indicate whether the principal asset was acquired by the tax shelter from a party who is not related to either the tax shelter or a principal organizer of the tax shelter. For purposes of determining whether the person from whom the principal asset was acquired is related to the tax shelter or a principal organizer, use the definition of "related person" in section 168(e)(4).

Item 3c(1). Enter in item 3c(1) the cost to the tax shelter of the principal asset. If the tax shelter did not purchase the principal asset, enter the tax shelter's basis in the asset.

Item 3c(2). If the principal asset is acquired by the tax shelter from a party who is related to either the tax shelter or a principal organizer of the tax shelter (*i.e.*, if the "no" box in item 3b is checked), enter in item 3c(2), the cost of the principal asset when it was first acquired by a party related to the tax shelter or a principal organizer of the tax shelter from an unrelated party. If the principal asset was acquired by the tax shelter from an unrelated party (*i.e.*, the "yes" box in item 3b is checked), leave item 3c(2) blank.

Item 3d. Check the "yes" box in item 3d if the principal asset of the tax shelter is (or is expected to be) located outside the United States and insert the name of the foreign country or its possession or the possession of the United States where the asset is (or is expected to be) located in the "country" space. If the principal asset is located in the United States, check the "no" box in item 3d and leave the "country" space blank.

Item 3e. If the principal business asset was acquired by the tax shelter or a principal organizer or a related person from the manufacturer, builder, producer, or creator of the asset, enter in item 3e, the name and address of the manufacturer, builder, producer, or creator of the asset.

Item 3f. Indicate in item 3f the means by which the tax shelter acquired the principal asset (purchase, construction, lease, other). If the "other" box is checked, specify the method in the space provided.

Item 3g(1). Enter in item 3g(1) the date the principal asset was purchased by the tax shelter, or the anticipated purchase date, if the asset has not been purchased by the date the tax shelter is registered. If the principal asset was acquired by the tax shelter from a party who is related to the tax shelter or a principal organizer of the tax shelter (*i.e.*, the "no" box in item 3b is checked), enter the date the asset was first acquired by a party related to the tax shelter or a principal organizer from an unrelated party.

Item 3g(2). Enter in item 3g(2) the date the principal asset was placed in service by the tax shelter, or the anticipated date if the asset has not been placed in service by the date the tax shelter is registered.

Item 4. Check the box corresponding to the accounting method used by the tax shelter (cash, accrual, hydrid, other). For the purposes of completing item 4, a hybrid method of accounting is a combination of the cash and accrual methods.

Item 5a. Check the proper box in item 5a to indicate the federal agency (or agencies), if any, with which the tax shelter is required to be registered or with which the tax shelter is required to file a notice to obtain an exemption from securities registration. See A-17 of § 301.6111-1T for the definition of an investment that is required to be registered with a federal agency regulating securities. See A-19 of § 301.6111-1T for the definition of an investment that is sold pursuant to an exemption from registration requiring the filing of a notice with a Federal agency regulating the offering or sale of securities.

Item 5b. Using the abbreviations specified in the printed instruction to the Form 8264, indicate the states, if any, in which the tax shelter is required to be registered under a law regulating securities or in which the tax shelter is required to file a notice to obtain an exemption from securities registration. If the tax shelter is required to be registered in more than 5 states, enter the 5 states in which the highest aggregate amounts are expected to be realized. See A-18 of § 301.6111-1T for rules for determining whether an investment is required to be registered with a state agency regulating securities. See A-20 of § 301.6111-1T for the definition of an investment that is sold pursuant to an exemption from registration requiring the filing of a notice with a state agency regulating the offering or sale of securities. See A-21 of § 301.6111-1T for the definition of aggregate amount.

Item 5c. Check the box in item 5c if the tax shelter is sold pursuant to an exemption from registration requiring the filing of a notice with a federal or state agency regulating the offering or sale of securities.

Item 6. If the tax shelter organizer registering the tax shelter (or a related person, as defined in section 168(e)(4)) was a principal organizer or participated in the organization of other tax shelters that were registered with the Internal Revenue Service by another tax shelter organizer, enter in the 5 spaces provided

in item 6 the tax shelter registration numbers of those tax shelters that were most recently registered. For example, assume that individuals P and M participate in the organization of Tax Shelter I and individuals P and D participate in the organization of Tax Shelter II. Assume further that M files a Form 8264 for Tax Shelter I and D files a Form 8264 for Tax Shelter II. If P were subsequently a participant in the organization of Tax Shelter III and P filed the Form 8264 for Tax Shelter III, P would be required to insert the registration numbers for Tax Shelter I and Tax Shelter II in item 6 of the Form 8264 filed for Tax Shelter III.

Item 7a. Item 7a summarizes the methods of financing that the tax shelter makes available to investors to purchase a minimum investment unit in the tax shelter. See item 12 for the definition of minimum investment unit.

Cash: Enter in the space next to the box marked "cash" the minimum amount of cash that is unconditionally required to be contributed or paid by the purchaser of a minimum investment unit during the first five years of the tax shelter.

Property contributed: Enter in the space next to the box marked "property contributions" the adjusted basis of any property expected to be contributed by the purchaser of a minimum unit.

Recourse debt: Enter in the space next to the box marked "recourse debt" the maximum amount of recourse debt, the proceeds of which reduce the investment base, available to the purchaser of a minimum investment unit. See A-14 (1), (2) and (3) of § 301.6111-1T for the definition of amounts borrowed that reduce the investment base.

Nonrecourse debt: Enter in the space next to the box marked "nonrecourse debt" the maximum amount of nonrecourse debt, the proceeds of which reduce the investment base, available to the purchaser of a minimum investment unit. See A-14 (1), (2) and (3) of § 301.6111-1T for the definition of amounts borrowed that reduce the investment base.

Other: Enter in the space below the box marked "other" a description of any other financing method available and enter in the space next to the box marked "other" the maximum amount of such financing that the purchaser of a minimum investment unit can obtain.

Item 7b. Enter in the boxes corresponding to each type of financing specified in item 7a the maximum period of time (in years) over which such borrowed amount may be repaid.

Item 7c. Check the appropriate box in item 7c to indicate whether any of the investor's financing is expected to be collateralized by letters of credit or whether any of the tax shelter's financing is expected to be collateralized by letters of credit executed by the investors.

Item 7d. Enter in the space next to the box marked "unrelated party" in item 7d the maximum percentage of the financing included in item 7a that may be borrowed by an investor from a party who is not the tax shelter, a participating person, or a related person, but which reduces the investment base because it will be arranged by the tax shelter or a participating person or a related person. See A-14(2) of § 301.6111-1T for the definition of amounts borrowed that are arranged by the tax shelter, a participating person or a related person. Enter in the space next to the box marked "related party" the maximum percentage of the financing included in item 7a that is expected to be borrowed by an investor from the tax shelter, a participating person, or a related person and must thus reduce the investment base. See A-14(1) of § 301.6111-1T for the definition of such related party financing.

Item 7e(1). If any of the financing included in 7a is "foreign-connected financing," enter in item 7e(1) the maximum dollar amount of such financing and the foreign country, foreign possession, or U.S. possession in which the lender is located. See A-14(3) of § 301.6111-1T for the definition of foreign-connected financing. If foreign-connected financing is available from more than one foreign country, foreign possession, or U.S. possession, enter the country, foreign possession, or U.S. possession from which the greatest dollar amount of such financing is available and the amount of such financing.

Item 7e(2). If no foreign-connected financing is available, check the box marked "none" in item 7e(2).

Item 8a. The printed instructions to item 8a on the Form 8264 state that the tax shelter organizer should enter in item 8a "the cumulative aggregate dollar amount of gross deductions attributable to the tax shelter over its first five years that are represented or will be represented as potentially allowable under subtitle A of the Code to all investors in the tax shelter." Ignore that instruction. Rather than including the deductions allowable to all investors in the tax shelter, enter in item 8a only the aggregate amount of deductions represented (or to be represented) as potentially allowable to the purchaser of a minimum investment unit in the tax shelter over the first five years. See A-6 of § 301.6111-1 for the definition of "amount of deductions." See A-8 through A-12 of § 301.6111-1T for rules for determining whether deductions are represented as potentially allowable to investors. See the instructions to item 12 (below) for the definition of minimum investment unit. In addition, enter in the right-hand boxes of item 8a the codes, as specified in the printed instructions to the Form 8264, for the two largest deductions, in dollar terms, represented as being potentially allowable to an investor.

Item 8b. The printed instructions to the Form 8264 state that the tax shelter organizer should enter in item 8b "the cumulative aggregate dollar amount of credits attributable to the tax shelter over its first 5 years that are represented as being potentially allowable under subtitle A to all investors in the tax shelter." Ignore that instruction. Rather than including the credits allowable to all investors in the tax shelter, enter in item 8b only the aggregate dollar amount of credits represented (or to be represented) as potentially allowable to the purchaser of a minimum investment unit. See A-6 of § 301.6111-1T for the definition of "credits." See A-8 through A-10 for rules for determining whether credits are represented as potentially allowable to investors. See the instructions to item 12 (below) for the definition of minimum investment unit. In addition, enter in the right-hand boxes of item 8b the codes, as specified in the instructions to Form 8264, for the two largest credits, in dollar terms, represented as being potentially allowable to an investor.

Items 9a-9e. Enter in items 9a through 9e, the highest tax shelter ratio for any investor as of the close of each of the first 5 years of the tax shelter. See A-5 through A-16 of § 301.6111-1T for rules for computing the tax shelter ratio.

Item 10. Enter in item 10 the maximum aggregate amount of the tax shelter, as represented or to be represented. See A21 of § 301.6111-1T for the definition of aggregate amount. If there is no maximum aggregate amount, enter in item 10 the aggregated amount reasonably expected to be realized from the sale of investment units.

Item 11. Enter in item 11 the maximum number of investors that potentially can participate in the tax shelter as represented or to be represented. If there is no maximum number of investors, enter in item 11 the number of investors reasonably expected in the tax shelter.

Item 12. Enter in item 12 the cost of the minimum investment unit that may be purchased by an investor in the tax shelter as represented or to be

represented. A minimum investment unit is the minimum investment that may be purchased by an investor in the tax shelter. The minimum investment unit may consist of more than or less than 1 "unit" as represented or to be represented in any offering material. For example, if a prospectus states that subscriptions in a limited partnership will be offered in units of $5,000 each, with a minimum subscription of 5 units per subscriber, the minimum investment unit is $25,000. If there is no minimum investment unit represented, enter the cost of a typical investment purchased by an individual investor.

Item 13. If interests in a tax shelter were offered for sale to any investor before September 1, 1984, enter in item 13 the date (or anticipated date) of the first offer made after August 31, 1984. If the first offering of a tax shelter interest is made after August 31, 1984, enter in item 13 the date (or anticipated date) of the first offer.

Q-8. Is a worksheet provided with the printed instructions to the Form 8264 to figure the tax shelter ratio for an investor as of the close of each of the 5 years?

A-8. Yes. Use the following instructions to complete the tax shelter ratio worksheet included in the printed instructions to the Form 8264:

Part I—Tax Benefits

Line 1. Enter the amount of deductions represented as being potentially allowable to the investor for the particular year. See A-6 of § 301.6111-1T for the definition of "amount of deductions." See A-8 through A-12 of § 301.6111-1T for rules for determining whether a deduction is represented as being potentially allowable to an investor. See A-7 of § 301.6111-1T for the definition of year.

Line 4. Enter the amount of credit represented as being potentially allowable to the investor for the particular year. See A-6 of § 301.6111-1T for the definition of "credits." See A-8 through A-10 of § 301.6111-1T for rules for determining whether a credit is represented as being potentially allowable to an investor. See A-7 of § 301.6111-1T for the definition of year.

Part II—Investment Base

Line 8. Enter the amount of cash to be contributed by the investor. See A-13 of § 301.6111-1T (definition of investment base) for the rules applicable to cash contributions.

Line 9. Enter the adjusted basis of property (reduced by any liability to which such property is subject) to be contributed by the investor. See A-13 of § 301.6111-1T (definition of investment base) for rules applicable to property contributions.

Line 10. Leave blank because § 301.6111-1T does not provide that any other amounts are to be included in the investment base.

Line 12. Enter the sum of: (1) Any amount borrowed by the investor from any person who participated in the organization, sale, or management of the investment or who has an interest (other than an interest as a creditor) in the tax shelter (a "participating person") or from any person who is related (as defined in section 168(e)(4)) to a participating person, unless the amount is unconditionally required to be repaid by the investor before the close of the particular year (see A-14 (1) of § 301.6111-1T for the definition of such amounts borrowed from a participating (or related) person); (2) Any amount to be held for the benefit of investors in cash, cash equivalents, or marketable securities (see A-14 (4) of § 301.6111-1T for the definition of such cash equivalents and marketable securities); (3) any amount borrowed by the investor from any person, if the loan is arranged by a participating (or related) person, unless the amount is unconditionally required to be repaid by the investor before the close of the particular year (see A-14 (2) of § 301.6111-1T for the definition of such borrowed amounts); (4) any amount borrowed, directly or indirectly, from a lender located outside the United States ("foreign-connected financing"), the existence of which a participating (or related) person knows or has reason to know (see A-14 (3) § 301.6111-1T for the definition of foreign-connected financing); and (5) distributions (whether of cash or property) that will be made without regard to the income of the tax shelter, but only to the extent such distributions exceed the amount to be held as of the close of the year in cash, cash equivalents, or marketable securities (see A-14 (5) of § 301.6111-1T for the definition of such distributions).

Par. 2. New § 301.6707-1T is added immediately after 301.6693-1 to read as follows:

§ 301.6707-1T Questions and answers relating to penalties for failure to furnish information regarding tax shelters.

The following questions and answers relate to the penalties imposed by section 6707 of the Internal Revenue Code of 1954, as added by section 141(b) of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 681), for failure to furnish information regarding tax shelters.

Penalties for Failure To Register and for Providing False or Incomplete Information

Q-1. What are the consequences if a person required to register a tax shelter ("tax shelter organizer") fails to register the shelter timely?

A-1. Generally, a penalty will be imposed. The penalty for failure to register timely is the greater of (i) $500 or (ii) 1 percent of the aggregate amount invested in the tax shelter, not to exceed $10,000. The $10,000 limitation does not apply, however, if the tax shelter organizer intentionally disregards the registration requirements. For purposes of this penalty, the aggregate amount invested in the tax shelter is computed in the manner prescribed in A-21 of § 301.6111-1T, except that the amount to be received from the sale of an interest is taken into account to determine the amount of the penalty only if the interest is sold to an investor. No penalty will be imposed on a person for failure to register a tax shelter if the failure is due to reasonable cause. See A-4 through A-6 of this section for rules relating to reasonable cause.

Q-2. Will registration of a tax shelter by a person participating in the management ("manager") or a person participating in the sale ("seller") of a tax shelter after the date that interests in the tax shelter were first offered for sale relieve a person principally responsible for organizing the tax shelter ("principal organizer") or a person who participated in the organization of the tax shelter of liability for failure to register?

A-2. No. A principal organizer of a tax shelter and a person who participates in the organization of a tax shelter are subject to penalty if they fail to register a tax shelter by the day interests in the tax shelter are first offered for sale, regardless of whether a seller or manager subsequently registers the tax shelter.

Q-3. Does registration of a tax shelter by a seller or manager relieve other sellers or managers who are required to register the tax shelter from liability for failure to register?

A-3. No. Sellers and managers who are required to register a tax shelter and fail to do so are subject to the penalty unless their failure to register is due to reasonable cause. A seller or manager, however, is not required to register a tax shelter once the seller or manager knows the tax shelter has been registered. See A-6 of this section for rules relating to reasonable cause for failure to register in the case of a seller.

Q-4. What constitutes reasonable cause for failure to register a tax shelter?

A-4. In general, the determination of whether reasonable cause exists for failure to register a tax shelter is a question of fact. In determining whether reasonable cause exists, all representations known to the tax shelter organizer (or for which there is reason for the tax shelter organizer to have known) must be taken into account. A tax shelter organizer (other than a seller) ordinarily will be deemed to know of all representations (including those made by sellers) that the tax shelter organizer would have discovered through inquiry that a reasonable person acting in the tax shelter organizer's capacity could have undertaken. Thus, for example, a principal organizer generally will be obligated to make a more thorough inquiry than a person who merely participated in the management of a tax shelter.

Q-5. Will a tax shelter organizer who is required to register a tax shelter before October 1, 1984, have reasonable cause for failure timely to register the tax shelter, if the tax shelter organizer registers the tax shelter after the day on which the first offering for sale of interests occurs, but before October 1, 1984?

A-5. Yes. A person who is required to register a tax shelter before October 1, 1984 (*i.e.*, a tax shelter in which the first offering for sale of an interest occurred before September 1, 1984, but in which interests will be sold after August 31, 1984, or a tax shelter in which the first offering for sale of an interest occurs after August 31, 1984, and before October 1, 1984), will have reasonable cause for the failure to register timely if the person registers the tax shelter on or before September 30, 1984.

Q-6. What constitutes reasonable cause for failure to register a tax shelter in the case of a seller of interests in the tax shelter?

A-6. Reasonable cause for failure to register a tax shelter will generally exist with respect to a seller who is required to register the tax shelter under A-36 or A-39 of § 301.6111-1T, if the seller registers the tax shelter as soon as practicable after the seller first knows or has reason to know that the tax shelter has not been timely registered. A seller will not have reasonable cause, however, if the seller fails to make a reasonable inquiry to determine whether the tax shelter is registered.

Q-7 If a group of tax shelter organizers enters into a designation agreement under A-38 of § 301.6111-1T and the designated organizer fails to register the tax shelter timely, will the other persons who have signed the designation agreement have reasonable cause for failure to register the tax shelter?

A-7 Each of the persons who signs a designation agreement, other than the designated organizer, will have reasonable cause for failure to register the tax shelter timely, provided the person does not participate in the tax shelter at a time when the person knows or has reason to know the tax shelter is not registered (without registering the tax shelter) and the person registers the tax shelter as required by A-39 of § 301.6111-1T.

Q-8. What are the consequences if a tax shelter organizer files false or incorrect information on Form 8264?

A-8. Generally, a penalty will be imposed for filing information that a reasonable person would know or have reason to know is false or incomplete. The amount of the penalty is the greater of (i) $500 or (ii) 1 percent of the aggregate amount invested in the tax shelter (computed in the manner prescribed in A-1 of this section), but not to exceed $10,000. The $10,000 limitation does not apply, however, if the tax shelter organizer intentionally disregards the requirements relating to registration.

Q-9. What is the maximum penalty that may be imposed on any one tax shelter?

A-9. Although the penalty for failure to register a tax shelter timely and the penalty for providing false or incomplete information may be imposed on each person who fails to register a tax shelter timely or who provides false or incomplete information, the maximum penalty is $10,000 for any one tax shelter, provided there is no intentional disregard of the registration requirements. For example, assume that A is the principal organizer of a tax shelter, and seven other persons participate in the organization of the tax shelter, and assume the tax shelter is not registered before the day on which the first offering for sale of an interest in the tax shelter occurs. Assume also that the A and other participants do not have reasonable cause for failure to register timely and the failure is not due to intentional disregard of the registration requirement on the part of any of the participants. The maximum penalty that may be imposed is $10,000, for which the 8 participants are jointly and severally liable.

Q-10. How will the Internal Revenue Service determine whether a person has intentionally disregarded any of the registration requirements?

A-10. The determination of intentional disregard will be made individually for each tax shelter organizer. If one tax shelter organizer intentionally disregards the registration requirements, the $10,000 limitation will not apply to that organizer. The limitation will apply, however, to any tax shelter organizers whose failure to register timely or whose furnishing of false or incomplete information was not due to intentional disregard.

Q-11. What is the maximum penalty that may be imposed if a tax shelter that is a substantial investment consisting of similar investments that are required to be aggregated under A-22 of § 301.6171-1T is not timely registered or if false or incomplete information is filed with respect to the tax shelter?

A-11. The maximum penalty is $10,000 as determined under A-6 of this section, with respect to any investment that is a tax shelter within the meaning of A-4 of § 301.6111-1T without regard to the aggregation rules provided in A-22 of § 301.6111-1T. The maximum penalty that may be imposed with respect to investments that are considered in a single tax shelter only by reason of the aggregation rules of A-22 of § 301.6111-1T is $10,000, even if more than one Form 8264 is required with respect to the aggregated investment (see A-48 of § 301.6111-1T). The penalty may be imposed, however, if there is a failure with respect to any of the required forms.

Penalty for Failure To Furnish a Registration Number

Q-12. What is the penalty for failure to furnish the registration number to a purchaser or other transferee of an interest in a tax shelter as required by A-52 through A-54 of § 301.6111-1T?

A-12. The penalty for failure to furnish the tax shelter registration number in the form required by A-55 through A-54 of § 301.6111-1T is $100 for each failure.

Penalty for Failure To Report a Registration Number on a Return

Q-13. What is the penalty for failure to include the tax shelter registration number on a return on which any deduction, loss, credit, other tax benefit, or any income attributable to a registered tax shelter is included?

A-13. The penalty for each failure by an investor to furnish the tax shelter registration number on such a return is $50 for each tax shelter, unless the failure is due to reasonable cause.

There is a need for immediate guidance with respect to provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure

under subsection (b) of section 553 of Title 5 of United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in section 6111 and 7805 of the Internal Revenue Code of 1954 (98 Stat. 678, 26 U.S.C. 6111; 68A Stat. 917, 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: August 10, 1984.

Ronald A. Pearlman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 84-21728 Filed 8-13-84; 9:06 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 301]

[LR-142-84]

Tax Shelter Registration; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the Federal Register, the Internal Revenue Service is issuing temporary regulations relating to tax shelter registration. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered by October 15, 1984. The amendments are proposed to be effective generally with respect to tax shelters in which any interest is first sold after August 31, 1984.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-142-84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Clark, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3828 not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the Federal Register amend Part 301 of Title 26 of the Code of Federal Regulations. The temporary regulations are designated by a "T" following their section citation. The final regulations, which this document proposes to base on those temporary regulations, would amend Part 301 of Title 26 of the Code of Federal Regulations.

The regulations provide rules relating to both tax shelter registration under section 6111 of the Internal Revenue Code of 1954 and the penalties imposed by section 6707 for failure properly to register tax shelters or to furnish the tax shelter registration number. The regulations reflect the addition of sections 6111 and 6707 to the Code by section 141 of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 678). The regulations are to be issued under the authority contained in sections 6111 and 7805 of the Internal Revenue Code of 1954 (98 Stat. 678, 26 U.S.C. 6111; 68A Stat. 917, 26 U.S.C. 7805). For the text of the temporary regulations, see FR Doc. (T.D. 7964) published in the Rules and Regulations portion of this issue of the Federal Register. The preamble to the temporary regulations provides a discussion of the rules.

Executive Order 12291; Regulatory Flexibility Act

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

Although this document is a notice of proposed rulemaking that solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Drafting Information

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

List of Subjects in 26 CFR Part 301

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

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84-21729 Filed 8-13-84; 9:06 am]

BILLING CODE 4830-01-M

federal register

Wednesday
August 15, 1984

Part III

Office of Management and Budget

Budget Rescissions and Deferrals; Cumulative Report; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report of Rescissions and Deferrals

August 1, 1984.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted of the Congress.

This report gives the status as of August 1, 1984 of nine rescission proposals and 65 deferrals contained in the first twelve special messages of FY 1984. These messages were transmitted to the Congress on October 3, November 17, December 14 and December 21, 1983; and January 12, February 1 and 22, March 26, May 8 and 21, June 20, and July 20, 1984.

Rescissions (Table A and Attachment A)

As of August 1, 1984, there were no rescission proposals pending before the Congress. Attachment A shows the history and status of the nine rescissions proposed by the President in 1984.

Deferrals (Table B and Attachment B)

As of August 1, 1984, $2,881.9 million in 1984 budget authority was being deferred from obligation and $12.3 million in 1984 outlays was being deferred from expenditure. Attachment B shows the history and status of each deferral reported during FY 1984.

Information from Special Messages

The special messages containing information on the rescission proposals and deferrals covered by this cumulative report are printed in the Federal Registers listed below:

Vol. 48, FR p. 45730, Thursday, October 6, 1983

Vol. 48, FR p. 53060, Wednesday, November 23, 1983

Vol. 48, FR p. 56720, Thursday, December 22, 1983

Vol. 48, FR p. 57098, Tuesday, December 27, 1983

Vol. 49, FR p. 2076, Tuesday, January 17, 1984

Vol. 49, FR p. 4692, Tuesday, February 7, 1984

Vol. 49, FR p. 7342, Tuesday, February 28, 1984

Vol. 49, FR p. 13096, Monday, April 2, 1984

Vol. 49, FR p. 20234, Friday, May 11, 1984

Vol. 49, FR p. 22032, Thursday, May 24, 1984

Vol. 49, FR p. 26014, Monday, June 25, 1984

Vol. 49, FR p. 30155, Thursday, July 26, 1984

David A. Stockman,

Director, Office of Management and Budget.

Table A.—Status of 1984 Rescissions

[In million of dollars]

	Amount
Rescissions proposed by the President	$636.4
Accepted by the Congress	0
Rejected by the Congress	−636.4
Pending before the Congress	0

Table B.—Status of 1984 Deferrals

[In millions of dollars]

	Amount
Deferrals proposed by the President	[1] $7,434.5
Routine Executive releases through August 1, 1984 (OMB/Agency Releases of $4,612.2 million and cumulative adjustments of −$87.9 million)	−4,524.3
Overturned by the Congress	−16.0
Currently before the Congress	[1] 2,894.2

[1] This amount includes $12.3 million in outlays for a Department of the Treasury deferral (D84-16).

BILLING CODE 3110-01-M

Attachment A - Status of Rescissions - Fiscal Year 1984

As of August 1, 1984 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Public and Indian Housing Programs								
Payment for operation of low-income housing	R84-2		331,431	2-1-84		331,431	3-28-84	
DEPARTMENT OF THE INTERIOR								
National Park Service								
Land acquisition	R84-3		30,000	2-1-84		30,000	3-28-84	
DEPARTMENT OF LABOR								
Occupational Safety and Health Administration	R84-1		1,700	12-21-83		1,700	3-19-84	
OTHER INDEPENDENT AGENCIES								
Corporation for Public Broadcasting								
Public broadcasting fund	R84-9		20,000	2-1-84		20,000	3-28-84	
Delaware and Susquehana River Basin Commissions								
Salaries and expenses, Delaware River Basin Commission	R84-4		19	2-1-84		19	3-28-84	
Salaries and expenses, Susquehana River Basin Commission	R84-5		24	2-1-84		24	3-28-84	
Panama Canal Commission								
Operating expenses	R84-6A		17,750	2-1-84		17,750	3-28-84	
Capital outlay	R84-6B		7,625	2-1-84		7,625	3-28-84	
OFF-BUDGET FEDERAL ENTITIES								
DEPARTMENT OF AGRICULTURE								
Rural Electrification Administration								
Rural electrification and telephone revolving fund	R84-7		197,862	2-1-84		197,862	3-28-84	
Rural telephone bank	R84-8		30,000	2-1-84		30,000	3-28-84	
Rescissions, total BA			636,411			636,411		

Attachment B - Status of Deferrals - Fiscal Year 1984

As of August 1, 1984 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 8-1-84
FUNDS APPROPRIATED TO THE PRESIDENT									
Appalachian Regional Development Programs									
Appalachian regional development programs	D84-1	10,000		10-3-83					10,000
International Security Assistance									
Foreign military sales credit	D84-30	1,315,000		1-12-84	-715000				600,000
Economic support fund	D84-24	303,880		12-14-83					
	D84-24A		2,267,691	1-12-84	-2350382				221,189
	D84-60	102,000		5-8-84					102,000
Military assistance	D84-31	426,970		1-12-84	-426970				0
DEPARTMENT OF AGRICULTURE									
Soil Conservation Service									
Watershed and flood prevention operations	D84-49	8,138		2-1-84					8,138
Forest Service									
Construction	D84-37	10,814		2-1-84					10,814
Timber salvage sales	D84-2	6,211		10-3-83					
	D84-2A		9,210	1-12-84	-1950				13,471
Expenses, brush disposal	D84-3	42,674		10-3-83					
	D84-3A		12,398	1-12-84					
	D84-3B		778	5-8-84					55,850

Attachment B - Status of Deferrals - Fiscal Year 1984

As of August 1, 1984 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 8-1-84
DEPARTMENT OF COMMERCE									
International Trade Administration									
Participation in U.S. expositions	D84-32	550		1-12-84					550
National Oceanic & Atmospheric Administration									
Promote and develop fishery products and research pertaining to American fisheries	D84-4	33,600		10-3-83	-33600				0
DEPARTMENT OF DEFENSE - MILITARY									
Operation and Maintenance									
Environmental restoration, defense	D84-33	75,000		1-12-84	-75000				0
Military Construction									
Military construction, all services	D84-5	414,597		10-3-83					
	D84-5A		488,340	12-14-83	-712914			129,648	319,671
Family Housing, Defense									
Family housing, Air Force	D84-6	53,000		10-3-83					
	D84-6A		20,131	12-14-83	-73131				0
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation	D84-7	777		10-3-83					
	D84-7A		385	1-12-84					1,162
DEPARTMENT OF EDUCATION									
Office of Postsecondary Education									
Higher education	D84-38	500		2-1-84					500
DEPARTMENT OF ENERGY									
Atomic Energy Defense Activities									
Atomic energy defense activities	D84-62	1,050		6-20-84					
	D84-62A		206	7-20-84					1,256
Energy Programs									
General science and research activities	D84-63	700		6-20-84					700
Energy supply, research and development activities	D84-39	10,052		2-1-84					
	D84-39A		800	6-20-84	-1999				8,853
Uranium supply and enrichment activities	D84-8	130,000		10-3-83					130,000
Fossil energy research and development	D84-21	20,326		11-17-83	-20326				
	D84-21A		500	12-14-83					
	D84-21B		8,993	2-1-84					
	D84-21C		150	6-20-84					
	D84-21D		771	7-20-84					10,414
Fossil energy construction	D84-25	38,038	1,962	12-14-83					
	D84-25A		23,196	2-1-84				-26000	37,196
Naval petroleum and oil shale reserves	D84-40	41,500		2-1-84					
	D84-40A		50	6-20-84					41,550
Energy conservation	D84-41	10,077		2-1-84	-8577			1,218	2,718
Strategic petroleum reserve	D84-26	12,707		12-14-83					
	D84-26A		256	2-1-84					
	D84-26B		92	7-20-84					13,055
Alternative fuels production	D84-22	13,800		11-17-83					
	D84-22A		4,300	2-1-84	-12300			712	6,512
Power Marketing Administrations									
Operation and maintenance, Southwestern Power Administration	D84-42	7,000		2-1-84					
	D84-42A		60	6-20-84					
	D84-42B		41	7-20-84					7,101
Construction, rehabilitation, operation and maintenance, Western Area Power Administration	D84-64	100		6-20-84					
	D84-64A		514	7-20-84					614
Departmental Administration									
Departmental administration	D84-43	29,053		2-1-84					
	D84-43A		375	6-20-84					
	D84-43B		6,660	7-20-84					36,088

Attachment B - Status of Deferrals - Fiscal Year 1984

As of August 1, 1984 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 8-1-84
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Centers for Disease Control Disease control	D84-27	15,560		12-14-83					15,560
National Institutes of Health Buildings and facilities	D84-65	8,006		7-20-84					8,006
Office of Assistant Secretary for Health Scientific activities overseas (special foreign currency program)	D84-9	6,463		10-3-83					
	D84-9A		571	1-12-84					7,034
Social Security Administration Limitation on administrative expenses (construction)	D84-10	10,571		10-3-83					
	D84-10A		10,490	12-21-83	-13				21,048
DEPARTMENT OF THE INTERIOR									
Minerals Management Service Payments for proceeds, sale of water, Mineral Leasing Act of 1920	D84-11	48		10-3-83					48
Bureau of Reclamation Construction program	D84-61	8,000		5-21-84	-8000				0
Bureau of the Mines Mines and minerals	D84-44	1,667		2-1-84					1,667
National Park Service Land acquisition and state assistance (contract authority)	D84-23	30,000		11-17-83					
	D84-23A		2,700	2-1-84				-30000	2,700
Construction (trust fund)	D84-50	14,000		2-22-84		-14000	98-332		0
Office of the Secretary Office of Water Policy	D84-51	300		2-22-84					300
DEPARTMENT OF JUSTICE									
Interagency Law Enforcement Organized crime drug enforcement	D84-57	272		3-26-84					272
Federal Bureau of Investigation Salaries and expenses	D84-58	42,000		3-26-84					42,000
Federal Prison System Buildings and facilities	D84-28	22,025		12-14-83					
	D84-28A		23,752	1-12-84					45,777
Office of Justice Assistance, Research and Statistics Law enforcement assistance	D84-52	296		2-22-84					296
DEPARTMENT OF STATE									—
International Organizations and Conferences Contributions to international organizations	D84-46	4,723		2-1-84					4,723
Contributions for international peacekeeping activities	D84-45	10,879		2-1-84					10,879
United States emergency refugee and migration assistance fund	D84-12	37,928		10-3-83					
	D84-12A		192	1-12-84	-192				37,928
United States bilateral science and technology agreements	D84-13	2,000		10-3-83					2,000

Attachment B - Status of Deferrals - Fiscal Year 1984

As of August 1, 1984 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 8-1-84
DEPARTMENT OF TRANSPORTATION									
Federal Railroad Administration									
Railroad research and development	D84-53	578		2-22-84					578
Federal Aviation Administration									
Facilities, engineering and development	D84-59	360		3-26-84					360
Construction, Washington Metropolitan Airports	D84-54	277		2-22-84					277
Facilities and equipment (airport and airway trust)	D84-14	1,083,268		10-3-83	-153063				930,205
U.S. Coast Guard									
Retired pay	D84-55	13,350		2-22-84					13,350
Maritime Administration									
Ship construction	D84-47	7,000		2-1-84					7,000
Office of the Secretary									
Transportation planning, research and development	D84-56	160		2-22-84					160
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
State and local government fiscal assistance trust fund	D84-15	56,068		10-3-83	-3336			111	52,843
	D84-16	15,209		10-3-83	-15199			12,246	12,256
Bureau of the Mint									
Expansion and improvements	D84-29	256		12-14-83	-256				0
OTHER INDEPENDENT AGENCIES									
Pennsylvania Avenue Development Corporation									
Land acquisition and development fund	D84-17	13,148		10-3-83					13,148
Railroad Retirement Board									
Milwaukee Railroad restructuring, administration	D84-18	85		10-3-83					
	D84-18A		147	12-14-83					232
Tennessee Valley Authority									
Tennessee Valley Authority fund	D84-19	7,000		10-3-83					7,000
	D84-48	2,192		2-1-84					2,192
United States Information Agency									
Salaries and expenses	D84-34	2,400		1-12-84					2,400
Salaries and expenses (special foreign currency program)	D84-35	2,900		1-12-84					2,900
Acquisition and construction of radio facilities	D84-36	9,645		1-12-84					9,645
United States Railway Association									
Administrative expenses	D84-20	2,050		10-3-83		-2050	98-181		0
TOTAL, DEFERRALS		4,548,798	2,885,711		-4,612,208	-16,050		87,935	2,894,186

Notes: Deferral D84-25 was reported as part of D84-21 in the second special message. In the third special message the deferral was reported separately and adjusted upward slightly.

Of the amount deferred as D84-25, $26 million was transferred to Fossil energy research and development pursuant to the 1984 Interior and Related Agencies Appropriations Act.

All of the above amounts represent budget authority except one general revenue sharing deferral (D84-16) of outlays only.

The Soil Conservation Service deferral was erroneously transmitted as D84-36 in the sixth special message. It has been renumbered as D84-49.

[FR Doc. 84-21602 Filed 8-14-84; 8:45 am]
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